

BENJAMIN R. ABUBAKAR AND HABIB SABRE, PETITIONERS, VS. THE HON. FRANCISCO ARCA AND GERONIMO R. MARAVE, AND ACTING PROVINCIAL FISCAL OF JOLO, SULU, RESPONDENTS.*G.R. No. L-14916. December 29, 1962*

Ponente: REYES, J.B.L., J.

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Petition for certiorari with preliminary injunction to annul the orders, dated 25 November 1958 and 2 January 1959, of respondent judges, the Honorable Francisco Arca and his predecessor, the Honorable Geronimo R. Marave, respectively, of the Court of First Instance of Sulu, and to enjoin them from rendering any new orders in Criminal Case No. 1926 filed in said court pending final termination of the present proceedings. Ancillary relief was granted by this Court on 26 January 1959 upon petitioners' filing of a bond.

An amended criminal complaint for double murder and multiple frustrated murder was filed on 24 April 1958 by PC Lt. Atilano C. Mercado with the Justice of the Peace Court of Indanan, Sulu, against herein petitioners together with several co-accused. At the bottom of the complaint was a verification, signed by Acting Justice of the Peace Peregrino S. Garcia, that "a preliminary investigation has been conducted in this case having examined the witnesses under oath". On the same day, Atty. A. V. Valbuena, as counsel for the accused Benjamin Abubakar, addressed a letter to the Acting Justice of the Peace requesting opportunity to be present during the first stage of the preliminary investigation. This letter was presented to the said judge after three (3) prosecution witnesses had already been examined, and acting on the request, the court set the hearing' on 30 April 1958; and later, finding no prima facie case against the two accused Benjamin Abubakar and Habib Sabre, the Court, on 26 April 1958, dismissed the case with respect to them. As the other accused waived further preliminary investigation while some others were still at large, the court remanded the records to the court of first instance, with a reiteration of the previous dismissal of the case with respect to Benjamin Abubakar and Habib Sabre.

On 5 May 1958, the then Secretary of Justice Jesus G. Barrera, pursuant to Section 1679 of the Revised Administrative Code, appointed respondent Provincial Fiscal of Bukidnon Himerio B. Garcia as Acting Provincial Fiscal of Sulu in the investigation and prosecution, if warranted, of the death of Board Member Akuk Sangkula and others; whereupon, respondent Acting Provincial Fiscal Garcia conducted another preliminary investigation, and thereafter filed two (2) informations in the court of first instance, the first, dated 14 August 1958, against Salip Anual and Marajuki Kissai for double murder with multiple frustrated murder, and the second, on 15 August 1958, against the herein two petitioners, as principals by induction of the crime charged in the first information. At the bottom of this second information was a verified certification by the respondent fiscal that he had "conducted the proper preliminary investigations of the above-entitled case under the provisions of Republic Act No. 732, having examined the witnesses under oath, and that there is reasonable ground to believe that the accused committed the crime charged". Judge Marave thenceforth ordered the arrest of the herein two (2) petitioners, and, upon Abubakar's filing of a bond, ordered his release.

It appears on record, and it has not been contradicted, that on 24 May 1958 Attys. Rasul and Amin, two lawyers of the accused, addressed a communication to the respondent fiscal requesting that they be given the opportunity to be present and to submit evidence during the investigation that the letter would conduct. On 2 June 1958, said counsel appeared at the preliminary investigation, and expressed their conformity thereto.

On 18 August 1958, herein petitioners filed a motion to quash, challenging the authority of the fiscal to file the information in the court of first instance under Republic Act 732, and claiming, as a consequence, lack of jurisdiction of the court. The trial court, in its orders of 25 November 1958 and 2 January 1959, referred to at the beginning of this opinion, denied the motion to quash and the subsequent motion for reconsideration. Not satisfied with the these orders, said accused filed the present petition with this Court.

The theory of the accused centers on the alleged lack of authority, under Republic Act No. 732, of the fiscal in filing the informations in the Court of First Instance of Sulu after the same case was dismissed by the justice of the peace in a preliminary investigation, and relies solely on a doctrine laid down in a decision of the Court of Appeals in the case entitled "People vs. Magbanua, et al.", No. 19844-R, promulgated on 14 February 1958.

There is no basis for analogy between the present case and the Magbanua case in view of their substantial difference in that in the cited decision the accused was denied the right to a preliminary investigation. This did not happen in the present case: a preliminary investigation by the fiscal actually took place; counsel for the accused, on 24 May 1958, requested the fiscal for the opportunity to be present and to introduce evidence, and actually appeared in the said preliminary investigation on 2 June 1958.

Petitioners' theory is, likewise, unacceptable, for the reason that the doctrine relied upon is a misinterpretation of a portion of this Court's ruling in the case of Villanueva, et al. vs. Gonzales, et al., 99 Phil., 679; 52 Off. Gaz. [12] 5497). This portion, quoted in the Court of Appeals decision in the Magbanua case, states:

"Republic Act No. 732 governs preliminary investigations conducted by provincial fiscals in cases originally instituted by them in court of first instance. It does not apply to cases begun in the justice of the peace courts and, thereafter, forwarded to the corresponding court of first instance, either after the second phase of the preliminary investigation required in the Rules of Court had been conducted before said justice of the peace courts, or after a waiver by the accused of their right to said preliminary investigation. The reason is obvious. In those cases the provincial fiscal is under no obligation to make such preliminary investigation. He may rely upon the evidence introduced in, and the facts found by, the justice of the peace court, at the preliminary investigation therein conducted." (Villanueva vs. Gonzales, 99 Phil., 679; 52 Off Gaz. 5497).

From the foregoing, the Court of Appeals erroneously concluded in the Magbanua case that—

"The complaint by which it was initiated was originally filed with the justice of the peace court of the municipality where the crime charged was committed, It was not originally filed by the Acting Provincial Fiscal of Davao in the Court of First Instance. It is a case, therefore, in which the provincial fiscal cannot under the authority granted him by Section 1687 of the Revised Administrative Code, as amended by Republic Act No. 732, conduct by himself a preliminary investigation." (People vs. Magbanua, et al., (CA) No. 19844-R, February 14, 1958).

The Villanueva decision neither said, nor meant, that the fiscal's authority was so limited under Republic Act No. 732. It merely elucidated on the practical fact that the fiscal need not ("is under no obligation") conduct the preliminary investigation when the case is originally instituted in the justice of the peace court because this court is the one required to conduct the preliminary investigation. It does not mean that just because the case was originally instituted in the justice of the peace court the fiscal is precluded from conducting another preliminary investigation by himself after the justice of the peace court has dismissed the case. For certainly no jeopardy has attached by such dismissal. This is not the first time that the specific issue in the present case has ben presented.

In the case of *People vs. Reginaldo*, 111 Phil., 963 (reiterating *People vs. Pervez*, 110 Phil., 214), this Court explained the Villanueva case, and stated:

"Obviously, the ruling refers to those cases where the Justice of the Peace conducted the second stage of preliminary investigation, and found a prima facie case, or where the accused waived preliminary investigation therein. In such cases, the Provincial Fiscal may rely on the evidence presented in the Justice of the Peace, and is under no obligation to conduct an entirely new preliminary investigation. But certainly, there is nothing in said decision to justify the conclusion that after a previous dismissal by the Justice of the Peace, the Provincial Fiscal may not conduct a separate independent investigation of his own, and this, without the presence of the accused, if the latter did not so request. In fact, the Villanueva case upheld the legality of the preliminary investigation conducted by the provincial fiscal with respect to one of the accused who was not among those originally investigated by the Justice of the Peace, and who was not given notice by the provincial fiscal in his own investigation." (*People vs. Pervez*, L-15231, *supra*).

The operative rule, therefore, is now that—

"In resume, we reiterate our previous rulings that if the charge for a crime cognizable by the Court of First Instance is filed by a competent party or officer in the Justice of the Peace Court, and the accused waives preliminary investigation therein, or the Justice of the Peace, after regular preliminary investigation, finds that a prima facie case exists, and consequently, elevated the records to the Court of First Instance, the Provincial Fiscal is not called upon to conduct another preliminary investigation, and may forthwith file the information in the Court of First Instance. Republic Act 732 does not apply in such a case. But if the Justice of the Peace, after due investigation, dismissed the charge, then, the case stands as if no charge had been made, and the Provincial Fiscal may thereafter conduct his own investigation of the same charge under the aforesaid Republic Act 1799 (amending R. A. 732), making it in the presence of the accused if and when the latter so requests." (*People vs. Pervez*, *supra*).

Finding no error in the orders complained of, the instant petition is dismissed, and the preliminary injunction lifted. Costs against the petitioners.

Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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