

BARTOLOME F. MERCADO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, FOURTH DIVISION, THE HONORABLE CESAR C. PERALEJO, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 98, Q...

G.R. No. 109036. July 05, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the Decision of the Court of Appeals dated January 13, 1993 in CA-G.R. SP No. 25630 and its Resolution dated February 16, 1993, denying reconsideration thereof.

I

Petitioner is the accused in Criminal Case No. Q-91-20150 for violation of B.P. Blg. 22 (Bouncing Check Law) before the Regional Trial Court, Branch 98, Quezon City.

Petitioner moved to defer his arraignment on the ground that he was not notified of the preliminary investigation. He claimed that the private complainant deliberately provided a wrong address in the issuance of the subpoena to him. He was thus prevented from submitting his counter-affidavit, which if considered, would have prevented the filing of the criminal case against him.

Petitioner alleged that in the hearing of July 10, 1991, the trial court granted his motion to defer the arraignment and ordered the remand of the case for reinvestigation. However, in the order that was issued, the trial court only directed the prosecution to comment on the motion.

Petitioner moved to cancel his arraignment scheduled on July 30, 1991. On said date, his motion to defer the arraignment was denied and upon his refusal to enter a plea, respondent judge entered for him a plea of "not guilty."

Petitioner filed a petition for prohibition and mandamus with the Court of Appeals to prevent respondent judge from proceeding with the trial. In its Decision dated January 13, 1993, the appellate court dismissed the petition on the following grounds: (1) the remedy of prohibition was not proper in the case; (2) there was an actual preliminary investigation conducted, where the prosecution sufficiently established probable cause against petitioner notwithstanding his lack of notice; and (3) the presence of the accused was not a requisite to the validity of the preliminary investigation. It further ruled that the defenses invoked by petitioner could be best ventilated in the trial.

Petitioner sought a reconsideration of the decision but the same was denied.

In the instant petition, petitioner raises the following questions of law: (1) Is a preliminary investigation

conducted ex-parte by reason of the lack of notice to the respondent valid, where such omission is due to the deliberate misinformation of the complainant regarding the address of the respondent? and (2) Is the remedy of prohibition proper in case of a denial of a motion to suspend the arraignment?

In his comment, the City Prosecutor denied that the subpoena was sent to the wrong address. He claimed that the subpoena was sent to the actual residence of petitioner at that time but the same was returned unserved. In fact, in the official receipt of his cash bond (Rollo, p. 51), petitioner acknowledged his address as "6-E Reyes St., Gloria Heights Subdivision, Antipolo, Rizal," which was the same address contained in the subpoena (Rollo, p. 52). The City Prosecutor further alleged that the presence of petitioner was not indispensable to the validity of the preliminary investigation, as long as efforts were exerted to notify him and he was given an opportunity to controvert the evidence against him.

II

We see no merit in the petition.

Petitioner was not denied of his right to a preliminary investigation. It is uncontroverted that a subpoena was sent to his given address but it was returned unserved. Petitioner did not dispute that the address appearing in the official receipt of his cash bond was his address.

The purpose of a preliminary investigation is for the investigating prosecutor to determine if a crime has been committed. A review of the evidence is thus necessary to establish probable cause and if the evidence so warrants, the investigating prosecutor is duty bound to file the corresponding information (Cruz, Jr. v. People, 233 SCRA 439 [1994]).

It was established by the complainant that petitioner issued a check which was dishonored because the account had been closed (Rollo, p. 50). The evidence satisfies the finding of probable cause. It must be borne in mind that the preliminary investigation is not the proper forum for an exhaustive production of evidence (Cruz, Jr. v. People, supra).

Moreover, we see no irregularity in the ex-parte conduct of the proceedings. We had occasion to rule that preliminary investigations can be conducted ex-parte if the respondent can not be subpoenaed or does not appear after due notice (New Rules on Criminal Procedure, Rule 112, Section 3(d); Cf. Rodriguez v. Sandiganbayan, 120 SCRA 659 [1983]).

We reiterate our ruling in Rodis, Sr. v. Sandiganbayan, 166 SCRA 618 (1988), that the New Rules on Criminal Procedure "does not require as a condition sine qua non to the validity of the proceedings [in the preliminary investigation] the presence of the accused for as long as efforts to reach him were made, and an opportunity to controvert the evidence of the complainant is accorded him. The obvious purpose of the rule is to block attempts of unscrupulous respondents to thwart the prosecution of offenses by hiding themselves or by employing dilatory tactics."

As to the second issue, we have ruled that an injunction will not generally lie to restrain a criminal action (Paderanga v. Drilon, 196 SCRA 86 [1991]; Brocka v. Enrile, 192 SCRA 183 [1990]; Crespo v. Mogul, 151 SCRA 462 [1987]). In the Brocka case, we laid the following exceptions to the rule: (1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused; (2) when it is necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (3) when there is a prejudicial question which is sub judice; (4) when the acts of the officer are without or in excess of authority; (5) where the prosecution is under an invalid law, ordinance or regulation; (6) when double jeopardy is clearly apparent; (7) where the court has no jurisdiction over the offense; (8) where it is a case of persecution rather than prosecution;

(9) where the charges are manifestly false and motivated by the lust for vengeance; and (10) when there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied. Petitioner's case does not fall within any of the exceptions.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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