

NARCISO D. SALCEDO, PETITIONER, VS. HON. JUAN R. LIWAG, ET AL., RESPONDENTS.*G.R. No. 21068. November 29, 1963*

Ponente: BAUTISTA ANGELO, J.

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This is a petition seeking to prohibit respondents from carrying out their order disauthorizing petitioner from prosecuting three criminal cases filed before the Justice of the Peace Court of Jolo, province of Sulu, against Lt. Romeo M. Reciña, et al., all members of the Philippine Constabulary stationed in said province, and praying that, pending determination of this case, a writ of preliminary injunction be issued against respondents. This Court granted the writ prayed for.

The facts as may be gathered from the petition are: On October 10, 1961, petitioner, in his capacity as 2nd Assistant Provincial Fiscal of Sulu, investigated an incident involving Sgt. Andres A. Lopez of the Philippine Constabulary who was allegedly arrested while performing guard duty and in the process was handcuffed and manhandled to unconsciousness. Having found enough merit to warrant prosecution, petitioner, with the approval of his chief, Fiscal Martin A. Paulete, filed on November 29, 1961 before the Justice of the Peace Court of Jolo, province of Sulu, three informations against Lt. Reciña, et al., to wit: one for assault upon an agent or a person in authority, another for less serious physical injuries, and the third for arbitrary detention.

On September 14, 1962, the first time the cases were called for trial, the Justice of the Peace Court, over the objection of petitioner, granted as many postponements as the accused had desired, contrary to our Rules of Court, as follows: the first postponement was to October 22 to 24, 1962; then to November 26, 1962; and many other postponements that were granted later on.

On October 2, 1962, accused Reciña wrote a letter to Chief Prosecutor Agapito Conchu requesting that petitioner be replaced by another fiscal considering the over enthusiasm and unusual interest he has taken in the prosecution of the cases against him. Acceding to the request, Chief Prosecutor Conchu wired 1st Assistant Provincial Fiscal Jose L. Coscolluela, Jr. instructing him to take over the cases handled by petitioner because the latter was needed in Manila. Obliging Fiscal Coscolluela tried to comply with the instruction but failed so he wired Chief Prosecutor Conchu informing him that petitioner refused to yield the prosecution of the cases until he is legally disqualified by the court. On November 12, 1962, petitioner received another telegram from Secretary Liwag again instructing him to turn over the cases to Fiscal Coscolluela. This time petitioner sent a radio message to Secretary Liwag explaining his stand on the matter. He stated that there is sufficient evidence to warrant prosecution of Reciña and since the motive behind his disqualification is to have the case quashed he requested that the order be recalled. He added that if the same would be pressed he will take up the matter with the Supreme Court.

On February 5, 1963, after the accused had secured numerous postponements of the trial which petitioner considers unwarranted because the prosecution was at all times prepared and ready to present its evidence,

petitioner was required by Fiscal Paulete to turn over the cases once more to Fiscal Coscolluela in order that the latter may handle the same, but considering such request as an undue interference with the performance of his official duty since he is not disqualified by law to act thereon, he declined the request and insisted on his right to prosecute the cases. This request was again reiterated by Fiscal Paulete on February 7, 1963, but petitioner again declined it for the same reason. And on February 8, 1963, Fiscal Paulete, in view of the order he received from Secretary Liwag, again tried to take over the cases from petitioner even if the same were already under trial, but again petitioner refused to yield claiming that he had a right to prosecute the cases inasmuch as he suffers from no legal disqualification as already ruled by the justice of the peace court. This refusal of petitioner prompted Fiscal Paulete to appear at the trial of the cases which was then in progress during which a discussion ensued between the two prosecutors. It was on this occasion when the court decided to postpone the trial once more in order that the incident may be determined once and for all by the authorities concerned. The court said: "This Court will not interfere as to who among the fiscals will appear to prosecute these cases. It is within the Office of the Provincial Fiscal to decide who will handle these cases. So we will postpone these cases." Whereupon, petitioner interposed the present petition for prohibition.

On the other hand, respondents aver that the events that happened relative to the prosecution of the cases mentioned and the attempts to relieve petitioner from handling their prosecution are as follows:

"That on November 29, 1961, two informations signed by the petitioner were filed before the Justice of the Peace Court of Jolo charging Lt. Romeo Reciña, Sgt. Torino and Pfc. Sanugal with less serious physical injuries and arbitrary detention;

That these charges were dismissed by the Justice of the Peace Court on February 6, 1962;

That on October 2, 1962, Lt. Romeo Reciña, one of the accused addressed a letter to the respondents complaining that petitioner Salcedo has shown over enthusiasm and unusual interest in the prosecution of the case against him;

That on October 16, 1961, the aggrieved party Sgt. Andres Lopez, wrote a letter to the respondent Provincial Fiscal asking that the case be handled by the military court;

That on the same date, October 16, 1961, the PC Provincial Commander of Sulu, Mamarinta B. Lao addressed a letter to the Provincial Fiscal of Jolo requesting that the investigation of the Reciña case be stopped in order to avoid duplication and to allow his command full control of the investigation as they involved persons subject to military law;

That on October 18, 1962, the letter of complaint of Lt. Reciña was endorsed to petitioner for his comment;

That on October 24, 1962, Atty. Asclepiades Valbuena sent a wire to respondent Secretary of Justice requesting that either Fiscal Paulete or Coscolluela be assigned to prosecute the case against Lt. Reciña;

That on October 26, 1962, in an information filed by the petitioner, Lt. Reciña, Sgt. Torino and Pfc. Sanugal were charged again before the Justice of the Peace Court of Jolo with assault upon an agent of a person in authority (Criminal Case No. 9582);

That on October 30, 1962, the respondents received telegrams from Gov. Abubakar and Atty. Valbuena requesting the relief of the petitioner Fiscal Salcedo from prosecuting the case against Lt. Reciña;

That on October 31, 1962, respondent Agapito Conchu, Chief of the Prosecution Division, sent a wire to Fiscal Coscolluela instructing him to take over the case against Lt. Reciña;

That on November 12, 1962, Fiscal Coscolluela wired the respondent Chief Prosecutor Conchu informing that petitioner Salcedo refused to yield the prosecution of the case of Reciña until legally disqualified from

handling the same;

That on the same date November 12, 1962, another telegram was sent to Fiscal Salcedo by respondent Secretary Liwag requesting him to turn over the Reciña case to Fiscal Coscolluela immediately;

That on November 17, 1962, Atty. Asclepiades Valbuena of Jolo sent a wire to respondent Secretary of Justice reiterating request for the relief of Fiscal Salcedo;

That on November 23, 1962, another wire was sent to the petitioner Fiscal Salcedo advising him to transfer the Reciña case to the Department;

That on January 11, 1963, Congressman Ututalum sent a letter to respondent Secretary of Justice requesting that the petitioner Salcedo be disqualified from prosecuting the Reciña case;

That on January 31, 1963, another letter was sent by Congressman Cesar Fortich to respondent Secretary of Justice requesting also for the relief of petitioner Salcedo from the prosecution of the Reciña case;

That on February 4, 1963, another telegram was sent to respondent Fiscal Paulete by respondent Conchu ordering him to have Fiscal Coscolluela handle the Reciña case;

That on February 6, 1963, another telegram was sent to respondent Paulete confirming previous wire of respondent Secretary Liwag directing him to have petitioner Salcedo turn over Reciña case to Fiscal Coscolluela;

That on February 7, 1963, another telegram was sent to respondent Paulete directing him to take over the Reciña case;

That in view of the repeated refusal of petitioner to turnover the Reciña case to respondent Paulete, on February 8, 1963, another telegram was sent to Fiscal Paulete requesting that the postponement of the said case be asked as the respondent Chief prosecuting Attorney Conchu would arrive on February 12, 1963;

That pursuant to the Department of Justice, Administrative Order No. 67 issued on February 9, 1963, Chief Prosecuting Attorney Conchu went to Jolo to confer with petitioner Salcedo;

That respondent Conchu told petitioner Salcedo that it would be better if he would turn over the Reciña case to respondent Provincial Fiscal Paulete and made it clear to him that the Secretary of Justice has no intention of relieving him from prosecuting this case as he would continue assisting the respondent Paulete in the prosecution panel;

That petitioner Salcedo finally agreed to turn over the Reciña case to respondent Paulete and for him to assist the latter in the prosecution of the case and to handle the cross-examination of the witnesses;

That in spite of this agreement petitioner still refused to turn over the case to respondent Paulete and on March 21, 1963 he filed this petition with this Honorable Court;"

Petitioner raises the following issues: (1) the power of control and supervision of the Secretary of Justice over a public prosecutor does not authorize him to interfere with the power and discretion of the latter in the prosecution of a case pending trial before the court; (2) the power and discretion of a public prosecutor to investigate and prosecute a case emanate from Section 1687 of the Revised Administrative Code, as amended by Republic Act 1799, in relation to Section 4, Rule 106, of the Rules of Court, and not from the power of control of the Secretary of Justice; (3) the Secretary of Justice cannot disqualify a public prosecutor from prosecuting a case because this power belongs to the proper court; and (4) the matter of disqualification of a public prosecutor must be determined in accordance with Section 13, Rule 115, in relation to Section 1, Rule 126, of the Rules of Court.

It appears that petitioner was the one assigned by his chief to investigate the incident involving Sgt. Andres A.

Lopez wherein he was allegedly handcuffed and manhandled while performing guard duty as a result of which, because of sufficient evidence he gathered, he filed against Lt. Romeo M. Reciña and companions three informations before the Justice of the Peace Court of Jolo, province of Sulu. Apparently these informations were dismissed without the intervention of petitioner, and so he later refiled them. Then a series of postponements ensued at the instance of counsel of the accused and in the process many attempts were made, not only on the part of the accused, but even on the part of certain provincial and national officials to have petitioner relieved from the prosecution on the alleged ground that he has taken an unusual interest in the conviction of Lt. Reciña because of a supposed rivalry over a woman. He refused time and again to yield the prosecution of the cases even in defiance of superior orders claiming that since he has investigated and, taken action on the incident in question and the cases were already in the process of trial before the Justice of the Peace Court of Jolo should be given the power and authority to continue the prosecution to its final termination unless it be proven that he is disqualified to act by our Rules of Court (Section 13, Rule 115, in relation to Section 1, Rule 126). Here he does not suffer from any disqualification as already found by said justice of the peace when counsel for the accused made an attempt to do so. And so he considers the orders of respondents decreeing his relief unauthorized they being an undue encroachment on the exercise by him of his official and quasi-judicial function directly interwoven with cases which were entrusted to him to prosecute. It is his contention that the power of control and supervision that the Secretary of Justice exercise over a public prosecutor merely extend to administrative matters and not to those which pertain to the handling or prosecution of cases already pending in court. In other words, he contends that once a fiscal has taken action on a case by filing the necessary information he cannot be relieved therefrom except for any ground that may constitute a legal disqualification. To hold otherwise would be to subvert the judicial duties of a fiscal to the detriment of public interest.

There is merit in the contention that once a public prosecutor has been entrusted with the investigation of a case and has acted thereon by filing the necessary information in court he is by law in duty bound to take charge thereof until its final termination, for under the law he assumes full responsibility for his failure or success since he is the one more adequately prepared to pursue it to its termination. This is more so when the attempt to relieve him is motivated by reasons that are not compatible with sound administration of justice. Apparently, this is the case obtaining herein. The record shows that, as a result of the investigation made by petitioner, the latter has filed three informations against Lt. Reciña and his companions before the Justice of the Peace Court of Jolo which for reasons that do not appear clear were dismissed provisionally but which were later refiled. Then a series of postponements ensued coupled with persistent attempts to relieve him from the prosecution. Why such persistent demands for his relief the record is not bereft of reasons. One apparently is the desire to have the cases quashed. Another is the desire to have the cases removed to the military authorities. In fact, there has been an attempt on the part of the provincial command of the Philippine Constabulary stationed in Sulu to have the cases tried by a military court on the alleged ground that if the cases are not quashed there would be duplication of action against the accused. It likewise appears that several local and national officials have made representations for the relief of petitioner, among them Governor Abubakar of Sulu and Congressmen Ututalum and Fortich. The fact that much political pressure has been brought to bear upon respondents to secure the relief of petitioner cannot but create the impression that the purpose of his relief is not in line with the interest of justice. In this respect, we find justified the attitude adopted by petitioner regarding his relief.

Of course, respondents contend that the Secretary of Justice merely acted on the matter pursuant to the authority conferred upon him by law over fiscals and public prosecutors invoking in his favor the portion of the law which provides: "It (Department of Justice) shall also have general supervision and control of the provincial sheriffs and all law officers of the Government, the provincial and city fiscals or attorneys and other prosecuting officers." (Section 83, in relation to Section 79 [C], Revised Administrative Code), But this power of control and

supervision can only extend to administrative matters and not when it may conflict or encroach on the performance by the fiscal of his duties in connection with the prosecution of a case investigated and acted upon by him. To this extent he should be given wide latitude in order that the best interest of justice may be accomplished. This is the case of petitioner.

Wherefore, petition is granted. Respondents are hereby enjoined from carrying out their orders of relieving petitioner from prosecuting the cases herein involved. No costs.

Bengzon, C. J., Padilla, Labrador, Concepción, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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