

**IN RE: PETITION FOR CONTEMPT AGAINST MRS. DOLORES H. SISON.
ALFREDO V. CRUZ, JR., PETITIONER AND APPELLANT, VS. MRS.
DOLORES H. SISON, RESPONDENT AND APPELLEE. IN RE: PETITION
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G.R. Nos. L-15902-03. December 23, 1964

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Alfredo V. Cruz, Jr., as Assistant Fiscal of Manila, filed two petitions for contempt in the Court of First Instance of Manila, one against Dolores H. Sison and the other against Benjamin Ravanera. In the said petitions it is alleged that respondent Sison, as secretary of the Bicol Electric Company in Napa City, and respondent Ravanera, as secretary of the University of Nueva Caceres, also in Naga City, refused to receive the subpoenas duces tecum issued to them by petitioner and failed to appear before the latter to give evidence in Criminal Case No. 47152 of the said Court, entitled "People of the Philippines vs. Secretary Jaime Hernandez".

The Court of First Instance decided the two cases jointly and dismissed both petitions on the ground that respondents were not bound by the processes issued by petitioner because their place of residence, which is Naga City, is more than 50 kilometers from Manila, where the investigation was being conducted.

Petitioner appealed and now claims that the lower court erred (1) in holding that Section 9 of Rule 29 (now Sec. 9, Rule 23 of the revised Rules) applies to both civil and criminal cases; and (2) in not holding appellees in contempt for refusing to comply with the subpoenas issued to them by appellant.

The rule above cited provides that a witness is not bound to attend as such before any court, judge, or other officer out of the province in which the resides, unless the distance be less than fifty (50) kilometers from his place of residence to the place of trial by the usual course of travel. Without going, however, into the question discussed at length by the parties in their respective briefs, namely, whether the said rule covers civil cases alone or both civil and criminal cases, we are of the opinion that the petitions for contempt were prematurely filed and hence their dismissal was in order.

Appellant issued the subpoenas in question on the authority of the Revised Charter of the City of Manila, Republic Act No. 409 (Sec. 38-B), as amended by Republic Act No. 1201, which provides:

"The fiscal of the City shall cause to be investigated all charges of crimes, misdemeanor, and violations of ordinances and have the necessary informations or complaints prepared or made against the persons accused. He or any of his assistants may conduct such investigations by taking oral evidence, of reputed witnesses, and for this purpose may issue subpoena, summon witnesses to appear and testify under oath before him, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to the Municipal Court or the Court of First Instance. No witness summoned to testify under this section shall be under obligation to give any testimony tending to incriminate himself."

Thus, although the City Fiscal and his assistants have the power to issue subpoenas and summon witnesses to testify, the attendance or evidence of an absent or refractory witness can be enforced only by application to the proper Municipal Court or Court of First Instance. This is obviously intended to give the person subpoenaed a chance to question the validity, propriety and reasonableness of the subpoena. It may be noted that in case of subpoena duces tecum issued by a court, the person subpoenaed may move for the quashal thereof if it is unreasonable or oppressive, or the relevancy of the books, documents or things sought to be produced does not appear, or if the person in whose behalf the subpoena is issued fails to advance the reasonable cost of the production, thereof (Section 4, Rule 23 of the Revised Rules of Court, formerly Section 4, Rule 29). If the person subpoenaed may question the propriety of a writ issued by the court, then in the same manner he should be afforded the opportunity to question the propriety and reasonableness of a similar process issued by the City Fiscal or by an assistant of his. And this chance is afforded him when the latter applies to the proper court for enforcement of the subpoena thus issued. Should the court find the subpoena to have been properly issued, it shall order compliance therewith, and it is only upon failure to comply that a contempt proceeding would lie.

The contempt proceedings against appellees here were instituted without a previous application to the court for the enforcement of the subpoenas issued by appellant and were, therefore, premature.

It further appears, as alleged by appellees and not contradicted by appellant, that the subpoenas were issued so that they could give evidence in Criminal Case No. 47152, "People of the Philippines vs. Secretary Jaime Hernandez," which was then already pending trial before a branch of the Court of First Instance of Manila. The power of the City Fiscal of Manila to issue subpoenas extends to cases pending investigation before him, but not where the complaint or information has been filed in court, in which case it is the court that should issue the necessary processes (Concepcion vs. Gonzales, L-15638, April 26, 1962).

For the reasons hereinabove set forth, the decision appealed from is affirmed, without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L. Barrera, Paredes, Dizon, Regala, Bengzon, J. P., and Zaldivar, JJ., concur.

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