

**ELENA L. GARCIA, PETITIONER-APPELLANT, VS. ANTONIO J. VILLEGAS, CITY MAYOR OF MANILA, ET AL.,
RESPONDENTS-APPELLEES.**

G.R. No. L-23566. October 31, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

The petitioner appealed from a decision of the Court of First Instance of Manila dismissing her petition for mandamus and prohibition with preliminary injunction, which seeks to compel the respondent City Mayor to file, with the Municipal Board of Manila, administrative charges against certain members of the Manila Police Department without having the matter first investigated by the Inspection Division of the Manila Police Department.

Sometime in 1963, the petitioner, Elena L. Garcia, allegedly the victim of an illegal arrest committed by Sgt. Patrocinio Sembrano and Pat Nazario de Vera of the Manila Police Department (referred to hereinafter as the MPD), lodged a complaint against the latter in the office of the City Mayor of Manila. Acting upon the complaint, the Mayor indorsed it to the Inspection Division of the MPD "in order to determine whether there is a cause of action." Appearing before said office, the petitioner contested its jurisdiction to investigate her complaint, but the objection was overruled upon an opinion given by a legal officer of the MPD.

Hence, petitioner instituted the instant proceedings.

Petitioner takes the view that upon receipt by the City Mayor of her complaint against the two policemen, it became the Mayor's ministerial duty, under section 1 of Republic Act 557, to prefer and file charges against them with the Municipal Board of Manila, based on the allegations of her complaint.

In dismissing the petition, the lower court upheld the contention advanced by the respondents that "the City Mayor is not duty bound to prefer and file the corresponding charges with the Municipal Board, for the law gives him the discretion to prefer and file or refuse to prefer and file, the corresponding charges, depending on whether or not he finds a probable or prima facie case against the policemen."

The view of the trial court is sound and persuasive. While section 1 of the law provides that for the purposes of securing disciplinary action against a member of the city police force, charges shall be preferred by the city mayor and investigated by the city council, this provision does not preclude the city mayor from conducting a prior inquiry in order to ascertain whether the complaint lodged in his office, is prima facie meritorious or sham, before he himself files formal charges with the city council or municipal board, and in so ascertaining, he can delegate the investigation of the case to any capable person or group of persons subordinate to him. Indeed, to hold that it is the ministerial duty of the city mayor to file charges everytime he receives complaint from private citizens, regardless of whether the charges have prima facie merit, is to make the office of the Mayor an instrument for persecution if the case turns out later on to be without basis and reason.

The case relied upon by the petitioner-appellant (*Covacha v. Amante*, 99 Phil. 1037), is not squarely in point. In that case, the investigation of a member of the police force, after the charges were formally filed, was conducted by a committee created by the city mayor of Bacolod. Instead of the city council, it was the committee that was assigned to determine whether the policeman was going to be suspended or removed or otherwise punished. In the case at bar, however, no charges had as yet been filed by the City Mayor of Manila. The inquiry that was to be conducted by the Investigation Division of the MPD was only for the mayor's own purposes and not in substitution for the investigation contemplated in section 1 of Republic Act 557, which would be conducted by the municipal board should charges be filed by the City Mayor himself.

Be that as it may, the question, however, has become academic with the enactment of the Police Act of 1966^[1] creating the Police Commission, which provides in its section 14 that -

"Members of the local police agency shall not be suspended or removed except upon written complaint filed under oath with the Board of Investigators herein provided for misconduct or incompetency, dishonesty, disloyalty to the Government, serious irregularities in the performance of their duties, and violation of law."

Under this provision of the law, it is not a requirement that charges against the peace officer be preferred by the city or municipal mayor or provincial governor. Section 24 of the law makes provision for the repeal or modification of the provisions of Republic Act 557 which are inconsistent with the Act, and the Saving Clause thereof (sec. 25) decrees that all pending administrative cases involving police service and personnel shall be absorbed by the Police Commission one hundred days after the publication of the Police Manual containing rules and regulations relative to such matters."

WHEREFORE, the decision is affirmed. No costs at this instance.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

[1] Republic Act No. 4864, approved Sept. 8, 1966.

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