

**MILAGROS DONIO-TEVES AND MANUEL MORENO, PETITIONERS, VS.
HON. CIPRIANO VAMENTA, JR., AS PRESIDING JUDGE, BRANCH III,
COURT OF FIRST INSTANCE, NEGROS ORIENTAL, PABLO E.
CABAHUG, ...**

G.R. No. L-38308. December 26, 1984

Ponente: CUEVAS, J.

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CUEVAS, J.:

Petitioners Milagros Donio-Teves and Manuel Moreno are accused of and charged with 'ADULTERY' before the defunct Court of First Instance of Negros Oriental under Criminal Case No. 1097 assigned to Branch III thereof, presided over by the Honorable respondent Judge. The said criminal proceeding was initiated by a letter-complaint dated July 13, 1972[1] thumbmarked and sworn to by complainant Julian L. Teves, the husband of petitioner Milagros Donio-Teves, on the same date before respondent City Fiscal Pablo E. Cabahug. Said letter-complaint reads as follows:

"Sir:

I have the honor to file a criminal complaint for 'Adultery' against my wife Milagros Donio-Teves and her paramour, Manuel Moreno, residents of this City and Bouffard Subdivision, Sibulan, Negros Oriental, respectively.

The affidavits of my witnesses are hereto attached.

Truly yours,
(Thumbmark)
JULIAN L. TEVES
Complainant

WITNESSES TO THUMBMARK:

1. (Sgd) Mita D. Escañó
2. (Sgd) Rubi Villariza Destaño

SUBSCRIBED AND SWORN to before me this 13th day of July, 1972, at Dumaguete City.

(Sgd) PABLO E. CABAHUG
City Fiscal
Dumaguete City"

Attached to the said letter-complaint were the affidavits of Elisa Chiu, Milagros Quiteves and Lorenza Regala-Lacsina, witnesses of complainant Julian L. Teves.[2]

On the basis thereof, respondent City Fiscal conducted a preliminary investigation of the aforesaid charge. Complainant Julian L. Teves took the witness stand and affirmed the statements appearing in his letter-complaint. He also identified one of the respondents, his wife Milagros Donio-Teves. Thereafter, he was cross-examined lengthily by counsel for both respondents, now petitioners.

After terminating his examination, respondents filed a Motion to Dismiss, assailing the jurisdiction of the City Fiscal to take cognizance of the case on the ground that there was no proper complaint filed by complainant Julian L. Teves. The motion was denied and continuation of the preliminary investigation was thereafter set for December 2, 1972. Petitioners' motion for reconsideration of the aforesaid order of denial was likewise denied by the respondent City Fiscal. Meanwhile, complainant Julian L. Teves filed a new letter-complaint dated January 16, 1973, this time attaching his affidavit thereto.

The said letter-complaint[3] reads as follows:

"The City Fiscal

Dumaguete City

Sir:

I hereby accuse my wife Milagros Donio-Teves and her paramour Manuel Moreno, residents of Bais City and Bouffard Subdivision, Sibulan, Negros Oriental, respectively of the crime of 'Adultery', committed as follows:

That on or about and during the months of May, 1970, to December, 1970, in the City of Dumaguete, and within the jurisdiction of this Office for preliminary investigation, the said Milagros Donio-Teves who is my wife, wilfully, unlawfully and feloniously had sexual intercourse with her co-accused Manuel Moreno, who is not her husband, while the latter, knowing her to be married, wilfully, unlawfully and feloniously had carnal knowledge of her.

Contrary to law.

I hereby attach my affidavit in support of this complaint, in addition to the affidavits of Milagros Quiteves, Elisa Chiu and Lorenza Regala-Lacsina x x x x. This complaint is in amplication of my complaint, dated July 23, 1972, against the same persons for the same offense, filed with your office on July 13, 1972. x x x x x x

Truly yours,

(THUMBMARK)

JULIAN L. TEVES

Complainant

x x x x

Subscribed and sworn to before me this 16th day of January, 1973, at Dumaguete City.

(Sgd) PABLO E. CABAUG

City Fiscal"

Continuation of the preliminary investigation was set for February 12, 1973. It was later reset to March 6, 1973 and finally to March 23, 1973 at the instance of respondents-petitioners.

At the resumption of the preliminary investigation scheduled on March 23, 1973, petitioners filed a Joint Urgent Omnibus Motion dated March 23, 1973, praying that portions of the affidavits of Elisa Chiu, Milagros Quiteves and Lorenza Regala-Lacsina which relate to the adulterous acts allegedly committed outside the territorial jurisdiction of Dumaguete City be ordered stricken out, the same not falling within the jurisdiction of the respondent City Fiscal. With the said motion still unresolved, an information to which a complaint thumbmarked by complainant Julian L. Teves, was filed before the then Court of First Instance of Negros Oriental on March 26, 1973 which, as herein earlier stated, was docketed therein as Criminal Case No. 1097. The complaint reads:

"Complaint

The undersigned complainant accused MILAGROS DONIO-TEVES and MANUEL MORENO of the crime of ADULTERY, committed as follows:

"That on or about and during the months of May, 1970 to December, 1970, and for sometime prior and subsequent thereto, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused MILAGROS DONIO-TEVES, be-ing then united in lawful wedlock with the undersigned complainant, wilfully, unlawfully and feloniously lay with, and had carnal knowledge of, her co-accused MANUEL MORENO, who in turn, know-ing that said MILAGROS DONIO-TEVES was a married woman, wilfully, unlawfully and feloniously lay with, and had carnal knowledge of, her."

Contrary to law.

City of Dumaguete, Philippines, March 26, 1973.

His Thumbmark

JULIAN L. TEVES

Complainant

WITNESS TO THUMBMARK:

(Sgd) YOLANDA D. BAGUIO

SUBSCRIBED AND SWORN to before me this 26th day of March, 1973, in the City of Dumaguete, Philippines.

(Sgd) PABLO E. CABAUG

City Fiscal

Witnesses:

1. Julian L. Teves, Bais City
2. Elisa Chiu, Bais City
3. Milagros Quiteves, Bais City
4. Lorenza Regala-Lacsina, Bais City and others."

On September 28, 1973, the day before the sche-duled arraignment, petitioner Milagros Donio-Teves filed a Motion to Quash challenging the jurisdiction of the respondent Court over the offense charged and the persons of both accuseds; and the authority of respondent City Fiscal of Dumaguete to file the information. In a "Manifestation" dated September 28, 1973, petitioner Manuel Moreno formally adopted as his own, Milagros Donio-Teves' aforesaid Motion to Quash.

After the Opposition and Joint Answer to Opposition were filed, respondent Judge issued an Order dated December 3, 1973 denying petitioners' Motion to Quash for lack of merit. Petitioners' joint motion for reconsideration was likewise denied in an Order dated January 14, 1974. Arraignment of petitioners was set for March 1, 1974 and later reset to March 7, 1974.

Hence, the instant petition for CERTIORARI, PROHIBITION and MANDAMUS with preliminary injunction praying for the annulment of:

"(1) all the proceedings conducted by the respondent City Fiscal that led to the filing of the challenged information;

(2) the Order of the Honorable respondent Judge dated December 3, 1973 denying petitioners' motion to quash as well as the Order dated January 14, 1974 denying petitioners' motion for reconsideration; and

(3) commanding the respondent Trial Judge and respondent City Fiscal to desist from taking any further action."

The petition is devoid of merit. Hence, its dismissal is in order.

Petitioners' attack against the validity of the proceedings conducted by the respondent City Fiscal is anchored on the lack of a valid complaint on the part of the offended party. The challenge against jurisdiction having been acquired over the case and persons of the accused, is similarly predicated on the same ground - absence of a valid complaint.

Adultery, being a private offense, it cannot be prosecuted except upon a complaint filed by the offended spouse who cannot institute the criminal prosecution without including both the guilty parties, if they are both alive, nor in any case, if he shall have consented or pardoned the offenders.[4]

This Court has invariably maintained strict adherence to this jurisdictional requirement of a complaint by the offended party, as defined in Section 2 of Rule 106 of the Rules of Court and Article 344 of the Revised Penal Code.[5] So much so, that an information filed with the provincial fiscal wherein the offended party signed at the bottom thereof over and above the signature of the prosecuting officer, the information even reciting that the provincial fiscal charges defendant with the crime of seduction at the "instance of the offended party" was considered insufficient.[6] In another case,[7] this Court *motu proprio* dismissed the case for failure of the aggrieved party to file the proper complaint for the offense of oral defamation imputing the commission of an offense which cannot be prosecuted *de officio*, although the accused never raised the question on appeal, thereby dramatizing the necessity of strict compliance with the above legal requirement even to the extent of nullifying all the proceedings already had in the lower court.

However, this legal requirement was imposed "out of consideration for the aggrieved party who might prefer to suffer the outrage in silence rather than go through the scandal of a public trial." [8] Thus, the law leaves it to the option of the aggrieved spouse to seek judicial redress for the affront committed by the erring spouse. This should be the overriding consideration in determining the issue of whether or not the condition precedent prescribed by said Article 344 has been complied with. For, indeed, it is the spirit rather than the letter of the law which should prevail.[9]

The complaint referred to which is required by way of initiating the criminal prosecution of crimes which cannot be prosecuted *de officio* is, however, that one filed with the Court and not that which is necessary to start the required preliminary investigation by the fiscal's office.[10] In the latter case, a letter of complaint sufficed for the purpose.

Coming back to the case at bar, the desire of the offended party Julian L. Teves to bring his wife and her alleged

paramour before the bar of justice is only too evident. Such determination of purpose on his part is amply demonstrated in the strong and unequivocal statement contained in his first complaint of July 13, 1972 making clear and implicit his purpose, which is no other than "to file a criminal complaint for ADULTERY against my wife Milagros Donio-Teves and her paramour Manuel Moreno" x x x plus the fact that he filed no less than three (3) complaints in order to meet the objections of the petitioner herein as to the sufficiency of his first complaint dated July 13, 1972.

Petitioners' submission - that there is no sufficient and valid complaint - instituted in the instant case so as to confer jurisdiction over the offense and persons of the accused (herein petitioners), hardly convinces Us. The second complaint dated January 16, 1973 filed with the Fiscal's Office and that filed with the respondent Court on March 26, 1973, are both sufficient and valid complaints. Both state the name of the defendants; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense; and the place where the offense was committed, which is an absolute compliance with what Article 344 of the Revised Penal Code and Section 5, Rule 110 of the Rules of Court prescribe.[11] Both complaints were also thumbmarked by and under oath of the complainant. The allegations of the complaints fully apprised petitioners of the facts and acts subject matter thereof and enables them to fully comprehend to which acts of theirs it refers.[12] Both sufficiently identify the acts constituting the offense, sufficient enough to enable the Court to pronounce a valid judgment thereon in case of conviction.[13]

As it is, doubt could not have set in and confusion would not have arisen had the Fiscal limited himself merely to the filing of the complaint (thumbmarked and under oath of the complainant) instead of an information with the complaint annexed thereto.

Finally, as a last-ditch attempt to throw the ADULTERY case out of court, petitioners invoked the death of the complainant which took place on April 14, 1974 and during the pendency of this case, as an added argument in support of their plea for dismissal.

Such a stand is erroneous. Death of the offended party is not a ground for extinguishment of criminal liability whether total[14] or partial.[15] The participation of the offended party is essential not for the maintenance of the criminal action but solely for the initiation thereof.

The term "private crimes" in reference to felonies which cannot be prosecuted except upon complaint filed by the aggrieved party, is misleading. Far from what it implies, it is not only the aggrieved party who is offended in such crimes but also the State. Every violation of penal laws results in the disturbance of public order and safety which the State is committed to uphold and protect. If the law imposes the condition that private crimes like adultery shall not be prosecuted except upon complaint filed by the offended party, it is, as herein pointed earlier "out of consideration for the aggrieved party who might prefer to suffer the outrage in silence rather than go through the scandal of a public trial." Once a complaint is filed, the will of the offended party is ascertained and the action proceeds just as in any other crime. This is shown by the fact that after filing a complaint, any pardon given by the complainant to the offender would be unavailing.[16] It is true, the institution of the action in so-called private crimes is at the option of the aggrieved party. But it is equally true that once the choice is made manifest, the law will be applied in full force beyond the control of, and in spite of the complainant, his death notwithstanding.[17]

WHEREFORE, for lack of merit, the petition is DISMISSED. The Presiding Judge of the Regional Trial Court Branch of Negros Oriental to whose sala Criminal Case No. 1097 had been assigned, is hereby ordered to immediately continue with the trial of the aforementioned case and render judgment thereon on the basis of the evidence presented.

SO ORDERED.

Makasiar (Chairman), Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.

Aquino, J., concur, the motion to quash is obviously dilatory. The instant petition should not have been given due course.

[1] Appendix "C", Complaint.

[2] Pages 45, 47 and 48, Rollo.

[3] Annex "A".

[4] Article 344, Revised Penal Code; Sec. 4, par. 3, Rule 10, Rules of Court.

[5] U.S. vs. Gomez, 12 Phil. 279; U.S. vs. Narvas, 14 Phil. 410; U.S. vs. dela Cruz, 17 Phil. 139; U.S. vs. Castañares, 18 Phil. 210; U.S. vs. Salazar, 19 Phil. 233; Quilatan & Santiago vs. Caruncho, 21 Phil. 399; People vs. Martinez, 76 Phil. 559; People vs. Santos, et al., 101 Phil. 798, 803.

[6] People vs. Palabao, G.R. No. L-80027, August 31, 1954.

[7] People vs. Martinez, 76 Phil. 599.

[8] Samilin vs. CFI of Pangasinan, 57 Phil. 298-304.

[9] Paraphrasing the Court in People vs. Ilarde, 125 SCRA 11-18.

[10] People vs. Santos, et al, supra.

[11] People vs. Salazar, 93 SCRA 796, 801.

[12] People vs. Arnault, 92 Phil. 252.

[13] U.S. vs. Chan Co., 23 Phil. 643.

[14] Article 89, Revised Penal Code.

[15] Article 94, Revised Penal Code.

[16] People vs. Miranda, 57 Phil. 274; People vs. Entes, 103 SCRA 162.

[17] People vs. Ilarde, supra.

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