

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. YU GO KEE AND VICENTE SUN, DEFENDANTS AND APPELLEES.*G.R. Nos. L-16155-57. November 29, 1961*

Ponente: DE LEON, J.

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Lim Bun Chuan filed with the City Fiscal's Office of Manila a complaint for falsification of public and official documents against Yu Go Kee. In turn, the latter's wife, Teng Yaa, filed with the same office a complaint for estafa against Lim Bun Chuan. In the presence of the parties, a joint preliminary investigation of these cases was conducted by Fiscal Jose T. M. Mayo, an Assistant Fiscal of the Preliminary Investigation Division of said City Fiscal's Office. Before Lim Bun Chuan closed his evidence, he included Vicente Sun as co-defendant of Yu Go Kee.

After investigation, Fiscal Mayo rendered his "Report of Investigation", recommending dismissal of both cases. Disagreeing with this recommendation, Second Assistant City Fiscal Carlos C. Gonzales, Chief of the Prosecution Division of the same Office of the City Fiscal, filed instead three informations with the Court of First Instance of Manila charging Yu Go Kee and Vicente Sun for falsification of public and official documents. In filing these informations, Fiscal Gonzales was guided solely by the evidence submitted by Fiscal Mayo, which consisted of the testimony of the parties who were given the chance to be heard during the preliminary investigation.

Before arraignment, the attorneys of Yu Go Kee and Vicente Sun filed separate motions to quash, alleging, among others, that there was no valid preliminary investigation conducted by Fiscal Gonzales. Fiscal Gonzales filed an opposition to the motions. The parties submitted memoranda. On September 24, 1959, Judge Froilan Bayona issued an order dismissing the three informations, the dispositive portion of which reads:

"In view of the foregoing considerations, this Court is of the opinion and so holds that these three informations against Vicente Sun and Yu Go Kee should be, as same are hereby, dismissed on the ground that Fiscal Gonzales who filed the information did not conduct the preliminary investigation in accordance with law; and if the said information referred to by Fiscal Gonzales in the certification was the investigation conducted by Fiscal Mayo as basis of the informations, these three informations likewise should be dismissed because Fiscal Mayo himself who conducted the Investigation recommended dismissal of these accused Vicente Sun and Yu Go Kee pursuant to his finding appearing in Annex A."

Fiscal Gonzales filed a motion for reconsideration of the aforesaid order of dismissal. It appears that the motion was never heard before and resolved by Judge Bayona. To forestall the expiration of the period within which he could appeal from the order, Fiscal Gonzales filed a notice of appeal with this Court. In the meantime, the cases were assigned to the sala presided by then Judge Juan P. Enriquez. On October 20, 1959, said Judge denied the motion for reconsideration but gave due course to the appeal.

Upon the facts presented, we find and hold that a valid preliminary investigation preceded the filing of the informations in the three criminal cases.

The "Report of Investigation" prepared by Fiscal Mayo does not indicate to whom it was directed, but, it being a mere recommendation, not a final resolution of dismissal, We can presume that it was intended for the review and final action of either Fiscal Gonzales or the City Fiscal himself, and if it was forwarded direct to the City Fiscal the latter referred it to Fiscal Gonzales in whose division the ultimate duty of prosecuting cases in court devolves. Be this as it may, the review made by Fiscal Gonzales was but a mere continuation of the preliminary investigation conducted by Fiscal Mayo within the purview of Section 38-C of Republic Act No. 409, as amended. Said section reads as follows:

"Preliminary investigation of cases cognizable by the Court of First Instance.—In all cases brought to the Office of the City Fiscal involving crimes cognizable by the Court of First Instance, where the accused is not already in the legal custody of the police, no complaint or information shall be filed without first giving the accused a chance to be heard in a preliminary investigation, where such accused can be subpoenaed and appears before the investigating fiscal, with the right to cross-examine the complainant and his witnesses: Provided, That when the accused is detained, he may ask for a preliminary investigation, but he must sign a waiver of the provisions of Article One hundred twenty five of the Revised Penal Code, as amended: And provided, further, That if the case has already been filed in court, he may ask for a reinvestigation thereof later on with the same right to cross-examine the witnesses against him: Provided, finally, That notwithstanding such waiver, the said investigation must be terminated within seven days from its inception."

There is no provision requiring a reviewing Fiscal to subpoena and hear anew the same witnesses who appeared before another Fiscal of the same office in a case where the latter has merely recommended dismissal. It is enough, for purposes of complying with Section 38-C, that the accused is heard or given the chance to be heard, with the right to cross-examine the complainant and his witnesses, at any time prior to the filing of the information in court. These requirements were met in the preliminary investigation conducted by Fiscal Mayo. Unless and until a case is finally dropped or dismissed by the City Fiscal, recommendations or actions taken subsequent to the close of the preliminary investigation are mere incidents in the same investigation. That was why Fiscal Gonzales acted correctly in certifying at the bottom of the informations filed by him that "a preliminary investigation in this case has been conducted by this Office in accordance with law."

It is true that under Section 38-A of the Charter of Manila (Republic Act No. 409, as amended), the Office of the City Fiscal is organized into three divisions, to wit:

"(a) Preliminary Investigation Division which shall have exclusive charge of the conduct of preliminary investigations of all crimes and violations of city ordinances;

"(b) Prosecution Division which shall have exclusive charge of the prosecution of criminal cases; and

"(c) Miscellaneous Division which shall represent the city in all civil cases wherein the city or any officer thereof in his official capacity is a party, render opinions draw ordinances when required by the Board, contracts, bonds, and inspect and pass upon all such documents already drawn but pending approval by the city officer concerned."

Citing this section, defendants-appellees contend that the three divisions are co-equal and each of them has exclusive authority within their respective domains.

The penultimate paragraph of Section 38-A provides:

"The City Fiscal shall effect, from time to time, such changes in the organization of the said three divisions as the exigencies of the service demand. This organization shall be without prejudice to the power of the City Fiscal to designate any single assistant fiscal or group of assistant fiscals to investigate and also prosecute the same case or cases: Provided, That notwithstanding any provision herein to the contrary, all of the assistant fiscals occupying the positions affected by the amendments embodied in this Act at the time of the approval

hereof shall continue to occupy said positions and discharge the duties and functions thereof and receive the corresponding salary increases without the necessity of any new appointment."

and Section 38-B of the same Charter, in part, provides:

"Duties of the City Fiscal.—The City Fiscal shall be the chief legal adviser of the city and all offices and departments thereof. He shall, personally or through any assistant, represent the city in all civil cases wherein the city or any officer thereof in his official capacity is a party; * * *. He shall also have charge of the prosecution of all crimes and violations of the city ordinances, in the Court of First Instance and the municipal courts of the city, and shall discharge all the duties in respect to criminal prosecutions enjoined by law upon provincial fiscals.

"The City Fiscal shall cause to be investigated all charges of crimes and violations of ordinances and have the necessary informations or complaints prepared or made against the persons accused. He or any of his assistants may conduct such investigations by taking oral evidence of reputed witnesses, and for this purpose may issue subpoena, summon witnesses, to appear and testify under oath before him, and the attendance 'or evidence of any absent or recalcitrant witness may be enforced by application to the municipal court or the Court of First Instance. No witness summoned to testify under this section shall be under obligation to give any testimony tending to incriminate himself."

The provisions just quoted provide ample safeguards against a curtailment of the City Fiscal's power of supervision and review over his subordinates and their actions. He has "charge of the prosecution of all crimes and violations of the City ordinance * * *," and to this end, has the authority to "cause to be investigated all charges of crimes and violations of ordinances and have the necessary informations or complaints prepared or made against the persons accused." Finally, the last paragraph of Section 38-A vests the City Fiscal with the power to "effect, from time to time, such changes in the organization of the said three divisions as the exigencies of the service demand."

He can, for instance, as has probably happened here, properly designate a Fiscal to review, for and on his behalf, the findings and recommendations of another Fiscal of a lower rank. This is purely internal office procedure which does not in any way detract from the organization of the office into three divisions.

Wherefore, the orders of September 24, 1959 and October 20, 1959, are hereby set aside, and the records of the cases are hereby remanded to the court of origin for further proceedings or trial. No pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes and Dizon, JJ., concur.

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