

**JOSE BERNARDO AND ROSARIO GUICO BERNARDO, PETITIONERS,
VS. HON. JUDGE RAFAEL T. MENDOZA, IN HIS CAPACITY AS
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE, BRANCH I,
ZAMBOANGA D...**

G.R. No. L-37876. May 25, 1979

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

The administration of justice in the Philippines firmly rests on the postulate that in this fair land of ours no man, no matter how poor, no matter how humble shall ever thirst for justice. Petitioners and spouses Jose Bernardo and Rosario Guico Bernardo are common barrio people, victims of harassment and persecution. They thirst for justice. As an ultimate recourse they have come to Us for relief. Their cause is meritorious. They are entitled to relief. They shall receive it. Immediately.

This petition for certiorari, prohibition and mandamus, with preliminary mandatory injunction places in issue the alleged grave abuse of discretion, amounting to lack of jurisdiction perpetrated by the respondents in refusing to dismiss Criminal Case No. 1103, of the Court of First Instance of Zamboanga del Norte, Branch I (Judge Rafael T. Mendoza), entitled "People of the Philippines vs. Jose Bernardo and Rosario Guico Bernardo", notwithstanding the evident facts that the charge of estafa emanated from a purely civil obligation and the offended parties accepted payment, including interest, and filed spontaneous desistance during the preliminary investigation of the case; and the refusal of respondents to fix and accept bail bond for petitioners in the aforementioned criminal case.

The facts appearing of record are:

- (1) On the basis of an affidavit (Annex "A" to petition) of Anacleto Q. Olvis, the Chief of Police of Manukan, Zamboanga del Norte, filed on July 17, 1973, a complaint for estafa (Annex "A-1" to petition), in the amount of P9,008.13, with the Municipal Court of Manukan, Zamboanga del Norte, against petitioners Jose Bernardo and Rosario Guico Bernardo;
- (2) After the preliminary examination the Manukan Municipal Court issued an order (Annex "B" to the petition) for the arrest of petitioners and fixed the bail bond at P3,000; petitioner Jose Bernardo was arrested and detained at the Manukan Municipal jail; on July 19, 1973, he posted a bail bond and was released;
- (3) On July 23, 1973, the Municipal Court of Manukan issued an order (Annex "C" to petition) recalling its previous order of arrest granting bail to the accused and ordering the arrest of the accused without bail, pursuant to General Order No. 29, dated April 13, 1973, amending General Order No. 2, dated September 30, 1972 of the President of the Republic, ordering the arrest and detention of persons accused of swindling, in large scale;
- (4) On July 26, 1973, the spouses Anacleto Q. Olvis and Iniega Olvis appeared before the Municipal Court of Manukan, and filed a joint affidavit of desistance (Annex "D" to petition), withdrawing the case against

petitioners because their witnesses had turned hostile and they could not prove the case;

(5) Petitioners' counsel filed a motion to quash the case and recall the warrant of ar-rest (Annex "E" to petition) on the ground that complaint was civil in nature and the complain-ants "have lost interest in the case"; the Chief of Police Serafin Lorenzo and the Special Coun-sel (prosecutor) Crisostomo C. Empaynado signed the said motion;

(6) On the same date that the motion was filed (July 26, 1973), the sum of P9,008.13, excluding the interest in the amount of P1,080.00 paid directly to Anacleto Olvis was depo-sited in the Municipal Court of Manukan as payment of the amount alleged in the com-plaint, which sum was delivered to and ac-cepted by Anacleto Olvis on July 26, 1973, and who signed a receipt therefor on July 27, 1973 (Annexes "F", "G", "Y", "Z" to petition);

(7) There being no objection on the part of the fiscal and the Chief of Police, the Municipal Court of Manukan in its order of July 26, 1973 (Annex "H" to petition) provisionally quashed or recalled the war-rant of arrest in Criminal Case No. 1345 subject to the final approval of the provin-cial fiscal and/or his assistants;

(8) Two days after the record of Cri-minal Case No. 1345 was sent to the office of the Provincial Fiscal on August 6, 1973, Anacleto Olvis requested for a reinvestiga-tion of the case on the ground that witnesses who have turned hostile were willing to tes-tify for the prosecution (Annex "I" and "J" to petition);

(9) Special Counsel Crisostomo Empay-nado (prosecutor) in the Municipal Court of Manukan in Criminal Case No. 1345 was relieved and replaced by the Provincial Fiscal who as-signed Special Counsel Wilfredo G. Guantero to conduct the preliminary investigation in Cri-minal Case No. 1345 (Annex "K" to petition);

(10) Special counsel Guantero notwith-standing his knowledge of the payment re-ceived by Anacleto Olvis required the peti-tioners to file counter affidavits, whereupon petitioners, thru counsel, filed a motion to dismiss (Annex "L" to petition) on the grounds that the nature of the complaint in the case was only civil and not criminal; and that the supposed offended parties agreed to a dis-missal of the complaint after receiving pay-ment of the amount claimed, plus interest;

(11) On September 25, 1973, petitioners informed the investigating Fiscal in writing (Annex "M" to petition) that the case was purely civil in nature, providing him with copies of the promissory notes voluntarily returned by the complainant Anacleto Olvis to the petitioners when he received payment for his claim that led to the dismissal of the criminal case in the Municipal Court of Manukan;

(12) On October 23, 1973, the inves-tigating Fiscal denied petitioners' motion to dismiss, whereupon petitioners filed a motion for reconsideration on October 31, 1973 (An-nex "N" to petition) together with the coun-ter affidavit of petitioner Rosario Guico Ber-nardo explaining the civil nature of the trans-actions with complainant Anacleto Olvis;

(13) The investigating fiscal denied the motion for reconsideration and filed an in-formation for simple estafa (Art. 315-1-B, Revised Penal Code) against the petitioners (Annex "O" to petition) on October 31, 1973 in the Court of First Instance of Zamboanga del Norte, docketed as Criminal Case No. 1103; with a motion to admit information, and to issue warrant of arrest, without any bail bond recommended (Annex "P" to petition);

(14) On November 7, 1973, respondent judge issued an order and a warrant of ar-rest against petitioners without fixing any bail bond (Annexes "Q" and "Q-1") and petitioner Jose Bernardo was arrested at midnight of the same day and detained from November 10, 1973 at the Office of the N.B.I. at Dipolog City (Annex "R" to petition);

(15) Also on November 7, 1973, the petitioner, thru counsel, filed an urgent motion to quash admission of the informa-tion and the warrant of arrest in Civil Case No. 1103 (Annex "S" to petition) questioning the jurisdiction of the court (respondent judge) to admit the information as the prosecuting fiscal had no authority

to file it on the grounds that the case was civil in nature; that it had been previously dismissed after the complainant Olvis accepted payment of his claims plus interest;

(16) On November 8, 1973, respondent judge denied the urgent notice to quash, hence an urgent motion for reconsideration (Annex "U" to petition) was filed by petitioner on November 10, 1973, reiterating the grounds in the main motion and alleging clear abuse of discretion when the respondent court accepted the information because the acts complained of were merely civil in nature and did not constitute an offense;

(17) On November 10, 1973, respondent judge issued an order (Annex "V" to petition) denying the said urgent motion for reconsideration;

(18) On November 19, 1973, petitioners filed an urgent motion to admit to and fix bail (Annex "W" to petition), alleging that under Sec. 18 of Article IV of the 1973 Constitution they are entitled to bail as a matter of right as they are charged with simple estafa and that their case does not fall under the provisions of General Order No. 29, dated April 13, 1973, amending General Order No. 2, dated September 30, 1972, which denies bail to persons charged with swindling and other deceits as defined in Article 315 and 316 of the Revised Penal Code, in large scale;

(19) On November 20, 1973, the respondent judge issued an order (Annex "X" to petition) commanding that a copy of the afore-mentioned motion be sent to the Fifth RECAD, Zamboanga City, thru the Provincial Commander, 463rd P.C. in accordance with Defense Order No. 739, dated January 25, 1973, and set the hearing of the urgent motion for December 12, 1973;

(20) The respondent judge acted favorably to petitioners' urgent motion to admit and fix bail, fixed the bail bond for provisional release of the petitioners at P3,000 each, on December 12, 1973 (Annex "1" to Answer).

It should be noted that in its resolution of December 3, 1979, this Court ordered the respondent Judge to admit both petitioners to bail in the amount of P3,000.00 each. The order of respondent Judge of December 12, 1973 thus came late. Although late, however, it rendered the issue of whether or not petitioners are entitled to bail because they were merely charged with simple estafa and they did not fall under the provisions of General Order No. 29, dated April 13, 1973, amending General Order No. 2, dated September 30, 1972, moot and academic.

The only issues left for Us to resolve then are whether or not the respondent fiscal acted in grave abuse of discretion in filing the information for estafa against the petitioners in Criminal Case No. 1103, Court of First Instance, Zamboanga del Norte, notwithstanding his awareness of the circumstances that resulted in the dismissal of the same case during the preliminary investigation conducted by the Municipal Court of Manukan, Zamboanga del Norte, in Criminal Case No. 1345; and whether or not the respondent judge committed grave abuse of discretion amounting to lack of jurisdiction in admitting and giving due course to the information filed against petitioners for estafa in Criminal Case No. 1103, Court of First Instance, Zamboanga del Norte, although he was made aware of the circumstances leading to the filing of said information.

A close scrutiny of the original complaint and the supporting affidavit of complainant Anacleto Q. Olvis (Annexes "A" and "A-1" to petition) filed with the Municipal Court of Manukan, Zamboanga del Norte, in Criminal Case No. 1345, already raises a doubt as to the real nature of the transactions entered into between the petitioners and the complainants, from the point of view of whether the claimed sum of P9,008.13 were given as loans to the petitioners to be paid by the copra produce of the petitioners' lands or if the sum of money was entrusted by complainants to petitioners for the purpose of buying copra to be delivered to the complainants.

But this doubt disappeared after complainant Anacleto Q. Olvis accepted payment of the claimed sum of P9,008.13 plus an interest of P1,080.00. Clearly the relationship between complainant and petitioners was that of creditor and debtors and the transaction was civil in nature, not criminal. This conclusion becomes

incontrovertible in the light of the receipts signed by petitioners when they received the sums of money from the complainant on various occasions, the said receipts bearing the title "Promissory Note" and its contents clearly spelling out that petitioners received loans from complainant.

Respondent fiscal erred in filing Criminal Case No. 1103, considering the antecedents of the case and the documentary evidence involved. Wittingly or unwittingly, by his official acts, he caused grave prejudice and injustice to petitioners.

Prosecutors are endowed with ample powers in order that they may properly fulfill their assigned role in the administration of justice. It should be realized, however, that when a man is haled to court on a criminal charge, it brings in its wake problems not only for the accused but for his family as well. Therefore, it behooves a prosecutor to weigh the evidence carefully and to deliberate thereon to determine the existence of a prima facie case before filing the information in court. Anything less would be a dereliction of duty.

Respondent judge erred in admitting and giving due course to the information, considering that he was made aware of the circumstances leading to the filing of said information. But his graver error is in issuing a warrant of arrest without a recommendation for bail for clearly the charges contained in Criminal Case No. 1103 did not fall within the purview of General Order No. 2 dated September 30, 1972 as amended by General Order No. 29 dated April 13, 1973. The right to bail is a constitutional right. Its denial to an accused is allowed only in rare cases. Respondent judge would do well to examine more carefully the laws and jurisprudence on the right to bail before denying the same.

WHEREFORE, the orders dated November 8, 1973 and November 10, 1973, of the respondent judge are hereby reversed and set aside. Both respondents are hereby ordered to desist from further proceedings in Criminal Case No. 1103, entitled "People vs. Jose Bernardo and Rosario Guico Bernardo", pending in respondent court, and to dismiss said case, without pronouncement as to costs.

Let a copy of this decision be furnished the Minister of Justice who is hereby directed to look into the official actions of Special Counsel Wilfredo G. Guantero and to take whatever course of action may be proper in the premises, and to inform this Court of the action so taken.

SO ORDERED.

Antonio, (Acting Chairman), Aquino, Santos, and Abad Santos, JJ., concur.
Barredo, J., on leave.

* George Washington

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