

PEDRO M. BERMEJO, PETITIONER-APPELLANT, VS. ISIDRO BARRIOS, ET AL., RESPONDENTS-APPELLEES.*G.R. No. L-23614. February 27, 1970*

Ponente: ZALDIVAR, J.

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These two cases, being interrelated, are decided together.

These are appeals from the joint decision of the Court of First Instance of Capiz, rendered on June 3, 1964, dismissing two petitions for certiorari and prohibition with preliminary injunction: one filed by petitioner Pedro M. Bermejo against City Judge Isidro Barrios and City Fiscal Quirico Abela of Roxas City, docketed as Special Civil Case No. V-2721; and the other filed by petitioner Jovita Carmorin against the same respondents, docketed as Special Civil Case No. V-2723.

In G.R. No.L-23614, petitioner Pedro M. Bermejo and Julia "Doe" (her identity at the time was unknown) were charged in the city court of Roxas City, on August 22, 1963, of the crime of falsification of public or official document in an information filed by the city fiscal. It was alleged in the information that on or about the 25th day of February 1963, in Roxas City, the two accused, being private individuals, conspired and confederated together and mutually helped each other, and willfully and feloniously prepared and executed a document consisting of an amended petition for habeas corpus entitled "Pedro M. Bermejo and Jovita Carmorin, petitioners, vs. Jose M. Bernales and Wilfredo Bernales, respondents", which petition Pedro M. Bermejo signed while Julia "Doe" placed her thumbmark over the name "Jovita Carmorin", which petition was subscribed and sworn to by the two accused before the Clerk of Court and filed in the Court of First Instance of Capiz, docketed as Special Proceeding No. 2669, thus the two accused stated and made it appear in the amended petition that the same was signed and sworn to by Jovita Carmorin as one of the petitioners when in truth and in fact the said Jovita Carmorin never signed and swore to it, because it was in fact the accused Julia "Doe" who signed and swore to that petition as Julia Carmorin.

Relying on the certification of the city fiscal that a preliminary investigation had been conducted by him and that he had examined the witnesses under oath before filing the information, the City Judge, Hon. Isidro O. Barrios, issued, on August 24, 1963, an order for the arrest of accused Bermejo. To prevent his incarceration, said accused put up the necessary bond.

Upon arraignment, Bermejo filed a motion to quash the information, alleging in substance: (1) that the information did not charge an offense because the amended petition for habeas corpus (in Special Proceeding No. V-2669 of the Court of First Instance of Capiz), allegedly falsified, is not a document contemplated under the provisions of Article 172 of the Revised Penal Code, and that in a previous judgment of the Court of First Instance of Capiz in the habeas corpus proceedings it was declared that the thumbmark in the amended petition was that of Jovita Carmorin; and (2) that the court did not acquire jurisdiction over his person because the warrant issued for his arrest was illegal, Judge Barrios having issued the same without first examining the witnesses under

oath and in the form of searching questions and answers as required under Republic Act 3828.

The city fiscal filed his opposition to the motion to quash, contending that the petition for habeas corpus is a public document; that the provisions of Republic Act 3828 are applicable only to municipal judges and not to city judges; and that the principle of *res judicata*, or conclusiveness of judgment, cannot be invoked by the accused. After Bermejo had filed a supplement to his motion to quash and a reply to the city fiscal's opposition, respondent City Judge, on October 5, 1963, issued an order denying the motion to quash.

On October 14, 1963, Bermejo filed his motion for reconsideration, but the same was denied for lack of merit. Thereupon he filed a petition for certiorari and prohibition with preliminary injunction before the Court of First Instance of Capiiz, naming as respondents City Judge Isidro Barrios and City Fiscal Quirico Abela, contending that City Fiscal Abela committed a grave abuse of discretion in filing an information against him without conducting the proper preliminary investigation, and that the City Judge committed a grave abuse of discretion in denying his motion to quash, raising practically the same issues that he raised in the motion to quash before the city court, and praying that respondent City Judge be enjoined from hearing the criminal case against him during the pendency of the special civil action in the Court of First Instance.

In G.R. No. L-23615, Jovita Carmorin was charged by respondent City Fiscal Quirico Abela with perjury, on August 23, 1963, in the same city court of Roxas City (Criminal Case No. 4452) for allegedly having "subscribed and swore to an affidavit . . . that she was really the one who signed with her thumbmark as Jovita Carmorin . . . the amended petition for habeas corpus . . . when in truth and in fact, as she very well knew, she had not done such act of signing with her thumbmark said petition and it was another person, who signed with a thumbmark said petition as Jovita Carmorin. . . ." The city fiscal also certified that he had conducted the preliminary investigation in accordance with law before filing the information.

On the basis of the certification by the city fiscal that he had conducted the proper preliminary investigation, respondent City Judge Barrios issued an order for the arrest of accused Carmorin. After posting a bond, said accused, thru her counsel, Atty. Pedro M. Bermejo (the same person accused in the falsification case), filed a motion to quash the information, alleging substantially, that the court had not acquired jurisdiction over her person because the warrant of arrest issued for her arrest was improvidently issued, the respondent City Judge having issued the same without examining the witnesses personally in the form of searching questions and answers in violation of Republic Act 3828, and that no offense was committed by the accused because it had already been declared by the Court of First Instance of Capiiz in the habeas corpus case (Special Proceedings No. V-2669) that the thumbmark appearing in the petition for habeas corpus was the true thumbmark of accused Carmorin.

After the city fiscal has filed his opposition to the motion to quash, and the accused, her reply, on October 15, 1963, City Judge Barrios issued an order denying the motion to quash. Carmorin's motion for reconsideration having been denied, she likewise filed a petition for certiorari and prohibition with preliminary injunction with the Court of First Instance of Capiiz, also naming as respondents City Judge Barrios and City Fiscal Abela, imputing abuse of discretion on the part of City Fiscal Abela in filing an information against her without conducting the proper preliminary investigation, and on the part of respondent Judge Barrios in denying her motion to quash, raising the same questions raised by her in her motion to quash before the city court, and also praying that respondent City Judge be enjoined from hearing the case pending decision of the special civil action.

On November 22, 1963, respondent city fiscal filed answers to the two petitions, admitting some of the allegations in the petitions, and denying others; and setting up the affirmative defense that the orders of respondent City Judge in the criminal cases against the two petitioners can not be the subject of the petitions for certiorari and

prohibition before the Court of First Instance of Capiz because the city court of Roxas City issued said orders in the exercise of its concurrent jurisdiction with the Court of First Instance of Capiz, so that the latter court has no jurisdiction to entertain the petitions for certiorari and prohibition filed before it, pursuant to Section 87, paragraph (c) of Republic Act 296, as amended by Section 6 of Republic Act 3828.

Herein petitioners filed their replies to respondents' answers, asserting that the Court of First Instance of Capiz has jurisdiction to take cognizance of the two cases for certiorari and prohibition with preliminary injunction. After the parties had filed their memoranda in support of their respective contentions regarding the jurisdiction of the court, the Court of First Instance of Capiz issued an order, on January 6, 1964, declaring that it had jurisdiction to take cognizance of the two special civil actions for certiorari and prohibition with preliminary injunction, and the court set the hearing of the two cases for January 24, 1964.

During the hearing of the two cases, which was held jointly, Atty. Bermejo appeared and testified in his behalf and in behalf of his co-accused Carmorin, while Fiscal Quirico Abela testified for the prosecution. Thereafter, the parties filed their memoranda. On June 3, 1964, the Court of First Instance of Capiz rendered a decision dismissing the two petitions, without pronouncement as to costs. Their joint motion for reconsideration having been denied, herein petitioners brought the present appeals to this Court.

Before resolving the questions posed in these appeals, We consider it necessary to rule on the matter regarding the jurisdiction of the Court of First Instance of Capiz to take cognizance of the two petitions for certiorari and prohibition with preliminary injunction – a question that was properly raised by the respondents in the court below, although this question is not now raised in the present appeals. We hold that the Court of First Instance of Capiz erred in taking cognizance of the two petitions. Section 6 of Republic Act 3828, amending Section 87, paragraph (c) of the Judiciary Act of 1948, provides in part, as follows:

"Justices of the peace in the capitals of provinces and sub-provinces and judges of municipal courts shall have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within their respective jurisdictions, in which the penalty provided by law does not exceed prison correccional or imprisonment for not more than six years or fine not exceeding six thousand pesos or both, and in the absence of the district judge, shall have like jurisdiction within the province as the Court of First Instance to hear applications for bail.

"All cases filed under the next preceding paragraph with justices of the peace of capitals and municipal court judges shall be tried and decided on the merits by the respective justices of the peace or municipal judges. Proceedings had shall be recorded and decisions therein shall be appealable direct to the Court of Appeals or the Supreme Court, as the case may be." [1]

The crime of falsification of a public or official document by a private individual, of which petitioner Bermejo is charged in the city court of Roxas City in Criminal Case No. 4451, is punishable with prison correccional in its medium and maximum periods, while the crime of perjury of which petitioner Carmorin is charged in Criminal Case No. 4452 before the city court of Roxas City is punishable with arresto mayor in its maximum period to prison correccional in its minimum period.[2] Undoubtedly, these two cases fall within the concurrent jurisdiction of the city court of Roxas City and the Court of First Instance of Capiz. This Court, interpreting the aforequoted provision of Republic Act 3828, ruled that "[w]here the municipal court (city court of Manila) has taken cognizance of a criminal case in its concurrent jurisdiction with the Court of First Instance, appeal must be taken direct to the Court of Appeals or the Supreme Court; and where the Court of First Instance has taken cognizance of such appeal in its appellate jurisdiction and refused to elevate the case to the Court of Appeals, said Court of First Instance acted without jurisdiction.[3] And this rule applies even if the order is not a judgment on the merits because in cases of this nature the Court of First Instance exercises no supervisory jurisdiction over

the city court, and having concurrent jurisdiction the city court acts with "like jurisdiction" as the Court of First Instance.[4] It is Our view, therefore, that the decision of the Court of First Instance of Capiz in Special Civil Cases Nos. 2721 and 2723, now appealed to this Court, is null and void because said court has no jurisdiction to take cognizance of those cases. The two special civil actions against the City Judge and the City Fiscal of Roxas City should have been filed with the Court of Ap-peals in aid of the latter's appellate jurisdiction over direct appeals from the decision or order of the city court. We note, however, that the decision of the Court of First Instance of Capiz is correct insofar as it had dismissed the two petitions in question.

Be that as it may, however, We believe that the error of the petitioners in filing their petitions for certiorari and prohibition with preliminary injunction with the Court of First Instance of Capiz and the error of the latter court in taking cognizance of those petitions should not deter Us from ruling on the questions raised in the present appeals. The record shows that these proceedings have been pending for more than six years, and were We to remand these cases to the courts below so the petitions for certiorari should be brought up to the Court of Appeals, our action would only cause further delay.

We shall, therefore, decide whether herein petitioners are right in assailing the correctness or legality of the proceedings in the city court of Roxas City in connection with the two criminal cases filed against them, as they now contend in the present ap-peals.

While petitioners maintain in the court below that the City Fiscal of Roxas City has no power to initiate the investigation of cases without a previous complaint by an offended party, they now admit in their brief that under the existing laws he can commence such pre-liminary inquiry.[5] Nevertheless, petitioner Bermejo contends that before the city fiscal can conduct such preliminary investigation, there must be a violation of the law, and in the instant case he avers that there was no violation of law. Basis of his argument is that the petition for habeas corpus not being a document as contemplated in Article 172 of the Revised Penal Code, the city fiscal is precluded from conducting the preliminary investigation, much less from filing the information, because Bermejo could not be prosecuted for falsification of the alleged public or official document.

The contention of Bermejo is untenable. In the case of *U. S. v. Orera*,[6] a "document" is defined as a deed, instrument or other duly authorized paper by which something is proved, evidenced or set forth. In *U. S. v. Asensi*,[7] this Court held that any instrument authorized by a notary public or a competent public official, with the solemnities required by law, is a public document. Section 38, Rule 123 of the old Rules of Court,[8] enumerates the following as public writ-ings:

"(a) The written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial and executive, whether of the Philippines, or of a foreign country;

"(b) Public records, kept in the Philippines, of private writings."

The same principle also obtains in the United States, that "defendant's pleadings and papers, which were involved in civil actions and which were in custody of county clerk as ex-officio clerk of superior court in which action was pending, were 'public documents' and were within scope of subject matter of statute making alteration of court records an offense." [9] Considering that the petition for habeas corpus (Special Proceedings No. V-2669) alleged the illegal confinement, or deprivation of liberty, of one Soterania Carmorin, and that said petition was duly subscribed and sworn to before Clerk of Court Leopoldo B. Dorado and filed with the Court of First Instance of Capiz, forming, therefore, a part of the court records in said proceed-ings, it cannot be disputed that said petition is a public or official document as contemplated in Articles 171 and 172 of the Revised Penal Code. Petitioner Bermejo, therefore, cannot say that he committed no crime if it can be shown that, as charged in the information, he connived or conspired with a certain Julia "Doe" in falsifying said petition by making it appear that Jovita

Carmorin placed her thumbmark therein when in fact she did not do so.

Petitioner Bermejo likewise complains that notwithstanding his request to be present at the preliminary investigation, the same was conducted in his absence or behind his back thus denying him his day in court. We find, however, in the record - and the court a quo so found too - that on March 11, 1963, a subpoena was issued to Atty. Pedro M. Bermejo requiring him to appear at the office of the city fiscal of Roxas City on March 14, 1963 in an investigation. This subpoena was received by Bermejo on March 12, 1963, and on the same day he sent a letter to the city fiscal, which was received by the latter in the afternoon of the same day, requesting that the investigation be postponed to March 19, 1963 because he (Bermejo) had to attend to another case which was scheduled to be heard on the same date. The city fiscal acceded to his request, but because the fiscal's office failed to notify him of the hearing on March 19, 1963, Bermejo was not present when the investigation was conducted on that day. The preliminary investigation was conducted on the very day requested by Bermejo, and after finding that there was a prima facie case the city fiscal filed the information against him on August 22, 1963.

It appears, therefore, that while the city fiscal failed to notify petitioner Bermejo that his request for postponement was granted, which should have been done, it can also be said that Bermejo was not entirely blameless if the preliminary investigation was conducted in his absence. It was he himself who set the date of the investigation in his request for postponement, but he did not bother to come on the date he fixed. Neither did he try to find out what action the city fiscal had taken on his request for postponement, on any day before the date of the hearing set by him, although he is living in Roxas City where the city fiscal holds his office. Moreover, the information was filed five months later, and this petitioner never inquired, at least as to the status of his case. This behavior of petitioner cannot merit Our approval. It is obvious that he failed to employ the standard of care or reasonable diligence that is expected of him. His unwarranted absence on the day of the hearing which he himself requested, coupled with his seeming indifference or unconcern about his case, is a clear indication that he was guilty of gross negligence in the protection of his rights. If he did not have his day in court, it was because of his own negligence. If he was really interested to attend the investigation, as he now pretends, he should have taken pains to communicate with the city fiscal. This Court had ruled that in the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of opportunity to be heard.[10] Since petitioner Bermejo was afforded the opportunity to appear at the preliminary investigation but did not take advantage of it, he has no one to blame but himself. Anyway, said petitioner's rights can still be amply protected in the regular trial of the case against him in the city court where he can cross-examine the witnesses and present his evidence.[11]

Furthermore, even assuming that the city fiscal did not notify petitioners, but had conducted the preliminary investigations ex parte, their rights to due process could not have been violated for they are not entitled as of right to preliminary investigation. The numerous authorities[12] supporting this view are not rendered obsolete, as claimed by petitioners, because Section 14, Rule 112 of the new Rules of Court invoked by them has no application in their cases, it appearing that the new Rules of Court took effect on January 1, 1964 while the preliminary investigations conducted by the city fiscal were conducted in 1963.[13] The Rules of Court are not penal statutes, and they cannot be given retroactive effect.[14]

Having arrived at the conclusion that respondent city fiscal did not abuse his discretion in conducting the preliminary investigations and that he filed the informations against herein petitioners in accordance with law, there is, therefore, no merit in the assertion of petitioners that the warrants of arrest issued for their arrest were illegal. Besides, granting arguendo that the orders of arrest were tainted with irregularity, still the posting by petitioners of their bail bonds amounted to a waiver of the effect of said defects.

"There is merit in the assertion that the warrant of arrest was irregularly issued. Section 87 of the Judiciary Act

as amended by Republic Act 3828 requires that the Municipal Judge issuing the same, personally, examine under oath the witnesses, and by searching questions and answers which are to be reduced to writing. Here, instead of searching questions and answers, we have only the af-fidavits of respondent and her one wit-ness. Moreover, said affidavits were sworn to before Judge Cabungcal, not before Judge Juntereal who issued the warrant of arrest.

"However, the giving of bail bond by petitioner constitutes a waiver of the irregularity attending her arrest. Besides, by her other personal appear-ances before the municipal court and the court a quo, petitioner voluntarily submitted herself to the court's jurisdiction. Hence, the absence of preli-minary examination becomes moot already, the court having acquired jurisdiction over the person of petitioner and could therefore proceed with the preliminary investigation proper." (Doce v. Branch II, Court of First Instance of Quezon, et al., supra; Luna-v. Plaza, L-27511, November 29, 1968).

The other point raised by petitioners in their contention that the respondent City Judge abused his discretion in denying their motion to quash is that there was a judicial declaration in the habeas corpus case (Special Proceedings No. V-2669) that the thumbmark appearing in the petition was the genuine thumbmark of Jovita Carmorin, and that pronouncement is now conclusive so that they cannot be prosecuted for falsification or perjury, as the case may be. This particular question should rather be submitted and threshed out in the city court during the trial. The record of the habeas corpus proceeding is not before Us, and We have no means of knowing what actually transpired in that proceeding. The proper determina-tion of this question will involve not only the in-troduction and consideration of evidence, but also calls for a detailed inquiry on the principle of estoppel by, or conclusiveness of, judgment.

Also devoid of merit is the other error pointed to by petitioners with respect to the alleged admission by respondents that they acted illegally, cap-riciously, or in excess of jurisdiction. A cursory examination of their answers would reveal that what was admitted by respondent was the fact of the filing by petitioners of their pleadings, but not the allega-tions contained therein, for, as shown in the record, respondents have staunchly defended their acts and insisted that their actuations are legal or in accordance with law.

IN VIEW OF THE FOREGOING, the decision of the Court of First Instance of Capiz in Special Civil Cases Nos. 2721 and 2723 is set aside for having been rendered by the court without jurisdiction, and the instant appeals are dismissed. We declare that the warrants of arrests issued, and the informations filed, in Criminal Cases Nos. 4451 and 4452 of the City Court of Roxas City, are in accordance with law, and these cases should be remanded to the City Court of Roxas City for trial on the merits. No pronouncement as to costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Ruiz Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

[1] The term "municipal court" should now be under stood to mean "city court" and "municipal judge" as "city judge". The "justices of the peace" are now known as "municipal judges."

[2] Articles 172 and 183, Revised Penal Code.

[3] Andico v. Roan, 23 SCRA, 93; L-26563, April 16, 1968.

[4] Pinza v. Aldovino, et al., L-25226, September 27, 1968, 25 SCRA 220; People v. Valencia, et al., L-29396, August 29, 1969, 29 SCRA 252; Esperat v. Avila, et al., L-25922, June 30, 1967, 20 SCRA 296.

[5] And this must be so for, as consistently held by Us the city or provincial fiscal can commence an investigation of a crime within his jurisdiction with-out waiting for the filing of a complaint by the police agency or an aggrieved party when the offense can be prosecuted de oficio. (Briñen v. Consolacion, et al., L-16060, July 31, 1962; Hernandez v. Albano, et al., L-17081, May 31, 1961; Nicomedes, et al. v. Chief of Constabulary, et al., L-16022, November 1969).

[6] 11 Phil., 596.

[7] 34 Phil., 750.

[8] Now Section 20, Rule 132, new Rules of Court.

[9] 35 Words and Phrases, 146, citing People v. McKenna, 255 P. 2d 452, 116 C.A. 2d 207.

[10] Caltex (Phil.) Inc. v. Castillo, L-24657, November 27, 1967, 21 SCRA 1071, citing Fuentes v. Vinamira, L-14965, August 31, 1961.

[11] Doce v. Branch II, Court of First Instance of Quezon, et al., L-26437, March 13, 1968, 22 SCRA 1028.

[12] Santos, et al., v. Flores, et al., L-18251-2, August 31, 1962; People v. Pervez, L-15231, November 29, 1960; Rodriguez v. Arellano, L-9037, July 31, 1955.

[13] Acts or events are governed by laws at the time they took place (Members of the Cult of San Miguel Ar-cangel v. Narciso, L-24843, July 15, 1968, 24 SCRA 52).

[14] Rilloraza v. Arciaga, L-23848, October 31, 1967; See also Rule 144, new Rules of Court.

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