

PABLO SANIDAD, ET AL., PETITIONERS, VS. HON. ALADIN BERMUDEZ, ETC., ET AL., RESPONDENTS.*G.R. No. L-25223. May 19, 1971*

Ponente: ZALDIVAR. J.

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These two cases are interrelated, the principal question involved in one case being the same as in the other. They are, therefore, decided jointly.

In the morning of October 19, 1965 a motorcade of about nine vehicles, loaded with the men of Congressman Floro Crisologo, entered the town of Narvacan, Ilocos Sur. Congressman Crisologo himself was in one of the vehicles. The congressman was at that time campaigning for congressional candidate Lucas Cauton, against Congressman Pablo Sanidad who was a candidate for reelection. Congressman Sanidad is from the town of Narvacan. Shortly after the party of Congressman Crisologo had entered the town a shooting incident occurred, allegedly between the men of Congressman Crisologo on one side and the men of Congressman Sanidad on the other, resulting in the death of five persons, and the wounding of also five persons, from the group of Congressman Crisologo. There were also persons from Narvacan who were killed or wounded. While the men of Congressman Crisologo claim that the motorcade was ambushed by the men of Congressman Sanidad, the men of Congressman Sanidad claim that the men of Congressman Crisologo raided the town of Narvacan, particularly the campaign headquarters of Congressman Sanidad and the municipal building of Narvacan.

On October 20, 1965 Congressman Sanidad sent a telegram to Judge Aladin Bermudez of the Court of First Instance of Ilocos Sur, in Vigan, stating that he was informed that charges were being fabricated against him (Sanidad) and other persons in Narvacan, arising from the shooting incident the day before; that he was an aggrieved party, and that he desired that the requirements of Republic Act 732 regarding preliminary investigation in the presence of prospective accused be strictly adhered to. On the same day, Congressman Sanidad also sent a telegram to the Provincial Fiscal of the same tenor as the telegram sent to Judge Bermudez, with addition of a request that the preliminary investigation be conducted in Narvacan where the incident happened.

On October 22, 1965, Assistant Provincial Fiscal Agileo Redoble, who was at that time assigned to the office of the Provincial Fiscal in Vigan — there being another assistant provincial fiscal assigned to and stationed at Narvacan where there was a branch of the Court of First Instance of Ilocos Sur — filed with the Court of First Instance of Ilocos Sur at Vigan an information charging Mayor Justo Mendoza of Narvacan and 28 others, and also John Doe, Richard Doe and many other Does, with having committed the crime of multiple murder and multiple frustrated murder. Together with the information Fiscal Redoble filed a motion praying "that the attached information be docketed and numbered in this court and that the municipal judge of Vigan, Ilocos Sur be authorized to conduct the preliminary investigation. " The ground alleged by Fiscal Redoble in his motion was that the accused were from Narvacan, among them the Municipal Mayor and members of the Municipal Police Force of the town, and the accused being municipal authorities and residents of Narvacan the witnesses were afraid to go to Narvacan to testify at the preliminary investigation of the case.[1] The information thus filed was

accompanied by statements of three persons that were subscribed and sworn to by them before Fiscal Redoble. The information was docketed as Criminal Case No. 5195 of the Court of First Instance of Narvacan. Acting on the motion of Fiscal Redoble, Judge Aladin Bermudez, on October 22, 1965, issued an order authorizing the municipal judge of Vigan, Ilocos Sur to conduct the preliminary investigation of the case in accordance with law and remanding the records of the case to the said municipal judge. The case was thereafter docketed as Criminal Case No. 3066 of the Municipal Court of Vigan, Ilocos Sur.

Acting pursuant to the authority given him by Judge Aladin Bermudez, Municipal Judge Francisco Ante of Vigan, on October 23, 1965, conducted the preliminary examination of witnesses in the case. Judge Ante examined and took down in writing the testimonies of the three persons whose sworn statements accompanied the information filed by Fiscal Redoble in the Court of First Instance of Ilocos Sur. Aside from those three persons, Judge Ante examined and took down the testimony of another witness. These four witnesses who were examined by Judge Ante subscribed and swore to their statements before Judge Ante. Judge Ante further considered the medico-legal necropsy reports regarding the persons named in the information as having been killed or wounded.[2] After accomplishing the preliminary examination of the witnesses in the case Judge Ante, on October 23, 1965, issued the warrant of arrest for the apprehension of all the accused mentioned in the information.

In G.R. No. L-25223

Believing that Judge Aladin Bermudez of the Court of First Instance of Ilocos Sur, Branch I, Judge Francisco Ante of the Municipal Court of Vigan, and Assistant Provincial Fiscal Agileo Redoble had exercised their authority illegally, had acted in an oppressive and vindictive manner, and that the warrant of arrest issued was null and void, and fearing that they would be apprehended and detained pursuant to said illegal warrant of arrest, and alleging that there was no other speedy and adequate remedy available to them, petitioners Pablo Sanidad, Justo Mendoza, Triumfante Mendoza, Romeo Mendoza, Modesto Crisolo, Edwin Cordero, Totoy Valentino, Romeo Gines, Buenaflor Gines, Mauro Corrales, Ramon Bautista, Jorge Bautista, Roman Antolin, Capt. Alejandro Alejo, Sgt. Beraabe de Guzman, Sgt. Roman Villa, Moises Cabamungan, Wapet Raquel, Mariano Banez, Renato Cabellon, Nelson Cabais, Marino Cabico, Apolinario Tamayo, Osmundo Calderon, Juanito de la Cuadra, Boy Alafriz, Jose Bautista, Jr. and Samuel Mendoza, Jr., on October 27, 1965, filed with the Court a petition for prohibition, praying that respondents Hon. Aladin Bermudez, as Judge of the Court of First Instance of Ilocos Sur, Branch I; Hon. Francisco Ante, as Municipal Judge of Vigan, Ilocos Sur; Assistant Provincial Fiscal Agileo Redoble, and any peace officer executing the questioned warrant of arrest, be commanded to desist from further proceeding with Criminal Case No. 5195 of the Court of First Instance of Ilocos Sur, and that a writ of preliminary injunction be issued exparte enjoining said respondent judges and fiscal from proceeding with said criminal case and from filing any other criminal information arising from the October 19, 1965 shooting incident at Narvacan, Ilocos Sur, and from causing the arrest of petitioners and the other members of their faction and organization, and enjoining any and all peace officers from carrying out or executing any warrant of arrest for the apprehension and detention of petitioners in connection with that incident.

On October 28, 1965 this Court ordered respondents to file an answer to the petition, and also issued a temporary restraining order effective until November 3, 1965, restraining respondents from "(1) proceeding with the proceedings of Criminal Case No. 5195 (People vs. Justo Mendoza, et al.) of the Court of First Instance of Ilocos Sur; (2) from filing any other criminal information arising from that October 19, 1965 incident at Narvacan, and causing the arrest of herein petitioners and other members of their faction and organization; and (3) from carrying out or executing any warrant of arrest for the apprehension and detention in connection with said incident subject matter of said criminal case No. 5195." [3] The effectivity of this restraining order was later extended until November 5, 1965. The subsequent motion of counsel for petitioners to continue the effectivity of the restraining

order was denied.

In their answer respondents Municipal Judge Francisco Ante and Assistant Provincial Fiscal Agileo Redoble admitted some facts alleged in the petition for prohibition and denied others and by way of special and affirmative defenses alleged that respondent municipal judge had authority to conduct the preliminary investigation under the provision of Section 2 of Rule 112 of the Rules of Court; that what had really taken place was that the complainants initiated criminal prosecution in the Court of First Instance of Ilocos Sur through the office of the provincial fiscal and that the Judge of the Court of First Instance subsequently acted pursuant to the provision of Section 13 of Rule 112 of the Rules of Court by ordering the respondent municipal judge to conduct a preliminary investigation; that respondent municipal judge summoned the witnesses cited in the information and individually examined them by propounding searching questions as demanded by the provision of Republic Act 3828, and it was only after he had satisfied himself, following all the legal requirements, that the offense charged had been committed and that the accused had probably committed the same that respondent municipal judge caused the issuance of a warrant for their arrest.

On January 27, 1966 petitioners filed a supplemental petition for prohibition, invoking the decision of this Court in the case of Albano, et al. vs. Arranz, et al., G.R. No. L-24403, December 22, 1965,[4] and praying that the warrant of arrest issued by respondent municipal judge Francisco Ante in Criminal Case No. 3066 of the municipal court of Vigan and all proceedings taken in Criminal Case No. 5195 of the Court of First Instance of Ilocos Sur be set aside. The respondents filed their answer to the supplemental petition on February 21, 1966 alleging, among others, that the ruling in the Albano case does not apply to the present case.

In G.R. No. L-25632

Of the twenty nine persons charged in the information filed by Asst. Provincial Fiscal Redoble (docketed as Criminal Case No. 5195 in the Court of First Instance of Ilocos Sur, and also docketed as Criminal Case No. 3066 of the municipal court of Vigan), seventeen had surrendered, on different dates, to the authorities, and were at first confined at the headquarters of the 131st Co. of the Philippine Constabulary at Narvacan, Ilocos Sur. Except for three of them, who were members of the Philippine Constabulary that surrendered on October 25, 1965, the rest surrendered after the elections of November 9, 1965. Upon the request of these seventeen accused who had surrendered, and upon certification by the commanding officer of the 131st PC Co. that the stockade of his unit was not adequately secured, the municipal judge of Vigan ordered the transfer of these detainees to Camp Olivas at San Fernando, Pampanga.

Believing that all the proceedings in Criminal Case No. 5195 of the Court of First Instance of Ilocos Sur and in Criminal Case No. 3066 of the Municipal court of Vigan, particularly the warrant of arrest issued in Criminal Case No. 3066, were void, that they were deprived of their liberty without due process of law, and that the respondent judges and fiscal had acted without or in excess of their jurisdiction or with grave abuse of discretion, these seventeen detainees at Camp Olivas namely, Mariano Banez, Samuel Mendoza, Ramon Bautista, Mayor Justo Mendoza, Capt. Alejandro Alejo, Sgt. Roman Villa, Sgt. Bernabe de Guzman, Marcelino Cabellon, Moises Cabamungan, Romeo Gines, Romeo Mendoza, Renato Cabellon, Marino Cabico, Juanito de la Cuadra, Edwin Cordero, Nelson Cabais, and Wapet Raquel, on February 7, 1966, filed with this Court a petition for certiorari and prohibition with preliminary injunction, praying that the information and warrants of arrest, and all proceedings in Criminal Case No. 5195 of the Court of First Instance of Ilocos Sur and in Criminal Case No. 3066 of the municipal court of Vigan, Ilocos Sur, be declared null and void ab initio and without legal force and effect, and, therefore, unenforceable, and that respondents Hon. Aladin Bermudez, as District Judge of the Court of First Instance of Ilocos Sur, Branch I; Judge Francisco Ante as Municipal Judge of Vigan, Ilocos Sur; the Provincial Fiscal, province of Ilocos Sur; Arty. Agileo Redoble as Assistant Provincial Fiscal of Ilocos Sur; the First PC

Zone Commander; the Provincial Commander, PC, province of Ilocos Sur; the Commanding Officer, 131st PC Co., and the Chief of Police of Narvacan, Ilocos Sur, and/or their successors, be enjoined and restrained from further continuing to enforce, implement, or otherwise give force and effect to aforesaid court proceedings and warrant of arrest and from detaining and/or holding petitioners in custody. Petitioners also pray that a writ of preliminary injunction be issued ex parte enjoining respondent judges and fiscal, and/or their successors, from proceeding with the proceedings in Criminal Case No. 5195 of the Court of First Instance of Ilocos Sur (Branch I) and in Criminal Case No. 3066 of the municipal court of Vigan; restraining respondents and/or their successors in further enforcing the warrant of arrest; and ordering said respondents and/or their successors to release petitioners from custody under such terms and conditions as this Court may impose.

In their petition for certiorari and prohibition petitioners anchor their claim of the nullity of the proceedings in the above-mentioned Criminal Case No. 5195 and Criminal Case No. 3066, mainly upon the decision of this Court in the case of Albano, et al. vs. Arranz, et al., supra. It will be noted that the seventeen petitioners in this case are among the twenty eight petitioners in G.R. No. L-25223. The respondents in this case (G.R. No. L-25632) are the same judges and fiscal as in G.R. No. L-25223, with the addition of the 1st PC Zone Commander, the PC Commander of Ilocos Sur, the Commanding Officer of the 131st PC Co., and the Chief of Police of Narvacan.

The respondents filed their answer. Respondent 1st PC Zone Commander, in his answer, alleges that the petitioners are detained at Camp Olivas in compliance with the order of the judge of the municipal court of Vigan. The other respondents admitted some allegations in the petition, and denied others; and by way of special defenses allege that the information filed by Fiscal Redoble in the Court of First Instance of Ilocos Sur was as good and valid as a complaint to give authority to said court to conduct the preliminary investigation either by the judge thereof, or by the municipal judge of Vigan to whom the case had been referred by the Court of First Instance for preliminary examination and investigation; that the preliminary examination conducted by the municipal judge of Vigan prior to the issuance of the warrant of arrest was in accordance with the provision of Rule 112 of the Rules of Court; that the decision in the case of Albano, et al. vs. Arranz, et al., supra, relied upon in the petition, does not apply; and that the petitioners were no longer entitled to a preliminary investigation because they had made a formal plea of not guilty and a waiver of preliminary investigation.

In their reply to respondents' answer, counsel for petitioners alleges that the acting municipal judge of Vigan, Judge Melanio Lazo, on February 19, 1966, refused to entertain the plea of not guilty and the waiver of preliminary investigation, and that said plea and waiver were subsequently withdrawn by petitioners.

The main issue in these two cases boils down to the question of whether or not the warrant of arrest that was issued by respondent Judge Ante of the municipal court of Vigan, for the apprehension of the persons charged in the information originally filed in the Court of First Instance of Ilocos Sur and remanded to the municipal court of Vigan where it was docketed as Criminal Case No. 3066, is valid or not. In G.R. No. L-25223 the petitioners assail the warrant of arrest as invalid and sought to prevent its execution. On the other hand, in G.R. No. L-25632 the petitioners, who had surrendered to the authorities and are detained in virtue of said questioned warrant of arrest, seek to have the warrant of arrest declared invalid and thereby secure their release from detention.

It is the contention of the petitioners that the proceedings which started with the filing by respondent Fiscal Redoble of an information in the Court of First Instance of Ilocos Sur, followed by the order of respondent Judge Bermudez authorizing respondent Judge Ante of the municipal court of Vigan to conduct the preliminary investigation, the preliminary examination conducted by Judge Ante, and the issuance by Judge Ante of the warrant of arrest, are all null and void for having been done not in accordance with the provisions of Section 13 of Rule 112 of the Rules of Court, and not in accordance with the ruling of this Court in its decision in the case of Albano, et al. vs. Arranz, et al., supra. The petitioners, therefore, maintain that the warrant of arrest issued by

respondent Judge Ante was null and void, of no legal force and effect, and should not have been executed.

Based upon the facts and circumstances appearing in the records of these two cases, however, this Court is of the considered view that the proceedings in the Court of First Instance of Ilocos Sur and in the Municipal Court of Vigan were not based on the provisions of Section 13 of Rule 112 of the Rules of Court, but on

the provisions of Sections 1,2,4,5 and 6 of Rule 112 of the Rules of Court, which provide as follows:

"Sec. 1. Preliminary examination.- Preliminary examination is a previous inquiry or examination made before the arrest of the accused by a judge or officer authorized to conduct the same, with whom a complaint or information has been filed imputing the commission of an offense cognizable by the Court of First Instance, for the purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial."

"Sec. 2. Officers authorized to conduct preliminary examination.-

x x x

"The justice of the peace of the provincial capital or of the municipality in which the provincial jail is located, when directed by an order of the Court of First Instance, shall have authority to conduct such preliminary examination or investigation of any offense committed anywhere within his province at the expense of the municipality wherein the same was committed."

"Sec. 4. Summoning witnesses.- Every person making complaint charging the commission of an offense must inform the judge or the corresponding officer of all persons whom he believes to have any knowledge of its commission; the said judge or officer shall issue subpoena for such persons, requiring them to attend at a specified time and place as witnesses."

" Sec. 5. Duty of judge, fiscal or other officer conducting preliminary examination.- The justice of the peace, the municipal judge, the fiscal or the municipal mayor who conducts the preliminary examination as provided in these rules must take under oath, either in the presence or absence of the accused, the testimony of the complainant and his witnesses. The testimony of the complainant and his witnesses shall be reduced to writing and signed by them."

"Sec. 6. Warrant of arrest, when issued.- If the judge be satisfied from the preliminary examination conducted by him or by the investigating officer that the offense complained of has been committed and that there is reasonable ground to believe that the accused has committed it, he must issue a warrant or order for his arrest."

Under Section 1, Rule 110 of the Rules of Court, "all criminal actions must be commenced either by complaint or information in the name of the People of the Philippines against all persons who appear to be responsible therefor." In the cases now before Us a criminal action was commenced in the Court of First Instance of Ilocos Sur by the filing of an information by respondent Fiscal Redoble charging the persons named in said information of having committed the crime of multiple murder and multiple frustrated murder. The information filed by Fiscal Redoble in the Court of First Instance, which was docketed as Criminal Case No. 5195, is not an information contemplated in Section 14 of Rule 112 of the Rules of Court which requires that "no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal, or state attorney, without first giving the accused a chance to be heard in a preliminary investigation conducted by him or by his assistant by issuing a corresponding subpoena," and that "the fiscal or state attorney shall certify under oath in the information to be filed by him that the defendant was given a chance to appear in person or by counsel at said examination and investigation." Rafter it was an information, defined in Section 3 of Rule 110 which is "an accusation in writing charging a person with an offense subscribed by the fiscal and filed with the Court."

It is undisputed that on October 22, 1965 Fiscal Redoble filed in the Court of First Instance of Ilocos Sur an accusation in writing, duly subscribed by him, charging some twenty nine persons of the offense of multiple murder and multiple frustrated murder. The filing of that information commenced the criminal action against the persons named therein as the accused. The information filed by Fiscal Redoble was not intended to secure from the judge of the Court of First Instance of Ilocos Sur an immediate order for the arrest of the accused and to proceed with the arraignment and trial of the accused based simply on the information and without any previous preliminary examination and investigation by the fiscal or the judge, as would be the case if the information was filed by the fiscal in accordance with Section 14 of Rule 112 of the Rules of Court; nor was it intended to make the court proceed to the arraignment and trial of the accused, as would be the case if the

information was filed by the fiscal after an inferior court had conducted the preliminary examination and preliminary investigation and had forwarded to the clerk of the court of first instance the record of the preliminary examination and preliminary investigation pursuant to Section 12 of Rule 112 of the Rules of Court. Rather, the information filed by the Fiscal Redoble was for the purpose only of commencing the criminal action and laying the basis for the conduct of the preliminary examination and preliminary investigation before the accused is brought to trial, as required by law and the Rules of Court. That information is simply the process whereby a criminal action is commenced and the prosecution proceeds upon it as the people's pleading.^[5] An information of the kind filed by Fiscal Redoble with the Court of First Instance of Ilocos Sur can, under the law, also be filed with the municipal court or city court. Thus a paragraph in Section 6 of R.A. 3828, amending Section 87 of R.A. 296, as amended, dealing with the jurisdiction of the municipal courts and city courts regarding criminal cases, provides as follows:

"Said justices of the peace (now municipal judges) and judges of municipal courts (now city judges) may also conduct preliminary investigation for any offense alleged to have been committed within their respective municipalities and cities, which are (sic) cognizable by Courts of First Instance and the information (is) filed with their courts without regard to the limits of punishment, and may release, or commit, and bind over any person charged with such offense to secure his appearance before the proper court." (italics, and words in parenthesis, supplied)

Under the aforequoted provision of Section 87 of R.A. 296, as amended, an information may be filed by the fiscal before a municipal court or city court. Certainly the information filed by the fiscal before the municipal court or city court is not the information contemplated in Section 14, Rule 112 of the Rules of Court, but an information intended only to initiate proceedings so the judge may conduct a preliminary examination to determine whether a warrant of arrest should issue, as provided in Sections 1, 2, 4, 5 and 6 of Rule 112 of the Rules of Court, and the preliminary examination may be followed by a preliminary investigation after arrest, as provided in Section 10 of the said Rule 112.

And so, if an information can be filed by the fiscal (because no information can be filed before the court except by the fiscal) before a municipal court or city court in order that a municipal judge or city judge can conduct a preliminary examination and preliminary investigation regarding a crime cognizable by the court of first instance, there can be no reason why a fiscal cannot file a similar information in the court of first instance for the purpose only of commencing a criminal action and laying the basis for the court of first instance to order an inferior court to conduct the preliminary examination and preliminary investigation as provided by law and the Rules of Court. There is no provision of law, nor is there a provision in the Rules of Court, which prohibits the filing of an information by the fiscal — in the simple form of an accusation in writing charging a person with an offense, duly subscribed by him — for the purpose only of commencing a criminal action and laying the basis for such proceedings as may eventually lead to the trial of the accused.

In this connection a distinction must be made of the information that may be filed by the fiscal, under different circumstances, to wit: (1) an information filed by the fiscal pursuant to the provisions of Section 14 of Rule 112 of the Rules of Court; (2) an information filed by the fiscal after the preliminary examination and investigation conducted by the Judge of the Court of First Instance pursuant to the provision of Section 13 of Rule 112; (3) an information filed by the fiscal after the preliminary examination and investigation had been conducted by an inferior court and the record of the case had been forwarded to the clerk of the court of first instance, pursuant to the provision of Section 12 of Rule 112; and (4) an information filed by the fiscal for the purpose only of commencing a criminal action and laying the basis for the proceedings relative to the conduct of the preliminary examination and preliminary investigation as provided by law and Sections 1, 2, 3, 4, 5, 6 and 10 of Rule 112 of the Rules of Court.

In the first case, the information is filed by the fiscal before the court of first instance after he had conducted the necessary preliminary investigation, and he should certify under oath in the information that he had conducted the required preliminary examination and investigation and that the accused was given a chance to be present in person or by counsel at said examination and investigation.^[6] This information must necessarily be filed in the court of first instance because the subject matter is an offense cognizable by the court of first instance. Once this information is filed the judge of the court of first instance may proceed to issue the warrant of arrest, and once the accused is arrested and brought to court he may thus be arraigned and tried.

In the second case, an information is filed by the fiscal before the court of first instance by direction of the judge of the said court after the judge himself has acted pursuant to the provisions of Section 13 of Rule 112 of the Rules of Court. This information is filed by the fiscal after the judge had issued the warrant for the arrest of the accused. Once this information is filed, the accused may be arraigned and tried if he had already been arrested and brought to court.

In the third case, an information is filed by the fiscal in the court of first instance after the preliminary examination and preliminary investigation had been conducted by the municipal judge or city judge, as the case may be, and the record of the preliminary examination and preliminary investigation had been transmitted to the clerk of the court of first instance by the municipal judge or city judge who had conducted the examination and investigation, pursuant to the provision of Section 12 of Rule 112. The accused is already under arrest when this information is filed by the fiscal before the court of first instance. The municipal judge, or the city judge, as the case may be, had conducted the preliminary examination and investigation upon a criminal complaint or an information directly filed before the municipal court or city court, relating to an offense cognizable by the court of first instance committed within his municipality or city; and in the case of the municipal judge of the provincial capital or the municipal judge of the municipality where the provincial jail is located, upon a criminal complaint or information filed in the court of first instance relating to an offense committed within the province, when said municipal judge is authorized by the court of first instance to conduct the preliminary examination and investigation pursuant to Section 2 of Rule 112. The preliminary examination and preliminary investigation conducted in this case are governed by the provisions of Sections 4, 5, 6, 10 and 11 of Rule 112. Upon the filing of this information the accused may be arraigned and tried if he is already arrested and brought to court.

In the fourth case, the information is filed by the fiscal without his having previously conducted any preliminary examination or preliminary investigation. This information, like the information in the other three cases, has for its subject matter an offense cognizable by the court of first instance. This information may be filed either in the court of first instance, or in the municipal court, or in the city court, as the case may be. As we have adverted to, this kind of information is filed by the fiscal for the purpose only of commencing the criminal action and laying the basis for the conduct of the preliminary examination and the preliminary investigation. If filed with the court

of first instance the judge of said court may direct the municipal judge of the provincial capital, or the municipal judge of the municipality where the provincial jail is located, to conduct the preliminary examination or (and) investigation in accordance with the second paragraph of Section 2 of Rule 112. In this connection, the Court is of the view that the word "or" used in Section 2 of Rule 112, between the word "examination" and "investigation" should be understood to mean "and," because the municipal judge, under the authority given him by the court of first instance, must conduct what formerly was called the two stages of the preliminary investigation — the first stage, consisting of the preliminary examination (Sections 4,5 and 6 of Rule 112), and the second stage, consisting of the preliminary investigation proper (Section 10 of Rule 112). If the information is filed directly with the municipal court or city court, the municipal judge, or the city judge, as the case may be, proceeds to conduct the preliminary examination in accordance with Sections 4,5, and 6 of Rule 112 of the Rules of Court. If the accused is ordered arrested and is delivered to the court, then the municipal judge, or the city judge, will proceed to conduct the preliminary investigation in accordance with Section 10 of Rule 112. Upon the conclusion of the preliminary examination and investigation the municipal judge, or the city judge, shall transmit without delay to the clerk of the court of first instance having jurisdiction of the offense the record of the case, in accordance with the provisions of Section 12 of Rule 112. Once the record is received by the clerk of court, the case shall proceed on the basis of the original information, unless as a result of the preliminary investigation the fiscal may find it necessary to amend the old information or file a new one. The accused may then be arraigned and tried if he is already arrested and brought to court.

In all these four cases that We have mentioned it is in the preliminary investigation where the accused shall be informed of the information or complaint filed against him, shall be given access to the testimony and evidence presented against him at the preliminary examination, and if he desires to testify or to present witnesses or evidence in his favor he shall be allowed to do so. It is at this preliminary investigation, also, that the accused, if he so requests, shall be allowed to have the sendees of an attorney.

In the cases now before this Court, We believe that the proceedings had in the Court of First Instance of Ilocos Sur (Criminal Case No. 5195) and in the Municipal Court of Vigan (Criminal Case No. 3066) which brought about the issuance of the warrant for the arrest of the persons named in the information filed by Fiscal Redoble, and particularly the petitioners in G.R. No. L-25632, were in accordance with the procedure outlined in the pertinent sections of Rules 110 and 112 of the Rules of Court. The records show that the following had taken place:

(a) Assistant Provincial Fiscal Redoble filed the information in the Court of First Instance of Ilocos Sur (Branch I), located at Vigan. The information was in due form — it being an accusation in writing, charging the persons named therein with an offense cognizable by the court of first instance, and subscribed by the fiscal. The circumstance that the information was filed by Assistant Provincial Fiscal Redoble who was assigned at the office of the Provincial Fiscal in Vigan, and not by the assistant provincial fiscal who was assigned to prosecute cases before the branch of the Court of First Instance of Ilocos Sur stationed at Narvacan (Branch II), and the circumstance that the information was filed at the branch of the Court of First Instance of Ilocos Sur located at Vigan and not at the branch of the said court located at Narvacan where the alleged offense was committed, are of no moment. Assistant Fiscal Redoble was working in the office of the provincial fiscal of Ilocos Sur. and like the provincial fiscal he could act on any offense committed within the province of Ilocos Sur. The branch of the Court of First Instance of Ilocos Sur located at Vigan had jurisdiction over all offenses committed within the province of Ilocos Sur, regardless of the fact that the offenses were committed in the municipalities where the other branches of the court of first instance are located.[7] The law creating the branch of the Court of First Instance of Ilocos Sur at Narvacan has not expressly defined the territorial jurisdiction of said branch to the exclusion of the other branches of the Court of First Instance of Ilocos Sur. As of October 22, 1965 when Fiscal Redoble filed the information with Branch I of the Court of First Instance of Ilocos Sur in Vigan, there was no existing

administrative order of the Secretary of Justice providing that cases arising from the municipality of Narvacan should be tried in the branch of the Court of First Instance of Ilocos Sur stationed at Narvacan. After all, the accused named in the information may still be tried later at the branch of the Court of First Instance of Ilocos Sur stationed at Narvacan.

(b) The information filed by Fiscal Redoble was accompanied by his motion asking the Court of First Instance of Ilocos Sur

(Branch I) to authorize the judge of the municipal court at Vigan, the capital of the province of Ilocos Sur, to conduct the preliminary investigation. Judge Aladin Bermudez of the Court of First Instance of Ilocos Sur (Branch I) found the reasons alleged in the motion meritorious, and authorized the municipal judge of Vigan to conduct the preliminary investigation, and remanded the record of the case to the municipal court of Vigan. We find the actuations of Fiscal Redoble and of Judge Bermudez to be in accordance with the provisions of Section 3 of Rule 110 and of the second paragraph of Section 2 of Rule 112.

(c) Upon receipt of the information and its accompanying papers, and acting under the authority given him by the Judge of the Court of First Instance of Ilocos Sur, Municipal Judge Francisco Ante docketed the case as Criminal Case No. 3066 of the Municipal Court of Vigan. The circumstance that the information was docketed as Criminal Case No. 3066 of the Municipal Court of Vigan, when it had already been docketed as Criminal Case No. 5195 of the Court of First Instance of Ilocos Sur, is also of no moment. The case had to be docketed in the Municipal Court of Viganas if it was an information originally filed with that court for purposes only of the preliminary examination and preliminary investigation that may be conducted.

(d) Municipal Judge Francisco Ante of Vigan proceeded to conduct the preliminary examination of the case, by citing to appear before him the three persons whose sworn statements were attached to the information. Judge Ante personally examined these three persons, and the questions of the judge and the answers of these persons were reduced to writing which these three witnesses subscribed and swore to before Judge Ante. The municipal judge also examined the three witnesses on their sworn statements attached to the information. The municipal judge further examined a fourth witness who had no sworn statement attached to the information. The questions of the judge and the answers of the witness were reduced to writing which was subscribed and sworn to before the judge by said witness. The municipal judge had before him the medico-legal necropsy reports regarding the persons who were mentioned in the information as having been killed or wounded. After the preliminary examination the municipal judge issued the warrant of arrest in question. We find the actuations of the municipal judge to be in accordance with Sections 4, 5 and 6 of Rule 112.

What would have followed, after the arrest of the accused named in the information, or after seventeen of them had surrendered and were under the custody of the municipal court, was for the municipal judge of Vigan to conduct the preliminary investigation in accordance with Section 10 of Rule 112. This could not be done any more because petitioners came to this Court to question the validity, and sought the annulment, of the warrant of arrest issued by the municipal judge.

We, therefore, find, and so hold, that the warrant of arrest issued by respondent Municipal Judge Francisco Ante of the Municipal Court of Vigan, on October 23, 1965, for the apprehension of the petitioners in the two cases now before this Court, except petitioner Pablo Sanidad, was valid and had legal force and effect; and the petitioners in G.R. No. L-25632 are legally detained pursuant to said warrant of arrest. The petitioners have not been deprived of their constitutional right to due process because as far as the preliminary examination of the case is concerned the municipal judge of Vigan had acted in accordance with law. The petitioners have no constitutional right to be present at the preliminary examination before the municipal judge.

The petitioners lay stress on the applicability of the rulings of this Court in the decision in the case of Albano, et al. vs. Arranz, et al., supra in the resolution of the issue in the two cases now before Us. It is the submission of petitioners that the proceedings had before respondent Judge Bermudez of the Court of First Instance of Ilocos Sur and before Judge Ante of the Municipal Court of Vigan should be governed by the provisions of Section 13 of Rule 112 of the Rules of Court. The petitioners assert that, as said in the Albano case, under Section 13 of Rule 122 the criminal action cannot be commenced in the court of first instance by the filing of an information but only by the filing of a complaint, and that the criminal complaint can only be filed by the offended party, by a peace officer, or by other employee of the government or governmental institution in charge of the enforcement or execution of the law violated. It is claimed by the petitioners that in the cases now at bar, the criminal action had not been properly commenced in the Court of First Instance of Ilocos Sur because what was filed by Fiscal Redoble was an information and not a complaint as required in Section 13 of Rule 112. It is also asserted by the petitioners that, as construed in the decision in the Albano case, under Section 13 of Rule 112 the judge of the court of first instance upon receipt of the complaint should do one of two things: either refer the complaint to the municipal judge of the provincial capital or to the municipal judge of the municipality where the provincial jail is located for preliminary examination and investigation, or he (the judge) himself conducts both preliminary examination and investigation simultaneously. The petitioners further assert that under said Section 13 of Rule 112 the judge of the court of first instance cannot issue a warrant for the arrest of the accused without first conducting the preliminary examination and preliminary investigation simultaneously, and when Judge Bermudez authorized Municipal Judge Ante to conduct the preliminary investigation he had thereby delegated to Judge Ante the function of conducting the preliminary examination and preliminary investigation simultaneously, and inasmuch as Judge Ante simply conducted an ex pane preliminary examination and did not conduct the preliminary investigation wherein the accused should have been given a chance to be present, the proceedings had before Judge Ante were a nullity and the warrant of arrest that he issued was invalid.

We hold, however, that the rulings in the decision in the Albano case have no application to the cases at bar. What happened in the Albano case was that the fiscal filed an information, without previous preliminary investigation, before the Court of First Instance of Isabela charging certain persons with murder. The Judge of the Court of First Instance of Isabela conducted what he considered as the preliminary examination and investigation, ex-parte, and issued the warrant for the arrest of the accused. In the cases before Us, the Judge of the Court of First Instance of Ilocos Sur, upon the filing of the information by Fiscal Redoble, without previous investigation by said fiscal, did not conduct any preliminary examination nor investigation himself— instead he authorized the judge of the municipal court of Vigan, the provincial capital, to conduct the preliminary examination and investigation. In the Albano case this Court held that the Judge of the Court of First Instance of Isabeladid not conduct the preliminary examination and investigation simultaneously as required in Section 13 of Rule 112 before issuing the warrant of arrest, such that the proceedings before said judge were null and void and the warrant of arrest that he issued was invalid. But in the cases now before Us, as We have stated at the earlier part of his decision, the proceedings had before the Court of First Instance of Ilocos Sur and before the municipal court of Vigan were not conducted pursuant to the provisions of Section 13 of Rule 112 but were conducted in accordance with the provisions of Sections 1,2,4,5, and 6 of Rule 112 of the Rules of Court. Since the rulings in the Albano case dwell on the construction of Section 13 of Rule 112, We hold that the rulings in that decision have no application to the cases at bar. The Judge of the Court of First Instance of Ilocos Sur, in the present cases, authorized the municipal judge of Vigan to conduct the preliminary examination and preliminary investigation not in pursuance with the provision of Section 13 of Rule 112 of the Rules of Court but in pursuance with the provision of Section 2 of the Rule 112, independently of what is provided in Section 13 of said rule as interpreted in the Albano case.

Petitioners also contend that even if Municipal Judge Ante was properly authorized by the Judge of the Court of

First Instance of Ilocos Sur to conduct the preliminary examination and investigation, still the proceedings before him were null and void because he conducted the preliminary examination in Vigan and not in Narvacan where the crime alleged in the information was committed. In other words, it is the stand of the petitioners that the municipal judge of the provincial capital who is authorized by the court of first instance to conduct the preliminary examination and investigation under the provisions of the second paragraph of Section 2 of Rule 112 should conduct the preliminary examination and investigation in the municipality where the alleged crime is committed. This stand of the petitioners has no merit. The municipal judge of the provincial capital or of the municipality in which the provincial jail is located when directed by an order of the court of first instance to conduct the preliminary examination or investigation of any offense committed anywhere within the province is not required to conduct such examination and investigation in the municipality where the crime under investigation was committed. He may conduct the preliminary investigation in his own municipality or in any other municipality in the province.[8]

WHEREFORE, the petitions in these two cases, G.R. No. L 25223 and G.R. No. L-25632, are dismissed. The judge of the municipal court of Vigan, Ilocos Sur, is ordered to conduct the preliminary investigation in Criminal Case No. 3066 now pending in that court, without delay, and act in accordance with Sections 10 and 12, of Rule 112, of the Rules of Court. No pronouncement as to costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal and Makasiar, JJ., concur.

Teahankee, J., concurs in a separate opinion.

Barredo, Villamor and Fernando, JJ., took no part.

Ruiz Castro, J., is on leave.

[1] Page 12, record of G.R. No. L-25632.

[2] Pages 66-88, record of G.R. No. L-25223.

[3] As quoted from the restraining order of October 28, 1965 in G.R. No. L- 25223.

[4] 15 SCRA 518.

[5] U.S. vs. Narvas, 14 Phil. 410.

[6] This is also provided in R. A. 5180, the act providing for a uniform system of preliminary investigation by provincial and city fiscals and their assistants — approved on Sept. 8, 1967.

[7] Lumpay, et al. vs. Hon. Moscoso, 105 Phil. 968; Gumpal vs. Court of First Instance of Isabela, etc., et al. G. R. Nos. L-16409 and L-16416, November 29, 1960.

[8] See Francisco's "Revised Rules of Court in the Philippines (Criminal Procedure), "Second Edition, 1969, p. 274.

CONCURRING**TEEHANKEE, J.,**

I concur in the result, but do so on the ground that the criminal action had been properly commenced by the fiscal as complainant on behalf of the offended parties, under Section 13 of Rule 112. The cited rule speaks of a "complaint filed directly with the Court of First Instance, without previous preliminary examination and investigation conducted by the fiscal." [1] The "information" filed by the fiscal with the Vigan Court of First Instance was for all legal purposes a complaint on behalf of the offended parties within the purview of the cited rule. This was patent from the fiscal's motion, filed by him upon filing of the complaint (which he termed as an information), alleging that "the accused were from Narvacan, among them the municipal mayor and members of the municipal police of the town, and the accused being municipal authorities and residents of Narvacan, the witnesses were afraid to go to Narvacan to testify at the preliminary investigation of the case" [2] and praying "that the attached information be docketed and numbered in this court and that the municipal judge of Vigan, Ilocos Sur be authorized to conduct the preliminary investigation." [3]

Respondent court, therefore, acted properly within the authority granted him in the cited rule, when instead of his own court conducting the preliminary investigation, he referred the "information" (complaint) to the municipal judge of Vigan for preliminary examination and investigation, as sought by the fiscal on behalf of the offended parties.

[1] "SEC. 13. Preliminary examination and investigation by the judge of the Court of First Instance.— Upon complaint filed directly with the Court of First Instance, without previous preliminary examination and investigation conducted by the fiscal, the judge thereof shall either refer the complaint to the justice of the peace referred to in the second paragraph of Section 2 hereof for preliminary examination and investigation, or himself conduct both preliminary examination simultaneously in the manner provided in the preceeding sections, and should he find reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest, and thereafter refer the case to the fiscal for the filling of the corresponding information."

[2] Decision, at page 3, *Italics* furnished.

[3] *Idem*, at pp. 2-3.

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