

**STA. ROSA MINING COMPANY, PETITIONER, VS. ASSISTANT
PROVINCIAL FISCAL AUGUSTO ZABALA, IN HIS CAPACITY AS
OFFICER--IN-CHARGE OF THE PROVINCIAL FISCAL'S
OFFICE OF CAMARINES NORT...**

G.R. No. L-44723. August 31, 1987

Ponente: BIDIN, J.

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BIDIN, J.:

Mandamus to compel respondent Fiscal to prosecute Criminal Case No. 821 of the then Court of First Instance of Camarines Norte until the same is terminated.

The facts of the case are not disputed. On March 21, 1974, petitioner filed a complaint for attempted theft of materials (scrap iron) forming part of the installations on its mining property at Jose Panganiban, Camarines Norte against private respondents Romeo Garrido and Gil Alapan with the Office of the Provincial Fiscal of Camarines Norte, then headed by Provincial Fiscal Joaquin Ilustre.

The case was assigned to third Assistant Fiscal Esteban P. Panotes for preliminary investigation who, after conducting said investigation, issued a resolution dated August 26, 1974 recommending that an information for Attempted Theft be filed against private respondents on a finding of prima facie case which resolution was approved by Provincial Fiscal Joaquin Ilustre. Private respondents sought reconsideration of the resolution but the same was denied by Fiscal Ilustre in a resolution dated October 14, 1974.

On October 29, 1974, Fiscal Ilustre filed with the Court of First Instance of Camarines Norte an Information dated October 17, 1974 docketed as Criminal Case No. 821, charging private respondents with the crime of Attempted Theft.

In a letter dated October 22, 1974, the private respondents requested the Secretary of Justice for a review of the Resolutions of the Office of the Provincial Fiscal dated August 26, 1974 and October 14, 1974.

On November 6, 1974, the Chief State Prosecutor ordered the Provincial Fiscal by telegram to "Please elevate entire records PFO Case 577 against Garrido et al., review in five days and defer all proceedings pending review."

The letter-request for review was opposed by petitioner in a letter to the Secretary of Justice dated November 23, 1974 alleging, among other things, that an information for Attempted Theft had already been filed against private respondents for which reason the request for review has become a moot question as the Provincial Fiscal has lost jurisdiction to dismiss the charge for attempted theft.

On March 6, 1975, the Secretary of Justice, after reviewing the records, reversed the findings of prima facie case of the Provincial Fiscal and directed said prosecuting officer to immediately move for the dismissal of the criminal case. Petitioner sought reconsideration of the directive of the Secretary of Justice but the latter denied the same in a letter dated June 11, 1975.

A motion to dismiss dated September 16, 1975 was then filed by the Provincial Fiscal but the court denied the motion on the ground that there was a prima facie evidence against private respondents and set the case for trial on February 25, 1976.

Private respondents sought reconsideration of the court's ruling but in an Order dated February 13, 1976, the motion filed for said purpose was likewise denied. Trial of the case was reset to April 23, 1976.

Thereafter, Fiscal Ilustre was appointed a judge in the Court of First Instance of Albay and respondent Fiscal Zabala became officer-in-charge of the Provincial Fiscal's Office of Camarines Norte.

On April 19, 1976, respondent Fiscal filed a Second Motion to Dismiss the case. This second motion to dismiss was denied by the trial court in an Order dated April 23, 1976. Whereupon, respondent fiscal manifested that he would not prosecute the case and disauthorized any private prosecutor to appear therein. Hence, this petition for mandamus.

In this action, petitioner prays for the issuance of the writ of mandamus "commanding respondent fiscal or any other person who may be assigned or appointed to act in his place or stead to prosecute Criminal Case No. 821 of the Court of First Instance of Camarines Norte" (Petition, Rollo, p. 27).

There is no question that the institution of a criminal action is addressed to the sound discretion of the investigating fiscal. He may or he may not file the information according to whether the evidence is in his opinion sufficient to establish the guilt of the accused beyond reasonable doubt (*Gonzales vs. Court of First Instance*, 63 Phil. 846) and when he decides not to file the information, in the exercise of his discretion, he may not be compelled to do so (*People vs. Pineda*, 20 SCRA 748). However, after the case had already been filed in court, "fiscals are not clothed with power, without the consent of the court, to dismiss or nolle prosequi criminal actions actually instituted and pending further proceedings. The power to dismiss criminal actions is vested solely in the court" (*U.S. vs. Barredo*, 32 Phil. 444, 450; *Gonzales vs. Court of First Instance*, supra).

"However, the matter of instituting an information should be distinguished from a motion by the fiscal for the dismissal of a case already filed in court. The judge may properly deny the motion where, judging from the record of the preliminary investigation, there appears to be sufficient evidence to sustain the prosecution. This is, as it should be, because the case is already in court and, therefore, within its discretion and control (*Abela vs. Golez*, 131 SCRA 12).

This ruling is just being consistent with the principle first laid down in *U.S. vs. Valencia* (1 Phil. 642) where it was held that "after the complaint has been presented, and certainly after trial has been commenced, the court and not the fiscal has full control of it. The complaint cannot be withdrawn by the fiscal without the consent of the court." It is discretionary on the court where the case is pending to grant the motion to dismiss or deny the same (*Asst. Provincial Fiscal of Bataan vs. Dollete* 103 Phil. 914).

In the case at bar, the court below denied the fiscal's motion to dismiss on the ground that there was a prima facie case against private respondents. The question presented for determination now is - after a case has been filed in court, can a fiscal be compelled to prosecute the same, after his motion to dismiss it has been denied?

This court is of the view that the writ prayed for should issue. Notwithstanding his personal convictions or opinions, the fiscal must proceed with his duty of presenting evidence to the court to enable the court to arrive at its own independent judgment as to the culpability of the accused. The fiscal should not shirk from his responsibility much less leave the prosecution of the case at the hands of a private prosecutor. At all times, the criminal action shall be prosecuted under his direction and control (Sec. 4, Rule 110, Rules of Court). Otherwise, the entire proceedings will be null and void (*People vs. Beriales*, 70 SCRA 361).

"In the trial of criminal cases, it is the duty of the public prosecutor to appear for the government since an offense is an outrage to the sovereignty of the State" (Moran, Comments on the Rules of Court, Vol. IV, 1980 Ed., p. 10). This is so because "the prosecuting officer is the representative not of an ordinary party to a controversy but of a sovereignty where obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer" (Suarez vs. Platon, 69 Phil. 556).

Accordingly, if the fiscal is not at all convinced that a prima facie case exists, he simply cannot move for the dismissal of the case and, when denied, refuse to prosecute the same. He is obliged by law to proceed and prosecute the criminal action. He cannot impose his opinion on the trial court. At least what he can do is to continue appearing for the prosecution and then turn over the presentation of evidence to another fiscal or a private prosecutor subject to his direction and control (U.S. vs. Despabiladeras, 32 Phil. 442; U.S. vs. Gallegos, 37 Phil. 289). Where there is no other prosecutor available, he should proceed to discharge his duty and present the evidence to the best of his ability and let the court decide the merits of the case on the basis of the evidence adduced by both parties.

The mere fact that the Secretary of Justice had, after reviewing the records of the case, directed the prosecuting fiscal to move for the dismissal of the case and the motion to dismiss filed pursuant to said directive is denied by the trial court, is no justification for the refusal of the fiscal to prosecute the case. It is the court where the case is filed and not the fiscal that has full control of it. Very recently, this Court in Mario Fl. Crespo vs. Hon. Leodegario L. Mogul (G.R. No. 53373, promulgated June 30, 1987) ruled:

"The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court, he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.

In order therefore to avoid such a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal maybe disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court. The matter should be left entirely for the determination of the Court."

WHEREFORE, petition is hereby Granted. Public respondent or any other person who may be assigned or appointed to act in his place or stead, is hereby ordered to continue prosecuting Criminal Case No. 821 until the same is terminated.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, and Cortes, JJ., concur.

Sarmiento, J., no part. I was the former counsel of respondent herein Gil Alapan.

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