

**RICARDO ESPIRITU, PETITIONER, VS. M.L. DE LA ROSA, AS
EXECUTIVE JUDGE OF COURT OF FIRST INSTANCE OF MANILA,
RESPONDENT.**

G.R. No. L-1156. July 31, 1947

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ to compel the respondent, as executive judge of the Court of First Instance of Manila, to direct the clerk "to receive and docket the criminal complaint filed by petitioner against Judge Crisanto Aragon; to refer the same thereafter to the City Fiscal for preliminary investigation, or to conduct the preliminary investigation himself as the law provides."

Petitioner subscribed and swore a complaint for falsification of public document against Judge Crisanto Aragon of the Municipal Court of Manila (Exhibit A). The clerk of court referred it to the respondent as executive judge of the Court of First Instance of Manila. On 4 November 1946, the date the complaint was presented to the clerk, there also were presented the appearance of an attorney for the complainant (Exhibit B) and a motion praying that the complaint be referred to the City Fiscal for investigation (Exhibit C). On 6 November 1946, the docketing of the complaint by the clerk and reference thereof to the City Fiscal were denied by the respondent judge (Exhibit E).

Petitioner claims that the order denying his prayer to direct the clerk to docket the complaint, to refer it to the City Fiscal for investigation, or to investigate the case himself (respondent), constitutes an unlawful neglect in the performance of his duties, specifically enjoined by law, resulting from the office of the respondent, and unlawfully excludes him (petitioner) from the use and enjoyment of a right to which he is entitled; and that against such order he has no other plain, speedy and adequate remedy in the ordinary course of law.

Petitioner contends that the respondent judge is in duty bound either to refer the complaint to the City Fiscal pursuant to section 2, Rule 108, or to conduct a preliminary investigation himself, as provided for in section 4 of said rule, and that a complaint cannot be filed with the City Fiscal because it is an executive office and not a court of justice. He further contends that the provisions of the Revised Administrative Code, as amended, regarding the power of the City Fiscal to conduct preliminary investigations were repealed by the new Rules of Court.

The same question had been raised in *Hashim vs. Boncan and City Fiscal of Manila* (71 Phil., 216), and this Court held that the new Rules of Court had not repealed and supplanted the provisions of the Revised Administrative Code regarding the power and authority of the City Fiscal to conduct preliminary investigations. This Court said:

"It is contended, however, that existing legislation authorizing the City Fiscal to conduct preliminary investigations should be deemed repealed and supplanted by the new Rules of Court. Otherwise, it is said, there would be no uniformity in said Rules as ordained by the Constitution. We do not share this view. * * *

"The framers of the Rules could not have intended to brush aside these lessons of experience and to tear down

an institution recognized by law and decision and sanctioned by years of settled practice. They could not have failed to keep intact an effective machinery in the administration of criminal justice, as expeditious and simple as any reform they have infused into the new Rules. * * *."

The power or authority of the City Fiscal to conduct preliminary investigations for crimes, misdemeanors and violations of ordinances committed within the territorial jurisdiction of the city is confirmed by section 2, Rule 108, which provides that "Every justice of the peace, municipal judge or city fiscal shall have jurisdiction to conduct preliminary investigation of all offenses * * *."

It is not correct to say that a complaint, as defined in section 2, Rule 106, must be filed with a court of justice, because said section which provides that "Complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated," does not require that it be filed with a court of justice. Unlike section 3 of said rule which requires an information to be "filed with the court," a complaint need not necessarily be filed with the court. Hence it may be laid before the City Fiscal for investigation.

Petitioner having failed to show that it is the duty of the respondent judge to direct the clerk to docket the complaint subscribed and sworn to by him, to refer it to the City Fiscal for investigation, or to conduct an investigation himself, is not entitled to the remedy prayed for.

Petition is dismissed, without costs.

Paras, Feria, Pablo, Hilado, Bengzon, Briones, Hontiveros, and Tuason, JJ., concur.

CONCURRING

MORAN, C. J.:

I concur upon the ground that Rule 108, section 4 does not apply in the City of Manila where the only officer authorized by law to conduct preliminary investigation is the City Fiscal (sec. 2474, Adm. Code) and therefore, all criminal complaints should be filed with that officer who in turn may, after investigation, file the corresponding information with the Court of First Instance. The provisions of the Administrative Code on this matter have not been repealed by the Rules of Court. (Hashim vs. Boncan and City Fiscal of Manila, 71 Phil., 216.)

DISSENTING

PERFECTO, J.:

Petitioner prays that respondent be ordered to receive and docket the criminal complaint for falsification of public document filed by him against Judge Crisanto Aragon, of the Municipal Court of Manila, pursuant to sections 1 and 2 of Rule 106 and section 4 of Rule 108, the ground of the petition being the fact that on November 6, 1946, respondent refused to receive the complaint and to order the docketing of the same, upon the theory that the city fiscal is the only person who may initiate the filing of information or complaint.

There is no question as to the sufficiency of the complaint nor as to petitioner's right to file it in accordance with sections 1 and 2 of Rule 106. The issue in this case is whether the lower court failed to do its ministerial duty as provided in section 4 of Rule 108 and be ordered to fulfill that duty. Section 4 of Rule 108 is as follows:

"Investigation by the judge of the Court of First Instance.—Upon complaint or information filed directly with the Court of First Instance, the judge thereof shall conduct a preliminary investigation in the manner provided in the following sections, and should he find a reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest and try the case on the merits."

There being no question as to the sufficiency of the complaint in question and as to the right of petitioner to file the complaint with the Court of First Instance of Manila in accordance with sections 1 and 2 of Rule 106, there should not be any mistake as to the fact that, under section 4 of Rule 108, above quoted, the lower court was and is duty bound to receive the complaint and conduct a preliminary investigation. Failure to do that duty cannot be left without relief, and the proper one at hand is mandamus.

The majority's denial of the petition is tantamount to ignoring the provisions of section 4 of Rule 108. If they have the purpose of repealing it, the proper way is to follow a direct way. Indirection should not take place in the course of the administration of justice. Truth and justice need not be concealed under the cloak of ambiguity and obscure inferences. Confusion and uncertainty must be avoided. The essential object of the administration of justice is to attain certainty. Uncertainty can never end litigations.

We vote to grant the petition.

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