

LOURDES P. SAN DIEGO, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF RIZAL, QUEZON CITY BRANCH IX AND BENJAMIN M. GRECIA, ASSISTANT CITY FISCAL OF QUEZON CITY, PETITIONERS, VS. THE...

G.R. No. L-23796. July 23, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Original action, for "certiorari, prohibition and injunction", to annul an order of the Court of Appeals and restrain the same from further proceedings in case CA-G. R. No. 34826-R. thereof.

The record shows that, after investigating an alleged maul-ing of one Manuel Abella, in Quezon City, on October 3, 1964, Benjamin M. Grecia, as Assistant Fiscal of said City, filed, in connection therewith, with the Court of First Instance of Rizal, Quezon City Branch - hereinafter referred to as CFI - presided over by Hon. Lourdes P. San Diego, Judge, an information - which was docketed as Criminal Case No. Q-6029 of said CFI - for frus-trated murder, against Juancho G. Gutierrez, Celedonio P. Cayado alias Tony Cayado, Alfonso D. Tagle alias Panchito Alba, Benjamin A. Johnson, Eliseo C. Estanislao and three (3) other persons de-signed in said pleading as John Doe, Richard Doe and Peter Doe.

Among those implicated in the alleged mauling were Modesto Obispo and Cipriano Valeriano, Assistant City Fiscal and member of the Police Force respectively, of Quezon City; but they were not named specifically in the information for the reason - stated in a letter of the City Fiscal to the Secretary of Justice, hereinafter referred to as the Secretary - "that only the victim Manuel Abella identified them, while his two other witnesses were negative in their identification of the two, aside from the fact that they were able to present witnesses to show that they did not participate in the mauling. " The City Fiscal further stated, in his letter, that the investigation had been set, for continuation thereof, on October 5, 1964, and that, owing to the danger that any action taken thereon by his office may be "misinterpreted", because a member of his staff - Assistant Fiscal Obispo - was involved, he (the City Fiscal) requested that a special prosecutor of the Department of Justice - herein-after referred to as the Department - be designated "to continue x x said investigation.

Accordingly, on October 5, 1964, the Secretary designated State Prosecutor, Francisco Villa, "to assist the city fiscal of Quezon City in the investigation and prosecution of all the persons responsible for the alleged mauling of Manuel Abella x x x." On the same date, Villa proceeded to conduct the investigation, which he resumed on October 7, 1964. Thereupon, he recommended to the Secretary the dismissal of the case, in so far as Obispo and Valeriano were concerned, upon the ground that Manuel Abella had refused to testify. This recommendation was, however, dis-approved by the Secretary, who instructed the prosecution to do everything possible to secure Abella's testimony. Hence, on October 13, 1964, the city fiscal issued a memorandum directing Grecia and Villa to sit together and resume the investigation, as well as report thereon.

On October 19, 1964, the defendants designated in the in-formation by their true names were arraigned before the

CFI. On this occasion, Judge San Diego asked Assistant Fiscal Grecia, about the identity of the persons referred to in said pleading as John Doe, Richard Doe and Peter Doe Grecia replied that the first two (2) were Assistant City Fiscal Modesto Obispo and Patrol-man Cipriano Valeriano, respectively - hereinafter referred to collectively as the respondents. Thereupon, Judge San Diego authorized Grecia to cross out the conventional names John Doe and Richard Doe, in the information, and write, instead, "Fiscal Mo-desto Obispo" and Patrolman Cipriano Valeriano", which Grecia did. Then, the warrants for their arrest were issued, on motion of Grecia.

Respondents forthwith moved to set aside said warrants of arrest, but, the motion was denied on October 20, 1964; whereupon, respondents posted their respective bail bonds, and moved to quash the information, upon the ground of absence of a preliminary investigation and the consequent lack of authority to file said pleading. After listening to the argument of respondents counsel, when said motion was heard on October 31, 1964, Judge San Diego stated that, "not being founded on the grounds provided by the Rules of Court, " the motion would "have to be denied. " As said counsel requested some time to file a motion for reconsideration, Judge San Diego remarked that she saw no need therefor, if the arguments adduced that morning would merely be reiterated. She, however, allowed Atty. Marvin Hill to appear as amicus curiae and submit, not later than November 2, 1964, a memorandum in support of said motion to quash. Judge San Diego further announced that the written order thereon would be issued on November 4, 1964 - as, in fact, it was then issued - on which date respondents would be arraigned and should be ready for trial.

Respondents, however, filed, with the Court of Appeals, on November 2, 1964, a petition, docketed as CA-G. R. No. 34826-R, for "certiorari, prohibition and injunction, " to annul the information against them and restrain Judge San Diego and Assistant Fiscal Grecia from proceeding with their (respondents' arraignment and trial in said Criminal Case No. Q-6029. On November 3, 1964, a division of the Court of Appeals passed a resolution requiring said Judge and Assistant Fiscal to answer the petition therein and, upon the filing of a P500 bond, issued a "summons with" the "writ of preliminary injunction" prayed for by respondents herein.

On November 12, 1964, Judge San Diego and Assistant Fiscal Grecia, in turn, filed, with the Supreme Court, the present action for "certiorari, prohibition and injunction, " against the respondents and the Members of the Division of the Court of Appeals that passed said resolution and authorized the issuance of the writ aforementioned, to annul both, upon the ground of grave abuse of discretion, amounting to excess of jurisdiction. As prayed for in the petition herein, we issued a writ of preliminary injunction restraining the Court of Appeals from further proceedings in said CA-G. R. No. 34826-R.

Respondents alleged in their petition therein that the amended information against them is null and void: (1) because they were given no preliminary investigation, before being included in said pleading, and (2) because Grecia allegedly "lost all authority to amend the information" by including therein respondents herein.

The infirmity of the last ground was manifest on the very face of said petition. Indeed, respondents quoted therein section 2 of Republic Act No. 1198, pursuant to which "State Attorneys shall only assist or collaborate with the Provincial Fiscal or city attorney unless otherwise expressly directed and authorized by the Secretary of Justice, " and it is not alleged in said pleading that the latter had thus "otherwise expressly directed and authorized state attorney" Villa, as regards the alleged mauling of Manuel Abella. In fact, Villa was merely "designated to assist the City Fiscal of Quezon City, " so that the latter, and, on his behalf, Assistant Fiscal Grecia retained control over the prosecution in Criminal Case No. Q-6029.

With respect to the first ground, it is worthy of notice that the Constitution does not require the holding of preliminary investigations. The right thereto exists only, if and when created by statute. When so created, the absence of a preliminary investigation - if it is not waived - may amount to a denial of due process.

In this connection, Section 38 of the Revised Charter of Quezon City reads:

"Every person arrested shall, without unnecessary delay, be brought before the City Attorney, the municipal court, or the Court of First Instance for preliminary hearing, release on bail, or trial. x x x In case triable only in the Court of First Instance the defendant shall not be entitled as of right to preliminary examination in any case where the Fiscal of the city, after a due investigation of the facts, shall have presented an information against him in proper form. But the Court of First Instance may make such summary investigation into the case as it may deem necessary to enable it to fix the bail or to determine whether the offense is bailable. "

Thus, the defendant in a case "triable only in the Court of First Instance" of Quezon City, "shall not be entitled as of right to preliminary investigation x x x where the Fiscal of the City, after due investigation of the facts, shall have presented an information against him in proper form." In the case at bar, such investigation had been conducted and said "information in proper form" was filed by the "Fiscal of the City. " Hence, the action of Assistant Fiscal Grecia in inserting, in the information in Criminal Case No. Q-6029, the true names of those accused there-in as John Doe and Richard Doe, and the authority given therefor by Judge San Diego, are violative of neither the Fundamental Law nor the statutes, and do not constitute a denial of due process.

In other words the petition in CA-G. R. No. 34826-R failed to set up a cause of action, because the law relevant to the subject-matter of every pleading - and, hence, the Revised Charter of Quezon City, as regards said petition - must be considered as part and parcel of the allegations thereof,[1] and in issuing the writ of preliminary injunction, the Court of Appeals had abused, therefore, its discretion so gravely as to have exceeded its jurisdiction.[2]

Needless to say, the cases cited in respondents' petition in CA-G.R. No. 34826-R are not in point. *Conde v. Judge of First Instance*[3] was concerned mainly with the harassment visited upon the accused and a denial of speedy trial, through substantial amendments of the information, by changing the nature of the crime charged therein, and the filing of new charges, without a preliminary investigation, after the dismissal of those originally filed, as well as undue delays in proceeding with the hearing of the case. In the one at bar, respondents seek to prevent their trial under an information the allegations of which, as regards the nature of the crime charged, have never been changed or amended.

In *U.S. v. Marfori*,[4] an information was filed in the court of first instance after the dismissal of the complaint by the justice of the peace who conducted the preliminary investigation. Upon the other hand, the justice of the peace who conducted the preliminary investigation in *U. S. v. Banzuela*[5] found that "there were no grounds for believing that" the "accused was guilty of the crime charged against him, " and, accordingly, ordering his release, thus, in effect, dismissing the complaint. In *People v. Red*,[6] no preliminary investigation was ever made.

In the case of respondents herein, Assistant Fiscal Grecia had conducted an investigation, and had not dismissed, either expressly or impliedly, the charges against them. What is more, he included them in the information, although under the conventional names of John Doe and Richard Doe, and their true names were not revealed [u]ntil the arraignment of their co-defendants, on October 31, 1964. Lastly, none of the aforementioned cases involved the application of a provision analogous to that of the Revised Charter of Quezon City, explicitly denying the right to a preliminary investigation in cases triable only in the Court of First Instance thereof, where the prosecutor, after due investigation of the facts, shall have filed an information against him in proper form.

WHEREFORE, the writ of preliminary injunction issued by the Court of Appeals in CA-G.R. No. 34826-R is hereby annulled, with costs against respondents, Modesto A. Obispo and Cipriano Valeriano.

IT IS SO ORDERED.

Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] *Aleman v. Sweeney*, 2 Phil. 654; *La. Insular v. Jao Oge*, 42 Phil. 367; *De los Santos v. Provincial Sheriff*, 64 Phil. 193; *Alzua vs. Johnson*, 21 Phil. 308, 349-350, 365.

[2] *North Negros Sugar Co. v. Hidalgo*, 63 Phil. 664, 671; *Ayo v. Ila* L-23293, January 16, 1968; *Commissioner of Customs v. Cloribel*, L-20266, January 31, 1967; *Vivo v. Arca*, L-21728, December 27, 1963. *Vivo v. Cloribel*, L-23239, Nov. 23, 1966; *Board of Commissioners v. Domingo*, L-21274, July 31, 1963; *Climaco v. Barcelo* L-19597, July 31, 1962.

[3] 45 Phil. 173.

[4] 35 Phil. 666.

[5] 31 Phil. 564.

[6] 55 Phil. 706.

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