

**FAUSTINA CALLANTA, PETITIONER, VS. HON. FELIPE VILLANUEVA, CITY JUDGE, CITY COURT OF DAGUPAN CITY, CORNELIA JIMENEZ AND PASTORA DAVID JIMENEZ, RESPONDENTS.***G.R. Nos. L-24646 & L-24674. June 20, 1977*

Ponente: FERNANDO, J.

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The denial by respondent City Judge Felipe Villanueva of Dagupan City to grant the motions to quash the two complaints for grave oral defamation against petitioner gave rise to these suits for certiorari, the validity of the issuance of the warrants of arrest by respondent City Judge Felipe Villanueva of Dagupan City[1] being contested on the ground that it should have been the City Fiscal who should have conducted the preliminary examination. There was then, in the opinion of petitioner's counsel, a jurisdictional infirmity. From the very petition itself, however, it was shown that after such issuance of the warrants of arrest with the bail fixed in the amount of P600.00, petitioner posted such required bail bonds, thus obtaining her provisional liberty.[2] Moreover, in the answer of respondents, it was expressly set forth: "The City Fiscal has shown intent to prosecute the petitioner in Criminal Cases Nos. 9298 and 9375. As early as February 25, 1965, after conducting his preliminary examination and after acquiring jurisdiction over the petitioner the respondent Court referred the complaints in Criminal Cases Nos. 9298 and 9375 to the City Fiscal. \* \* \* So that on March 4, 1965, the arraignment and hearing of the cases were postponed because the City Fiscal was investigating them. \* \* \* It may also be noted that at the proceedings in said criminal cases on April 20, 1965, the Fiscal entered his appearance for the government and manifested that he was ready for trial. If the Fiscal did not agree with the Judge in the latter's investigation of the case, he would have asked for a further reinvestigation of the cases. But the City Fiscal did not. On the other hand the Fiscal appeared at the proceedings to prosecute the petitioner, indicating that he was in agreement with the complaint already filed." [3] There was no denial thereof by petitioner.

On the above facts, certiorari does not lie.

1. With the express admission by petitioner that she had posted the required bail to obtain her provisional liberty, it becomes futile to assail the validity of the issuance of the warrants of arrest. This excerpt from the opinion of Justice Sanchez in *Zacarias v. Cruz*[4] finds pertinence: "Posting of a bail bond constitutes waiver of any irregularity attending the arrest of a person, estops him from discussing the validity of his arrest. In the recent case of *Luna v. Plaza* \* \* \*, our ruling is that where petitioner has filed an application for bail and waived the preliminary investigation proper, 'he had waived his objection to whatever defect, if any, in the preliminary examination conducted \* \* \* prior to the issuance of the warrant of arrest.'" [5] As a matter of fact, such a doctrine goes back to *People v. Olandag*, [6] the opinion being rendered by former Chief Justice Paras. After *Zacarias*, mention may be made of three other decisions, *Bermejo v. Barrios*; [7] *People v. La Caste*, [8] and *Manzano v. Villa*. [9] The latest case in point is *People v. Obngayan* [10] where this Court, through Justice Antonio, after referring to *Luna v. Plaza*, again reiterated the ruling "that where the accused has filed bail and waived the preliminary investigation proper, he has waived whatever defect, if any, in the preliminary examination conducted

prior to the issuance of the warrant of arrest." [11] At any rate, it cannot be denied that the City Fiscal of Dagupan City had been quite active in the investigation and thereafter in the prosecution of petitioner. The matter was referred to his office. It was he who appeared at the hearing and manifested his readiness to proceed with the trial. It would be then to pay an undue premium to technicalities to assert that under such circumstances the procedural requisite, assuming that the contention of petitioner is correct, of such official conducting the preliminary examination was not in fact complied with.

2. Nor can it be concluded that there is justification for the tone of certainty of counsel for petitioner that only the City Fiscal of Dagupan may conduct a preliminary examination. Apparently, he had in mind *Sayo v. Chief of Police of Manila*. [12] That was a decision involving the Charter of the City of Manila. The opinion of Justice Feria did state the following: "Under the law, a complaint charging a person of commission of an offense cognizable by the courts of Manila is not filed with the municipal court or the Court of First Instance of Manila, because as above stated the latter do not make or conduct preliminary investigation \* \* \*." [13] Such a doctrine is inapplicable. The reliance is, therefore, misplaced. The Charter of the City of Dagupan cannot be any clearer. The City Court of Dagupan City "may also conduct preliminary investigation for any offense, without regard to the limits of punishment, and may release, or commit and bind over any person charged with such offense to secure his appearance before the proper court." [14]

WHEREFORE, these petitions for certiorari are dismissed. The restraining order issued by this Court is lifted and set aside. Costs against petitioner.

Barredo and Fernandez, JJ., concur.

Antonio, J., concurs with the main opinion and in its concurring opinion of J. Aquino.

Aquino, J., concurs in a separate opinion.

Concepcion, Jr., J., is on leave.

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[1] The private respondents are Cornelia Jimenez and Pastora David Jimenez.

[2] Petition, par. 7.

[3] Answer, 7.

[4] L-25899, November 29, 1969, 30 SCRA 728.

[5] Ibid, 730. *Luna v. Plaza*, L-27511, Nov. 29, 1968 is reported in 26 SCRA 310.

[6] 92 Phil. 286 (1952).

[7] L-23614, February 27, 1970, 31 SCRA 764.

[8] L-29083, February 27, 1971, 37 SCRA 767.

[9] L-27018, August 30, 1972, 46 SCRA 711.

[10] L-29201, January 31, 1974, 55 SCRA 465.

[11] Ibid, 471.

[12] 80 Phil. 859 (1948).

[13] Ibid, 869. Cf. *Montelibano v. Ferrer*, 97 Phil. 228 (1955).

[14] Section 77, Article XIII, Republic Act No. 170 (1947).

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### **CONCURRING OPINION**

#### **AQUINO, J.:**

I concur because section 77 of the Dagupan City charter expressly empowers its city court (formerly municipal court) to "conduct preliminary investigation for any offense, without re-gard to the limits of punishment". (See sec. 24[f] as to city attorney's power to conduct preliminary investigations).

It should be noted that that provision is also found in section 87 of the Judiciary Law and in section 2, Rule 112 of the Rules of Court which provides that "every justice of the peace, municipal judge (meaning city judge), city or provincial fiscal, shall have authority to conduct preliminary examination or inves-tigation in accordance with these rules of all offenses alleged to have been committed within his municipality, city or province, cognizable by the Court of First Instance" (this provision is not correctly reproduced in some legal publications).

It is also found in the last sentence of section 41 of Republic Act No. 409, the Revised Charter of Manila, which took effect on June 18, 1949 or after Sayo vs. Chief of Police of Manila, 80 Phil. 859 was decided.

But that provision is not found in Commonwealth Act No. 326, the charter of Bacolod City, under which Montelibano vs. Ferrer, 97 Phil. 228 was decided, nor in the old Manila charter found in the Revised Administrative Code.

Hence, in the Sayo and Montelibano cases, it was held that the city court could not conduct preliminary investigations.

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