

ROMERO ESTRELLA Y DE VENECIA, PETITIONER, VS. HON. G. JESUS B. RUIZ, PRESIDING JUDGE, BRANCH I, CFI OF CAGAYAN, FIRST JUDICIAL DISTRICT, TUGUEGARAO, CAGAYAN, AND FLORENTINO DE L...*G.R. No. L-38621. August 30, 1974*

Ponente: FERNANDEZ, J.

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In this original action of certiorari and prohibition with preliminary injunction, petitioner prays that the order^[1] dated April 23, 1974 of the Court of First Instance of Cagayan (Branch I) in its Criminal Case No. 371 filed against the petitioner and one Dante Custodio, be annulled and that respectively, respondents Provincial Fiscal Florentino de la Pena and Judge G. Jesus B. Ruiz be prohibited permanently from proceeding with the reinvestigation of the case and from hearing the same.

On July 21, 1973, at about 2:30 p.m., an owner jeep with a trailer driven by herein petitioner and a motorized tricycle driven by Dante Custodio, both coming from opposite directions on the national highway of Barrio Ugac, Tuguegarao, Cagayan, collided with each other; and, as a result, one of the passengers sustained fatal injuries, three others were injured, and the two vehicles were damaged.

The vehicular accident was investigated by a patrolman of the Tuguegarao Police Department, and, on July 25, 1973, a complaint^[2] for "Homicide through Reckless Imprudence" against the herein petitioner was filed before the Municipal Court. The latter did not conduct any preliminary investigation on the strength of a "Waiver"^[3] signed by the petitioner. Hence, the case was remanded to the Court of First Instance wherein the same was numbered as Criminal Case No. 371.

Came August 3, 1973, petitioner (driver of the jeep) filed a complaint^[4] in the Office of the Provincial Fiscal against Dante Custodio (driver of the tricycle) for "Criminal Negligence Resulting to Homicide, with Multiple Physical Injuries and Damage to Property."

That same day, petitioner, through his counsel requested the Provincial Fiscal to conduct a reinvestigation of the complaint filed against him before the Municipal Court and remanded to the Court of First Instance and the preliminary investigation of the complaint filed by him against Dante Custodio before the Provincial Fiscal.^[5] The latter granted the request and directed Assistant Provincial Fiscal Leonardo Guiyab, Jr. to conduct an investigation of both cases.^[6]

On December 19, 1973, after the investigation, the respondent Provincial Fiscal filed an information^[7] for "Homicide with Multiple Physical Injuries and Damage to Property through Reckless Imprudence" against both petitioner and Dante Custodio before the Court of First Instance of Cagayan.

On March 15, 1974, petitioner was arraigned and he pleaded not guilty to the charge.^[8]

On April 19, 1974, petitioner filed a motion to dismiss the case,[9] on the ground that the information was invalid in view of the fact that the certification of the Fiscal with respect to the preliminary investigation conducted by him was limited to his co-accused Dante Custodio. The motion was heard and argued on April 23, 1974, with the Fiscal opposing the same. The respondent Judge denied the motion and the motion for reconsideration which was filed afterwards,[10] but directed the Office of the Provincial Fiscal to reinvestigate the complaint with respect to the herein petitioner for "the satisfaction of defense counsel." [11]

Petitioner, in his present petition for a writ of Certiorari filed with Us, maintains that the information filed against him and his co-accused Dante Custodio, is null and void insofar as he is concerned, because the certification of the Investigating Fiscal, embodied at the bottom of the information, which states that a preliminary investigation was conducted and that there exists a probable cause, referred to Dante Custodio alone.[12] Petitioner then concludes that the respondent Judge acted with grave abuse of discretion in not dismissing the case against him and in further ordering the reinvestigation of the complaint insofar as he is concerned.

The present case may be compared with the case of *People vs. Marquez*,[13] wherein, notwithstanding the absence of a certification as to the holding of a preliminary investigation in the information, We declared the information to be valid, for the reason that such certification is not an essential part of the information itself and its absence cannot vitiate it as such. This Court, speaking through Mr. Justice Barredo, held:

"x x x the question to determine in this case is, what was the effect of appellee's failure to object to the information before or at the time he entered his plea of not guilty. Assuming that said information was defective because it did not contain the requisite certification regarding the fiscal's having held a preliminary investigation where the accused was given an opportunity to be present personally or thru counsel, such an omission is not necessarily fatal. It should be observed that Section 3 of Rule 110 defines an information as nothing more than an 'accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court.' Thus, it is obvious that such certification is not an essential part of the information itself and its absence cannot vitiate it as such. True, as already stated, Section 14 of Rule 111[14] enjoin that 'no information xxx shall be filed, without first giving the accused a chance to be heard in a preliminary investigation,' but, as can be seen, the injunction refers to the non-holding of the preliminary investigation, not the absence of the certification. In other words, what is not allowed is the filing of the information without a preliminary investigation having been previously conducted, and the injunction that there should be a certification is only a consequence of the requirement that a preliminary investigation should first be conducted. Logically, therefore, inasmuch as the settled doctrine in this jurisdiction is that the right to the preliminary investigation itself must be asserted or-invoked before the plea, otherwise, it is deemed waived, it stands to reason, that the absence of the certification in question is also waived by failure to allege it before the plea. After all, such certification is nothing but evidence of a fact, and if the omission of the fact itself to be certified is waived, if not properly raised before the accused enters his plea, why should the omission merely of the certification be given more importance than the absence of the fact itself to be certified to? Is it to be sustained that if in a given case, there were such a certification although in fact no preliminary investigation has been held, this Court is going to hold that the requirement of a preliminary investigation has been complied with? To ask the question is to immediately expose the absurdity of the affirmative answer to it." (Italics Supplied)

Furthermore, herein petitioner did not question the validity of the information on the ground of defective certification already adverted to above with respect to preliminary investigation before he entered a plea of not guilty. He filed his motion to quash only after 1 1/2 months thereafter. Consequently, when he entered a plea of not guilty, he thereby waived all objections that are grounds for a motion to quash, except lack of jurisdiction or failure of the information to charge an offense;[15] specifically, he waived his right to a preliminary investigation. In a long line of decisions, We have previously held that the right to a preliminary investigation must be asserted and invoked before or, at least, at the time of the entry of his plea in the Court of First Instance, otherwise, it is

deemed waived.[16]

It is true that the certification with respect to preliminary investigation makes mention only of the petitioner's co-accused Dante Custodio. But petitioner does not deny the fact that a reinvestigation of the case filed against him originally in the Municipal Court and remanded to the Court of First Instance, and of his own complaint against Dante Custodio, have been ordered investigated by the Provincial Fiscal. The Assistant Provincial Fiscal Leonardo Guiyab, Jr., to whom the investigation of said two cases had been assigned, must have conducted the necessary reinvestigation of the case against the petitioner and the investigation of the case filed by him against Dante Custodio. And the Comment of the respondent Fiscal clearly states that he concurred with the findings of the investigating Fiscal that there is prima facie evidence against both respondents. As a matter of fact, petitioner's objects to the holding of another reinvestigation insofar as the case against him is concerned, as ordered by the respondent Judge.[17] Petitioner, therefore, cannot say that there is no basis for accusing him along with Dante Custodio. The basis thereof is not a certification that a preliminary investigation has been held, but more so, the actual holding thereof.

And even granting that no reinvestigation of the case against herein petitioner was conducted by the Office of the Provincial Fiscal, the fact is that he has already previously waived his right to a preliminary investigation when the case was still with the Municipal Court. Thus, in the Comment of the respondent Fiscal he notes that the herein petitioner made an express waiver of his right to a preliminary investigation in the Municipal Court; so, when the case was remanded to the Court of First Instance, he "saw no necessity in including the name of the petitioner in his certification in the Information."

Petitioner claims that the resolution¹⁸ of the investigating fiscal, recommending the incorporation of the information against Dante Custodio to that against petitioner, is of no import. On the contrary, this resolution, which reads in its dispositive portion:

"WHEREFORE, considering the existence of a prima facie case, let an information be filed against the respondent Dante Custodio, the same to be incorporated in the information to be filed against Romero Estrella in Criminal Case No. 371, for Homicide, thru Reckless Imprudence, defined and penalized under Article 365 of the Revised Penal Code, in connection with the death of Mamerto Camayang." (Italics supplied)

marks out the clear intention to include petitioner and Dante Custodio as the two accused in the information, "considering the existence of a prima facie case."

WHEREFORE, finding no error in the order of the respondent Judge denying petitioner's motion to dismiss, the herein petition is hereby dismissed with the modification that a new reinvestigation of the complaint need not to be made, without pronouncement as to costs.

Zaldivar (Chairman), Fernando, Barredo, Antonio, and Aquino, JJ., concur.

[1] Order, Annex "F-I", Rollo, p. 28. It reads: "The motion to dismiss is hereby denied for lack of merit. However, for the satisfaction of defense counsel, the Court directs the office of the Provincial Fiscal to conduct a reinvestigation within twenty days from today. SO ORDERED."

[2] Petition, Rollo, p. 2.

[3] Waiver of Preliminary Investigation, Annex "A", Rollo, p. 37.

[4] Complaint, Annex "A", Rollo, p. 15.

[5] Request, Annex "B", Rollo, p. 17.

[6] Grant of Request, Annex "C", Rollo, p 18.

[7] Information, Annex "D", Rollo, p. 19.

[8] Petition, Rollo, p. 5.

[9] Motion to Dismiss, Annex "E", Rollo, p. 21.

[10] Petition, Rollo, p. 6.

[11] Order, *supra*.

[12] Information, *supra*, It reads: "I, Leonardo Guiyab, Jr., Asst. Provincial Fiscal of Cagayan, hereby certify that a preliminary investigation in this case has been conducted in accordance with law, with respect to respondent Dante Custodio; that the accused appeared during said investigation; that I have examined the complaint as well as his witnesses; that basing on the evidence on record, there is a probable ground to believe that the offense charge has been committed and that the accused Dante Custodio is probably guilty thereof."

[13] L-23654, March 28, 1969, 27 SCRA 808, 812-814

[14] As amended by Presidential Decree No. 77, dated December 6, 1972, the same reads: "x x x no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal or any of his assistants, or by the Chief State Prosecutor or his assistants, without first conducting a preliminary investigation x x x."

[15] Barot vs. Hon. Julio Villamor, et al., 105 Phil. 236 (1959); Oca vs. Jimenez, L-17777, June 19, 1962, 5 SCRA 425.

[16] People vs. Solon, 47 Phil. 443; People vs. Quinto, 60 Phil. 451; People vs. Magpale, 70 Phil. 176; People vs. Moreno, 77 Phil. 548; People vs. Lambino, 103 Phil. 504; People vs. Luccro, 46 O.G. (Supp.) 445; People vs. Silos, et al., L-5158, March 28, 1952; People vs. Ricarte, 49 O.G. 947; People vs. Scelfaison, et al., L-14732, Jan. 28, 1961, 1 SCRA 235; People vs. Casiano, L-15309, Feb. 16, 1961, 1 SCRA 479; and People vs. Paras, et al., L-23111, March 29, 1974, 56 SCRA 248.

[17] Petition, Rollo, pp. 9-10.

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