

VIRGINIA B. ANCHETA, ASSISTED BY HER HUSBAND ALFREDO ANCHETA, PETITIONERS, VS. HON. ANGEL A. DAQUIGAN, PRESIDING JUDGE, BRANCH I, COURT OF FIRST INSTANCE SECOND JUDICIAL DISTRICT...

G.R. No. L-47305. March 16, 1987

Ponente: PARAS, J.

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PARAS, J.:

Submitted for decision on June 13, 1979, this is a petition for review on certiorari of the June 17, 1977 Decision of the Court of First Instance of La Union, dismissing petitioner's petition for lack of merit; dissolving the writ of preliminary injunction of January 12, 1977; and ordering the remand of Criminal Case No. 534 to the Municipal Court for trial on the merits.

A criminal complaint for theft was filed with the Municipal Court of San Fernando, La Union, presided over by respondent Judge Francisco Collado, against Hank Schwartz, Gertrudes Schwartz and six (6) John Does, which complaint was docketed as Criminal Case No. 11244. The herein petitioner was the complainant in the said case, she, being the owner of the stolen personal properties worth P9,880.00.

The Municipal Court, after conducting a preliminary investigation, issued a warrant of arrest against Hank Schwartz and Gertrudes Schwartz. The six (6) John Does were not identified by the prosecution witnesses.

Subsequently, the Municipal Court, acting on a written waiver of the second stage of preliminary investigation filed by counsel for the two (2) identified accused (Hank Schwartz and Gertrudes Schwartz), in an Order dated October 5, 1976 (Record, p. 31), forwarded the case to the Court of First Instance of La Union (where it was docketed as Criminal Case No. 534) for trial on the merits.

On October 18, 1976, after the Clerk of Court of the Court of First Instance of La Union had transmitted the records of the case to the Provincial Fiscal of La Union, herein petitioner Virginia B. Ancheta wrote a letter to the Provincial Fiscal, giving the names of the John Does mentioned in the complaint and stating that there were seven (7) of them instead of six (6); and she also asked that the date for the investigation of her witnesses who know the names of the John Does be set and thereafter the corresponding amendment of the information be made. (Ibid., p. 32).

On November 6, 1976, First Assistant Provincial Fiscal Francisco M. Tezano issued an Order for the preliminary investigation of the seven (7) other accused, previously referred to as John Does (Ibid., p. 33). On November 15, 1976, another Order was issued requiring the said accused to submit their counter-affidavits within ten (10) days from receipt of the said order (Ibid., p. 34).

However, while the Fiscal's Office was still conducting its preliminary investigation, the seven (7) accused, the herein private respondents, voluntarily surrendered to respondent Municipal Judge, who issued an Order dated November 19, 1976, setting the case (Criminal Case No. 11244) for the second stage of preliminary investigation

insofar as the said accused were concerned. Informed of the said Order of November 19, 1976, petitioner questioned the propriety of the said order in a letter sent to the respondent Municipal Judge (Ibid., pp. 37-38).

In the meantime, on November 22, 1976, respondent Municipal Judge issued another Order directing the Station Commander of San Fernando, La Union, Galicano M. Leonen, to amend the original complaint by including the names of the seven (7) accused who surrendered (Ibid., p. 36).

Pursuant to the said Order, Station Commander Galicano M. Leonen amended the complaint by including the names of the seven (7) other accused (Ibid., pp. 39-40).

Herein petitioner Virginia B. Ancheta then brought a Petition for Certiorari, Prohibition and Mandamus, with prayer for writ of preliminary injunction, with the Court of First Instance of La Union, presided over by respondent Judge Angel A. Daquigan, seeking, among other things the nullification of the November 19 and 22, 1976 Orders of respondent Municipal Court, as well as the amended complaint filed by the Station Commander (Ibid., pp. 25-30). The case was docketed as Civil Case No. 2754.

On January 11, 1977, the Court of First Instance of La Union granted the writ of preliminary injunction prayed for by petitioner and enjoined respondent Municipal Judge from conducting the preliminary investigation he set for January 13, 1977 (p. 3, June 17, 1977 Decision; Record, p. 61).

In the said Civil Case No. 2754, public respondents filed separate Motions to Dismiss (pp. 3-4, Ibid.; Record, pp. 61-62) while private respondents filed an Answer and Counterclaim with Motion to Remand (Record, pp. 41-46). These were opposed by petitioner by filing a Reply and Opposition (Ibid., pp. 47-50). The Provincial Fiscal, on the other hand, in compliance with the Order of the Court dated January 31, 1977, filed a Manifestation on February 11, 1977 stating (1) that it is the position of the public prosecution that the respondent court can validly conduct the second stage of the preliminary investigation to determine the identity and participation of the private respondents who have not waived their rights; and (2) that the public prosecution has chosen as a forum the Court of First Instance to which the municipal court had elevated the records of Criminal Case No. 11244. Subsequently, the motions to dismiss having been denied by the Court, public respondents filed their Answer (Ibid., pp. 51-54).

After hearing on the merits, the Court of First Instance of La Union rendered a ruling (decision), dated June 17, 1977, dismissing the petition; dissolving the writ of preliminary injunction of January 12, 1977; and ordering the remand of Criminal Case No. 534 to the Municipal Court for trial on the merits (Record, pp. 59-69).

A Motion for Reconsideration of the Decision was filed by petitioner on August 20, 1977 (Ibid., pp. 70-74), but the same was denied on August 22, 1977.

Hence, this petition (Ibid., pp. 14-24).

Private respondents, in compliance with the resolution of January 4, 1978 of the First Division of this Court (Ibid., p. 75) filed their Comment on February 14, 1978 (Ibid., pp. 89-90), while the Solicitor General filed his Comment on July 14, 1978 (Ibid., pp. 125-137).

In a Resolution dated July 19, 1978, the First Division of this Court resolved, among others, to give due course to the petition; and to require the parties to submit simultaneous memoranda within thirty (30) days from notice thereof (Ibid., p. 139). In compliance therewith, petitioner filed her Memorandum on September 27, 1978 (Ibid., pp. 149-158).

In a Resolution dated June 13, 1979, the First Division of this Court resolved to deny the motions of the Solicitor General for nineteenth, twentieth and twenty first extensions of time totalling thirty (30) days from May 16, 1979

within which to file memorandum; and to declare the case submitted for decision (*Ibid.*, p. 293).

The issues in this case are —

- WHETHER OR NOT THE MUNICIPAL COURT HAS AUTHORITY TO RECALL THE RECORDS OF CRIMINAL CASE NO. 11244 IN ORDER TO CONDUCT A SECOND STAGE OF PRELIMINARY INVESTIGATION, AFTER SAID CASE HAS BEEN ELEVATED TO THE COURT OF FIRST INSTANCE AND THE PROVINCIAL FISCAL IS ALREADY CONDUCTING THE PRELIMINARY INVESTIGATION FOR THE PURPOSE OF DETERMINING THE IDENTITIES AND PARTICIPATION OF THE "JOHN DOES" UPON THE REQUEST OF COMPLAINANT;
- WHETHER OR NOT THE COURT OF FIRST INSTANCE CAN DISREGARD THE CHOICE OF FORUM MADE BY THE INVESTIGATING FISCAL FOR THE TRIAL OF THE CASE ON THE MERITS; and
- WHETHER OR NOT THE COURT OF FIRST INSTANCE CAN REMAND THE CASE TO THE MUNICIPAL COURT FOR TRIAL ON THE MERITS.

The instant petition is without merit.

It is undisputed that a complaint for theft of personal properties worth P9,880.00, allegedly committed in San Fernando, La Union, was filed with the Municipal Court of San Fernando and docketed therein as Criminal Case No. 11244. Under the provisions of Section 87 of the Judiciary Act of 1948, as amended, in relation to Article 309(2) of the Revised Penal Code, the Municipal Court of San Fernando and the Court of First Instance of La Union have concurrent jurisdiction over the case.

As stated by Justice Barredo in his concurring opinion, whenever a criminal complaint is filed in an inferior court charging an offense within its concurrent jurisdiction with the court of first instance, said inferior court should as a rule refrain from assuming jurisdiction solely to conduct a preliminary examination and investigation and should instead take cognizance thereof already for trial on the merits after conducting the preliminary examination (*Tabil v. Ong*, 91 SCRA 451, July 16, 1979). This principle is based on well-settled jurisprudence that the accused in an offense falling within the concurrent jurisdiction of the Inferior Courts and Courts of First Instance, is not entitled to be heard in a preliminary investigation. (*People v. Pable*, 115 SCRA 707-708; July 30, 1982; *People v. Abejuela* and *People vs. Endan*, 38 SCRA 324; March 31, 1971). The reason is that the ensuing trial on the merits takes place of the preliminary investigation, without needless waste of duplication of time and effort. (*Tabil v. Ong*, *supra*). Hence, pursuant to the doctrine laid down in said cases, the Municipal Court of San Fernando should have tried the case on the merits. On the contrary, however, respondent Municipal Judge erroneously elevated the case to the Court of First Instance of La Union for trial on the merits, and because of this error, petitioner now contends that the Municipal Court of San Fernando has lost its jurisdiction over the case, and accordingly, it is deprived of the authority to order the amendment of the criminal complaint and to conduct the second stage of preliminary investigation.

This contention is untenable as it is likewise well-settled that upon filing of the case, the Municipal Court acquired jurisdiction over it to the exclusion of the Court of First Instance, (*People v. Pable*, *supra*); that the court which first acquires jurisdiction of a case retains it to the exclusion of the other courts (*People vs. Layno*, 111 SCRA 20; *Encarnacion vs. Baltazar* and *Kayanan*, 111 Phil. 459) and that jurisdiction once acquired subsists until the case is completely decided (*Roxas vs. Sayoc*, 100 Phil. 448; *Tomasa C. Viuda de Pamintuan vs. Tiglao*, 53 Phil. 1, 4).

It has also been held that mere transmittal of the records of criminal cases to the Court of First Instance without the filing of the corresponding information, does not vest jurisdiction in said court. (*Salcedo v. Suarez*, 80 SCRA

242; Oct. 28, 1977; Quinto v. Villaluz, 113 SCRA 180, March 29, 1982).

In the instant case while the Provincial Fiscal has expressed preference for the Court of First Instance of La Union as the forum for the trial of the case on the merits, no information has as yet been filed by him while as previously stated the Municipal Court of San Fernando has already acquired jurisdiction over the criminal case upon filing of the complaint therein by Station Commander Galicano R. Leonen.

There appears no need to resolve the third issue, it being evident from the foregoing that the Court of First Instance of La Union did not err in remanding the case to the Municipal Court of San Fernando for trial on the merits.

PREMISES CONSIDERED, the Court RESOLVED to AFFIRM the assailed decision.

Fernan, (Chairman), Alampay, Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

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