

**EDUARDO CASTANDIELO, PETITIONER-APPELLANT, VS. LUCILA REYES AND FELIPE C. ANGELES, MUNICIPAL JUDGE OF MARIKINA, RIZAL, RESPONDENTS-APPELLEES.***G.R. No. L-27318. July 31, 1970*

Ponente: BARREDO, J.

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Appeal from the decision of the Court of First Instance of Rizal, Branch XI, in its Civil Case No. 9024 denying appellant's petition for certiorari against appellee Felipe Angeles, Judge of the Municipal Court of Marikina, Rizal, who had denied appellant's motion to lift a writ of preliminary attachment issued by said judge in the course of the preliminary investigation initiated by an information filed by an Assistant Provincial Fiscal of Rizal charging said petitioner with the crime of estafa involving the amount of P46,300.00, an offense admittedly not within the original jurisdiction of the said court.

Stripped of non-essentials, the material facts We gather from the records are as follows:

On November 2, 1965, Assistant Provincial Fiscal Salvacion Birco of Rizal filed, an information dated October 30, 1965 with the Municipal Court of Marikina, charging appellant Eduardo Castandielo with the crime of estafa upon the allegation that said petitioner had defrauded appellee Lucila Reyes of the amount of P46,300.00. Strangely, said information was over the said assistant provincial fiscal's certification under oath, taken on even date, that "a preliminary investigation of (the) case (had) been conducted in the case under (her) direction, having examined the witnesses under oath." [1] Even more strangely, the judge took cognizance of the case for purposes of preliminary examination and forthwith, so the record suggests, issued a warrant for the arrest of appellant.

On November 14, 1965, upon motion of appellee Re-yes filed on November 4, 1965, the judge issued a writ of preliminary attachment against the properties of appellant sufficient to satisfy the amount of P46,300.00, over the objection filed by appellant wherein, inter alia, he raised the question of lack of jurisdiction of the municipal court to issue a writ of preliminary attachment in the course of a preliminary investigation of a criminal case which, by its nature, is beyond its original jurisdiction. An attempt was made by appellant to have said writ enjoined by the Court of First Instance of Cebu, but the various incidents in connection with the Cebu case are rather irrelevant in the resolution of the present case, so, for the sake of brevity, they need not be mentioned here.

On November 27, 1965, appellant made an express waiver of his right to the preliminary investigation (the so-called second stage) and so the case was remanded to the Court of First Instance of Rizal where it was received on December 8, 1965, docketed therein as Criminal Case No. Q-6756 and assigned to Branch IX. On February 23, 1966, appellant filed with said Branch IX an urgent ex-parte motion to lift the above-mentioned writ of attachment. This was granted on March 4, 1966, upon appellant's filing a counter-bond in the amount of P46,300 also.

Upon these facts, the court below dismissed appellant's petition for certiorari. For the reasons very well discussed in his decision, His Honor sustained the jurisdiction of the municipal court to issue the questioned writ of

preliminary attachment, albeit holding at the same time that certiorari was not the proper re-medey of appellant, inasmuch as the matter of the alleged illegal issuance of the writ in dispute could have been well taken up with the Court of First Instance of Rizal upon the elevation of the case thereto after the preliminary investigation. Petitioner has come to Us with the following assignment of errors:

### "I

"THE COURT A QUO ERRED IN HOLDING THAT RESPONDENT MUNICIPAL JUDGE OF MARIKINA, RIZAL, HAS THE POWER TO ENTERTAIN AND GRANT ANY PETITION FOR THE ISSUANCE OF A WRIT OF PRELIMINARY ATTACHMENT AS AN INCIDENT OF HIS POWER TO CONDUCT PRELIMINARY INVESTIGATION.

### "II

"THE COURT A QUO ERRED IN HOLD-ING THAT PETITIONER HAD STILL A RECOURSE FOR AN EQUALLY ADEQUATE, SPEEDY AND PLAIN REMEDY FROM THE COURT OF FIRST INSTANCE OF RIZAL FROM DECEMBER 8, 1965, JUST ONE DAY AFTER HIS PETITION FOR CERTIORARI AS FILED ON DEC-EMBER 7, 1965 BEFORE THE COURT A QUO.

### "III

"THE COURT A QUO ERRED IN DENYING PETITION FOR CERTIORARI." (Pp. 6-7, Petitioner-Appellant's brief)

No doubt the point raised in appellant's first assignment is unprecedented and interesting. The temptation is great to make a scholarly dissertation on the subject, if only to suggest points which have been seemingly overlooked by the learned trial judge. We feel, however, that better occasion for a fuller discussion thereof will come, should the developments in the pro-ceedings below in relation to the lifting of the writ of attachment in controversy by the Court of First Instance of Rizal, Branch IX on March 4, 1966 as well as any possible damages suffered by any of the parties as a consequence of said attachment and its incidents make it necessary that the same matter be appropriately, brought to this Court later. Anyway, whatever may be said now on the issues raised under said assignment of error will be more or less obiter in view of our resolution of the second assignment of error.

Anent this second assigned error, it is our considered view that the trial court did not commit the same. On the point raised by appellant thereunder, His Honor held:

"Because the records of Criminal Case No. 3281 were received on December 8, 1965, by the Quezon City Court of First Instance (p.36, Rec.), just one day after the instant petition filed on December 7, 1965 (p. 1, Rec.), the petitioner had and still has recourse for an equally adequate, speedy, and plain remedy from the Quezon City Court of First Instance from December 8, 1965. A difference of one day could not prejudice his rights be-cause the respondents are to be served with summons and a copy of the same and were given ten (10) days within which to file their answer from receipt of such copy of the petition pursuant to the Order dated December 29, 1965 (p. 31, Rec.)" (p. 29, Appellant's brief)

On the other hand, appellant argues thus:

"The Court a quo, however, took the view that from December 8, 1965, when the records of Criminal Case No. 3281 were received in the Court of First Instance of Rizal, Quezon City branch, petitioner could still have a recourse for an equally adequate, speedy, and plain remedy from said court considering that it was just one day after his petition for certiorari was filed on December 7, 1965, and that a difference of one day could not prejudice his right be-cause the respondents are to be served with summons and copy of the same to be answered in ten (10) days.

"When petitioner filed his special civil action for certiorari before the Court a quo on December 7, 1965, he had definitely no right to appeal from the acts complained of. Neither has he any other plain, speedy and adequate remedy in the ordinary course of law. When the records of Criminal Case No. 3281 were elevated to the Court of First Instance of Rizal, it was not by virtue of an appeal duly taken from an order of the Municipal Judge of Marikina, Rizal, but for trial on the merits, petitioner having waived his rights to the second stage of the preliminary investigation scheduled before said municipal court. Consequently, it is highly doubtful whether the Court of First Instance of Rizal could properly pass upon the propriety or legality of respondent Municipal Judge's issuance of the preliminary attachment in question, the main burden of petitioner. In other words, petitioner has no remedy at all, in so far as the acts complained of are concerned, in the Court of First Instance of Rizal." (pp. 13-14, Appellant's brief)

As may be noted, appellant believes "it is highly doubtful whether the Court of First Instance of Rizal could properly pass upon the propriety or legality of respondent Municipal Judge's issuance of the preliminary attachment in question, the main burden of petitioner". Appellant's misgivings have no reason for being. All doubts about the propriety of the Court of First Instance dealing with the writ of attachment in all respects and all its aspects is immediately removed the moment it is considered that the proceedings in the Court of First Instance after a preliminary investigation has been conducted by a municipal court constitute nothing more than a continuation of the criminal action started in the inferior court. Upon the elevation of the records to the Court of First Instance, the municipal court's authority over the whole case ends. Were it to be held that the Court of First Instance is without power to pass on matters related to the writ of preliminary attachment issued by the municipal court, assuming without deciding that such a writ can be issued by the inferior court in the course of a preliminary investigation,[2] a vacuum would result, since it is obvious that there is no law or rule of court under which such an inferior court is supposed to retain jurisdiction over writs or process issued by it during such investigation. Accordingly, and more appropriately, that power must be lodged, if the imagined hypothesis is legally possible, in the Court of First Instance upon the elevation of the case thereto.

We hold, therefore, that the trial court did right in denying the petition for certiorari of appellant, there being another plain, speedy and adequate remedy in the ordinary course of law available to him for questioning the propriety or legality of the writ of preliminary attachment at issue in this case, which is, to raise that question before the Court of First Instance upon the elevation of the case thereto. As a matter of fact, at least partial relief was obtained by appellant when the Court of First Instance of Rizal, Branch IX, lifted the questioned writ upon appellant's motion. That this was done in consequence of appellant's filing a counter-bond only served to lay down the preliminaries for the ultimate resolution of the said writ's legality later. Indeed, had appellant filed such a motion as soon as the records were received by the Court of First Instance on December 8, 1965, much of his troubles and expenses would have been avoided.

WHEREFORE, the appealed decision is affirmed, without costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Villamor, JJ., concur.

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[1] This is unusual because a preliminary investigation by the fiscal is sufficient basis for the filing of an information with the Court of First Instance. The only possible explanation We can see in the records for this unusual procedure is that the certification is not in accordance with Section 14 of Rule 112 which requires that certification must state that the accused had been given a chance to appear at the investigation.

[2] There is not the slightest intention to imply that this can be done; We are precisely leaving that point unresolved.

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