

**THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE
HONORABLE FRAN-CISCO RO. CUPIN, JUDGE, CIRCUIT CRIMINAL
COURT, XIV JUDICIAL DISTRICT, HON. CITY FISCAL, CEBU CITY,
JOSE P. AM...**

G.R. No. L-30317. June 09, 1969

Ponente: DIZON, J.

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DIZON, J.:

Original petition for certiorari and/or prohibition filed on behalf of the Republic of the Philippines by Narciso D. Salcedo, Provincial Fiscal of Cavite, pursuant to authority granted to him in Administrative Order No. 336 of December 26, 1968, against the Hon. Francisco Ro. Cupin, Judge of the Circuit Criminal Court, 14th Judicial District, Jose P. Amadora, in his capacity as Fiscal of Cebu city, and Ernesto Dakay, praying that judgment be rendered as follows:

"1) all the acts, proceedings and orders of the respondent Hon. Judge Francisco Ro. Cupin, Circuit Criminal Court, Cebu City be declared NULL and VOID;

"2) the records of the said Crim. Case No. V-10839 be ordered returned to the Court of First Instance of Cebu, Br. I;

"3) all documentary evidence and exhibits which respondent Hon. Judge Cupin directed de-posed in the lower court, be IMMEDIATELY ordered returned to the NBI, the said evidences, documents and/or exhibits having been lawfully seized pursuant to valid search warrants, and the legality thereof had been upheld by the Hon. Judge Guillermo P. Villazor, but which legality, the respondent Dakay might yet question, as in fact the legality of the search warrants and seizures is still under consideration by the Honorable Supreme Court in G. R. Nos. L-26828 and 26957;

"4) and after the acts, proceedings, and orders of the respondent Circuit Criminal Court Judge Francisco Ro. Cupin are declared NULL and VOID, an order issue restraining, enjoining and prohibiting the respondent Hon. City Fiscal Jose P. Amadora, from interfering or intervening in any manner whatsoever, in the investigation, reinvestigation or prosecution of Crim. Case V--10839 of the Court of First Instance of Cebu, and thereafter, making the injunction and prohibition permanent; and

"5) such other reliefs and remedies as are proper and equitable under the premises, be likewise granted."

On March 28, 1969, upon motion of petitioner, We issued a resolution allowing the inclusion, as respondent, of District Judge Santiago O. Tañada, and restraining both respondent judges from taking action in, or cognizance of Criminal Case No. V-10839 entitled "People of the Philippines vs. Ernesto Dakay", and particularly from acting on the motion for dismissal filed by the respondent City Fiscal of Cebu.

Stripped of unnecessary details, the antecedent facts are the following:

On January 18, 1966, by Administrative Order No. 5 of the Department of Justice, senior state prosecutor Vicente

G. Ericta was designated to assist the Provincial Fiscal of Cebu and the Fiscal of Cebu city in the investigation and prosecution of all cases involving the violation of the National Internal Revenue Code and Tariff and Customs Code and of all such other crimes committed in relation thereto and which may be penalized by the Revised Penal Code or by any special law. On the 27th of the same month he filed in the Court of First Instance of said province an information against Ernesto Dakay (Criminal Case No. V-10839) for violation of Section 355 in relation to Section 336 of the Internal Revenue Code. This information was superseded by an amended pleading charging the same offense filed three days later.

On February 1, 1966, Dakay filed a motion to quash the information alleging firstly, that Prosecutor Ericta had no authority to conduct the preliminary investigation of the case and to file the corresponding information against him; secondly, that he was denied the right to a preliminary investigation and, lastly, that the information was void because it charged more than one offense. After hearing both parties, the court, on April 14, 1966, denied the motion but at the same time ordered that the case be reinvestigated to give the defendant an opportunity to be heard, cross-examine the prosecution witnesses and to present evidence in his favor. When the motions for the reconsideration of this order filed by both parties were denied by the court, then presided by the Hon. Guillermo P. Villazor, on June 15, 1966, Dakay brought up the case to Us by way of appeal (G.R. L-26380), but We dismissed the appeal on December 1 of the same year.

Thereafter Dakay, thru counsel, addressed a letter to the Fiscal of the city of Cebu requesting him to conduct the preliminary investigation of Criminal Case V-10839 as ordered by Judge Villazor.

It appears that on May 24, 1966, the Secretary of Justice, thru the then Undersecretary, issued Administrative Order No. 154 designating Narciso D. Salcedo, at the time second Assistant Provincial Fiscal of Sulu, to assist the Provincial Fiscal of Cebu and the Fiscal of Cebu city in the prosecution of all cases mentioned in the previous administrative order designating Fiscal Ericta for the same purpose. Salcedo's designation thus superseded that of the latter.

After the dismissal of Dakay's appeal by Us, Special Counsel Llenos set the case against the former for reinvestigation. When Prosecutor Salcedo appeared thereat and claimed authority to handle the prosecution, his right to do so was contested by City Fiscal Amadora and special counsels Llenos and Salazar, who claimed that Salcedo's only authority in the premises was to assist them in the presentation of evidence against the accused. In fact, on May 2, 1967, special counsel Salazar had issued a subpoena duces tecum, requiring him to produce all the evidence pre-sented during the previous investigation conducted by state prosecutor Ericta on May 17-18 of the same year. Result of this controversy was an agreement between the parties that the City Fiscal of Cebu would move the court to clarify the order for the reinvestigation of the case and rule squarely on who should make such reinvestigation. The City Fiscal having done so, the court, thru Judge Villazor, issued the following order:

"Considering the provision of Section 39 of the Revised City Charter of Cebu (Republic Act No. 3857) that 'the fiscal of the City shall cause to be investigated all charges of crimes,' as well as the pertinent administrative order designating a State Prosecutor to 'assist the Provincial Fiscal of Cebu Province and the City Fiscal of Cebu City' in this case, it is believed that action on the motion filed by the City Fiscal of Cebu dated May 18, 1967 is unnecessary for the reason that both prosecutors, in the conduct of the reinvestigation as ordered by this Court, shall have to comply with the tenor of the above mentioned laws."

As the above order did not seem to decide the issue clearly, Fiscal Salcedo, thru the Chief Prosecutor, submitted a memorandum to the Department of Justice suggesting that court action be taken against City Fiscal Amadora. Days and weeks thereafter elapsed apparently without any action on the case, but suddenly Fiscal Salcedo received notice to the effect that Criminal Case No. V-10839 would be tried before the Circuit Criminal Court of the 14th Judicial District of Cebu city on December 7, 9 and 10, 1968. On the first day, Salcedo appeared and

asked that the trial be postponed alleging that due to the suddenness of the notice he was not prepared to go to trial. This was granted only after the City Fiscal of Cebu - patently to serve a definite but undisclosed purpose - submitted a manifestation to the effect that the case had not passed through his office; that no complaint had been filed with his office by the complainant for the purpose of a preliminary investigation; that neither he nor anyone of his assistants had signed or verified the information; that he did not have in his possession the documentary evidence to prove the case nor did he have knowledge of the nature of the case (Annex "P" attached to the petition). As was to be expected, invoking the facts set forth in the written statement aforesaid, de-fendant Dakay's counsel filed a motion for dismissal, which, however, was not decided forthwith. Thereafter the case was again called for trial on January 15-17, 1969 on which occasion Dakay's counsel reiterated his motion for dismissal. On the same occasion, however, Fiscal Salcedo informed the Court that, under a later administrative order, Secretary of Justice Juan Ponce Enrile had designated him anew to handle the investigation and prosecution of the case of People vs. Ernesto Dakay, (Criminal Case No. V-10839) and other related cases independently of the City Fiscal of Cebu city effective immediately and to continue until further orders and that this last administrative order superseded the other Numbered 259 of October 9, 1968. The statement to this effect appears not to have been contested. Thereupon the court, then presided by herein respondent Hon. Francisco Ro. Cupin, manifested that a resolution would be issued the next day resolving the motion to dismiss filed by the defense, but instead of one such resolution, he issued one (Annex "Q" attached to the petition) in which he ordered that the case be reinvestigated by the City Fiscal's office of Cebu, as-sisted by the Provincial Fiscal of Cavite pursuant to Admi-nistrative Order No. 336 dated December 26, 1968.

On January 22, 1969, after the office of the City Fiscal of Cebu and Fiscal Salcedo had apparently arrived at an understanding that the latter would only assist in the reinvestigation of the case, respondent City Fiscal Amadora filed a motion for the dismissal of the case (Annex "R" attached to the petition), thereby concurring with the recommendation made by special counsel Salazar of the city of Cebu in his report dated January 21, 1969, concerning the reinvestigation of the case conducted by him by designa-tion of the city fiscal of said city. In relation to this motion to dismiss the case, Fiscal Salcedo was given time to submit a written opposition - which pleading he filed. Thereafter the respondent judge issued on February 1, 1969 an order (Annex "U" attached to the petition) approving the report submitted by the City Fiscal of Cebu covering the reinvestigation of the case and, as a consequence, dismissed the case. As a result the present petition for certiorari and/or prohibition was filed on March 20, 1969 mainly for the annulment of all the proceedings held before the respondent Judge Francisco Ro. Cupin.

On March 10, 1969 respondent Ernesto Dakay filed a motion for the dismissal of the present case upon the ground that Administrative Order No. 336 of December 28, 1968 issued by the Secretary of Justice designating Nar-ciso D. Salcedo, Provincial Fiscal of Cavite, to handle the investigation and prosecution of Criminal Case No. V-10839, among others, independently of the City Fiscal of Cebu, effective immediately and until further orders, had been cancelled and superseded by Administrative Order No. 136 issued by the same Department Head on April 8, 1969, expressly revoking Administrative Order No. 336. On April 17, 1969, We required Fiscal Salcedo to comment within ten (10) days from notice upon this motion to dismiss. On May 13 of the same year he submitted his comment saying, among other things, the following:

"1. That he is not in a position to give an intelligent comment on respondent Dakay's ex-parte motion to recall restraining order issued on March 31, 1969, because he has not been furnished a copy of the same. Be this as it may, it is respectfully submitted that the recall of the restraining order, copy of which has not also been received by the undersigned, must be based on the merits and not merely on the ground that the authority of the undersigned to prosecute the Dacay cases has been revoked by Administrative Order No. 136 dated April 8, 1969.

"2. That by way of comment on the urgent motion to dismiss the herein petition on the ground that the authority of the undersigned to handle the Dakay cases has been revoked by Administrative Order No. 136 dated April 8, 1969, it is submitted that the said revocation of authority is not a valid ground for dismissal and that if ever the instant petition should be dismissed, it should be dismissed on the merits and on valid grounds other than mere revocation of the authority of the undersigned.

"3. That in view of the revocation of the authority of the undersigned to handle the Dakay cases by virtue of Administrative Order No. 136 dated April 8, 1969, the undersigned can only state by way of final comment that during the existence of his authority to handle the Dakay cases, the undersigned handled the Dakay cases to the best of his limited ability in accordance with the facts, the law, and jurisprudence applicable, and in accordance with the conscience of fair-minded men. But, inasmuch as the authority of the undersigned has been re-voked, it is but prudent and just that the undersigned should refrain from making any other comment, else the same might be misunderstood as defiance of the authority and prerogative of the Secretary of Justice in the exercise of his power to designate prosecutors to handle cases and to revoke such designation in accordance with what the Secretary believes is right. To comment any further might be misconstrued as questioning the wisdom and discretion of the Secretary of Justice.

"WHEREFORE, with the submission of the herein comments, it is most respectfully prayed that the undersigned be spared the painful duty of making any further comments."

The motion for dismissal before Us could be resolved with a simple minute resolution granting or denying it, but We have chosen instead to issue this extended resolution because of the need to point out a situation - in our opinion anomalous and unedifying - clearly disclosed by the facts of the case: that of two groups of public prosecutors with different ideas about the same case and working at cross purposes in connection therewith; on the one hand, special prosecutors designated by the Department of Justice who, after due investigation, had found that there was a prima facie case against Ernesto Dakay and, therefore, acted accordingly, and on the other, the Office of the City Fiscal of Cebu, at first persistently trying to limit the activities of the special prosecutors to merely giving it assistance in the investigation and prosecution of the case, and ultimately arriving at its own conclusion that there was no sufficient evidence to make out a prima facie case against Dakay and accordingly asking for the dismissal of the criminal case filed against him - which the court granted in its order of February 1, 1969. On top of this, after Fiscal Salcedo had been authorized in the second to the last administrative order of the Department of Justice to continue the prosecution of Criminal Case No. V-10839 of the Court of First Instance of Cebu against Ernesto Dakay, independently of the City Fiscal of Cebu, such authority was suddenly withdrawn, thus in effect pulling the rug from under his feet. It is not strange, therefore, that he was noncommittal in his remarks in relation to Dakay's motion to dismiss the present case precisely upon the ground that Fiscal Salcedo's authority to prosecute the criminal case against him and, as a consequence, to prosecute the present case, had been cancelled by the Department of Justice.

The motion for dismissal, if resolved on the merits, should be denied because the petitioner in the present special civil action is the Republic of the Philippines and not Fiscal Salcedo. The fact that the latter who commenced it with the filing of the proper petition is no longer authorized to prosecute it, is not a legal ground upon which to dismiss the case. The Solicitor General could, if he is so minded, go on with it. We are, however, constrained to order its dismissal because, according to the record, respondent Judge Francisco Ro. Cupin, in an order dated March 4, 1969, had held that under the provisions of Republic Act No. 5179 creating the Circuit Criminal Courts, the violation of the provisions of the Internal Revenue Code charged in Criminal Case V-10839 does not come within the limited jurisdiction of the court by him presided and, as a consequence, declared "as without any force and effect its order dated February 1, 1969 dismissing the case and hereby returns the case to the Honorable Executive Judge for raffle". This, in effect, set aside the proceedings complained of - a circumstance that renders the present case moot and academic.

FOR THE REASONS ABOVE STATED, the present case is dismissed, without costs.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Sanchez, Fernando, and Capistrano, JJ., concur.

Concepcion, C.J., and Ruiz Castro, J., on official leave.

Teehankee and Barredo, JJ., took no part.

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