

GIAN PAULO VILLAFLOR, PETITIONER, VS. DINDO VIVAR Y GOZON, RESPONDENT.

G.R. No. 134744. January 16, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The absence of a preliminary investigation does not impair the validity of an information or render it defective. Neither does it affect the jurisdiction of the court or constitute a ground for quashing the information. Instead of dismissing the information, the court should hold the proceedings in abeyance and order the public prosecutor to conduct a preliminary investigation.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, seeking to set aside the Orders issued by the Regional Trial Court (RTC) of Muntinlupa City (Branch 276) in Civil Case No. 97-134.[1] Dated January 20, 1998,[2] the first Order granted the Motion to Quash the Informations and ordered the dismissal of the two criminal cases. The second Order dated July 6, 1998, denied the Motion for Reconsideration.

The Facts

Culled from the records and the pleadings of the parties are the following undisputed facts.

An Information[3] for slight physical injuries, docketed as Criminal Case No. 23365, was filed against Respondent Dindo Vivar on February 7, 1997. The case stemmed from the alleged mauling of Petitioner Gian Paulo Villaflor by respondent around 1:00 a.m. on January 27, 1997 outside the Fat Tuesday Bar at the Ayala Alabang Town Center, Muntinlupa City. After the severe beating he took from respondent, petitioner decided to leave the premises together with a friend who was in the restroom when the mauling incident took place. On his way out, petitioner again met respondent who told him, "Sa susunod gagamitin ko na itong baril ko"[4] ("Next time, I will use my gun on you").

When the injuries sustained by petitioner turned out to be more serious than they had appeared at first, an Information[5] for serious physical injuries, docketed as Criminal Case No. 23787, was filed against respondent.[6] The earlier charge of slight physical injuries was withdrawn.

At the same time, another Information[7] for grave threats, docketed as Criminal Case No. 23728,[8] was filed against respondent on March 17, 1997.

On April 14, 1997, respondent posted a cash bond of P6,000 in Criminal Case No. 23787 (for serious physical injuries).[9] Instead of filing a counter-affidavit as required by the trial court, he filed on April 21, 1997, a Motion to Quash the Information in Criminal Case No. 23728 (for grave threats). He contended that the threat, having been made in connection with the charge of serious physical injuries, should have been absorbed by the latter. Thus, he concluded, Criminal Case No. 23728 should be dismissed, as the trial court did not acquire jurisdiction over it.[10]

In an Order dated April 28, 1997 in Criminal Case No. 23728, the Metropolitan Trial Court (MTC) denied the Motion to Quash, as follows:

"For consideration is a motion to quash filed by accused counsel. Considering that jurisdiction is conferred by law and the case filed is grave threats which is within the jurisdiction of this Court and considering further that a motion to quash is a prohibited [pleading] under the rule on summary procedure, the motion to quash filed by accused counsel is DENIED.

WHEREFORE, the motion to quash filed by accused counsel is hereby DENIED and let the arraignment of the accused be set on June 25, 1997 at 2:00 o'clock in the afternoon."[11]

The Motion for Reconsideration filed by respondent was denied by the MTC on June 17, 1997.[12] Thus, he was duly arraigned in Criminal Case No. 23728 (for grave threats), and he pleaded not guilty.

On July 18, 1997, respondent filed a Petition for Certiorari with the RTC of Muntinlupa City. This was docketed as Civil Case No. 97-134. On January 20, 1998, after the parties submitted their respective Memoranda, the RTC issued the assailed Order which reads as follows:

"The Judicial Officer appears to have acted with grave abuse of discretion amounting to lack of jurisdiction in declaring and denying the MOTION TO QUASH as a prohibitive motion. The same should have been treated and [should have] proceeded under the regular rules of procedure. The MOTION TO QUASH THE INFORMATIONS filed without preliminary investigation is therefore granted and these cases should have been dismissed.

Let this Petition be returned to the Metropolitan Trial Court, Branch 80-Muntinlupa City for appropriate action."[13]

The RTC, in an Order dated July 6, 1998, denied the unopposed Motion for Reconsideration, as follows:

"Submitted for resolution is the unopposed Motion for Reconsideration filed by Private Respondent.

This Court agrees with the contention of private respondent that the Motion to Quash filed by petitioner in the inferior court is a prohibited pleading under Rules on Summary Procedure so that its denial is tenable. However, it would appear that the criminal charges were filed without the preliminary investigation having been conducted by the Prosecutor's Office. Although preliminary investigation in cases triable by inferior courts is not a matter of right, the provision of Sec. 51 par 3(a) of Republic Act 7926 entitled "An Act Converting the Municipality of Muntinlupa Into a Highly Urbanized City To Be Known as the City of Muntinlupa" provides that the city prosecutor shall conduct preliminary investigations of ALL crimes, even violations of city ordinances. This Act amended the Rules on Criminal Procedure. Since this procedure was not taken against accused, the Order dated January 20, 1998 stands.

The Motion for Reconsideration is therefore denied."[14]

Hence, this Petition.[15]

The Issues

Petitioner submits the following issues for our consideration:[16]

"I

Can the court motu proprio order the dismissal of the two (2) criminal cases for serious physical injuries and grave threats on the ground that the public prosecutor failed to conduct a preliminary investigation?

"II

Should the failure of the public prosecutor to conduct a preliminary investigation be considered a ground to quash the criminal informations for serious physical injuries and grave threats filed against the accused-respondent?

"III

Should respondent's entry of plea in the [grave] threats case and posting of cash bond in the serious physical injuries case be considered a waiver of his right, if any, to preliminary investigation?"

The Court's Ruling

The Petition is meritorious.

First Issue:

Lack of Preliminary Investigation

Preliminary investigation is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." [17] A component part of due process in criminal justice, preliminary investigation is a statutory and substantive right accorded to the accused before trial. To deny their claim to a preliminary investigation would be to deprive them of the full measure of their right to due process. [18]

However, the absence of a preliminary investigation does not impair the validity of the information or otherwise render it defective. [19] Neither does it affect the jurisdiction of the court or constitute a ground for quashing the information. [20] The trial court, instead of dismissing the information, should hold in abeyance the proceedings and order the public prosecutor to conduct a preliminary investigation. [21]

Hence, the RTC in this case erred when it dismissed the two criminal cases for serious physical injuries (Criminal Case No. 23787) and grave threats (Criminal Case No. 23728) on the ground that the public prosecutor had failed to conduct a preliminary investigation.

Furthermore, we do not agree that a preliminary investigation was not conducted. In fact, a preliminary investigation for slight physical injuries was made by the assistant city prosecutor of Muntinlupa City. The said Information was, however, amended when petitioner's injuries turned out to be more serious and did not heal within the period specified in the Revised Penal Code.

We believe that a new preliminary investigation cannot be demanded by respondent. This is because the change made by the public prosecutor was only a formal amendment. [22]

The filing of the Amended Information, without a new preliminary investigation, did not violate the right of respondent to be protected from a hasty, malicious and oppressive prosecution; an open and public accusation of a crime; or from the trouble, the expenses and the anxiety of a public trial. The Amended Information could not have come as a surprise to him for the simple and obvious reason that it charged essentially the same offense as that under the original Information. Moreover, if the original charge was related to the amended one, such that an inquiry would elicit substantially the same facts, then a new preliminary investigation was not necessary. [23]

Second Issue:

Motion to Quash

As previously stated, the absence of a preliminary investigation does not impair the validity of the information or otherwise render it defective. Neither does it affect the jurisdiction of the court over the case or constitute a ground for quashing the information. [24]

Section 3, Rule 117 of the Revised Rules of Criminal Procedure, provides the grounds on which an accused can

move to quash the complaint or information. These are: (a) the facts charged do not constitute an offense; (b) the court trying the case has no jurisdiction over the offense charged (c) the court trying the case has no jurisdiction over the person of the accused; (d) the officer who filed the information had no authority to do so; (e) the information does not conform substantially to the prescribed form; (f) more than one offense is charged, except in those cases in which existing laws prescribe a single punishment for various offenses; (g) the criminal action or liability has been extinguished; (h) the information contains averments which, if true, would constitute a legal excuse or justification; and (i) the accused has been previously convicted or is in jeopardy of being convicted or acquitted of the offense charged.[25]

Nowhere in the above-mentioned section is there any mention of a lack of a preliminary investigation as a ground for a motion to quash. Moreover, such motion is a prohibited pleading under Section 19 of the Revised Rules on Summary Procedure. In the present case, the RTC therefore erred in granting herein respondent's Motion to Quash

Furthermore, we stress that the failure of the accused to assert any ground for a motion to quash before arraignment, either because he had not filed the motion or had failed to allege the grounds therefor, shall be deemed a waiver of such grounds.[26] In this case, he waived his right to file such motion when he pleaded not guilty to the charge of grave threats.

In view of the foregoing, we find no more need to resolve the other points raised by petitioner.

WHEREFORE, the Petition is GRANTED, and the assailed Orders of the Regional Trial Court of Muntinlupa City are REVERSED. No costs.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] The title of the case is "Dindo Vivar, Petitioner, vs. Hon. Judge Jose L. Bautista, in his capacity as Assisting Judge, Metropolitan Trial Court, Branch LXXX, Muntinlupa City, and People of the Philippines, Respondents."

[2] Both Orders were issued by Judge N. C. Perello; rollo, pp. 48-51 and 52.

[3] Signed by Assistant City Prosecutor Dale Dick M. Liban.

[4] Rollo, p. 55.

[5] Signed by Assistant City Prosecutor Thelma B. Medina.

[6] Rollo, p. 65.

[7] Signed by Assistant City Prosecutor Thelma B. Medina.

[8] Rollo, p. 66.

[9] Rollo, p. 69.

[10] Rollo, p. 73.

[11] Rollo, p. 75.

[12] Rollo, p. 78.

[13] Rollo, p. 51.

[14] Rollo, p. 52.

[15] The case was deemed submitted for decision on May 4, 2000, upon the Court's receipt of respondent's Memorandum, signed by Atty. Merlo P. Fernandez. Filed earlier were petitioner's Memorandum, signed by Atty. Ma. Theresa Gonzales of V.E. Del Rosario & Partners; and that of the Office of the Solicitor General, signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Magdangal M. De Leon and Sol. Bernard G. Hernandez.

[16] Petition, pp. 13-14; rollo, pp. 30-31.

[17] Section 1, Rule 112 of the Revised Rules of Criminal Procedure, which became effective on December 1, 2000. A substantially similar provision is found in the old Rules.

[18] *Go v. CA*, 206 SCRA 138, February 11, 1992.

[19] *People v. Deang et al.*, GR No. 128045, August 24, 2000; *People v. Gomez*, 117 SCRA 72, September 30, 1982; *People v. Casiano*, 1 SCRA 478, February 16, 1961.

[20] *People v. Deang*, *supra*.

[21] *Paredes v. Sandiganbayan*, 193 SCRA 464, January 28, 1991; *Sanciangco Jr. v. People*, 149 SCRA 1, March 24, 1987.

[22] The following have been held to be merely formal amendments, viz.: (1) new allegations that relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment that does not charge another offense different or distinct from that charged in the original one; (3) additional allegations that do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense to be assumed; and (4) an amendment that does not adversely affect any substantial right of the accused, such as the right to invoke prescription. *Teehankee Jr. v. Madayag*, 207 SCRA 134, March 6, 1992. (Emphasis supplied.)

[23] *Ibid*.

[24] *People v. Deang*, *supra*.

[25] The old Rules of Criminal Procedure contained a substantially similar provision. However, paragraphs (b) and (c) of the Revised Rules were found in paragraph (b) of the old Rules, which read: "That the court trying the case has no jurisdiction over the offense charged or the person of the accused."

[26] Section 9, Rule 117 of the Revised Rules of Criminal Procedure, provides that the exceptions - found in paragraphs (a), (b), (g) and (i) of Section 3 of this Rule - are the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty, and jeopardy. Under Section 8, Rule 117 of the old Rules, the exceptions were paragraphs (a), (b) (f) and (h).

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