

**TOMAS B. TADEO, PETITIONER AND APPELLANT VS. THE
PROVINCIAL FISCAL OF PANGASINAN, THE JUSTICE OF THE PEACE
OF MANGALDAN, EMILIA ACOSTA AND LEONCIO MAICONG,
RESPONDENTS AND APPEL...***G.R. No. 16474. January 31, 1962*

Ponente: PADILLA, J.

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This is an appeal from an order of the Court of First Instance of Pangasinan, Third Branch, dated 30 July 1957, denying Tomas B. Tadeo Sr.'s petition for a writ of prohibition to enjoin the Provincial Fiscal and Special Counsel and the Justice of the Peace Court of Mangaldan, Pangasinan, from conducting the preliminary investigation in criminal case No. 263 of the said Justice of the Peace Court for estafa, against the appellant, at the instance of the spouses Leoncio Maicong and Emilia Acosta.

In the appellant's amended petition filed and admitted in Court on 26 June 1957, in lieu of the original filed on 13 May 1957, the appellant alleged that in civil case No. 10759 of the Court of First Instance of Pangasinan, the appellees spouses sued him for damages allegedly for preparing a deed of sale of their parcel of land conveying it to Francisco Bongato and fraudulently inducing them to sign the deed of sale which they did sign under the belief that it was a partition of their conjugal partnership property they had asked the appellant, a lawyer and notary public, to prepare and ratify; that after instituting the foregoing action the appellees spouses filed against the appellant a complaint for estafa in the Justice of the Peace Court of Mangaldan, Pangasinan, arising from the same facts alleged in Civil Case No. 10759 (criminal case No. 129); that the Court of First Instance dismissed civil case No. 10759; that after the dismissal of the said civil case by the Court of First Instance, the Justice of the Peace Court dismissed criminal case No. 129 for estafa against the appellant on the ground that the dismissal of the civil case which was prejudicial precluded the continuation of the criminal case which arose from the same transaction alleged in the civil case; that after the dismissal of civil case No. 10759 by the Court of First Instance the appellant filed in the same Court a complaint against the appellees spouses for declaratory judgment basing his cause of action upon the same transaction alleged in civil case No. 10759, which was still pending hearing and determination (civil case No. D-413); that after the appellant had instituted civil case No. D-413 in the Court of First Instance the appellees spouses again filed a complaint for estafa against the appellant in the same Justice of the Peace Court upon the same facts alleged in civil case No. 10759 and criminal case No. 129, which already had been dismissed, and civil case No. D-413, still pending hearing and determination (criminal case No. 263); that civil case No. D-413 is prejudicial to criminal case No. 263; that the dismissal of civil case No. 10759 and criminal case No. 129 constitutes a bar to further criminal prosecution of the appellant for estafa arising from the same facts alleged therein; that all these notwithstanding the appellee Provincial Fiscal and Special Counsel and the appellee Justice of the Peace Court were conducting the preliminary investigation of criminal case No. 263 against the appellant; that the act of the aforesaid appellees in conducting the preliminary investigation in the said criminal case constitutes a grave abuse of discretion amounting to lack of jurisdiction; and that there is no appeal

or any other plain, speedy and adequate remedy in the ordinary course of law available to the appellant. The appellant prayed that the appellees be enjoined from conducting the preliminary investigation in criminal case No. 263 for estafa against him (civil case No. D-539).

In their answer entitled "opposition" filed on 22 June 1957, the appellees alleged that civil case No. 10759 had been dismissed without trial on the merits and criminal case No. 129 had been dismissed without prejudice; and contended that civil case No. D-413 for declaratory relief does not raise any question prejudicial to the determination of criminal case No. 263 because the former refers to facts separate and distinct from those alleged in the latter case; that as the same acts that constitute the crime of estafa alleged in criminal case No. 263 are referred to in civil case No. D-413, the criminal case for estafa should first be decided before trial in the civil case could proceed; and that in civil case No. D-418 the appellant is not the real party-in-interest because he was not privy to any of the parties in the deed of quitclaim sought to be construed.

After trial and after the appellant had submitted his memorandum, on 30 July 1957, as stated at the outset of this opinion, the Court entered an order denying the writ prayed for, on the ground that although the appellant's "claim of persecution" by the appellees seems to be "borne out by the previous cases between the parties which were dismissed," yet the former has a plain, speedy and adequate remedy in the ordinary course of law, for at the opportune time he could set up all defenses and appeal in case of an adverse judgment; and that the Provincial Fiscal and Special Counsel and the Justice of the Peace Court have the authority to conduct the preliminary investigation in criminal case No. 263.

On 2 August 1957 the appellees Provincial Fiscal and Special Counsel filed a motion praying that the statement of the Court in its order, to wit: "There seems, however, to be a justification on the claim of persecution on the part of petitioner. This is borne out by the previous cases between the parties which were dismissed," be deleted.

On 10 August 1957 the appellant filed his notice of appeal "to the Court of Appeals on the ground that the said decision is contrary to law and the evidence."

On 14 August 1957 the Court entered an order setting the motion of the appellee Provincial Fiscal and Special Counsel for hearing on 21 August 1957 at 8:30 o'clock in the morning and directing that a copy of the motion be furnished the appellant immediately.

On the same day, 14 August 1957, the appellant filed the appeal bond and prayed that the Court approve it.

On 21 August 1957 the court granted the appellant until 26 August 1957 to answer the motion of the appellee Provincial Fiscal and Special Counsel. On 24 August 1957 the appellant filed his answer to the said motion.

On 11 September 1957 the Court approved the appeal bond filed by the appellant and denied the motion of the appellee Provincial Fiscal and Special Counsel for the reason that it had lost jurisdiction of the case by the perfection in due time of an appeal taken by the appellant. The Court also ordered the transmittal of the record of the case to the appellate court. On 14 September 1957 the Court of Appeals received the record of the case. On 28 November 1959 the Court of Appeals certified the appeal to this Court on the ground that only a question of law is involved.

The undisputed facts of the case are: On 29 January 1949 the appellees spouses brought an action in the Court of First Instance of Pangasinan against the appellant for recovery of P2,000 as damages suffered and P1,500 as attorney's fees spent by the former as a result of a fraudulent drafting by the latter of a deed of sale purporting to convey their parcel of land to Francisco Bongato and execution thereof by the appellees spouses under the belief that it was a deed of partition of their conjugal partnership property they had asked the appellant to draft (civil case No. 10579, Exhibit A). To this complaint the appellant and codefendant Francisco Bongato filed an answer

with counterclaim for P5,000 and P500, respectively, as damages for maliciously bringing an unfounded suit calculated to embarrass them (Exhibit B). After filing the suit in the Court of First Instance (civil case No. 10579), the appellees spouses filed a criminal complaint for estafa arising from the same facts alleged in civil case No. 10579, against the appellant in the Justice of the Peace Court of Mangaldan (criminal case No. 129). At the preliminary investigation of criminal case No. 129 on 5 January 1956, the Justice of the Peace Court, at the behest of the appellant, suspended further proceedings until after civil case No. 10579 of the Court of First Instance, which has a direct bearing on criminal case for estafa, shall have been finally decided (Exhibit G). On 21 March 1956, upon motion of counsel for the appellees spouses that they were no longer interested in the prosecution of the case, but over the objection of the appellant who asked to be allowed to prove his counterclaim, the Court of First Instance dismissed the appellees spouses' complaint and the appellant's counterclaim in civil case No. 10579, because the latter could prosecute his claim in another action, his counterclaim being permissive only and not compulsory (Annex C). On 18 June 1956 the appellant filed a complaint for declaratory relief in the Court of First Instance against the appellees spouses and co-defendant Vicente Torralba praying that the deed of quitclaim executed by them on 27 March 1948 in favor of Francisco Bongato be declared "the genuine document representing the true intention" of the appellees spouses and that he (the appellant) be relieved from civil and criminal liability arising from the part he had taken as lawyer and notary public in the drafting and execution thereof; that the appellees spouses be enjoined from impeaching the genuineness and due execution of said deed of quitclaim; that the appellees spouses and their co-defendant Vicente Torralba, jointly and severally, be ordered to pay the appellant moral and actual damages in the total sum of P2,900; that during the pendency of the case a writ issue to attach the appellees spouses' and co-defendant's properties to secure the satisfaction of the judgment for damages that the appellant might recover from them; and that the appellant be granted other just and equitable relief (Exhibit D). On 22 June 1956 the appellant filed in the Justice of the Peace Court of Mangaldan a motion to dismiss criminal case No. 129 on the ground that civil case No. 10579, upon the facts of which criminal case No. 129 for estafa was based, already had been dismissed and that the determination of the question of whether or not the crime of estafa had been committed by the appellant depends upon the outcome of civil case No. B-413 for declaratory judgment filed by the appellant in the Court of First Instance (Exhibit F). On 9 July 1956 the Justice of the Peace Court dismissed without prejudice criminal case No. 129 (Exhibit H). On 30 April 1957 the appellees spouses again instituted criminal proceedings for estafa against the appellant in the Justice of the Peace Court of Mangaldan, Pangasinan, based on the same facts alleged in civil case No. 10579 (criminal case No. 263).

A Provincial Fiscal, a duly appointed Special Counsel or a Justice of the Peace has the power and authority to conduct preliminary investigations of crimes committed within their territorial jurisdiction. In the case at bar the crime of estafa imputed to the appellant in criminal case No. 263 was allegedly committed by him in Mangaldan, Pangasinan. Undoubtedly, the appellees conducting the preliminary investigation of criminal case No. 263 have the power and authority to do so. But in taking cognizance of the case and conducting the preliminary investigation, did they act with grave abuse of discretion which would entitle the appellant to the extraordinary legal remedy of prohibition and justify the intervention of a court exercising supervisory authority over them? Civil case No. 10579 for damages, brought by the appellees spouses against the appellant, was dismissed by the Court of First Instance for lack of interest on the part of the plaintiffs therein and not because the fraud constituting their cause of action and the crime of estafa allegedly committed by the appellant in fact had not been committed by him (Exhibit C). Criminal case No. 129 for estafa against the appellant was likewise dismissed by the Justice of the Peace Court but without prejudice (Exhibit H). The pendency of civil case No. D-413 for declaratory judgment, commenced by the appellant against the appellees spouses in the Court of First Instance, was one of the reasons given by the Justice of the Peace Court to dismiss criminal case No. 129. However, the appellant not being one of the contracting parties to the deed of sale executed by the appellees spouses but took part only as notary public before whom they acknowledged the execution thereof is not entitled to file an action

for declaratory judgment. None of his rights or duties thereunder need be declared.[1]

Another valid and good reason relied upon by the Court in denying the writ prayed for is that the appellant has a plain, speedy and adequate remedy in the ordinary course of law. In the appropriate case and at the opportune time he may set up all defenses available to him and may appeal from an adverse judgment.

As regards the motion to delete from the decision the statement of the Court to the effect that the appellee Provincial Fiscal and Special Counsel are persecuting the appellant, on 2 August 1957 when the motion was filed, the Court still had jurisdiction of the case for it was only on 10 and 14 August 1957 when the appellant filed his notice of appeal and appeal bond and the appellant had not yet perfected his appeal. Hence the Court should have acted upon it.

In fairness to the appellee Provincial Fiscal and Special Counsel, their act of conducting the preliminary investigation of criminal case No. 263 for estafa against the appellant does not constitute persecution; on the contrary they should be commended for their zeal and devotion to duty. It was incumbent upon them to Inquire whether an offense had been committed, and, if they should find it had been committed, to charge and prosecute the guilty part.

The order appealed from is affirmed, with costs against the appellant.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

[1] In the order appealed from the Court states that after trial of civil case No. D-539, on 3 July 1957 it dismissed civil case No. D-413 "on the ground that said action is improper."

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