

**BENJAMIN H. AQUINO, AS PROVINCIAL FISCAL OF RIZAL,
PETITIONER, VS. HON. HERMINIO C. MARIANO, JUDGE OF THE
COURT OF FIRST INSTANCE OF RIZAL (BRANCH X), AND LUCIO
ADRIANO, JR., RE...**

G.R. No. L-30485. May 31, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

On October 9, 1968, then Rizal Provincial Fiscal Benjamin H. Aquino filed an information in the then Court of First Instance at Pasig, Rizal, docketed as Criminal Case No. 18425 and entitled: "The People of the Philippines vs. Rodolfo Ceñidoza, Jose R. Baricua, Cesario B. Ong, Lucio Adriano, Jr. and Adriano Castillo," for estafa thru falsification of official and/or public documents. Said criminal case, which arose from the huge expansion in the area after a resurvey and subdivision of a certain parcel of registered land in Muntinlupa, Rizal, and the approval by certain officials of the Land Registration Commission of the corresponding plans and technical descriptions prepared by the surveyor who resurveyed and subdivided the property, was assigned to the branch of the then Court of First Instance of Rizal presided by Hon. Pedro Revilla.

On October 27, 1968, Lucio Adriano, Jr., one of the defendants in said Criminal Case No. 18425, instituted a petition for mandamus in the then Court of First Instance of Rizal praying for an order directing Fiscal Aquino to include as defendants in the information filed by him in Criminal Case No. 18425 (not 18245) - all persons of whom he found a prima facie case as stated by him in Annex "B" of his Petition, particularly, Commissioner Antonio Noblejas of the Land Registration Commission, who, in the meantime, resigned from the office. The mandamus case, docketed as Civil Case No. 11307, was assigned to Branch X, presided by herein respondent Judge Herminio C. Mariano, who, thereafter, rendered a decision, dated March 28, 1969, granting the petition for mandamus, the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING, decision is hereby rendered in favor of the petitioner and against the respondent, granting petitioner's prayer for the issuance of a Writ of Mandamus, directing the respondent Benjamin H. Aquino, Provincial Fiscal of Rizal, to include as accused in the information filed by him in Criminal Case No. 18425 (not 18245) of this Court, all persons, including Commissioner Antonio Noblejas, against whom he found a prima facie case as stated by him in his second indorse-ment dated June 20, 1968 addressed to the Secretary of Justice, a copy of which is attached to the present petition as Annex "B" thereof.

"Let the corresponding Writ of Mandamus issue."

Hence, this petition for review by certiorari praying that the decision of respondent Court of First Instance be set aside and declaring that herein petitioner cannot be compelled to include former Commissioner Antonio Noblejas as one of the accused in Criminal Case No. 18425.

There is merit in the petition.

As stated in the decision sought to be reviewed, herein petitioner conducted the corresponding preliminary investigation in the case assigned to him and, in a second indorsement to the then Secretary of Justice, dated June 20, 1968, he had expressed the view that a strong prima facie case exists against Commissioner Noblejas and, therefore, recommended strongly that he be allowed to file the corresponding information against said commissioner and all other persons whom he found in his investigation to be criminally liable for the offense complained of. However, Fiscal Aquino, after a period of more than two months from the time he made his second indorsement, addressed a memorandum, dated September 2, 1968, to the then Secretary of Justice stating, among others, that in view of the offer of Commissioner Noblejas to resign from office and in the light of the Commissioner's explanation, he (herein petitioner) found the responsibility of said commissioner, if any, to be only administrative in nature. Thus, the information was filed without including Commissioner Noblejas as one of the accused.

In the light of the foregoing facts, is the proper remedy of private respondent Adriano, Jr., an action for mandamus, or a simple motion in Criminal Case No. 18425 with prayer for an order directing Fiscal Aquino to include in the information Commissioner Antonio Noblejas as one of the defendants therein?

The Revised Rules of Court (Section 3, Rule 65) on Petition for Mandamus provides that "[when any tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant, immediately or at some other specified time, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner, by reason of the wrongful acts of the defendant." Stated differently, mandamus is an extraordinary remedy that can be resorted to only in cases of extreme necessity where the ordinary forms of procedure are powerless to afford relief where there is no other clear, adequate and speedy remedy. Before a writ of mandamus may be issued, it is obligatory upon the petitioner to exhaust all remedies in the ordinary course of law. He must show that the duty sought to be performed must be one which the law specifically enjoins as a duty resulting from an office. (Quintero vs. Martinez, 84 Phil. 496; Perez vs. City Mayor of Cabanatuan, 3 SCRA 431; Alzate vs. Aldana, 8 SCRA 219; and, Caltex Filipino Managers and Supervisors Association vs. Court of Industrial Relations, 23 SCRA 492).

Thus, if appeal or some other equally adequate remedy is still available in the ordinary course of law, the action for mandamus would be improper. In the case at bar, private respondent Adriano, Jr. did not request Fiscal Aquino to include in the information Commissioner Noblejas as one of the accused. Had he done so and the same was met with a denial, Adriano, Jr. could have appealed to the Secretary of Justice who may reverse petitioner and designate another to act for the purpose. That way, the filing of a simple motion with the Fiscal to include or to amend the information is much more speedy and adequate than a petition for mandamus. As aptly stated by the Solicitor General in his brief for the petitioner:

"x x x By just presenting the motion, there will be no need of paying any docket fee and the numbering of another case; there will be no issuance and service of a summons or of an order equivalent thereto; there will be no more raffles to determine the sala of the court to which the case will be assigned; and there will be no pre-trial, all of which necessarily consume time. At least, there is no prohibition in the rules against this procedure. After all, a motion is defined as 'every application for an order not included in a judgment' (Sec. 1, Rule 15, of the Revised Rules of Court).

"x x x x x x x x x

"The conclusion is therefore inevitable that the filing of a mere motion in the criminal case to achieve the same purpose as prayed for in the petition for mandamus is not only an adequate remedy but even a plainer, speedier, and more adequate remedy in the ordinary course of law than mandamus.

"Another substantial argument in favor of filing only a motion in the criminal case instead of the petition for mandamus is that it will avoid multiplicity of suits which modern procedure abhors (3 Moran's Comments on the Rules of Court, 1963 ed., p. 134)"

Otherwise stated, before filing the present action for mandamus in the court below, private respondent Adriano, Jr. should have availed of this administrative remedy and his failure to do so is fatal. To place his case beyond the pale of this rule, it must be shown that his case falls - which it did not - within the cases where, in accordance with this Court's decisions, the aggrieved party need not exhaust administrative remedies within his reach in the ordinary course of the law (Tapales vs. the President and the Board of Regents of the U.P., G.R. No. L-17523, March 30, 1963; Mangubat vs. Osmeña, G.R. No. L-12837, April 30, 1959; Baguio vs. Honorable Jose Rodriguez, G.R. No. L-11078, May 27, 1959; Pascual vs. Provincial Board, G. R. No. L-11959, October 31, 1959; Marinduque Iron Mines, etc. vs. Secretary of Public Works, G.R. No. L-15982, May 31, 1963; Alzate vs. Aldaba, G.R. L-14407, February 29, 1960 and Demaisip vs. Court of Appeals, G. R. No. L-13000, September 25, 1959).

Neither is there merit in the argument that if a motion is presented before the trial judge he would be prejudging the case if he should grant the same because such a resolution will be premised only on a prima facie evidence, while a judgment of conviction must be based on evidence beyond reasonable doubt.

WHEREFORE, the petition is GRANTED and the decision dated March 28, 1969, of respondent judge is SET ASIDE.

SO ORDERED.

Melencio-Herrera, Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.

Teehankee, J., (Chairman), no part.

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