

ROGELIO PUREZA, IGMIDIO ABUTAN, CONRADO NATI, REYNALDO PUREZA, ROGELIO REYES, PEDRITO RAMOS, VENERANDO ABUEG, JOHN DOE, PETER DOE, AND RICHARD DOE, PETITIONERS, VS. ALBERTO AVER...

G.R. No. L-28246. September 28, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This is an original action for certiorari and injunction with preliminary injunction. Upon its filing, this Court issued an order restraining the respondents, until further orders, from performing the acts complained of in the petition.

It appears that, on September 30, 1967, Abelardo Victor, Santos Aprao and Leonardo Horario were shot dead, whereas Domingo Diaz sustained serious bullet wounds inflicted by other persons, in the Barrio of Ligton, Municipality of Rosario, Province of Cavite. This event led to the institution of two (2) judicial proceedings, one in the Municipal Court of Rosario, presided over by Municipal Judge, Augusto C. Santamaria, and the other in the Court of First Instance of Cavite, presided over by Judge Alberto V. Averia.

In the first, a complaint for triple murder with frustrated murder, was filed, on October 6, 1967, by Corporal Antonio Credo of the Philippine Constabulary, against Leonardo Ibias, Edo Ibias and Norberto Quinto - hereinafter referred to as the accused - based upon the affidavits of Rogelio Nati and Francisco Echenique,[1] pointing to said accused as the guilty parties. Thereupon, Judge Santamaria began to conduct the corresponding preliminary examination, by taking the testimony of said witnesses. When the preliminary examination was resumed on October 10, 1967, Manuel M. Angeles, Chief of Police of Rosario, informed the Court that, according to his own investigation, the culprits were not the accused, but other persons. Upon his motion and over the objection of Acting Assistant Fiscal Felix B. Mintu, who invoked his right to control the prosecution, the continuation of the preliminary examination was postponed to October 11, 1967.

Upon the other hand, the widows of the deceased and the wife of Domingo Diaz,[2] had - at about the same time - filed with the Court of First Instance, three (3) separate complaints for murder and one for frustrated murder[3] against Rogelio Pureza, Reynaldo Pureza, Igmidio Abutan, Conrado Nati, Pedrito Ramos, Rogelio Reyes, John Doe, Peter Doe and Richard Doe, which complaints were docketed as Criminal cases Nos. 600, 601, 602 and 603 of said Court. Likewise included therein as defendants were: (1) Vicente Abueg, in the complaint about the assassination of Abelardo Victor; (2) Venerando Abueg, in the complaints for the murder of Leonardo Horario and the frustrated murder of Domingo Diaz; and (3) Reynaldo Abueg, in the complaint for the killing of Santos Aprao, which did not include, however, Reynaldo Pureza and Pedrito Ramos. On October 9, 1967, Judge Averia issued an order directing the City Judge of Trece Martires, Ernesto G. Pepa, to conduct the corresponding preliminary investigation in said cases Nos. 600 to 603. Thereupon, Judge Pepa, after, seemingly, conducting a preliminary examination ex parte, issued warrants for the arrest of Rogelio Pureza, Igmidio Abutan, Rogelio

Reyes, Conrado Nati, Reynaldo Pureza, Pedrito Ramos and Venerando Abueg - herein-after referred to as petitioners - in all four cases.

Soon thereafter, the office of the Provincial Fiscal of Cavite, of which Bienvenido Reyes was the officer-in-charge, acting through the aforementioned Fiscal Mintu, issued a subpoena, dated October 13, 1967, and addressed to the accused - Leonardo Ibias, Edo Ibias and Norberto Quinto - commanding them to appear before said Office, on October 16, 1967, in connection with the criminal complaint filed with the Municipal Court of Rosario. On or about October 14, 1967, said accused, in turn, filed with the Court of First Instance of Cavite Civil Case No. Tm-288 thereof, against Fiscals Reyes and Mintu, to restrain them from proceeding with the investigation of the offenses charged in said criminal complaint. In this civil case, Judge Averia issued, on October 16, 1967, an order restraining said Fiscals from proceeding with said investigation, until further orders.

Presently, or on November 7, 1967, petitioners commenced, in the Supreme Court, the present action for certiorari and in-junction, against Judge Averia, Judge Pepa, the Municipal Mayor of Cavite, the aforesaid widows of the deceased, and Mrs. Diaz, to prevent the enforcement of the said warrants of arrest, as well as to nullify the same and the proceedings leading to the issuance thereof, upon the theory that the Municipal Court of Rosario has a better right than the City Court of Trece Martires to conduct the preliminary investigation of the crimes in question and that, at any rate, said warrants of arrest are null and void, the proceedings before Judge Pepa having been held ex parte, without notice to petitioners herein.

The petition in the case at bar is devoid of merit. Although the proceedings in the Municipal Court of Rosario and those held in the City Court of Trece Martires, seek to determine the existence of probable cause against those who, on September 30, 1967, had allegedly killed Abelardo Victor, Santos Aprao and Leonardo Horario, and committed the crime of frustrated murder against Domingo Diaz, the persons charged in one court are different from those accused in the other. We are not aware of and our attention has not been called to any legal provision, rule or decision that would bar the Court of First Instance of Cavite or the City Court of Trece Martires from proceeding with the investigation of the charges preferred against petitioners herein, merely because the crimes imputed to them were, according to the complaint filed with the Municipal Court of Rosario, committed by other persons.

Moreover, said crimes are within the original exclusive jurisdiction of said Court of First Instance, which is not and can not be deprived of such jurisdiction in consequence of the proceedings before the Municipal Court of Rosario. Then, also, the reference of said Criminal Cases Nos. 600 to 603 by the Court of First Instance of Cavite to the City Court of Trece Martires is expressly sanctioned in Section 13, in relation to Section 2, of Rule 112 of the Rules of Court, which provide that:

"SEC. 13. Preliminary examination and investigation by the judge of the Court of First Instance. - Upon complaint filed directly with the Court of First Instance, without previous preliminary examination and investigation conducted by the fiscal, the judge thereof shall either refer the complaint to the justice of the peace referred to in the second paragraph of section 2 hereof for preliminary examination and investigation, or himself conduct both preliminary examination and investigation simultaneously in the manner provided in the preceding sections, and should he find reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest, and thereafter refer the case to the fiscal for the filing of the corresponding information."

"SEC. 2. Officers authorized to conduct preliminary examination. - Every justice of the peace, municipal judge, city or provincial fiscal, shall have authority to conduct preliminary examination or investigation in accordance with these rules of all offenses alleged to have been committed within his municipality, city or province, cognizable by the Court of First Instance.

"The municipal judge of the provincial capital or of the municipality in which the provincial jail is located, when directed by an order of the Court of First Instance, shall have authority to conduct such preliminary examination or investigation of any offense committed anywhere within his province at the expense of the municipality wherein the same was committed."

The case of *Bacar v. Tordesillas*⁴, relied upon by the petitioners, is not in point. That case involved a complaint for adultery, filed with the justice of the peace court of San Jose, Antique - where the offense had allegedly been committed - and dismissed for insufficiency of the evidence introduced at the preliminary examination. Soon, thereafter, the same complaint was filed with the justice of the peace of Sibalon, whose authority was assailed for lack of venue. The objection was overruled by said justice of the peace, upon the ground that, the Court of First Instance had authorized him to contract the corresponding preliminary investigation, pursuant to section 211 of the Administrative Code of 1917. This provision conferred upon the Judge of First Instance the power to designate the justice of the peace of one municipality to act as justice of the peace of another municipality, when the latter is unable to perform the regular duties of his office. Inasmuch as no such disability existed, the Supreme Court declared that the justice of the peace of Sibalon had no jurisdiction to conduct said preliminary investigation.

Obviously, this precedent is not applicable to the case at bar, the complaints in Cases Nos. 600 to 603 having been filed with the court of first instance, unlike the second complaint in the *Bacar* case which was filed with the justice of the peace court. Besides, the issue in the *Bacar* case was whether the justice of the peace of Sibalon could validly be authorized to act as justice of the peace of San Jose. There is no such issue in the case at bar.

As regards the warrants of arrest issued by Judge Pepa, petitioners impugn the legality thereof for the reason that the proceedings before said Judge were held ex parte. In this connection, it should be noted that, pursuant to the provisions above quoted, when a criminal complaint is filed directly with the court of first instance, as the complaints in said Cases Nos. 600 to 603 were, said court may either conduct the preliminary investigation or refer the complaint to the proper municipal or city court for preliminary examination and investigation. If the court of first instance chooses the first alternative, it must "conduct both the preliminary examination and the preliminary investigation simultaneously." If the second alternative is taken, the municipal court or the city court to which the complaint has been referred, shall act in conformity with sections 5, 6, and 10 of said Rule 112, reading:

"SEC. 5. Duty of judge, fiscal or other officer conducting preliminary examination. - The justice of the peace, the municipal judge, the fiscal or the municipal mayor who conducts the preliminary examination as provided in these rules must take under oath, either in the presence or absence of the accused, the testimony of the complainant and his witnesses. The testimony of the complainant and his witnesses shall be reduced to writing and signed by them."

"SEC. 6. Warrant of arrest, when issued. - If the judge be satisfied from the preliminary examination conducted by him or by the investigating officer that the offense complained of has been committed and that there is reasonable ground to believe that the accused has committed it, he must issue a warrant or order for his arrest."

"SEC. 10. Right of accused to preliminary investigation after arrest. - After the arrest of the accused and his delivery to the court, he shall be informed of the complaint or information filed against him. He shall be given access to the testimony and evidence presented against him at the preliminary examination, and, if he desires to testify or to present witnesses or evidence in his favor, he shall be allowed to do so. The testimony of the witnesses presented at this investigation need not be reduced to writing but that of the accused shall be taken in writing and subscribed by him.

"In cases triable in the justice of the peace or municipal courts, the accused shall not be entitled as a matter of right to a preliminary investigation in accordance with this section."

It is worthy of notice that the preliminary examination by the justice of the peace or municipal judge may be conducted "either in the presence or absence of the accused;" that "if the judge is satisfied from the preliminary examination conducted by him" - "in the presence or absence of the accused" - "that the offense complained of has been committed and that there is reasonable ground to believe that the accused has committed it, he must issue a warrant or order for his arrest;" and that, "after the arrest of the accused, and his delivery to the court," the preliminary investigation shall take place as provided in section 10. In other words, the accused need not be present at the preliminary examination conducted by the justice of the peace or municipal judge, previous to the issuance of the warrant of arrest, so that the validity thereof is not and cannot be affected by the fact that said preliminary examination may have taken place *ex parte*.

The case of *Marcos v. Cruz*,⁵ cited by petitioners does not bear out their alleged right to be present at the preliminary examination conducted by Judge Pepa. Said case referred to an information filed directly with the court of first instance, which, after conducting the summary investigation prescribed in sections 13 and 14 of General Orders No. 58, as amended, issued the corresponding warrant of arrest. Upon their apprehension and subsequent release on bail, the accused moved that a preliminary investigation be conducted in their presence. It was held that the motion had been properly denied by the court of first instance, the same having already held said preliminary investigation.

In the case before us no such preliminary investigation has, as yet, been conducted by Judge Pepa, who is a city judge. He has merely held a preliminary examination. In the *Marcos* case, the summary investigation by the court of first instance, constituted both a preliminary examination and a preliminary investigation conducted simultaneously.

WHEREFORE, the petition in the present case should be as it is hereby dismissed, the writs prayed for are denied, and the restraining order issued by this Court is, accordingly, set aside, with costs against petitioners herein.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Dizon and Zaldivar, JJ., did not take part.

[1] Dated October 2 and 3, 1967, respectively.

[2] Priscilla Quinto Vda. de Victor, Aurora Morales Vda. de Horario, Anicia Molina Vda. de Aprao and Remedios M. Diaz.

[3] Dated October 5, 1967.

4 39 Phil. 187.

5 68 Phil. 96.

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