

**DINA TUZON, PETITIONER, VS. THE HONORABLE CESAR C. CRUZ,
JUDGE OF THE MUNICIPAL COURT OF MANDALUYONG, RIZAL AND
BENJAMIN FERNANDEZ, RESPONDENTS.**

G.R. No. L-27410. August 28, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

Dina Tuzon filed these special civil actions of certiorari and prohibition in order to annul the order of the municipal court of Mandaluyong, Rizal, denying her motion to quash the complaint for estafa against her in Criminal Case No. 17393. The complaint is quoted below:

"That on or about 4:00 PM of October 6, 1966, in the Municipality of Mandaluyong, Province of Rizal and within the jurisdiction of this Hon. Court, the said accused confederating and aiding one another and with to defraud (sic), did then and there willfully, unlawfully and feloniously defraud LYRIC PIANO CENTER COMPANY, INC. in the amount of ONE THOUSAND NINE HUNDRED PESOS (P1,900.00) by then and there falsely pretending to be the representative or authorized agent of one Carlos Rivera and executed a fictitious (sic) contract with the said company to the damage and prejudice of the same, in the aforementioned amount.

"Contrary to law Oct. 14, 1966

"Mand., Rizal

(Sgd.) BENJAMIN FERNANDEZ

Representative of Lyric

Piano Center Co.

Complainant

"SUBSCRIBED AND SWORN to before me this 14 day of October, 1966 in the Municipality of Mandaluyong, Province of Rizal, Philippines.

(Sgd.) CESAR C. CRUZ

Judge

"Witnesses:

- Benjamin Fernandez, 1509 Kundiman St., Samp. Mla.
- Cesar Cruz (Judge), c/o Mand. Mun. Court.
- Carlos Rivera, 2234 Dimasalang St., Mla.
- And others."

In complainant's affidavit, supporting the complaint, which like the complaint was sworn to before respondent Cesar C. Cruz, the municipal judge of Mandaluyong, it was alleged that while the deceit was perpetrated at 184 Dr. Alejos Street, Quezon City, the payment of the consideration to the accused (which payment constituted the damage) was consummated at Mandaluyong. The pertinent portion of the affidavit is quoted below:

"T — Saan at kailan nangyari ang sinasabi mong panlolokong ito nila Dina Tuzon at Faustino Aguilar sa Lyric Piano Center Co., Inc.?

"S — Sa No. 184 Dr. Alejos St., La Loma, Quezon City ngunit ang bayaran ay naganap sa Mandaluyong, Rizal at ang halaga na binayaran ng Lyric Piano Center Co., Inc. ay P1,900.00 na tinanggap ni Dina Tuzon ng mga ika 4:00 n.h. (sic) noong ika 6 ng Octubre, 1966.

"T — Saan lugar dito sa Mandaluyong, Rizal na sinasabi mo na naganap ang bayaran

"S — Sa opisina ni Judge Cesar C. Cruz ng Mandaluyong."

Judge Cruz after conducting a preliminary examination of the case issued a warrant of arrest. Dina Tuzon was arrested and posted bail for her release. Later, she filed a motion to quash the complaint on the ground that the estafa was committed outside the territorial jurisdiction of the Mandaluyong municipal court. To that motion, she annexed (1) a photostatic copy of a document known as "Transfer of Rights" signed by her at Quezon City but sworn to at Mandaluyong before Judge Cruz himself; (2) illegible photostatic copies of two vouchers of Lyric Piano Center Co., Inc. showing that she received P1,600 from that company, and (3) a photostat of a supposed preliminary agreement over the "telephone rights" allegedly executed in Quezon City. The other accused, Faustino Aguilar, did not file a motion to quash. The record does not show whether he has been arrested.

Judge Cruz denied the motion to quash as well as the motion for the reconsideration of the denial order.

The issue is whether the venue of the case was properly laid in Mandaluyong. It is evident that the case was filed in the Mandaluyong municipal court only for purposes of preliminary investigation. Municipal judges may conduct a preliminary investigation for any offense alleged to have been committed within their respective municipalities which are cognizable by Courts of First Instance, without regard to the limits of punishment (Sec. 87, Judiciary Law; Sec. 2, Rule 112, Rules of Court).

An estafa case, involving the amount of P1,900, as alleged in the complaint herein, is punishable with arresto mayor maximum to prision correctional minimum or four (4) months and one (1) day to two (2) years and four (4) months (Art. 315[3rd], Revised Penal Code). It is within the original jurisdiction of the Court of First Instance. A municipal or city court has jurisdiction over estafa cases where the amount involved does not exceed two hundred pesos (Sec. 87[b][3], Judiciary Law).

We hold that on the basis of the complaint and the supporting affidavit of the complainant the municipal court of

Mandaluyong could conduct the preliminary investigation because an essential ingredient of the estafa charge, which was the actual payment to the accused of the amount swindled, took place in Mandaluyong or in the office of the municipal judge himself. Rule 110 of the Rules of Court provides:

"SEC. 14. Place where action is to be instituted. — (a) In all criminal prosecutions the action shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place."

To determine whether the offense was committed within the court's territorial jurisdiction, the allegations of the complaint or information are controlling (*Arches vs. Bellasillo*, 81 Phil. 190, 193; 4 *Moran's Comments on the Rules of Court*, 1970 Ed., pp. 224-225).

The circumstance that the deceitful manipulations or false pretenses employed by the accused, as shown in the vouchers, might have been perpetrated in Quezon City does not preclude the institution of the criminal action in Mandaluyong where the damage was consummated. Deceit and damage are the basic elements of estafa.

The estafa involved in this case appears to be a transitory or continuing offense. It could be filed either in Quezon City or in Rizal. The theory is that a person charged with a transitory offense may be tried in any jurisdiction where the offense is in part committed. In transitory or continuing offenses in which some acts material and essential to the crime and requisite to its consummation occur in one province and some in another, the court of either province has jurisdiction to try the case, it being understood that the first court taking cognizance of the case will exclude the other (4 *Moran's Comments on the Rules of Court*, 1970 Ed., pp. 61-62).

It results that the petition in this case, insofar as it was grounded on the lower court's alleged lack of jurisdiction (venue in criminal cases is jurisdictional, *Ragpala vs. J.P. of Tubod, Lanao*, 109 Phil. 373, 378), is devoid of merit.

Generally, certiorari, prohibition or mandamus do not lie to review an order denying a motion to quash (*Lim vs. Sabarre*, L-22002, July 20, 1968, 24 SCRA 76, 78-80; *Ramos, Jr. vs. Pamaran*, L-38271, October 28, 1974, 60 SCRA 327).

However, petitioner's contention in her motion to quash that Judge Cesar C. Cruz should have inhibited himself from investigating the case because he is listed as a witness in the complaint is tenable. Respondent Cruz could not have displayed the cold neutrality of an impartial judge in this case. He resigned as municipal judge of Mandaluyong effective on December 31, 1971. The incumbent municipal judge of that municipality is Judge Hermenegildo Cruz who was appointed on December 27, 1973.

It is advisable in the interest of justice that the case be reinvestigated by Judge Hermenegildo Cruz.

WHEREFORE, the petition is denied without prejudice to a new preliminary investigation being conducted by the incumbent municipal judge of Mandaluyong. No costs.

SO ORDERED.

Makalintal, C.J., Fernando, Barredo, and Concepcion, Jr., JJ., concur.

Antonio, J., is on leave.

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