

**ARTURO H. TROCIO, PETITIONER, VS. HON. LUIS D. MANTA,
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF
CAMIGUIN AND FRANCISCO P. CEDRO, IN HIS CAPACITY AS
PROVINCIAL AUDITOR FO...**

G.R. No. L-34834. November 15, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

On November 18, 1970, petitioner Arturo H. Trocio was charged by Acting Provincial Fiscal Sixto B. Tagarda before the Court of First Instance of Camiguin with the crime of malversation of public funds (Criminal Case No. 17-C) in the information which reads:

"That on or about July 1, 1964 to November 30, 1967 and from December 1, 1967 to June 30, 1968, in the Municipality of Mambajao, province of Camiguin, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused Arturo H. Trocio was then a Deputy Provincial Treasurer and at the same time a Municipal Treasurer of Mambajao, Camiguin Province and as such directly responsible for the keeping of public funds and accountable for the said public funds in the form of land taxes collection and the like and being then the custodian of such public funds and by reason of his public office and with grave abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate, embezzle, take away and convert for his personal use and benefit from the said public funds under his custody, control and possession the total amount of Five Thousand Nine Hundred Thirty Four Pesos (P5,934.00) Philippine Currency as shown in the Municipal Voucher No. 427 and No. 428, which the accused had illegally prepared without first obtaining and securing prior authorization to do it and to the damage and prejudice of the Philippine Government in the aforesaid amount of P5,934.00."

According to petitioner, the aforementioned information was filed without the requisite preliminary investigation. Whereupon, he pleaded with the Acting Provincial Fiscal that he be given the opportunity to present his evidence which would prove that he did not commit the crime charged; that his petition for reinvestigation was granted by the fiscal who scheduled the hearing on April 29, 1971; and that the complainant in said case, Mr. Francisco Cedro, former Provincial Auditor of the province, failed to appear, thus, petitioner was deprived of a chance to cross-examine him, in violation of Section 14, Rule 112 of the New Rules of Court, which provides:

"SEC. 14. x x x if the accused appears the investigation shall be conducted in his presence and he shall have the right to be heard, to cross-examine the complainant and his witnesses, and to adduce evidence in his favor."

Further, petitioner alleged that when complainant failed to appear so that he may be cross-examined, he (petitioner) moved for the dismissal of the case. This motion was denied and this prompted him to appeal to the Secretary of Justice who, however, sustained the stand of the fiscal saying, among others, that:

"We agree with the observation of the Provincial Fiscal that the appearance of the complainant is not necessary. Furthermore, the case has been set for re-investigation so that you may present your defense. Under

these circumstances, we regret that we cannot give due course to your complaint."

A motion for reconsideration of the stand of the Secretary of Justice was filed by petitioner but the same was denied in a letter, dated December 17, 1971, saying that his ruling in a letter dated October 12, 1971 "stands and consequently considers this matter closed and terminated."

Hence, this petition for certiorari, prohibition with writ of preliminary injunction, with prayer that respondent Judge be enjoined from trying on the merits the aforesaid Criminal Case No. 17-C until after the fiscal shall have completed his "preliminary investigation or reinvestigation of the case."

It is the position of petitioner that while the preliminary investigation was still pending, the fiscal peremptorily filed the information for malversation against him without affording him an opportunity to cross examine the complainant and his witnesses, pursuant to the provisions of Section 1 of Republic Act 5180.

In their answer respondents, among others, alleged:

"2. That the contention of the petitioner in paragraph 5 of his petition is totally malicious and willfully groundless that he was not 'given a preliminary investigation before the information was filed for Malversation of Public Funds.' The truth of the matter was that on April 13, 1970, the petitioner was subpoenaed to appear for preliminary investigation; he appeared before the Office of the Provincial Fiscal of Mambajao, Camiguin; Assistant Provincial Auditor, Mr. Ernesto Ceta, and his witnesses, Messrs. Policarpio S. Sanchez, Senior Clerk, and Candido Javier, Clerk in the Office of the Provincial Auditor of Camiguin Province, appeared and manifested their readiness for the preliminary investigation. The petitioner appeared and was not ready to testify because, according to him, the Provincial Auditor, Mr. Francisco Cedro, the complainant, was not present; he asked for postponement and it was granted. But the Acting Provincial Fiscal proceeded investigating the witnesses for the complainant, to be cross-examined by the petitioner on the next setting of the said preliminary investigation;

"3. That, even if the Provincial Auditor, Mr. Francisco Cedro, was present, the investigating Fiscal would not present him to testify on the matter, because the criminal acts committed by the petitioner was discovered by Messrs. Policarpio S. Sanchez, Senior Clerk, and Candido Javier, Clerk in the Office of the Provincial Auditor of Camiguin province, who were verbally ordered and instructed by the Assistant Provincial Auditor of Camiguin to examine the cash and accounts of the petitioner, who has been officer-in-charge of the Office of the Municipal Treasurer of Mambajao, Camiguin. Attached herewith is a true copy of the second indorsement, dated August 24, 1971, of Acting Provincial Fiscal Sixto B. Tagarda who conducted the preliminary investigation of the complaint against the herein petitioner; and the said true copy of the 2nd indorsement consisting of two (2) pages are marked as Annexes '1' and '1-A' and be considered as part of this Answer;

x x x x x x x x

"5. That the allegation of the petitioner contained in paragraph 7 of his petition is highly malicious that 'information was filed without petitioner having been given a chance to present his side in a preliminary investigation.' The truth of the matter is that on April 13, 1970, the petitioner was duly notified and he appeared. But he wanted the presence of the Provincial Auditor Francisco Cedro, even if he is around, would not be presented to testify, because he does not know the way and manner the illegal collection was effected. The Provincial Auditor Francisco Cedro made only the complaint for he is the head of the Office of the Provincial Auditor. Messrs. Policarpio S. Sanchez, Senior Clerk, and Candido Javier, Clerk of the Provincial Auditor's Office are the complaining witnesses, representing the Office of the Provincial Auditor. The petitioner petitioned the investigating Fiscal to postpone the preliminary investigation and his petition was granted."

We find the petition without merit. The purpose of preliminary investigation is to secure the innocent against

hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials (Hashim vs. Boncan 71 Phil. 216). In this connection, the fiscal has the power to investigate the charges irrespective of whether the person who complains is the offended party or not. A sworn written complaint is not required, except if the offense is one which cannot be prosecuted de oficio, or is private in nature, or where it pertains to those cases which need to be endorsed by specific public officers as required by Section 2, Rule 110 of the New Rules of Court (Hernandez vs. Albano, 2 SCRA 607).

In this case filed by the fiscal against herein petitioner for the crime of malversation of public funds (Criminal Case No. 17-C), the offended party is the Philippine government. Respondents, in their ANSWER to this petition, say and it has not been denied, that Assistant Provincial Auditor Ernesto Ceta, Messrs. Policarpio S. Sanchez and Candido Javier, Senior Clerk and Clerk, respectively, in the Office of the Provincial Auditor of Camiguin Province, appeared and were investigated by the fiscal "to be cross-examined by the petitioner on the next setting of the said preliminary investigation." However, petitioner insisted that the Provincial Auditor, Mr. Francisco Cedro, be presented, and upon the latter's failure to appear and testify, petitioner claimed that the investigation has not been terminated. Answering the request of petitioner, then Undersecretary of Justice Estelito P. Mendoza said:

"In our letter of October 12, 1971, it was intimated that in the reinvestigation of the case by the fiscal, you will be accorded ample opportunity to present your defense. The presence of the provincial auditor during the hearing, is unnecessary, considering that he has no personal knowledge of the facts surrounding the malversation charge against you. The record shows that the two employees of the provincial auditor's office are the principal witnesses against you, and not the provincial auditor himself.

"Accordingly, we are constrained to deny your request for reconsideration on our previous ruling in not giving due course to your complaint. The letter of this Department dated October 12, 1971, stands and consequently considers this matter closed and terminated." (p. 57, Records)

Indeed, the presence of Mr. Francisco Cedro is not necessary where the latter cannot testify on his own personal knowledge regarding the facts of the case. When a fiscal investigates a complaint in order to determine whether he should file charges with the court against the person complained of, the scope of the investigation is far short of a trial of an accused before the court. It is not required that all reasonable doubt of the guilt of the accused must be removed; it is only required that the evidence be sufficient to establish probable cause that the accused committed the crime charged. Otherwise stated, the important thing is, the fiscal, before filing the information should hear the testimonies of witnesses who can sustain the allegations in the information.

With respect to the case of petitioner, if his only problem is the declaration of Mr. Cedro and the latter would not testify, he (petitioner) can cause the issuance of a subpoena to Mr. Cedro and then present him as his own witness.

WHEREFORE, this petition is hereby dismissed for lack of merit.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Gutierrez, Jr., JJ., concur.

Vasquez, J., in the result.

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