

THE ASSISTANT PROVINCIAL FISCAL OF BATAAN, PETITIONER, VS. AMBROSIO T. DOLLETE, JUDGE, COURT OF FIRST INSTANCE, BATAAN, RESPONDENT.

G.R. No. 12196. May 28, 1958

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition by the Assistant Provincial Fiscal of Bataan for certiorari to annul the order of respondent Judge, dated February 19, 1957, in Criminal Case No. 5046 of the Court of First Instance of Bataan, denying petitioner's motion to dismiss the case, at the same time ordering him to file the corresponding information within a period of five days.

The facts are not disputed. In Criminal Case No. 278 of the Justice of the Peace Court of Dinalupihan, Bataan, several persons were charged with "Offending the Religious Feeling", under Article 133 of the Revised Penal Code. It was alleged in the complaint filed by the Chief of Police, that while devotees of the Iglesia Ni Cristo were holding ceremony in a certain house in Dinalupihan, the accused stopped in front thereof, made unnecessary noise, and shouted derogatory words against the Iglesia Ni Cristo and its members, and even stoned the house. The Justice of the Peace conducted the preliminary investigation and reduced to writing the entire proceedings, wherein he made his findings of fact, after which he elevated the case to the Court of First Instance of Bataan, being of the opinion that "the crime has in fact been committed and that the accused are probably guilty thereof".

Upon receiving the record of the case, which was docketed in the Court of First Instance as Criminal Case No. 5046, petitioner Assistant Provincial Fiscal summoned the offended parties and prosecution witnesses who were represented by a private prosecutor, to appear before him and testify for the purpose of gathering the necessary evidence and to convince himself of the sufficiency thereof, before going ahead with the prosecution. The offended parties and the private prosecutor appeared, but declined to give any testimony, contending that said Assistant Provincial Fiscal had no right to require them to do so, but that they were reserving their testimonies when the case was tried before the Court of First Instance. The petitioner, considering the attitude of the offended parties, filed a motion for dismissal of the case. Said motion was opposed by the private prosecutor. It was set for hearing, later actually heard, after which respondent Judge issued the order subject of the present petition for certiorari, not only denying said motion for dismissal, but ordering petitioner to file the corresponding information. After failing to secure a reconsideration of the said order, petitioner tried to appeal said order, but the appeal was denied by respondent Judge on the ground that it was a mere interlocutory order and consequently, not appealable. Hence this petition for certiorari.

There seems to be a series of misunderstandings, if not errors, on the part of the parties involved in this case. When a Fiscal or prosecuting attorney receives a criminal case, elevated to the Court of First Instance by the Justice of the Peace Court which has conducted the corresponding preliminary investigation, and on the ground that there was probable cause, the said Fiscal has the right to conduct his own investigation to convince himself of

the sufficiency of said evidences for the prosecution. Said this Court in *People vs. Ovilla*, 65 Phil, 722:

"From the foregoing, it may be clearly inferred that after a criminal case has been remanded by the justice of the peace to the Court of First Instance which has jurisdiction to try it on the merits and before the provincial fiscal has filed the necessary information the latter not only has the power but also the duty to investigate the facts upon which the complaint filed in the justice of the peace court was based, examine the evidence submitted to the justice of the peace and such other evidences as the parties may deem proper to submit on their own free will or on demand of the fiscal, for the purpose of determining whether there is at least prima facie evidence establishing the guilt of the accused and overcoming the presumption of innocence in his favor. If after he has done all this and considering all the circumstances of the case, the fiscal believes that the evidence is not sufficient to establish prima facie the guilt of the accused, he should submit to the court before which the case is pending the corresponding motion for dismissal." * * *

Later, in the case of *Villanueva vs. Hon. Primitivo Gonzales*, 99 Phil, 679, 52 Off. Gaz., [12], 5497, we slightly modified the above ruling. We said:

"Said Republic Act No. 732, governs preliminary investigations conducted by provincial fiscal in cases originally instituted by them in courts of first instance. It does not apply to cases begun in justice of the peace courts and, thereafter, forwarded to the corresponding court of first instance, either after the second phase of the preliminary investigation required in the Rules of Court had been conducted before said justice of the peace courts, or after a waiver by the accused of their right to said preliminary investigation. The reason is obvious. In those cases the provincial fiscal is under no obligation to make such preliminary investigation. He may rely upon the evidence introduced in, and the facts found by, the justice of the peace court, at the preliminary investigation therein conducted."

But there is no question that a prosecuting attorney has the right to conduct his own investigation. Because of said right, naturally, there is the corresponding duty or obligation of the prosecution witness, specially the offended parties, to submit to said investigation. Consequently, said offended parties and their legal counsel, the private prosecution, were not justified in refusing to submit to the same and to give their testimony. Because of their refusal, the petitioner was in part justified in filing his motion to dismiss on the ground that he was in no position, much less was he convinced, that he could go on with the prosecution of the case. We say that petitioner was in part justified, because he was not fully justified in asking for dismissal. Full justification comes only after his investigation shall have convinced him that the evidence available to him would not be sufficient to secure conviction. In the case of *U. S. vs. Barredo*, 32 Phil., 444, this Tribunal said:

"We agree with the contentions of counsel that a conscientious prosecuting official, whose investigations have satisfied him as to the innocence of persons charged with the commission of crime, should not institute criminal proceedings against such persons. But we are of the opinion that in the event that criminal proceedings have been instituted and the investigations of the provincial fiscal have satisfied him that the accused person is innocent, or that evidence sufficient to secure conviction will not be forthcoming at the trial despite the exercise of due diligence to that end, it then becomes his duty to advise the court wherein the proceedings are pending as to the result of his investigations, and to move the court to dismiss the proceedings, leaving it to the court to take such action as may be proper in the premises."

What the petitioner should have done was to advise respondent Judge of the attitude and conduct of the offended parties and to request that they be ordered to submit to an investigation by him. On his part, respondent Judge had the right to deny the motion for dismissal. His action on similar motions is discretionary. He may grant the motion to dismiss or deny the same. In the present case, he denied the motion to dismiss on the ground that judging from the record of the case in the Justice of the Peace Court, wherein the proceedings were reduced in writing, there was sufficient evidence to sustain the prosecution. In this, respondent Judge was right. As to the right of a Judge to deny a motion for dismissal of a criminal case, we said in *U.S. vs. Barredo*, supra:

"Upon a motion of the provincial fiscal to dismiss a complaint upon which an accused person has been remanded for trial by a justice of the peace, it rests in the sound discretion of the judge whether to accede to such motion or not. Ordinarily of course he will dismiss the action in accordance with the suggestion of an experienced fiscal who has personally investigated the facts. But if he is not satisfied with the reason assigned by the fiscal, or if it appears to him from the record of the proceedings in the court of the justice of the peace, or as a result of information furnished by the private prosecutor, or otherwise, that the case should not be dismissed, he may deny the motion."

But there was no need for respondent Judge in his order denying the motion for dismissal, to direct the Fiscal (petitioner) to file the information within five days. The denial of the motion to dismiss implied the prosecution of the case, although not necessarily by the same fiscal who moved for dismissal. It is rather embarrassing for a prosecuting attorney to be compelled to prosecute a case when he is in no position to do so, because in his opinion, he does not have the necessary evidence to secure conviction, or he is not convinced of the merits of the case. Now, if the Assistant Provincial Fiscal fails or refuses to file said information within a reasonable time, then either the offended parties or the court could invoke Section 1679 of the Revised Administrative Code, so that the Department of Justice could designate one to act as Provincial Fiscal and file the corresponding complaint or information.

Another error was the attempt of the petitioner to appeal the order denying his motion to dismiss. Aside from said order being discretionary, it is interlocutory in character and not appealable.

In view of the foregoing, the writ is granted in part, and in part denied. We cannot and we will not annul the order complained of in so far as it denies the motion for dismissal filed by petitioner Assistant Provincial Fiscal, for the reason that that action of the respondent Judge was wholly within his right and discretion, but we can and do set it aside in so far as it orders petitioner to file the corresponding information. It is suggested that the respondent Judge either order the offended parties to submit to an investigation to be conducted by petitioner, so that the latter may gather the necessary evidence to support the prosecution, or to convince himself of the merits of the case, from the point of view of the Government; or else, considering the attitude of the petitioner and to avoid embarrassment, to have either the trial court or the offended parties make manifestations to the Department of Justice for the designation of an Acting Provincial Fiscal. No costs.

Paras, C.J., Bengzon, Reyes A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

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