

FELICULO ISRAEL, PETITIONER, VS. HON. NUMERIANO G. ESTENZO AND THE OFFICE OF THE CITY FISCAL, ORMOC CITY, RESPONDENTS.

G.R. No. L-24671. June 30, 1965

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

A petition for certiorari with preliminary injunction having been presented before this Court alleging that the City Fiscal of Ormoc City filed with respondent Judge of First Instance of Leyte, Special Proceeding No. 727-0 against herein petitioner, among other persons, for the purpose of citing them for indirect contempt for refusing to receive and comply with a subpoena issued by the City Fiscal in connection with an investigation he was conducting; that herein petitioner moved to dismiss the aforesaid proceeding on the ground that the alleged contempt is of a criminal nature, punishable with imprisonment for not more than six (6) months or a fine of not more than P1,000.00, and consequently it falls within the original jurisdiction of the City Court of Ormoc, pursuant to section 87 of the Judiciary Act, as amended by Republic Acts Nos. 2613 and 3828; and that respondent Judge denied the motion to dismiss as well as petitioner's motion for reconsideration of the order of denial;

Considering that the charge of indirect contempt against petitioner falls under Rule 71, Section 4, according to which the same may be filed in the Court of First Instance of the province or city in which the contempt has been committed, and is punished under Section 6 of the same Rule and not under any penal statute.

Considering further that contempt, as defined in said Rule, is not a criminal offense within the «« Section 87 of the Judiciary Act, as amended, defining

the jurisdiction of municipal and city courts to try criminal cases, and in fact is not initiated by means of an information but as a special civil action; and

Considering finally that the procedure followed by respondent City Fiscal is in accordance with the Charter of Ormoc City (R.S. No. 179, as amended), section 24 (f) of which provides that in investigations which the Fiscal is authorized to conduct he may subpoena witnesses and "the attendance of an absent or recalcitrant witness may be enforced by application to the Municipal Court or the Court of First Instance."

WHEREFORE, the instant petition is dismissed for lack of merit.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Regala, Bengzon, J.P. and Zaldivar, JJ., concur.

Petition dismissed.

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