

ALMARIO T. SALTA, HONORABLE CONSTANCE A. ANCHETA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE CIRCUIT CRIMINAL COURT, 5TH JUDICIAL DISTRICT, HONORABLE CATALINO BALAGTAS, IN HIS CA...

G.R. No. L-41395. July 31, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Before us in these petitions for review are the decisions of the Court of Appeals in CA-G.R. No. SP-03464 entitled "Patrocinio Dayrit v. Honorable Vonstante Ancheta, et al.," and CA-G.R. No. SP-03475 entitled "Renato D. Tayag v. Hon. Constance A. Ancheta, et al." These cases are considered jointly because the conflicting decisions of the Court of Appeals in the two cases involve the same action of respondent Constance A. Ancheta in his capacity as presiding judge of the Circuit Criminal Court, Fifth Judicial District at Malolos, Bulacan.

On April 22, 1970, Almario T. Salta was charged by the Philippine National Bank before the Provincial Fiscal of Bulacan for violation of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act). The complaint was docketed as I.S. No. 3934.

On December 18, 1970, Salta filed a complaint with the Office of the Provincial Fiscal of Bulacan against Patrocinio Dayrit, Renato Tayag and others, docketed as I.S. No. 3934-A. In support of his complaint and as part of his defense in I.S. No. 3934, Salta submitted his affidavit taken December 15, 1970.

After conducting an investigation, the Provincial Fiscal of Bulacan dismissed both cases (I.S. Nos 3934 and 3934-A) on the ground that the Philippine National Bank refused to submit documents considered by the fiscal as material.

The Philippine National Bank moved that the dismissal of I.S. No. 3934 be reconsidered. The then Department of Justice assigned District State Prosecutor Pascual C. Kliatchko to reinvestigate the case against Salta. Salta, likewise appealed the order of the Provincial Fiscal of Bulacan which dismissed I.S. No. 3934-A. Prosecutor Kliatchko reinvestigated both complaints.

Prosecutor Kliatchko conducted hearings after which: a) a prima facie case was found in I. S. No. 3934 and an information was filed against Salta with the Circuit Criminal Court at Malolos Bulacan docketed as CCC-V-668, and b) the case against Dayrit, et al. (I.S. No. 3934) was "with the approval of the Department of Justice" dismissed.

On January 17, 1973, while CCC-V-668 was pending trial before Judge Constance A. Ancheta of the Circuit Criminal Court at Malolos, Bulacan, Salta filed a complaint against Patrocinio Dayrit, Renato Tayag, Adoracion Tayag and Montano Bundad directly with Judge Ancheta for violation of the Anti-Graft Law. The complaint, docketed as Case No. CCC-V-668-A, alleged the same grounds and issues raised by Salta in the earlier complaint against Dayrit, Tayag and the others filed with the Provincial Fiscal of Bulacan. The complaint had been

dismissed by both the Pro-vincial Fiscal and District State Prosecutor Kliatchko.

On the other hand, the Philippine National Bank charged Salta before the Provincial Fiscal in Pampanga for alleged violations of the Anti-Graft Act committed by Salta in the PNB Guagua Branch where he was transferred after his Malolos assignment. After an investigation, the Provincial Fiscal of Pampanga found a prima facie case against Salta and filed the corresponding information with the Circuit Criminal Court presided by Judge Ancheta. The case was docketed as CCC-V-656.

On January 19, 1973, Judge Ancheta issued an order ruling that "unless otherwise restrained by higher courts, the requisite preliminary investigation thereon on Salta's complaint shall be conducted on January 24 and 25, 1973." Judge Ancheta further held that "until such time when the preliminary investigation shall have been terminated, the hearings on the merits of the criminal case No. CCC-V-668 is hereby suspended."

The scheduled preliminary investigation was post-poned upon motions of respondents Adoracion S. Tayag, Renato D. Tayag, Montano Bundad and Patrocinio Dayrit. Subsequently, these respondents filed their respective motions to dismiss, premised on the principle that under Section 13, Rule 112 of the Revised Rules of Court, the judge may take cognizance of and conduct preliminary investigation of a complaint filed directly with him only if there has been no "x x x previous preliminary examination and investigation conducted by fiscal x x x."

Judge Ancheta denied the motion to dismiss. A joint motion for reconsideration filed by the respondents was likewise denied. The judge then reset the preliminary investigation.

On March 12, 1973, respondents Renato Tayag, Adoracion S. Tayag, Patrocinio Dayrit, Hector Gonzales and Montano Bundad filed with this Court a petition for certiorari and prohibition with preliminary injunction. The case was docketed as G.R. No. L-36460. The petitioner questioned the jurisdiction of the Circuit Criminal Court presided by Judge Ancheta to conduct a preliminary investigation of the complaint filed by Salta against Tayag, Dayrit and others (CCC-V-668-A) when the previous identical complaint filed by Salta with the Provincial Fiscal of Bulacan had already been dismissed by the fiscal and, later, by the district state prosecutor for insufficiency of evidence.

On June 7, 1973, this Court issued a minute resolution dismissing the petition for lack of merit.

On June 21, 1973, Judge Ancheta acquitted Salta in Criminal Case Nos. CCC-V-668 and CCC-V-656.

On March 22, 1974, Judge Ancheta issued a resolution in connection with the preliminary investigation he conducted in CCC-V-668-A, to wit:

"As far as respondents RENATO TAYAG and PATROCINIO DAYRIT are concerned, we find that a prima facie case has been established against them, sufficient to support an indictment. Pursuant to the mandate of Sec. 13, Rule 112 of the Revised Rules of Court let a Warrant of Arrest for RENATO TAYAG and PATROCINIO DAYRIT be issued. The bail bond of P8,000.00 each is hereby fixed for their provisional liberty.

"The District State Prosecutor of this Court is hereby directed to file the requisite Information in consonance with the findings made and conclusions reached within TEN (10) days from receipt of this Resolution."

This March 22, 1974 resolution of Judge Ancheta was the subject matter of two separate petitions for certiorari filed by Tayag and Dayrit with the Court of Appeals. The petition filed by Tayag was docketed as CA-G.R. No. SP-03475 while that of Dayrit was docketed as CA-G.R. No. SP-03464.

The Dayrit petition was dismissed for lack of jurisdiction. On the other hand, the Tayag petition was granted and the resolutions and orders complained of were set aside and declared as null and void.

A motion for reconsideration filed by Dayrit was denied. Likewise, a motion for reconsideration filed by Salta in CA-G.R. No. SP-03475 was denied. Hence, both Dayrit and Salta filed the present petitions for certiorari.

The main issue in both petitions is whether or not Judge Ancheta had jurisdiction to conduct the preliminary investigation over Salta's complaint against petitioner Dayrit in G.R. No. L-42973 and Renato Tayag, the respondent in G.R. No. L-41395.

We have in the past viewed with disfavor the unseemly interest of Judges of Circuit Criminal Courts to conduct preliminary investigations in cases they will later try. We stated in *Collector of Customs v. Villaluz* (71 SCRA 357) that the authority given to regular Courts of First Instance to conduct preliminary investigations is likewise conferred on Circuit Criminal Courts. However, we made it clear that even as said courts may have such authority, they must concentrate on hearing and deciding criminal cases filed before them instead of discharging a function that could very well be handled by the provincial or city fiscal.

A preliminary investigation is intended to protect the accused from the inconvenience, expense, and burden of defending himself in a formal trial until the reasonable probability of his guilt has first been ascertained in a fairly summary proceeding by a competent officer. It is also intended to protect the State from having to conduct useless and expensive trials (*U.S. v. Marfori*, 35 Phil. 666; *U.S. v. Grant & Kennedy*, 18 Phil. 122). Section 1, Rule 112 of the present Rules of Court states that it is conducted for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime cognizable by the court has been committed and that the respondent is probably guilty thereof and should be held for trial. The preliminary investigation proper is, therefore, not a judicial function. It is a part of the prosecution's job, a function of the executive.

Necessity and practical considerations constrained the Government to assign this non-judicial function to justice of the peace or municipal courts and to a very limited extent to courts of first instance. There are not enough fiscals and prosecutors to investigate crimes in all municipalities all over the country. Moreover, the preliminary examination for the issuance of a warrant of arrest which only a judge could conduct subject to the qualification in the 1973 Bill of Rights, is usually integrated with the preliminary investigation proper when conducted by a court. (See *Collector of Customs v. Villaluz* supra at pp. 385-396 for the historical background of this procedure).

Wherever there are enough fiscals or prosecutors to conduct preliminary investigations, courts are counseled to leave this job which is essentially executive to them. The fact that a certain power is granted does not necessarily mean that it should be indiscriminately exercised.

Cognizant of the above, Section 37 of Batas Pambansa Blg. 129 reiterates the removal from Judges of Metro-politan Trial Courts in the National Capital Region the authority to conduct preliminary investigations. There are enough fiscals and prosecutors in the region to do the job. Similarly, Section 2 of Rule 112 of the 1985 Rules on Criminal Procedure no longer authorizes Regional Trial Judges to conduct preliminary investigations.

The respondent Judge conducted the questioned preliminary investigation pursuant to Section 13, Rule 112 of the Revised Rules of Court, to wit:

"SEC. 13. Preliminary examination and investigation by the judge of the Court of First Instance. – Upon complaint filed directly with the Court of First Instance without previous preliminary examination and investigation conducted by the fiscal, the judge thereof shall either refer the complaint to the justice of the peace referred to in the second paragraph of section 2 hereof for preliminary examination and investigation, or himself conduct both preliminary examination and investigation simultaneously in the manner provided in the preceding sections and should he find reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest, and thereafter refer the case to the fiscal for the filing of the corresponding information."

In the instant cases, the complaint filed by Salta directly before Judge Ancheta was the subject of two previous preliminary investigations conducted by first, the provincial fiscal of Bulacan and second, District State Prosecutor Kliatchko, representing the then Department of Justice. The complaint was dismissed by both investigators.

Under these circumstances, respondent Judge Ancheta had no authority to conduct another preliminary investigation against Dayrit and Tayag, more so since it is admitted that the complaint alleged exactly the same grounds and issues earlier charged against them. As we ruled in the case of *People v. Hechanova* (54 SCRA 101):

"Relative to Section 13, Rule 112 of the New Rules of Court, it is stated thereby with pristine clarity that the complaints over which a judge of a court of first instance may conduct preliminary examination and investigation are those 'filed directly' before it, 'without previous preliminary examination and investigation conducted by the fiscal x x x.' " (Underlining supplied).

Even if we assume that there had been no prior investigations and granting that Judge Ancheta had jurisdiction to conduct another preliminary investigation, the record shows that he behaved in such a manner that the respondents, among them Tayag and Dayrit, were virtually deprived of due process of law. We agree with the then Court of Appeals in CA-G.R. No. SP-03475 which observed:

"Petitioner, deplores the fact that respondent judge has shown extreme bias in favor of the private respondent and against the herein petitioner and his fellow witnesses for the Philippine National Bank, the aggrieved party. We find indeed a considerable number of circumstances that lend substance to this claim. Taken singly, these circumstances may at best be termed harsh as applied to the petitioner, but taken together in their entirety they paint a picture in which one can discern that the private respondent received all the protection in his trial while the petitioner and his fellow witnesses were virtually subjected to intimidation by the prospect of their prosecution.

"When the respondent judge accepted the counter-complaints of the private respondent, which indisputably covered the same subject matter as those investigated previously by the fiscals, the respondent judge should have reacted in a different manner. Even assuming that he had the requisite jurisdiction, he should have treated the subsequent preliminary investigations as prejudicial matters to be heard before the trial of respondent Salta, which should have been held in abeyance. If he then found a prima facie case against the respondents, then he should have had the respondents included as the co-accused of Salta in the two cases (*Malolos* and *Guagua*). As it is, the trial of Salta was heard first and said accused was acquitted in the two cases, in the *Malolos* case on a mere demurrer to the evidence. If during the Salta's trial the respondent judge found the prosecution witnesses timid, it could only have been the consequence of the unfair and unusual procedure he had followed.

"The procedure followed was just one circumstance. Other evidence of partiality can be gleaned from the records. For instance, he did not consider the evidence of herein petitioner saying that these 'partakes of defenses which will become pertinent in a trial on the merits.' This is an error. If in fact said evidences were enough to overcome the judge's prima facie findings, respondent judge did not have to proceed to a 'trial on the merits' and he could have just declared the cases dismissed for insufficiency of evidence. A trial under the circumstances would be a superfluity that could only do unjust harm to the petitioner, aside from wasting the time and money of the government. Then, there are the decisions promulgated by respondent judge acquitting the private respondent Salta. Truly, after acquitting Salta, making all those pronouncements, respondent judge at that stage should have voluntarily inhibited himself from investigating the charges, based on the same set of facts, instituted by Salta against the petitioner and others. His insistence that he should investigate the complaints of Salta exposed him, and with good reason, to charges of partiality in favor of Salta. He could not have resolved the complaints with an unprejudiced mind. His indefensible attitude resulted in the deprivation of petitioner and the others of their right to due process.

"Respondent judge also directed that the petitioner be arrested, fixing a bail bond of P8,000.00 for the latter's

provisional liberty, even before the filing of the information. At the same time, he directed the District State Prosecutor 'to file the requisite Information in consonance with the findings made and conclusions reached herein, within ten (10) days from receipt of this Resolution.' The implication of such an unjust order is that the District State Prosecutor would be guilty of contempt of court if he disobeyed the instruction of the court. This is irregular. It is elementary that a court cannot order the prosecution to submit to such a dictation.

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"x x x [P]etitioner makes a serious claim which should not escape our attention and scrutiny. This is the charge made by petitioner in his Motion for Reconsideration of April 13, 1974, in which it was alleged:

""(e) That this Court lacks that impartiality which is so essential and vital in the dispensation of justice, thereby vitiating the entire proceedings, is established by the fact, recently discovered by respondent Renato D. Tayag, much to his dismay and consternation, that the Presiding Judge of the Court had been seen on numerous occasions and in the unlikeliest of places, before and after the dismissal of the two (2) criminal cases against Salta, consorting, fraternizing and socializing, directly and indirectly, with said Salta..."

"Later, petitioner amplified in his above complaint with a tender and offer of proof on August 22, 1974:

""(b) During the pendency CCC-V-656 of (Guagua case) and CCC-V-668 (Malolos case), as well as during the pendency of the preliminary investigations filed by complainant Salta against respondent Tayag, et al., the Presiding Judge has been a frequent guest, not a few but on many instances, of complainant Salta and not only in one province but in three (3) provinces, whereat Salta gave good and drinks to the Presiding Judge, particularly in restaurants in Malolos, San Fernando and Balanga. Respondent reiterates that he is not, as yet, making formal charges against the Presiding Judge. He merely desires to adduce evidence that there was 'extrinsic fraud' utilized by complainant Salta in obtaining the resolutions against respondents and which factor deprived the respondents of their right to due process, to a fair and impartial trial, thus vitiating the entire proceedings of the above-entitled investigations - rendering the resolutions thereof as null and void and of no legal force and effect.'

"The petitioner never had a chance to present his evidence, hence, his tender and offer of proof. The petitioner claims (and this has not been disputed) 'that the respondent judge, motu proprio, suppressed the issuance of the subpoena directed to the employees of the court and to the wife of the Presiding Judge on the ground that the matters sought to be proven in the hearing are irrelevant and immaterial. The Court, invoking the inherent power of the court to control its own processes, directed the clerk of court not to issue subpoena. In the case of the court's employees, the reason adduced was irrelevancy and immateriality. In the case of the wife of the Presiding Judge, the reason adduced (as appears in the TSN, but not in the July 18, 1974 order) is that a wife cannot testify against the husband without the latter's consent and, in the case of complainant Salta and his wife, in view of the opposition of complainant's counsel, the latter's Motion to Quash Subpoena was granted on grounds of irrelevancy and immateriality of the evidence sought to be elicited.

"We find the charge of petitioner to be very material and relevant. After receiving the Motion for Reconsideration of April 13, 1974, in which the charge was first made, respondent Judge should have lost no time in disqualifying himself and in requesting that another judge be named to take over the proceedings. The records show that he dilly-dallied on the motion for reconsideration and when he finally resolved it on September 9, 1974, it was with a defense of himself against the charges all explicatio non petita, uncalled for under the situation.

Indeed, Judge Ancheta was heedless of his duty to be impartial in conducting the preliminary investigation of the cases against Dayrit and Tayag. We remind Judge Ancheta of what we said in the case of Mateo, Jr. v. Villaluz (50 SCRA 18):

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"x x x There is relevance to what was said by Justice Sanchez in *Pimentel v. Salanga*, (21 SCRA 160) drawing 'attention of all judges to appropriate guidelines in a situation where their capacity to try and decide a case fairly and judiciously comes to the fore by way of challenge from any one of the parties. A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of a circumstance reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decisions to sit or not to sit may depend to a great extent the all important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice.' (Ibid, 167-168)."

The death of Renato D. Tayag, private respondent in G.R. No. L-41395 has rendered the said petition moot and academic. This however, does not preclude this Court from cautioning trial judges on their obligation to observe "the cold neutrality of an impartial judge" at all times to satisfy the requirements of due process.

WHEREFORE, the petition in G.R. No. L-42973 is, GRANTED. The questioned decision of the then Court of Appeals is hereby REVERSED and SET ASIDE. The resolution of Judge Ancheta dated March 22, 1974 is likewise SET ASIDE. The petition in G.R. No. L-41395 is DISMISSED for having become moot and academic.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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