

AMORSOLO R. MANZANO, PETITIONER AND APPELLANT, VS. JUDGE PATROCINIO S. VILLA, THE MUNICIPAL JUDGE OF VICTORIA, TARLAC AND THE CHIEF OF POLICE OF VICTORIA, TARLAC, RESPONDENTS AN...

G.R. No. L-27018. August 30, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from an order of the Court of First Instance of Tarlac dated August 23, 1966 dismissing the petition for mandamus and prohibition against the municipal judge of Victoria, Tarlac in connection with the filing of three criminal complaints and the issuance of warrants of arrest against herein appellant.

The said criminal complaints were successively filed on May 8, 10 and 11, 1966 before the municipal court of Victoria, Tarlac, by police sergeant Felix G. Felipe, then designated by the mayor as acting chief of police. They were docketed as Criminal Case No. 646, for "Assault and Resistance to an Agent of Person in Authority;" No. 647, for "Alarm and Scandal;" and No. 649, for "Concealing a Deadly Weapon" under Section 26 of Act No. 1780. All three arose from a single incident which occurred on the night of May 7, 1966, wherein the accused allegedly created a disturbance inside the public auditorium of Victoria and assaulted and resisted a policeman who was trying to investigate him.

The municipal judge conducted a preliminary examination on May 10, May 11 and May 23, 1966 by taking the sworn statements, in question and answer form, of policemen Ruperto Baldric and Felino Narne and P.C. soldiers Dominador San Miguel and Felino Silvestre. Warrants of arrest were thereafter issued against the accused, but for unstated reasons the same were not served.

On June 10, 1966 a motion to dismiss and to recall the warrants of arrest was filed by the accused, through counsel. He alleged that he had not been notified of the preliminary examination nor given an opportunity to cross-examine the witnesses against him. This motion was followed by a memorandum filed by the accused's father (through the same counsel), who claimed that the charges filed against his son were fabricated. Both pleadings contained a request for submission to the court "in chamber," but copies thereof were not served on the adverse party. Then a supplemental motion to dismiss, dated June 20, 1966, raised the additional argument that police sergeant Felipe had no authority to file the complaints in his capacity as acting chief of police of Victoria, Tarlac, since he never held a valid and subsisting appointment to the latter position.

On July 7, 1966, no action having been taken by the municipal judge on the motion to dismiss, the accused went to the court of first instance of Tarlac on a petition for mandamus and prohibition, with a prayer for the issuance of a writ of preliminary injunction (Civil Case No. 4225), against the municipal judge and Felix G. Felipe to compel the former to act on the said motion and both respondents to desist from proceeding with the criminal charges.

On July 9, 1966 the court of first instance issued the injunction and required the respondents to answer the petition. On July 20, 1966 the respondents (in Civil Case No. 4225) moved to dismiss the petition on the grounds that the accused, not having submitted himself to the jurisdiction of the municipal court, since he had not been arrested, had no personality to file the motion for the dismissal of the criminal complaints; that Sgt. Felix Felipe was a peace officer and as such was therefore authorized to file the criminal complaints under Section 2 of Rule 110 of the Rules of Court; and that the municipal court of Victoria, Tarlac had jurisdiction to conduct a preliminary examination of the charges.

The accused opposed the motion, and a supplemental memorandum was filed by his father in support of the opposition, alleging that the respondent judge had unlawfully delegated to Sgt. Felix Felipe the duty to personally examine the witnesses before issuing any warrant of arrest.

On August 23, 1966, the court of first instance dismissed the petition for mandamus and prohibition.

In this appeal the petitioner raises the following errors: (1) that respondent judge should have given the petitioner an opportunity "to be heard formally in evidence" before dismissing Civil Case No. 4225; and (2) that respondent judge erred in dismissing the petition for lack of cause of action.

The appellant proceeds on the mistaken premise that the three criminal complaints filed by Sgt. Felix Felipe were defective and that the preliminary examination was not conducted by the municipal judge in accordance with law.

Section 2 a Rule 110 defines a complaint as a "sworn written statement charging a person with an offense subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated." Sgt. Felix G. Felipe was a member of the municipal police force of Victoria, Tarlac, and therefore a peace officer with authority to file the complaints in question. The fact that at the time he did so he was acting as chief of police without formal appointment but merely by designation of the Mayor did not divest him of that authority. In either capacity he remained a peace officer.

The preliminary examination conducted by the municipal judge was essentially a procedural matter and no substantial rights of the accused were violated just because he had not been given an opportunity to examine the witnesses against him.[1] This first stage of the preliminary investigation is "not the occasion for full and exhaustive presentation of parties' evidence but only such as may engender well-grounded belief that an offense has been committed and that the accused is probably guilty thereof." [2] The proceeding is usually held ex-parte, for under Section 5 of Rule 112 all that is required is for the judge conducting such examination to "take under oath, either in the presence or absence of the accused, the testimony of the complainant and his witnesses," said testimony to be reduced to writing and signed by them. Hence the absence of the accused during the preliminary examination was not a denial of due process of law.

Petitioner maintains that Section 87(c) par. 3 of Republic Act No. 296 as amended by Republic Act No. 3828 was not observed. This provision reads as follows: "No warrant of arrest shall be issued by any justice of the peace in any criminal case filed with him unless he first examines the witness or witnesses personally, and the examination shall be under oath and reduced to writing in the form of searching questions and answers." The record contains the sworn statements, in the form of questions and answers, of Felino L Narne dated May 10, 1966, of Ruperto Baldrice dated May 11, 1966, of Dominador San Miguel dated May 11, 1966 and May 23, 1966, and of Felino Silvestre dated May 11, 1966, all subscribed before the municipal judge. These statements show the preliminary examination was properly conducted.

The argument that the charges were fabricated was premature at the stage of the case when the motion to dismiss

was filed in the municipal court. That is a matter proper as a defense and should be raised during the trial on the merits. If the judge found the complainant and the witnesses against the accused credible on the strength of the evidence received by him at the preliminary examination, any error on his part in the appreciation of such evidence did not warrant a petition for prohibition.

Neither was the petition for mandamus in order. The failure of the municipal judge to immediately act on the motion to dismiss did not amount to such wanton neglect as to warrant the issuance of such a writ. The motion to dismiss was dated June 10, 1966. A supplemental motion to dismiss was subsequently filed, dated June 20, 1966. The petition for prohibition and mandamus was filed on July 7, 1966, or only about three weeks from the date of the motion to dismiss. The delay was not a neglect of duty on the part of the municipal judge, especially considering that the motion did not even contain a written notice of the date and place of hearing but was submitted for the consideration of the court "in chamber." Moreover, the petitioner should have asked the court to act on his motion before filing the mandamus case. Or he could have waited for the arraignment and thereupon filed a motion to quash pursuant to Rule 117. His petition in the Court of First Instance was premature, and delayed the case needlessly instead of expediting it.

The order appealed from is affirmed, with costs against petitioner.

Concepcion, C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] Bustos vs. Lucero 81 Phil. 640.

[2] Mayuga vs. Maravilla L-18826, December 17, 1966, 18 SCRA 1115 quoting Hashim vs. Boncan, 71 Phil. 216, 225.

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