

**HERMINIO A. ASTORGA, PETITIONER, VS. THE HONORABLE
RICARDO C. PUNO, IN HIS CAPACITY AS JUDGE OF THE COURT OF
FIRST INSTANCE OF MANILA, AND ALFREDO R. GOMEZ,
RESPONDENTS.**

G.R. No. L-25600. September 30, 1975

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ANTONIO, J.:

This petition for certiorari and prohibition with preliminary injunction presents for review the validity of the Orders of the respondent Court, denying the dismissal of the criminal case filed against petitioner or the suspension of the trial thereof.

On November 2, 1965, respondent Alfredo R. Gomez filed a complaint with the Court of First Instance of Manila charging petitioner Herminio A. Astorga and several others with the crimes of grave coercion and grave threats in violation of the Revised Election Code, allegedly committed in connection with the local elections of November 12, 1963 in the City of Manila. The complaint was docketed as Criminal Case No. 80557 and assigned to Branch XXIV, presided over by respondent Judge Ricardo C. Puno.

Prior to the filing of the criminal complaint, an election protest had been filed by respondent Alfredo Gomez against petitioner Herminio A. Astorga. According to the allegations of petitioner, said election protest, pending before Branch XVIII of the Court of First Instance of Manila, is predicated upon the same acts of fraud and terrorism imputed to him in connection with the local elections above-mentioned, as a result of which he won over respondent as Vice-Mayor elect of the City of Manila.

The preliminary investigation of the criminal case was set for November 16 and 17, 1965. By Motion dated November 15, 1965, petitioner prayed for the dismissal of the complaint on the ground, among others, that the offenses charged had prescribed, two (2) years having elapsed from November 12, 1963, the date when the offenses were allegedly committed, without any formal information having been filed against petitioner, in accordance with the provisions of Section 188 of the Revised Election Code. Respondent Gomez filed an Opposition to the Motion to Dismiss, to which a Reply was filed by petitioner. Respondent in turn filed a Rejoinder thereto.

On November 22, 1965, finding no merit on the ground of prescription relied upon by the movant, respondent Court issued an Order denying the Motion to Dismiss, holding that the filing of the complaint with the Court of First Instance on November 2, 1965 interrupted the two-year prescriptive period provided for in the Revised Election Code, the period being counted from November 12, 1963 when the offenses were allegedly committed. Respondent Court made the following pronouncement:

"It is well-settled that in crimes cognizable by the Court of First Instance, the filing of the corresponding complaint before the proper Municipal Court for purposes of preliminary investigation before latter forum interrupts the prescriptive period. Under the same token and, indeed, with greater vigour, the self-same principle should apply in the case now before us, which has been filed before the very court having plenary

jurisdiction of both the preliminary investigation and the subsequent trial on the merits of the offense charged. .
.."

Petitioner filed a Motion for Reconsideration of the above Order, relying upon the following grounds: (1) that the alleged offenses had prescribed; (2) that assuming that there was no prescription, the proceedings in the criminal case should be suspended because the issue raised in the election protest (Civil Case No. 55820) was in the nature of a pre-judicial question; and (3) that only the City Fiscal of Manila had jurisdiction to investigate the offenses charged under the provisions of Section 38 of the Charter of the City of Manila conferring upon him exclusive jurisdiction to investigate all offenses committed in said city. This Motion for Reconsideration was likewise denied by respondent Court in its Order dated December 22, 1965.

By subsequent Order dated January 22, 1966, the preliminary investigation of the complaint was reset for February 2, 1966. Alleging that respondent Judge acted without or in excess of his jurisdiction and with grave abuse of discretion in denying the Motion to Dismiss as well as the Motion for Reconsideration of said denial, and in refusing to suspend the preliminary investigation of the criminal complaint, petitioner filed the present petition.

On February 2, 1966, this Court issued a Temporary Restraining Order directed to respondent, the Hon. Ricardo C. Puno, restraining him from proceeding with the preliminary investigation of Criminal Case No. 80557.

It is the view of petitioner that (1) the Court of First Instance has no jurisdiction to conduct the preliminary investigation of the complaint inasmuch as the function of investigating all charges of crimes and violations or ordinances in the City of Manila is vested exclusively in the City Fiscal of Manila;^[1] (2) assuming that said Court had jurisdiction to conduct the preliminary investigation, it acted with grave abuse of discretion when it refused to suspend the trial of the same, based on the pendency of a pre-judicial question in the election protest (Civil Case No. 55820) where the resolution of the issue of fraud and terrorism involved therein is a logical antecedent of the issue involved in the criminal case; and (3) more than two (2) years having elapsed since the commission of the alleged offenses, it was error for the trial court to have ruled that the offenses charged had not prescribed and that the filing of the criminal complaint before the said court tolled the two-year period of prescription provided in Section 188 of the Revised Election Code, considering that said criminal complaint is only in the nature of a denuncia for the determination of probable cause and does not interrupt the running of the prescriptive period.

Petitioner, therefore, prays that this Court issue an Order setting aside the Orders of respondent Judge denying the Motion to Dismiss and the Motion for Reconsideration, and declaring the Court of First Instance to be without jurisdiction to conduct the preliminary investigation of Criminal Case No. 80557, or, in the alternative, assuming that it is found to have jurisdiction, dismissing the criminal complaint on the ground that the offenses charged therein have already prescribed, or, granting the contrary, ordering the suspension of the preliminary investigation pending the resolution of the pre-judicial question in the election case before another sala.

Respondents, on the other hand, maintain the authority of respondent Court to conduct the preliminary investigation of the criminal complaint above-mentioned, in view of Section 187 of the Revised Election Code which expressly grants the Court such power. Moreover, it is averred that preliminary investigations of election offenses are purposely removed from the jurisdiction of the city fiscal because said official is not wholly independent of the municipal council, his salary, equipment, supplies and staff being dependent upon appropriations made by the municipal council. Furthermore, it is urged that the public interest demands that violations of the election law be immediately investigated and prosecuted, and this is best accomplished by removing from the jurisdiction of the city fiscal the investigation of election offenses and conferring the same upon the Courts of First Instance. It is respondents' contention that the Revised Election Code must prevail over the Charter of the City of Manila.

With respect to the allegation that a pre-judicial question exists which requires the suspension of the criminal trial, respondents contend that, in the election protest, what is sought is the annulment of votes cast in favor of petitioner Herminio A. Astorga in 307 precincts in the City of Manila, whereas in the criminal case, the question is whether or not Herminio A. Astorga had conspired with the goons and gangsters in committing acts of terrorism and fraud in the precincts mentioned in the criminal complaint.

In regard to the issue of prescription, respondent alleges that, contrary to petitioner's contention that the offenses charged had prescribed, the filing of the criminal complaint before the Court of First Instance by complainant Alfredo R. Gomez within two (2) years from the date of the commission of the offenses interrupted the prescriptive period.

We find that the present petition is without merit.

The provisions of Section 187 of the Revised Election Code vesting exclusive jurisdiction on the Court of First Instance to conduct preliminary investigations of election offenses is explicit. It states thus:

"SEC. 187. Jurisdiction of Courts of First Instance. — The Courts of First Instance shall have exclusive original jurisdiction to make preliminary investigations, issue warrants of arrest and try and decide any criminal action or proceeding for violation of this Code. From its decision, an appeal shall lie as in other criminal cases."

Construing the above provision, We held in *Tagayuma v. Lastrilla, et al.*,^[2] that while Provincial Fiscals are authorized to conduct preliminary investigations under the general law (Rep. Act No. 732), Section 187 of the Revised Election Code, which gives Courts of First Instance exclusive original jurisdiction to make preliminary investigations for violation of said Code, must be construed as a limitation upon the powers of the fiscal to conduct the preliminary investigations of criminal offenses. We explained that:

"x x x The provision giving original and exclusive jurisdiction to Courts of First Instance in the conduct of preliminary investigations in criminal cases arising from violations of the Election Code is not without meaning. Public interest demands that such violations be immediately investigated and prosecuted, for it is the only way to curb fraud, terrorism and other corrupt practices which may occur in elections and secure a free expression of the people's true will *Gorospe v. Penaflorida, et al.*, G.R. No. L-11683, July 19, 1957). A speedy action is guaranteed if the CFI conducts the investigation, since there is only one stage to hurdle. Also, the procedural technicalities in the investigations conducted by the fiscal may be obviated and the said official is removed from the pernicious influence of partisan politics which, for reasons of the inherent independence of the judiciary, and of his elevated position, a judge can easily resist." (p. 941.)

In *People v. Golez*,^[3] this Court, speaking thru Mr. Justice Barredo, stated that the ruling of the Judge of the Court of First Instance of Capiz to the effect that under Section 187 of the Revised Election Code only said Court, to the exclusion of the City Fiscal of Roxas City, had jurisdiction to conduct preliminary investigations of violations of the Revised Election Code, is "unassailable."

Relative to the second issue, it appearing that the Court of First Instance has not yet conducted, much less terminated the requisite preliminary investigation, the issue of pre-judicial question is, therefore, prematurely raised. As We explained in *Isip, et al. v. Gonzales*^[4] it is only after a preliminary investigation that the Court could determine the existence of a probable cause which would warrant the holding of the accused for trial, as absent a finding of probable cause, the complaint would be automatically dismissed.

"SEC. 5. Suspension by reason of pre-judicial question. — A petition for the suspension of the criminal action based upon the pendency of a prejudicial question in a civil case, may only be presented by any party before or during the trial of the criminal action."

"The Court a quo was right in holding that under these provisions, the petition to suspend the preliminary investigation being conducted by him on the ground of the alleged existence of a pre-judicial question in the electoral protest also filed by private respondent in this case was prematurely raised, inasmuch as it is only after said preliminary investigation that the court could determine the existence of a probable cause by reason of which said petitioners may alone be brought to a formal trial. As pointed out by His Honor, absent a finding of probable cause, the complaint would be automatically dismissed; and it is only in case the contrary is found and petitioners are held for formal trial that suspension of the criminal action would be in order. To this effect indeed was the holding of this Court in the case of *Dasalla, et al. vs. City Attorneys of Quezon City and Francisco T. Koh*:

'Granting that the pre-judicial question raised by the appellants be legally correct, still, the time or moment to ask for the suspension of the criminal proceedings is not during the period of preliminary investigation by the city prosecuting officer but after such investigation and after he shall have filed the informations against the appellants. Should the prosecuting officer find that the mortgage on the parcels of land was not really executed, or, if executed, it was through deceit and misrepresentation, he certainly would not file the information.'

"More definitely in *Estrella vs. Orendain, Jr. and Quilop*, G.R. No. L-19611, February 27, 1971, We held that 'it is settled that the matter of pre-judicial questions cannot be resolved (until) . . . after corresponding information has already been filed.' (pp. 262-263.)

Appos the foregoing, We also said in *Falgui vs. Provincial Fiscals of Batangas*.^[5]

"Implicit, therefore, is the pendency of both the civil action and the criminal action, and the resolution of the issue raised in the action would be determinative of the guilt or innocence of the accused in the criminal case. The requirement that there should be a criminal action in court is pursuant to the express provisions of Section 5, Rule 111, of the Revised Rules of Court which provides that 'A petition for the suspension of the criminal action based upon the pendency of a prejudicial question in a civil case, may only be presented by any party before or during the trial of the criminal action.' The abovequoted rule is a reiteration of Our ruling in *Dasalla, et al v. City Attorney of Quezon City, et al.*, that the time to ask for the suspension of a criminal case due to a pre-judicial question is not during the preliminary investigation but after the Fiscal has filed the corresponding information, x x x"

Equally without merit is petitioner's contention that the offense for which he is charged had already prescribed. The filing of the complaint before the Court of First Instance for purposes of preliminary investigation tolled the period of prescription provided in Section 188 of the Revised Election Code. This is the rule enunciated in *David, et al. vs. Santos, et al.*,^[6] wherein this Court, speaking through Mr. Justice Teehankee, held that "the filing of a complaint for alleged violation of the Revised Election Code with the Court of First Instance which is vested with the exclusive jurisdiction to conduct the preliminary investigation thereof properly interrupts the period of prescription." It was likewise said therein that Article 91 of the Revised Penal Code, which provides that the period of prescription of offenses shall be interrupted by the filing of the complaint or information should be applied as suppletory to the Revised Election Code. The reason given therefor is as follows:

"The aversion of the Election Code against the period, prescription just running out is shown from the special provision in Section 188 thereof that 'if the discovery of such (election) offenses I made in election contest proceedings, the period of such prescription shall commence on the date on which the judgment in such proceedings becomes final.' As the late Justice Laurel observed, special provision prevents a guilty person from evading a well-deserved punishment, even if the trial of the election contest, during which the commission of the offense is incidentally discovered is protracted for several years. Similarly, under the supplementary provisions of Article 91 of the Penal Code, the interruption of the two year prescriptive period for the offense charged from the date of filing of the complaint with respondent Court, preserves the right of the State to prosecute and punish the guilty, even if the preliminary investigation thereof has been protracted

for many years, as in the case at bar." (p. 793).

WHEREFORE, in view of the foregoing, the petition for certiorari and prohibition is hereby denied, and pro tanto the temporary restraining order issued on February 2, 1966 is hereby set aside. Costs against petitioner.

Fernando, Barredo, Aquino, and Martin, JJ., concur.

[1] Section 38-B of R.A. No. 409, otherwise known as the Revised Charter of the City of Manila.

[2] 5 SCRA 937.

[3] 39 SCRA 248.

[4] 39 SCRA 255.

[5] 62 SCRA 462.

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