

**LOURDES ZACARIAS, PETITIONER, VS. HON. FERNANDO A. CRUZ,
COURT OF FIRST INSTANCE OF RIZAL, CALOOCAN BRANCH AND
HON. BENJAMIN AQUINO, PROVINCIAL FISCAL, PROVINCE OF
RIZAL, RESPON...**

G.R. No. L-25899. November 29, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Petitioner Lourdes Zacarias seeks, by the present petition for habeas corpus, to nullify respondent judge's order of arrest issued against her in Criminal Case C-1320 of the Court of First Instance of Rizal, Caloocan Branch, Her ground is that respondent judge issued the same without personally examining under oath or affirmation the complainant and the witnesses in said case in alleged violation of Section 1(3), Article III of the Constitution.

Concededly, the order of arrest issued on January 24, 1966 by respondent judge was upon a criminal information for estafa filed in court against petitioner following a preliminary investigation conducted by respondent fiscal.

If only for the reasons that follow, the petition should be dismissed. She is at liberty upon a P10,000-bail bond. She has heretofore pleaded to the information.

Posting of a bail bond constitutes waiver of any irregularity attending the arrest of a person,[1] estops him from discussing the validity of his arrest.[2] In the recent case of Luna vs. Plaza (1968), 26 SCRA 310, 321-322, our ruling is that where petitioner has filed an application for bail and waived the preliminary investigation proper, "he had waived his objection to whatever defect, if any, in the preliminary examination conducted x x x prior to the issuance of the warrant of arrest." [3] It makes eminent sense to say that an accused in a criminal case who is at liberty on bail and who had thus secured by judicial decree release which the high prerogative writ of habeas corpus is intended to afford, may no longer avail of that remedy.

And then, nothing in the record suggests that petitioner herein ever moved to quash the information upon the ground that by the defective arrest the court acquired no jurisdiction over her person. And again, she is deemed to have waived lack of jurisdiction over her person.[4]

There is the other fact that petitioner has already entered a plea of not guilty to the information charging her with estafa. She is deemed to have foregone her right to preliminary investigation and to have abandoned her right to question any irregularity that surrounds it, By now, this is settled law.[5]

To be underscored here is that the absence of a preliminary investigation does not impair the validity of a criminal information, does not otherwise render it defective, does not affect the jurisdiction of the court over the case.[6]

WHEREFORE, the petition for the writ of habeas corpus is denied; the respondent judge's order of arrest here complained of is hereby affirmed; and petitioner's prayer to restrain respondents judge and fiscal from further proceeding with Criminal Case C-1320 of the Court of First Instance of Rizal, Caloocan Branch, entitled "People

of the Philippines, Plaintiff, versus Lourdes F. Zacarias, Accused", is likewise denied.

Costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

[1] U.S. vs. Grant, 18 Phil. 122, 147; Doce vs. Branch II of the Court of First Instance of Quezon (1968), 22 SCRA 1028, 1031, citing Car-rington vs. Peterson, 4 Phil. 134, and U.S. vs. Grant, supra.

[2] People vs. Dorado (unreported), G.R. No. 21540, February 12, 1924, cited in People vs. Red, 55 Phil. 706, 711.

[3] Emphasis supplied. See also: People vs. Selfaison (1961), 1 SCRA 235, 244, citing People vs. Ricarte, 49 O.G. 974; People vs. Quinto, 60 Phil. 451; People vs. Moreno, 77 Phil. 548; Bustos vs. Lucero, 46 O.G. [Supp.] 445.

[4] Section 10, Rule 117, Rules of Court; Francisco, Rules of Court in the Philippines, Vol. V, Part III, Revised Edition, p. 197.

[5] Lozada vs. Hernandez, 92 Phil. 1051, 1054; People vs. Casiano (1961), 1 SCRA 478, 483, citing People vs. Solon, 47 Phil. 443, 448, People vs. Magpale, 70 Phil. 176, and People vs. Lambino, 55 O.G. 1565; People vs. de la Cerna (1967), 21 SCRA 569, 572, citing Oca vs. Jimenez, L-17777, June 29, 1962.

[6] People vs. Figueroa (1969), 27 SCRA 1239, 1248, citing People vs. Casiano, supra.

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