

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. CESARIO C. GOLEZ, JUDGE, COURT OF FIRST INSTANCE OF CAPIZ, BRANCH I, AND RETOGO ARCIGA, RESPONDENTS.

G.R. No. L-29267. September 15, 1986

Ponente: FERNAN, J.

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FERNAN, J.:

The instant petition for certiorari is a twin case of *People v. Golez, et. al.*, 116 SCRA 165. It involves the same respondent judge and the same fiscal, who filed the similarly-worded information, charging the same offense allegedly committed in exactly the same manner as that involved in the latter case. The facts, issue raised, as well as the arguments adduced are the same. Only the identities of private respondents differ. The conclusion reached in *People v. Golez* must perforce be applied to the case at bar.

The facts are as follows:

On February 2, 1968, an information was filed by the City Fiscal of Roxas City before respondent Judge Cesario C. Golez of the Court of First Instance of Capiz for preliminary investigation pursuant to Section 87 of the Revised Election Code. The information, docketed as Criminal Case No. 4455, charged private respondent Retogo Arciga with a violation of Section 87 of the Revised Election Code [R.A. No. 180, as amended]. It reads:

"That on the 14th day of November, 1967 an election day of the 1967 elections, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the above respondent, then being a member of the board of election inspectors, of Precinct No. 65, duly constituted and convened, with deliberate intent to obstruct the efficient performance of the said board of election inspectors, did then and there wilfully, unlawfully and feloniously absent himself from the polling place during voting for more than twenty [20] minutes, without the permission of the said board, and without leaving a substitute to take his place and bringing with him the keys of the ballot boxes, thereby resulting in the failure of the said board to canvass the votes in the evening." [1]

On May 22, 1968, respondent judge issued an Order dismissing the information on the ground that "in view of the ruling of the Supreme Court in the case of *Albano v. Arranz*, L-24403, December 22, 1965, this Court cannot legally conduct a preliminary investigation under Section 13, Rule 112, New Rules of Court, of an offense in an information filed by the Fiscal." [2]

On June 7, 1968, an ex-parte motion for reconsideration was filed by the City Fiscal, alleging that the summary dismissal of the information without hearing deprived the government of its day in court; that the doctrine in the case of *Albano v. Arranz* has no bearing in the instant case; and that although the Election Law lodged preliminary investigation with the Court of First Instance, it never provided nor intended to take out from the province and power of the Fiscal the initiation and prosecution of offenses defined by the Election Code.

On June 11, 1968, respondent judge denied the motion for reconsideration, stating that it is only upon complaint that the Court of First Instance can conduct a preliminary investigation; [3] that a preliminary investigation

conducted by the Court of First Instance on an information filed by the fiscal is null and void;[4] and that "Courts are bound to take notice of their want of jurisdiction and even if the question is not raised, courts may ex mero motu act accordingly by staying pleadings or dismissing the case." [5]

On July 22, 1968, petitioner, thru the City Fiscal, came to this Court on a petition for certiorari.

On July 25, 1968, the Court issued summons requiring the respondents to file an answer. The summons was returned marked "Unknown", for the reason that the address of private respondent stated therein was wrong.

After the correct address of private respondent was furnished by the City Fiscal, the Court by resolution dated October 28, 1968, ordered a copy of the summons to be served on private respondent. On November 11, 1968, private respondent filed an answer. He contends that the information filed by the Fiscal is null and void because he has no authority to file the same; that he, private respondent, was denied his right to be heard when the preliminary inquiry was conducted by the City Fiscal without notice to him and that Courts are bound to take notice of their want of jurisdiction and thus may ex mero motu act accordingly by staying pleadings or dismissing the same.[6]

In the case of *People vs. Golez, et. al.*, supra, this Court ruled that by reason of Section 182 of P.D. No. 1296, otherwise known as "The 1978 Election Code", "it is no longer the Courts of First Instance which shall conduct the preliminary investigation of election offenses. The power has been transferred to the Commission on Elections."

Presidential Decree No. 1296 has been repealed by Batas Pambansa Blg. 881, also known as the Omnibus Election Code of the Philippines. Notwithstanding such repeal, the Commission on Elections retained its power to conduct preliminary investigations of all election offenses. In fact, this power was even made exclusive, as provided for in Section 265 of the Omnibus Election Code which reads as follows:

"Sec. 265. Prosecution. The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the Government; Provided, however, that in the event that the Commission fails to act on any complaint within four months from its filing, the complainant may file the complaint with the Office of the Fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted."

ACCORDINGLY, this Court hereby directs the respondent judge to refer the records of the here-in case to the Commission on Elections, for the latter to take appropriate action.

SO ORDERED.

Feria, (Chairman), Alampay, Gutierrez, Jr., and Paras, JJ., concur.

[1] Annex "A", Petition, p. 6.

[2] Annex "B", Petition, p. 8, Rollo.

[3] Rule 112, Sec. 13, Rules of Court.

[4] *Albano vs. Arranz*, L-24403, December 22, 1965.

[5] Annex "D", Petition, p. 11, Rollo.

[6] pp. 31-32, Rollo.

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