

**FELIMON C. MARQUEZ, RICARDO SUAREZ AND ANASTACIO ROXAS,
PETITIONERS, VS. GAVINO R. ALEJO, LUIS CRUZ, PEDRO D. OFIANA,
IN HIS CAPACITY AS PROVINCIAL FISCAL OF THE PROVINCE OF
BUL...**

G.R. No. L-40575. September 28, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

Appeal from the order* of the Court of First Instance of Bulacan dismissing Special Proceedings No. 340-V for certiorari and prohibition with preliminary injunction. The appeal was elevated to the Court of Appeals. It was certified to this Court by the Court of Appeals as it involves only questions of law.

The Court of Appeals resolution** reads:

"It appears that at the instance of private respondents Gavino R. Alejo and Luis Cruz the provincial fiscal of Bulacan filed a complaint for falsification of public documents by public officers against petitioners Felimon C. Marquez and Ricardo Suarez, then municipal mayor and treasurer of Obando, Bulacan, respectively (I.S. No. 2389). A complaint for estafa through falsification of public document was also filed against petitioner Anastacio Roxas (I.S. No. 2390). After conducting an investigation, the provincial fiscal issued a resolution dismissing the charges against petitioners for lack of sufficient evidence to warrant criminal prosecution.

"Private respondents then filed a petition for review and/or appeal with the Secretary of Justice who in a 3rd Indorsement dated July 14, 1966, through the Chief State Prosecutor, requested the investigating fiscal to make a thorough reinvestigation of the cases in view of an apparent inconsistency in the resolution dismissing the same. However, said fiscal in his 4th Indorsement dated August 1, 1966, disclaimed any inconsistency. Nonetheless, he conducted several hearings on the requested reinvestigation.

"Prior to the hearing set for May 10, 1967, petitioners filed with the CFI of Bulacan a petition for certiorari and prohibition with preliminary injunction to restrain the provincial fiscal from proceeding with the reinvestigation of the charges lodged against them. Finding the petition sufficient in form and substance, the respondent court issued on May 9, 1967, a temporary restraining order enjoining the provincial fiscal from continuing with the reinvestigation.

"After trial respondent court on December 6, 1968, issued an order dismissing the petition and dissolving its restraining order.

"Petitioners have appealed to this Court claiming that:

"I

"THE LOWER COURT ERRED IN HOLDING THAT THE SECRETARY OF JUSTICE IS 'A NECESSARY AND INDISPENSABLE PARTY TO THIS CASE' (PAGE 2, ORDER APPEARING ON PAGE 188 OF RECORDS; ALSO APPENDIX 'A')

"II

"THE LOWER COURT ERRED IN HOLDING THAT THE THIRD INDORSEMENT OF THE SECRETARY OF JUSTICE DATED JULY 14, 1966 (EXHIBIT D) TAKEN AS A WHOLE IS NOT A REQUEST FOR REINVESTIGATION BUT AN ORDER TO REINVESTIGATE BASED ON THE ALLEGED FINDING OF 'APPARENT INCONSISTENCY.'

"III

"THE LOWER COURT ERRED IN NOT HOLDING THAT THE RESOLUTION OF RESPONDENT-APPELLEE PROVINCIAL FISCAL IN I.S. NOS. 2306, 2389 and 2390 DATED DECEMBER 15, 1965 (EXHIBIT C) DISMISSING THE SAID CASES SHOULD BE MAINTAINED.

"IV

"THE LOWER COURT ERRED IN NOT HOLDING THAT THE SECRETARY OF JUSTICE, THRU HIS STATE PROSECUTOR, ENCROACHED UPON THE PERFORMANCE OF THE RESPONDENT-APPELLEE PROVINCIAL FISCAL PEDRO D. OFIANA OF HIS DUTY, WHICH IS NOT ADMINISTRATIVE IN NATURE.

"V

"THE LOWER COURT ERRED IN NOT HOLDING THAT ASSUMING ARGUENDO BUT VIGOROUSLY DENYING THAT THE REMEDIES TAKEN BY RESPONDENTS-APPELLEE GAVINO R. ALEJO AND LUIS CRUZ ARE PROPER, NEVERTHELESS, THE SAME ARE NULL AND VOID FOR LACK OF NOTICE TO THE PETITIONERS, WHO WERE DEPRIVED OF THE DUE PROCESS OF LAW OR THEIR DAY IN COURT, AND WHICH IS CONTRARY TO THE ORDERLY ADMINISTRATION OF JUSTICE.

"VI

"THE LOWER COURT ERRED IN NOT HOLDING THAT RESPONDENTS-APPELLEES GAVINO R. ALEJO AND LUIS CRUZ WITH THE AID OF THE SECRETARY OF JUSTICE ARE USING THE STRONG ARM OF THE LAW IN AN OPPRESSIVE AND VINDICTIVE MANNER.

"VII

"THE LOWER COURT ERRED IN NOT HOLDING THAT THE INDORSEMENT OF THE SECRETARY OF JUSTICE, THRU HIS CHIEF STATE PROSECUTOR, DATED JULY 14, 1966 (EXHIBIT D) IS NULL AND VOID AND THE RESPONDENT-APPELLEE PROVINCIAL FISCAL OR HIS ASSISTANTS SHOULD PERMANENTLY BE ENJOINED FROM PROCEEDING IN ACCORDANCE WITH THE SAME.

"VIII

"THE LOWER COURT ERRED IN DISMISSING THE PETITION DATED MAY 6, 1967 AND IN DISSOLVING AND SETTING ASIDE THE RESTRAINING ORDER DATED MAY 9, 1967."

Upon consideration of the foregoing assignment of errors and the issues as stated in their brief, we believe that petitioners-appellants raise no factual issues but only questions of law. Thus, the dismissal of their petition on the ground of failure to include the Secretary of Justice as a necessary and indispensable party in this suit poses a legal issue. Similarly legal in nature is the question of whether or not the Secretary of Justice is authorized to ask a fiscal to reinvestigate a case after the latter has made a finding that there is insufficiency of evidence to

warrant criminal prosecution.

As the issues in this appeal involve questions of law, the Supreme Court has exclusive jurisdiction over the same (*Uytiepo vs. Aggabao*, L-28671, Sept. 30, 1970, 35 SCRA 186, 192).

WHEREFORE, pursuant to the provisions of Section 17 in connection with Section 31 of Republic Act No. 296, as amended, and Section 3 of Rule 50 of the Revised Rules of Court, this case is hereby certified to the Supreme Court.

IT IS SO ORDERED."

At the outset, it will be noted that the legal issues presented to this Court for resolution were formulated when the 1964 Rules on criminal procedure were still in force and effect. These rules have been superseded by the 1985 Rules on Criminal Procedure. Section 4, Rule 112 of the Rules of Court now squarely covers the issues. It provides thus -

Sec. 4. Duty of investigating fiscal - If the investigating fiscal finds cause to hold the respondent for trial, he shall prepare the resolution and corresponding information. He shall certify under oath that he has examined the complainant and his witnesses, that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, that the accused was informed of the complaint and of the evidence submitted against him and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend dismissal of the complaint.

In either case, he shall forward the records of the case to the provincial or city fiscal or chief state prosecutor within five (5) days from his resolution. The latter shall take appropriate action thereon within ten (10) days from receipt thereof, immediately informing the parties of said action.

No complaint or information may be filed or dismissed by an investigating fiscal without the prior written authority or approval of the provincial or city fiscal or chief state prosecutor.

Where the investigating assistant fiscal recommends the dismissal of the case but his findings are reversed by the provincial or city fiscal or chief state prosecutor on the ground that a probable cause exists, the latter may, by himself, file the corresponding information against the respondent or direct any other assistant fiscal or state prosecutor to do so, without conducting another preliminary investigation.

If upon petition by a proper party, the Minister of Justice reverses the resolution of the provincial or city fiscal or chief state prosecutor, he shall direct the fiscal concerned to file the corresponding information without conducting another preliminary investigation or to dismiss or move for dismissal of the complaint or information. (Emphasis supplied)"

Under the above-quoted Rule, which was taken from Pres. Dec. No. 911[1], and is supported by Previous rulings of this Court[2], the Minister (now Secretary) of Justice is empowered to order or perform the very acts questioned by petitioners in this case. As held in *Crespo v. Hon. Mogul*[3], on the rights and duties of fiscals:

"It is a cardinal principle that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. The institution of a criminal action depends upon the sound discretion of the fiscal. He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence, in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt. The reason for placing the criminal prosecution under the direction and control of the fiscal is to prevent malicious or unfounded prosecution by private persons. It cannot be controlled by the complainant. Prosecuting officers under the power vested in them by law, not only have the authority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their office.

It is through the conduct of a preliminary investigation that the fiscal determines the existence of a prima facie case that would warrant the prosecution of a case. The Courts cannot interfere with the fiscal's discretion and control of the criminal prosecution. It is not prudent or even permissible for a Court to compel the fiscal to prosecute a proceeding originally initiated by him on an information, if he finds that the evidence relied upon by him is insufficient for conviction. Neither has the Court any power to order the fiscal to prosecute or file an information within a certain period of time, since this would interfere with the fiscal's discretion and control of criminal prosecutions. Thus, a fiscal who asks for the dismissal of the case for insufficiency of evidence has authority to do so, and Courts that grant the same commit no error. The fiscal may reinvestigate a case and subsequently move for the dismissal should the re-investigation show either that the defendant is innocent or that his guilt may not be established beyond reasonable doubt. In a clash of views between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the defendant, those of the fiscal's should normally prevail. On the other hand, neither an injunction, preliminary or final nor a writ of prohibition may be issued by the Courts to restrain a criminal prosecution except in the extreme case where it is necessary for the Courts to do so for the orderly administration of justice or to prevent the use of the strong arm of the law in an oppressive and vindictive manner.

However, the action of the fiscal or prosecutor is not without any limitation or control. The same is subject to the approval of the provincial or city fiscal or the chief state prosecutor as the case may be and it maybe elevated for review to the Secretary of Justice who has the power to affirm, modify or reverse the action or opinion of the fiscal. Consequently the Secretary of Justice may direct that a motion to dismiss the case be filed in Court or otherwise, that an information be filed in Court." (Emphasis supplied)

Once the case is filed in court, however, the court acquires complete jurisdiction over the case. As Crespo ruled:

"The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation[4]". (Emphasis supplied)

WHEREFORE, in view of the supervening developments, above-stated, the petition (appeal) is hereby dismissed. No costs.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

* Issued by Judge Juan de Borja.

** Penned by Justice Mariano Serrano, with the concurrence of Justices Ramon G. Gaviola, Jr. and Ricardo C. Puno.

[1] (1976)

[2] Estrella vs. Orendain, Jr., G.R. No. L-19611, February 27, 1971, 37 SCRA 640; Oliveros v. Villaluz, G.R. No. L-33362, July 30, 1971, 40 SCRA 327; Caeg v. Abad Santos, G.R. No. L-40044, March 10, 1975, 63 SCRA 96; Noblejas v. Salas, G.R. Nos. L-31788 & L-31792, September 15, 1975, 67 SCRA 47; Vda. de Jacob v. Puno,

G.R. No. L-61554-55, July 31, 1984, 131 SCRA 144

[3] G.R. No. 53373, 30 June 1987

[4] Ibid.

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