

LEONOR G. TAGAYUMA, PETITIONER, VS. HON. OLEGARIO LASTRILLA, THE PROVINCIAL FISCAL OF SAMAR AND MAXIMO MANOOK, RESPONDENTS.*G.R. No. L-17801. August 30, 1962*

Ponente: PAREDES, J.

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On November 16, 1957, the Asst. Provincial Fiscal of Samar, filed with the Samar Court of First Instance an Information charging herein petitioner Leonor G. Tagayuma and Maria Calagos with violation of Sections 87 and 130 of the Revised Election Code, certifying therein that he himself conducted a preliminary investigation. Tagayuma came to know of the filing of such information only upon receipt of a warrant of arrest issued by respondent Judge Olegario Lastrilla on November 18, 1957. She posted a bail bond of P3,000.00 for her provisional liberty. On March 10, 1960, Tagayuma, thru counsel, presented a Motion to Dismiss the case against her, claiming that the CFI did not have jurisdiction to take cognizance of the case. Petitioner pointed out that since the supposed crime was a violation of the Revised Election Code, the Provincial Fiscal and/or his Assistants had no authority to conduct the preliminary investigation upon which the information was based and filed, under the provisions of Section 187, Revised Election Code.

The Provincial Fiscal filed an Opposition to the Motion to dismiss, maintaining that the Court had jurisdiction over election cases and that in taking cognizance of the same, it was merely exercising its jurisdiction; that although the Fiscal conducted the preliminary investigation, the fact that the Court issued the warrant of arrest, upon certification by the Fiscal as to the presence of a probable cause, confirmed the findings of the Fiscal and amounted to a preliminary investigation conducted by the Court itself, and that said Fiscal was empowered by Republic Act No. 732 to make preliminary investigations on all offenses, even capital ones, and to deny him that power over election cases, which to him (Fiscal) are comparatively minor violations, would be "preposterous, illogical and nonsensible".

The trial court, on March 25, 1960, denied the motion to dismiss, holding that it had jurisdiction over the subject-matter, it being a court of general jurisdiction and had acquired jurisdiction over the persons of the accused, upon the issuance of the warrant of arrest and their appearance in Court. "The Court is of the opinion and so holds that although the preliminary investigation called for in Section 187 of the Revised Election Code was conducted by the Provincial Fiscal and not by the Judge himself, the defect is not fatal. Not fatal in the sense that no substantive right of the defendants was ever lesioned. At most if any right at all was violated, it was (is) procedural in character which this Court may correct."

Alleging that respondent Judge, is not granting the motion to discuss the information on the ground of lack of jurisdiction, there having been no valid preliminary investigation conducted before the filing thereof and in denying the motion for reconsideration, acted without jurisdiction and with grave abuse of discretion, petitioner brought the matter before this Court on a petition for certiorari, with a prayer for a writ of preliminary injunction,

asking that the orders of the respondent Judge denying the motion to quash the information dated March 25, 1960 and the order denying the motion for reconsideration (November 12, 1960), be declared null and void; and that pending the resolution of the petition, a writ of preliminary injunction issue to restrain the respondent judge from trying the criminal case led against petitioner Leonor Tagayuma. We issued the writ prayed for.

In answer to the petition, respondents reiterated their contention and arguments in their opposition to the motion to dismiss the case.

The issue presented is whether the preliminary investigation conducted by the Fiscal was sufficient in law, for the court to take cognizance of the case.

The Revised Election Code provides—

"SEC. 187. Jurisdiction of the Court of First Instance.—The Courts of first Instance shall have exclusive original jurisdiction to make preliminary investigation, issue warrants of arrest and try and decide any criminal action or proceeding for violation of this Code. From its decision an appeal shall lie as in other criminal cases."

It is admitted that it was not the Court of First Instance which conducted the preliminary investigation in question but the Provincial Fiscal. The section just quoted is precise, clear and leaves no room for doubt as to who should conduct preliminary investigations for violations of the Election Code. While We agree that the Fiscal is authorized to conduct preliminary investigations under the general law (Rep. Act. No. 732), the provisions of section 187 of the Revised Election Code is a limitation to such power and authority. To sustain the theory of the respondents would render the section cited nugatory and devoid of any reason for its existence. The provision giving original and exclusive jurisdiction to Courts of First Instance in the conduct of preliminary investigations in criminal cases arising from violations of the Election Code, is not without meaning. Public interest demands that such violations be immediately investigated and prosecuted, for it is the only way to curb fraud, terrorism and other corrupt practices which may occur in elections and secure a free expression of the people's true will (*Gorospe vs. Penaflorida et al.*, 101 Phil., 886). A speedy action is guaranteed, if the CFI conducts the investigation since there is only one stage to hurdle. Also, the procedural technicalities in investigations conducted by the Fiscal may be obviated and the said official is removed from the pernicious influence of partisan politics which, for reasons of the inherent independence to the judiciary, and of his elevated position, a judge can easily resist.

In the case at bar the petitioner is given a special right by the Election Code, the law under which she stands charged. Not only is she entitled to a preliminary investigation, but such investigation should be conducted by the Court itself. An investigation by a Fiscal is different from that undertaken by the Court itself. Thus the Rules provide—

"SEC. 4. Investigation by the judges of the Court of First Instance.—Upon complaint or information filed directly with the Court of First Instance, the judge thereof shall conduct a preliminary investigation in the manner provided in the following sections, and should he find a reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest and try the case on the merits."

* * * * *

"SEC. 6. Duty of judge or corresponding officer in preliminary investigation.—The justice of the peace or the officer who is to conduct the preliminary investigation must take under oath, either in the presence or absence of the defendant, the testimony of the complainant and the witnesses to be presented by him or by the fiscal, * * *." (Rule 108).

Obviously, the respondent judge did not comply with the above requirements. He said: "* * * For example, in the case at bar this Court was satisfied from a reading of the allegations in the information supported by the affidavit of witness Tirso Gajoco that the crime charged therein was committed and the defendants in this case most probably committed the same, before the Court ordered the issuance of the warrant of arrest for the apprehension of the defendants". His Honor did not conduct the preliminary investigation himself and did not take under oath the testimony of the complainant and the witnesses. And this is an omission which affects the substantial rights of the appellant. It is not a mere error in procedure.

"* * * The right of an accused person not to be brought to trial except when remanded therefor as a result of a preliminary examination before a committing magistrate, it has been held, is a substantial one. Its denial over the objections of the accused is prejudicial error, in that it subjects the accused to the loss of life, liberty, or property without due process of law (U. S. vs. Marfori [1916], 35 Phil. 666)". (Conde vs. Judge CFI of Tayabas, 45 Phil. 173).

Concededly, the error or irregularity, in the filing of the information against petitioner, without the requisite preliminary investigation conducted by the respondent judge himself, did not divest it of jurisdiction to try and hear the case, because this is a violation of the election law, (section 187 REC, supra), but the cold fact remains that the appellant was not given her day in court. It is a familiar doctrine that where the law provides for preliminary investigation and the defendant is denied the same with his objection, timely made, the accused is considered to have been deprived of due process of law (U.S. vs. Banzuela, 31 Phil. 564; U. S. vs. Marfori, supra).

Conformably with all the foregoing, the orders complained of are hereby set aside and the case is remanded to the court of origin for preliminary investigation in accordance with law and the terms of this decision. Without costs.

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

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