

IRINEO SANTOS, JR., ET AL., PETITIONERS, VS. HON. JOSE P. FLORES, ETC., ET AL., RESPONDENTS. FLORENTINO B. MOLINYAWE, PETITIONER, VS. HON. JOSE P. FLORES, ETC., ET AL., RESPONDE...

G.R. Nos. L-18251-2 and Nos. L-18256 and L-18260. August 31, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

These cases are interrelated. The petitioners in L-18251 and L-18252 are Irineo Santos, Jr., Antonio Pineda, Benito Puzon, Virgilio Elayda, Graciano Abad, Bernardino Torrijos, Virgilio Miclat and Mario Reyes, whereas Florentino B. Molinyawe is the sole petitioner in G. R. Nos. L-18256 and L-18260. The respondents in these four (4) cases, are identical, namely, Hon. Jose P. Flores, as Judge of the Court of First Instance of La Union, and Alejandro Sebastian, Rufino Marasigan and Pedro Ofiana.

It appears that on November 27, 1959, the Secretary of Justice issued Administrative Order No. 185, directing respondent Alejandro Sebastian, aside from Isidro Vajunco and Meneleo Mesina, "to assist the provincial fiscal of La Union and other provincial and city fiscals and attorneys in the investigation and prosecution of the alleged ACCFA's fraudulent tobacco deals". Thereupon, respondents Rufino Marasigan and Pedro Ofiana, as provincial fiscal and assistant provincial fiscal, respectively, of La Union, together with respondent Sebastian, who are hereinafter referred to collectively as the prosecutors, seized ACCFA (Agricultural Credit and Cooperative Financing Administration) and CCE (Central Cooperative Exchange) records of tobacco purchases and redrying, sealed the ACCFA warehouses in the redrying plant in Agoo, La Union, where the tobacco purchased in 1959 were stored, and conducted ex parte the investigation referred to in said Administrative Order, by taking down the testimony of witnesses, and examining, with the assistance of tobacco experts, the confiscated tobacco, a considerable amount of which turned out to be native tobacco, although purchased and passed off, as well as paid for, as Virginia tobacco, aside from a sizeable quantity of low grade Virginia tobacco purchased as high grade tobacco and paid for at the price fixed by law for said high grade tobacco. After ascertaining the names of the persons involved in said tobacco deals, hereinafter referred to as defendants, the prosecutors prepared the corresponding informations against them. Inasmuch, however, as some of the aforementioned defendants had subsequently asked the Department of Justice for an opportunity to give their side of the matter before the filing of said informations, the prosecutors decided that all of the defendants be given such opportunity. Hence, the prosecutors sent to said defendants, including petitioners herein, a notice, dated March 23, 1960, informing them that the former would conduct a preliminary investigation "on March 20—April 2, 1960, at 8:30 a.m., in the office of the Provincial Fiscal, San Fernando, La Union." The notice received by Molinyawe, reads as follows:

"You are hereby notified that the undersigned will conduct the preliminary investigation of the above-entitled case on Mar. 20-Apr. 2, 1960 at 8:30 a.m., in the Office of the Provincial Fiscal, San Fernando, La Union. At the hearing, you may appear in person or with the assistance of counsel. Failure to appear and adduce evidence in your favor will be considered a waiver on your part to be heard, and such steps as the facts and the law on the case warrant will then be taken.

"For your information, you are advised that, in a previous inquiry, it has been established that during the period from September 1, 1959 and November 10, 1959, in the Redrying Plant of the Central Cooperative Exchange (CCE) in the Municipality of Agoo, Province of La Union, in violation of existing laws which authorize it to buy only Virginia type leaf Tobacco grown and produced in the Philippines, the Agricultural Credit and Cooperative Financing Administration, commonly known as ACCFA, in a series of transactions purchased from different Farmers Cooperative Marketing-Associations (Facomas), two million kilos of native leaf tobacco which have been falsely entered and made to appear in papers and books kept by ACCFA as Virginia leaf tobacco and which were paid for as such, to the damage of the Government which supplied the money used in such purchases in the amount of Three Million Five Hundred Thousand Pesos (P3,500,000). Needless to say, the crime of Malversation of Public Funds Through Falsification of Public and Official Documents was committed. You were, during the period alluded to, employed as ACCFA Chief of Operations, with the function of exercising full control in purchasing tobacco in Agoo, La Union and the evidence gathered reveals that directly or indirectly, and in connivance with your co-respondents, you participated in the commission of the crime. The evidence constitutes a prima facie case against you, and unless overcome, justifies your inclusion in the information to be filed in Court."

The notices received by the other petitioners herein were identical, except as regards the description of the positions they respectively held as employees of the ACCFA.

When the preliminary investigation began on March 29, 1960, the prosecutors announced that their purpose was merely to hear the side of the defense and to receive its evidence, because that introduced at the previous inquiry had already been found to be sufficient to justify the filing of the corresponding informations. Counsel for petitioners in these four (4) cases then asked that they be informed of the particulars of the charges against them, and allowed to examine the records of the ex parte investigation, and the evidence introduced therein, as well as to cross-examine the witnesses who had testified on said occasion. Acting upon this request, the prosecutors caused the draft of the informations prepared by them—which are substantially identical to those eventually filed in court—to be read to petitioners herein. The latter were not allowed to examine the records of the ex parte investigation, particularly the affidavits made by said witnesses, but the documentary evidence, consisting of records of the ACCFA and the CCE, were placed at their disposal for two (2) days. Moreover, the prosecutors refused to recall said witnesses for cross-examination by petitioners, who protested against the procedure being followed by said prosecutors and announced that they (petitioners) would have nothing to do with the proceedings. The prosecutors then gave petitioners herein up to April 5, 1960 to take up the matter with the Supreme Court, whereupon petitioners and other defendants walked out of the room in which the investigation was being held and did not attend further hearings. This notwithstanding the investigation continued, with respect to other defendants, from March 29 to April 6, 1960, during which period the testimony of around 80 defendants and their witnesses was taken. Upon the request of some defendants, who resided in Manila and nearby provinces and had complained about the expenses incident to their stay in San Fernando, La Union, the investigation was resumed in Manila on April 12 and subsequent dates.

Thereafter, or on May 16, 1960, two (2) informations, one for malversation of public funds with falsification of public and official documents, and another for malversation of public funds, were filed with the Court of First Instance of La Union and docketed therein as Criminal Cases Nos. 2996 and 2997, thereof, against 61 and 48 persons, respectively, including, in both cases, petitioners herein. On or about June 15, 1960, said informations were amended by dropping thirty-one (31) and six (6) defendants, respectively, not including petitioners herein, from the charges in said Cases Nos. 2996 and 2997.

Meanwhile, on motion of respondents Sebastian and Marasigan, dated May 17, 1960, writs of preliminary attachment of the properties of the defendants in said criminal cases were issued on May 27, 1960. Said defendants sought, on June 17, 1960, the dissolution of said writs, which was denied by respondent Hon. Jose P.

Flores, as Judge of the Court of First Instance of La Union, on June 28, 1960. The arraignment of the defendants having subsequently been set for November 21, 1960, petitioners in G. R. Nos. L-18251 and L-18252 moved to quash the amended informations.

Prior thereto, or on November 5, 1960, the Government had instituted Civil Case No. 6379 of the Court of First Instance of Rizal, against several defendants, including herein petitioner, Florentino B. Molinyawe, for forfeiture of property allegedly acquired by him, during his incumbency, in an amount manifestly out of proportion to his lawful income, as a public official, in violation of Republic Act No. 1379, otherwise known as the Anti-Graft Law. Thereupon, or on November 16, 1960, Molinyawe moved to quash the informations in the aforesaid Criminal Cases Nos. 2996 and 2997, relying not only upon the grounds invoked by petitioners in said cases G. R. Nos. L-18251 and L-18252, but, also, upon said Republic Act No. 1379. The motions to quash these two (2) sets of defendants were denied by respondent Judge on March 13, 1961. Soon, thereafter, or on March 17, 1961, petitioners were notified that their arraignment would take place on April 4, 1961. Thereupon, or on March 27, 1961, Irineo Santos, Jr., Antonio Pineda, Benito Puzon, Virgilio Elayda, Graciano Abad Bernardino Torrijos, Virgilio Miclat and Marino Reyes, instituted Cases G. R. Nos. L-18251 and L-18252 of this Court. The next day, Molinyawe commenced Cases G. R. Nos. L-18256 and L-18260.

These four (4) cases are for certiorari, prohibition and/or mandamus, with preliminary injunction to restrain the respondents, their associates, representatives, delegates, subordinates, substitutes and all other persons acting by or under their direction or in cooperation with them, from further proceeding in said Criminal Cases Nos. 2996 and 2997 and from enforcing the orders and writs of attachment issued therein, as well as from doing any act tending directly or indirectly to render ineffectual whatever judgment may be rendered by this Court. Petitioners pray, also, that, after due hearing, judgment be rendered, annulling the preliminary investigation conducted by the prosecutors and the proceedings relative to the filing of the informations and amended informations and to the issuance of the writs of preliminary attachment above referred to, declaring that respondent Judge has no jurisdiction to hear said criminal cases and commanding him to forthwith dismiss the same. Furthermore, petitioner Molinyawe prays that he be declared, pursuant to section 8 of Republic Act No. 1379, immune from further prosecution in the aforementioned criminal cases, by reason of the pendency of Civil Case No. 6379 of the Court of First Instance of Rizal against him, and that respondents herein be commanded to "forever desist from prosecuting" him "for any transaction, matter or thing he is compelled to explain in said Civil Case No. 6379".

The main issues, common to these four (4) cases, are: (1) whether petitioners herein, as defendants in said Criminal Cases Nos. 2996 and 2997, are entitled, as a matter of right, to examine the affidavits of the witnesses who appeared before the prosecutors in the course of the investigation conducted by them prior to March 29, 1960, and to cross-examine said witnesses; and (2) whether the writs of preliminary attachment issued on May 27, 1960 should be dissolved or annulled, owing to the alleged insufficiency of the affidavit submitted by the prosecution in said cases in support of its motion for the issuance of said writs.

The first issue hinges on the proper interpretation and construction of section 1687 of the Revised Administrative Code, as amended, the pertinent part of which reads:

"A provincial fiscal, an assistant provincial fiscal and a special counsel appointed under section 1686 of this Code shall have authority to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the same. If the offense charged falls within the original jurisdiction of the Court of First Instance, the defendant shall not be entitled as a matter of right to preliminary investigation in any case where the provincial fiscal himself, or an assistant provincial fiscal, or a special counsel, after due investigation of the facts made in the presence of the accused if the latter so requested, shall have presented an information against him in proper form and certified under oath by the said provincial fiscal or assistant provincial fiscal or special counsel that

he conducted a proper preliminary investigation. To this end, he may, with due notice to the accused, summon reputed witnesses and require them to appear before him and testify and be cross-examined under oath by the accused upon the latter's request. The attendance or evidence of absent or recalcitrant witnesses who may be summoned or whose testimony may be required by the provincial fiscal, or assistant provincial fiscal, or special counsel under the authority herein conferred shall be enforced by proper process upon application to be made by the provincial fiscal, or assistant provincial fiscal, or special counsel to any Judge of First Instance of the Judicial District. But no witness summoned to testify under this section shall be compelled to give testimony to incriminate himself."

At the outset, it will be recalled that, prior to the preliminary investigation held on March 29, 1960 and subsequent dates, the prosecutors had made an investigation of the facts pertinent to the malversation of public funds and falsification of public and official documents which, later on, became the subject matter of Criminal Cases Nos. 2996 and 2997. Had the prosecutors filed the informations therein relying exclusively upon the evidence obtained in said previous investigation, there would have been no possible doubt that petitioners herein would not be entitled to examine the sworn statements aforementioned and to cross-examine the makers thereof, for the provision above quoted explicitly declares that "the defendant shall not be entitled as a matter of right to preliminary investigation". His right, under said provision, to be present at the investigation conducted by the prosecutor and to cross-examine the witnesses who may appear before the latter, is conditioned upon the existence of a "request", which must, perforce, precede said investigation by the prosecutor. There had been no such request by herein petitioners before March 29, 1960. The request made by them on that date did not impose upon the prosecutors the mandatory duty to disclose the details of the evidence introduced, and to recall the witnesses who had testified, prior thereto. This was a matter entirely within the sound discretion of the prosecutors, who, we find, had acted within the proper bounds thereof.

It should be noted, also, that the prosecutors considered the evidence and facts gathered by them prior to March 29, 1960, as sufficient to warrant the filing of the corresponding informations, which were, accordingly, prepared by them, and that the institution of the corresponding criminal actions was deferred at the behest merely of some of the prospective defendants, who had asked that their respective sides be heard before the filing of said informations. For this reason, the notice sent to herein petitioners and other defendants advised them that the evidence introduced in the previous inquiry "constitutes a prima facie case against you and unless overcome justifies your inclusion in the information to be filed in court". This notice did not have the effect of revoking or annulling the investigation previously conducted by the prosecutors. It gave petitioners herein no other right than that to give their side of the case, if they wanted to. It did not entitle them to examine the sworn statements taken at said previous inquiry or to cross-examine the respective affiants. By giving to petitioners the gist of the evidence secured at said previous investigation and placing at their disposal the documentary evidence then taken, consisting of records of the ACCFA and the CCE, the prosecutors had complied with the letter and spirit of section 1687 of the Revised Administrative Code, as amended, and satisfied the demands of justice and due process.

In the language of Senator Sumulong, the sponsor of Senate Bill No. 315, which upon approval, became Republic Act No. 732, amending said section 1687, of the Revised Administrative Code, the purpose of the amendment was merely "to authorize provincial fiscals to conduct preliminary investigations in the same way that is being done * * * in the City of Manila". Hence, referring to a provision in the Charter of Roxas City analogous to that of the City of Manila, we held in *People vs. Ramilo*, 98 Phil., 545:

"Section 11 of Rule 108 of the Rules of Court clearly provides that, the right of a defendant after his arrest is (1) to be informed of the complaint or information filled against him and of the substance of the testimony and evidence presented against him; and (2) to be allowed, if he so desires, to testify or to present witnesses or

evidence in his favor. As of right, therefore, in a preliminary investigation, an accused is not entitled to cross-examine the witnesses presented against him. Hence, the demand of the herein accused during the reinvestigation conducted by the City Attorney that the witnesses for the prosecution be recalled so that she could cross-examine them was not based on any provision of law and therefore the City Attorney of Roxas City has correctly denied such demand."

Such view was reiterated in *Abrera vs. Muñoz*, 108 Phil., 1124, and we find no plausible reason to depart therefrom.

Indeed, the purpose of a preliminary investigation is, not to have a full dress investigation that would delay unnecessarily the disposition of judicial proceedings, but, no more than "to secure the innocent against hasty, malicious and oppressive prosecutions, and to protect him from an open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and, also, to protect the State from useless and expensive trials". (*U.S. vs. Grant*, 18 Phil., 122; *U.S. vs. Marfori*, 35 Phil., 666; *Marcos vs. Cruz*, 67 Phil., 82; *People vs. Magpole*, 70 Phil., 176.) For these reasons, pursuant to section 11 of Rule 108 of the Rules of Court:

"After the arrest of the defendant and his delivery to the court, he shall be informed of the complaint or information filed against him. He shall also be informed of the substance of the testimony and evidence presented against him, and, if he desires to testify or to present witnesses or evidence in his favor, he may be allowed to do so. The testimony of the witnesses need not be reduced to writing but that of the defendant shall be taken in writing and subscribed by him".

This is exactly what has been done in connection with Criminal Cases Nos. 2996 and 2997. Petitioners herein were informed of the gist of the testimony taken at the previous investigation and allowed to examine the documents, consisting of official records, seized prior thereto, as well as to present evidence in their defense. Under these facts, it is clear to us that the objective of the law on preliminary investigations had been attained.

Petitioners assail the propriety and validity of the investigations conducted in Manila on April 12, 1960 and subsequent dates as violative of the provisions concerning venue. Regardless, however, of the merits of the objection in abstract, it appears that said investigations were held in Manila upon the request of defendants other than petitioners herein and referred exclusively to the participation of said defendants, not to that of petitioners herein, in the commission of the aforementioned offenses. Petitioners, accordingly, have no cause for complaint thereon.

They insist, however, that the writs of preliminary attachment above mentioned were illegally issued and that the same should be, either dissolved, or annulled, upon the following grounds, namely: (a) the motion for the issuance of said writs was filed by respondent Alejandro Sebastian, who, petitioners aver, has no personality to file said motion, the offended party being the ACCFA; (b) the motion was sworn to by said respondent, who it is urged, has no personal knowledge of the truth of the allegations of fact made in said motion.

We find no merit in this pretense. As one of the official prosecutors in Criminal Cases Nos. 2996 and 2997, respondent Sebastian has the authority to apply for such remedies as may be necessary to protect the interest of the offended party in said cases, particularly considering that the corresponding civil liability of the culprits is to be determined therein, no reservation having been made of the right to enforce it in a separate civil action. Again, respondent Sebastian alleged specifically in the aforesaid motion that he "personally" know the facts of these cases. Although he explained this knowledge by adding that he had "conducted personally the preliminary investigation of the same", it does not follow that his aforesaid knowledge is hearsay in nature. In this connection, we must not overlook the fact that the main issues in Criminal Cases Nos. 2996 and 2997 were: (a) whether native tobacco had been purchased, passed of and paid for as Virginia tobacco; (b) whether low grade tobacco were purchased as high grade tobacco and paid for at the price fixed by law for such high grade tobacco, and (c)

whether the public and official records of said purchases had been falsified, and, in the affirmative, by whom.' The nature of these issues is such that the determination thereof depends principally upon the contents of said records and the stock found in the warehouse in which the tobacco purchased had been stored, of which respondent Sebastian could have, and seemingly had, personal knowledge.

As indicated above, petitioner Molinyawe maintains that Criminal Cases Nos. 2996 and 2997 should be dismissed, insofar as he is concerned, and respondents should be restrained from further prosecution in said cases, in view of the pendency of Civil Case No. 6379 of the Court of First Instance of Rizal for forfeiture of property allegedly acquired by him in violation of Republic Act No. 1379, section 8 of which reads:

"Neither the respondent nor any other person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to prosecution; but no individual shall be prosecuted criminally for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and conviction for perjury or false testimony committed in so testifying or from administrative proceedings".

Pursuant to this provision, "no individual shall be prosecuted criminally for or on account of a transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise * * *". The records before us do not show that he has already testified or produced evidence in Civil Case No. 6379. Much less do said records indicate the nature of said testimony or evidence, and, consequently, its hearing, if any, on the criminal cases referred to above. Indeed, not even copies of the pertinent pleadings in said Civil Case No. 6379 have been attached to said records. Hence, we are not in a position to determine the applicability of said section 8 of Republic Act No. 1379 to the aforementioned criminal cases.

Wherefore, the petitions in these four (4) cases are denied and said cases are hereby dismissed, with costs against the petitioners. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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