

MANUEL GRIÑEN, PETITIONER AND APPELLANT, VS. FILEMON R. CONSOLACION AS ILOILO CITY FISCAL AND PHILIPPINE CHARITY SWEEPSTAKES OFFICE, RESPONDENTS AND APPELLEES.

G. R. No. L-16050. July 31, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

Manuel Griñen was, since February, 1957, a cashier of the Philippine Charity Sweepstakes Office. On December 17, 1958, he was removed, for violation of office regulations. On February 18, 1959, Aurelio Peña, Auditor of the Philippine Charity Sweepstakes Office, wrote the City Fiscal of Iloilo, the following letter—

"Sir:

I have the honor to forward to that office the attached report of examination of the cash and accounts of Mr. Jose Villagracia, former salesman, Philippine Charity Sweepstakes Office, assigned to the Iloilo Branch, showing a shortage in his accountability in the amount of P5,623.65, together with pertinent papers relative thereto for evaluation of his criminal liability and appropriate court action, as the circumstances of the case may warrant.

There is also enclosed hereto photostat copies of CBC Check No. 243018 for P1,000.00 issued by Mr. Jose Villagracia for payment of his ticket accounts, which was returned by the bank with notation "No account" with further request for you to determine the extent of the liability of the suspended cashier Mr. Manuel Griñen for accepting said check with full knowledge that the maker has no deposit in the bank as stated in the attached testimony of Mr. Villagracia. (*Italics supplied*).

It may be stated in this connection, that under existing regulation of the Philippine Charity Sweepstakes Office, the sale of sweepstakes tickets are strictly on cash basis.

True copies of Consignment Invoices Nos. R-00271, R-00273, R-00290, R-00313 and R-00321 are also enclosed herewith to support his accountabilities for the June 2, 22, and July 6, 1958, draws, together with copies of his appointment, oath of office, and fidelity bond.

Your cooperation in this regard will be highly appreciated"

On the basis of the above letter, City Fiscal Filemon R. Consolacion of Iloilo, initiated a preliminary inquiry into the case, by issuing subpoena to Romulo Plagata, Manuel Lacson, Jose Villagracia and Manuel Griñen (petitioner-appellant), to appear before him on May 29, 1959, to shed light on the matter. After having been apprised that he might be involved in the malversation cases against Plagata, Lacson and Villagracia, Griñen's counsel requested the City Fiscal to advise him of any subsequent investigations and to allow him to cross-examine witnesses. The City Fiscal set the investigation for July 20, 1959, for the purpose of determining whether a prima facie case of malversation of public funds exists against Griñen. Griñen, instead of appearing on the scheduled investigation, notice of which has been, given him upon his own request, filed with the CFI of Iloilo, a petition for Prohibition with Preliminary Injunction (Case No. 5249), to restrain in the City Fiscal from

proceeding with the preliminary inquiry and from filing an information against him (Griñen), alleging (1) lack of jurisdiction of the respondent City Fiscal to conduct the preliminary investigation, because there was no valid complaint filed; and (2) there was no law upon which petitioner could be prosecuted. He further prayed for P10,000.00 as moral damages and P500.00 for attorney's fees.

On July 22, 1959, the Court a quo ordered the issuance of a writ of preliminary injunction upon the filing of P1,000.00 bond. Respondents, answering the petition, after the usual admissions and denials, interposed various defenses, contending that the respondent Fiscal had the power and authority to conduct the preliminary investigation and that petitioner Griñen could be prosecuted under the provisions of the Revised Penal Code, depending upon the evidence and outcome of the projected preliminary investigation.

On August 18, 1959, the lower court rendered judgement, which is hereunder quoted in full

"It appearing from petitioner's testimony that the Auditor of Philippine Charity Sweepstakes Office, Mr. Aurelio Peña, had written a letter to the City Fiscal of Iloilo charging petitioner with complicity in the criminal acts of Manuel Lacson, Romulo Plagata and Jose Villagracia who had issued rubber checks in payment of Charity Sweepstakes tickets which they had received from petitioner who was the cashier of the Iloilo Branch of said Charity Sweepstakes Office, the petition praying that the City Fiscal of Iloilo be restrained from investigating petitioner is without merit. Petition, dismissed. Costs are taxed against petitioner. The writ of preliminary injunction is dissolved. The counterclaim filed by respondent City Fiscal is dismissed for lack of evidence. Motion for judgment by default filed by respondent City Fiscal is denied for lack of merit."

Appellant claims that the court a quo erred (1) in not stating clearly and distinctly the facts and the law on which the decision is based; (2) in finding that there is a valid complaint filed, before respondent City Fiscal and that the latter acquired jurisdiction to conduct a preliminary inquiry therein; and (3) in not finding that there is no law upon which appellant can be prosecuted.

A mere reading of the decision heretofore quoted satisfies the requirements of sec. 12, Art. VIII of the Constitution, and sec. 1, Rule 35. It states the facts upon which the decision was based, that is, the Auditor of the Charity Sweepstakes Office had written a letter to the City Fiscal charging the petitioner with complicity in the criminal acts in connection with the issuance of rubber checks. In fact, the only issue on which the trial of the case could proceed, was whether there was a complaint filed with the fiscal as the basis of conducting a preliminary investigation or inquiry. The trial judge need only make a brief, definite and pertinent findings and conclusions upon controverted matters. The ultimate test as to the sufficiency of trial courts' findings of facts is whether they are comprehensive enough and pertinent to the issue raised to provide a basis for decision. When the issue involved is simple, as the one presented in the court below, the trial court is not required to make a finding upon all the evidence adduced. It must state only such findings of facts as are within the issue presented and necessary to justify the conclusions (*Ongsiako vs. Magsilang*, 50 Phil., 380; *I Moran's Rules of Court*, 3rd Ed., pp. 617-618). The very admission of petitioner that there was such a letter-complaint lodged with the City Fiscal which the court a quo considered as a legal basis for the said official to conduct his preliminary investigation, is in itself sufficient to support the judgment of said court. The dominant issue in a petition for Prohibition, under Sec. 2, Rule 67, is whether the proceedings of the tribunal were without or in excess of its jurisdiction. In dismissing the present writ for being unmeritorious, the lower court had undoubtedly in mind a well-entrenched doctrine, that as a general rule the prosecution in a criminal offense cannot be the subject of prohibition or injunction, same being vested with public interest (*Kwong Sing vs. The City of Manila*, 41 Phil., 103; *Dimayuga & Fajardo vs. Fernandez, et al.*, 43 Phil., 304; *Gorospe, et al. vs. Pefiaflorida*, 101 Phil., 886). And the present case is not within the known exceptions of such rule.

Appellant contends that there is no valid complaint against him, as defined under Sections 2 and 5, Rule 106,

upon which to base an investigation. There is no dispute that respondent appellee City Fiscal conducted his preliminary investigation pursuant to the Auditor's letter complaint, heretofore reproduced, although it was not sworn to by the said Auditor. The absence of the jurat in the letter-complaint, however, did not deprive the City Fiscal of the power and authority to investigate the charges contained therein and comply with a duty imposed by law. The City Fiscal of Iloilo does not derive his power and authority to conduct preliminary investigation from the Rules of Court alone (Rules 106 and 108). The Charter of the City of Iloilo (C.A. No. 57, as amended), provides—

"SEC 58. The City Fiscal—His Duties—* * * He shall also have charge of the prosecution of all crimes, misdemeanors and violations of city ordinances, in the Court of First Instance and in the Municipal Court of the City, and shall discharge all the duties in respect to criminal prosecutions enjoined by the law upon provincial fiscals.

"The City Fiscal shall cause to be investigated all charges of crimes, misdemeanors, and violations of ordinances, and have the necessary informations or complaints prepared against the person accused. * * *."

"SEC. 62. * * * Preliminary examination in Municipal Court and Court of First Instance—* * *. In cases triable in the Municipal Court the defendant shall not be entitled as of right to preliminary examination, except a summary one to enable the Court to fix the bail. In cases triable only by the Court of First Instance the defendant shall not be entitled as of right to a preliminary examination, in any case where the city fiscal, after a due investigation of the facts shall have presented an information against him in proper form. * * *" (Comm. Act No. 426, amending Sec. 62 of Comm. Act No. 57, as amended by Comm. Act No. 158).

The Revised Administrative Code also states:

"SEC. 1687. Authority of Fiscal to conduct investigation, in criminal matters.—A provincial fiscal (city fiscal) shall have authority to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the same, * * *." (Rep. Act No. 732).

And this power has been held not to have been repealed by the Rules (Hashim vs. Boncan, 71 Phil., 216; Espiritu vs. de la Rosa, 78 Phil., 827).

It becomes all too clear that the above provisions do not require that the criminal charges or complaints lodged with the City Fiscal, should be sworn to. What should be sworn to is the complaint or information that will be presented in court, after the preliminary inquiry shall have been conducted by the Fiscal who may initiate an investigation covering the commission of an offense, without even waiting for the filing of a complaint by the police agency or an aggrieved party. This power to initiate a preliminary inquiry is inherent in the duties of a public prosecutor. This Court, in the case of Hernandez vs. Albano, et al., 112 Phil., 506, where the issue of an unsworn complaint was raised, held:

"* * * As may be seen from the foregoing provisions, the city fiscal and his assistants, in the same manner as provincial fiscal, are vested with the power and authority to investigate all charges of crimes and violations of ordinance irrespective of whether the person who complains is the offended party or not. Said provisions do not require that a sworn written complaint be first filed before the city fiscal in order that he may investigate the case complained of except of course if the offense is one which cannot be prosecuted de oficio, or is private in nature, where the law requires that it be started by a complaint sworn to by the offended party, or when it pertains to those cases which need to be enforced by specified public officers as required in Section 2, Rule 106 of the Rules of Court.

* * * * *

The contention that the trial court erred in ruling that the complaint contemplated in Section 2, Rule 106 is the one filed in court because it is the one prepared after the preliminary investigation is conducted by the prosecuting official is untenable. This ruling is but a sequel to our interpretation above set out to the effect that, with the exception of the two cases already mentioned, a sworn written complaint is not necessary to be filed in the office of the fiscal before he can start the required preliminary investigation preparatory to the filing of a formal charge. * * *

Since the above provision of law clearly shows that the preliminary investigation precedes the filing of the complaint which is what is defined and mentioned in the Rules of Court, the charge filed by respondent Congressman Albano which was not the result of the preliminary investigation but started it, need not conform to the definition of complaint in the Rules of Court."

Considering that appellees' case come under the aegis of the above decision, the City Fiscal, therefore, had full authority to conduct the investigation in question.

The allegation of appellant that the court erred in not finding that there was no law under which he could be criminally prosecuted is untenable.

Wherefore, the decision appealed from is hereby affirmed, with costs against appellant Manuel Griñen, in both instances.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Barrera, Dizon, Regala, and Makalintal, JJ., concur.

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