

JIMMY LIM PALACIOS, PETITIONER, V. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 240676. March 18, 2019

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this petition[1] for review on certiorari are the Decision[2] dated January 18, 2018 and the Resolution[3] dated July 11/2018 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 150260, which upheld the Orders dated October 5, 2016[4] and January 25, 2017[5] of the Regional Trial Court of Quezon City, Branch 86 (RTC) denying petitioner Jimmy Lim Palacios' (petitioner) motion for reinvestigation and to recall warrant of arrest.

The Facts

The present case stemmed from a complaint[6] for violation of Section 5 (i) of Republic Act No. (RA) 9262[7] otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" filed by Maria Cecilia Ramirez (Ramirez) against petitioner. Ramirez alleged that she and petitioner were married[8] on November 17, 1987 and thereafter, had a son.[9] However, petitioner abandoned them and refused to give them financial support, acts which constitute economic abuse under Section 5 (i) of RA 9262. Further, in her Sinumpaang-Reklamong Salaysay filed before the Office of the City Prosecutor, Quezon City (OCP-QC), she alleged that petitioner's residence where he may be served with summons is Block 3 Lot 24 Turquoise St., Las Piñas Royale Estate, Naga Road, Brgy. Pulang Lupa Dos, Las Piñas City.

In a Resolution[10] dated March 19, 2015, the OCP-QC recommended that petitioner be indicted for the crime charged. In resolving the case based on the evidence proffered solely by Ramirez, the investigating prosecutor held that petitioner failed to appear during the preliminary investigation and submit his counter-affidavit despite being given ample opportunity to do so.[11] Consequently, the corresponding Information[12] was filed before the RTC, docketed as Crim. Case No. R-QZN-15-04286 and a warrant[13] for petitioner's arrest was issued pursuant to the RTC Order[14] dated May 12, 2015 (May 12, 2015 Order).

Sometime in September 2016, petitioner, through his lawyer, filed before the RTC an extremely very urgent motion for reinvestigation and to recall warrant of arrest,[15] decrying violation of his right to due process upon learning of the case that Ramirez filed against him and the RTC's May 12, 2015 Order directing the issuance of a warrant of arrest. He averred that he only learned of the subject complaint when, in a criminal case that he had filed against her, his lawyer was furnished with a copy of her Kontra-Salaysay[16] where the May 12, 2015 Order was attached as an annex. He further alleged that he would not have been denied of his right to due process and to a preliminary investigation had Ramirez not concealed his true and correct address, i.e., Block 9 Lot 6 Pag-Ibig Homes, Talon IV, Las Piñas City. As a result of the fraud employed by Ramirez, petitioner asserted that he was not able to interpose his valid and meritorious defenses to show that no probable cause exists to charge him in this case.[17]

The RTC Ruling

In an Order[18] dated October 5, 2016, the RTC denied petitioner's motion, citing A.M. No. 11-6-10-SC[19] which states that a motion for preliminary investigation shall only be granted where the accused was subjected to inquest proceedings,[20] which was not the case here.

Petitioner's motion for reconsideration[21] was denied in an Order[22] dated January 25, 2017. Thus, he elevated the case to the CA via a petition for certiorari[23] ascribing grave abuse of discretion on the part of the RTC.

The CA Ruling

In a Decision[24] dated January 18, 2018, the CA dismissed the petition and affirmed the assailed RTC Orders upon finding that petitioner was given the opportunity to participate in the preliminary investigation, based on the certification[25] of Assistant City Prosecutor Pedro M. Tresvalles (ACP Tresvalles) dated March 19, 2015. Likewise, it was observed that ACP Tresvalles had examined Ramirez's statements and the pieces of evidence, and on the basis thereof, found that there was probable cause. Furthermore, it was determined that the accused was informed of the complaint and evidence against him and was given an opportunity to submit controverting evidence. Finally, the CA affirmed the RTC's finding that pursuant to A.M. No. 11-6-10-SC, a motion for preliminary investigation shall only be granted when accused was subjected to inquest proceedings, which was not so in this case.[26]

Petitioner's motion for reconsideration[27] was denied in a Resolution[28] dated July 11, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the denial of petitioner's motion for preliminary investigation and to recall warrant of arrest.

The Court's Ruling

The petition is impressed with merit.

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.[29] The rationale of preliminary investigation is to "protect the accused from the inconvenience, expense[,] and burden of defending himself in a formal trial unless the reasonable probability of his guilt shall have been first ascertained in a fairly summary proceeding by a competent officer." [30] Section 1, [31] Rule 112 of the Rules of Court requires the conduct of a preliminary investigation before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to fine.

In this case, although the OCP-QC conducted a preliminary investigation relative to the complaint filed by Ramirez against petitioner, the latter bewails the lack of notice to him of the proceedings, which resulted in his failure to participate in the preliminary investigation. He claims that Ramirez committed fraud by intentionally giving the wrong address in her Sinumpaang-Reklamang Salaysay instead of his true and correct residence address, which is Block 9 Lot 6 Pag-Ibig Homes, Talon IV, Las Piñas City, as evidenced by: (a) a Certification[32] dated July 10, 2017 issued by Barangay Talon Kwartro, Las Piñas City; (b) his Seaman's Service Record Book; [33] and (c) their Marriage Contract[34] dated November 17, 1987. To bolster his claim that Ramirez was fully aware of his correct address, he pointed out that in the petition[35] for declaration of nullity of their marriage and the Affidavit of Withdrawal[36] dated May 3, 1990, both of which Ramirez filed, she indicated

his address at Block 9 Lot 6[37] Pag-Ibig Homes, Talon, Las Piñas, Metro Manila. Thus, petitioner contends that he was denied due process when Ramirez supplied the wrong address when she filed the present complaint against him.

Due process is comprised of two (2) components – substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal.[38] The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.[39] "Non-observance of these rights will invalidate the proceedings. Individuals are entitled to be notified of any pending case affecting their interests, and upon notice, they may claim the right to appear therein and present their side and to refute the position of the opposing parties." [40]

The Court has punctiliously examined the available records of this case and found no showing that indeed, petitioner had been duly notified of the charges filed against him by Ramirez or served with a subpoena relative to the preliminary investigation conducted by the OCP-QC. The Court therefore takes exception to the CA's observation[41] that petitioner failed to prove that he was denied participation in the preliminary investigation, for it would have been impossible for him to prove such negative allegation. Instead, under the circumstances, it was incumbent upon respondent to show that petitioner had been duly notified of the proceedings and that, despite notice, he still failed to appear or participate thereat. In the absence of such proof, the Court therefore finds that petitioner had not been given an opportunity to be heard. Case law states that "[w]hen service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence." [42]

It bears to stress that the right to preliminary investigation is substantive, not merely formal or technical.[43] As such, to deny petitioner's motion for reinvestigation on the basis of the provisions of A.M. No. 11-6-10-SC would be to deprive him of the full measure of his right to due process[44] on purely procedural grounds. Thus, the courts a quo should allow petitioner to be accorded the right to submit counter-affidavits and evidence in a preliminary investigation for, after all, "the fiscal is not called by the Rules of Court to wait in ambush; the role of a fiscal is not mainly to prosecute but essentially to do justice to every man and to assist the court in dispensing that justice." [45]

Contrary to the CA's conclusion, the fact that ACP Tresvalles certified in the Information that: (a) he had conducted the preliminary investigation in accordance with law and examined Ramirez's statements and pieces of evidence; and (b) the accused was informed of the complaint and evidence against him, and thus, given an opportunity to submit controverting evidence, should not suffice in light of the absence of notice to petitioner regarding the conduct of the preliminary investigation. Given petitioner's insistence that Ramirez provided the wrong address in her complaint, it behooved the respondent to show that petitioner was duly notified at the said address, especially in light of the fact that the warrant for his arrest was returned unserved[46] at the said address. Such failure, to the Court's mind, compounded the violation of petitioner's constitutionally-guaranteed right to due process. Besides, the said certification in the Information is merely pro forma, and hence, does not enjoy the presumption of regularity in its issuance.[47] Consequently, Crim. Case No. R-QZN-15-04286 pending before the RTC must be suspended until the completion of a preliminary investigation in order to afford petitioner a chance to present his counter-affidavit and any countervailing evidence.

WHEREFORE, the Decision dated January 18, 2018 and the Resolution dated July 11, 2018 rendered by the Court of Appeals in CA-G.R. SP No. 150260 upholding the Orders dated October 5, 2016 and January 25, 2017 of the Regional Trial Court of Quezon City, Branch 86 are REVERSED and SET ASIDE. The Office of the City Prosecutor, Quezon City is hereby ORDERED to conduct forthwith a preliminary investigation on the charge of

violation of Section 5 (i) of Republic Act No. 9262 against petitioner Jimmy Lim Palacios. The trial on the merits of Crim. Case No. R-QZN-15-04286 shall be SUSPENDED until the conclusion of the preliminary investigation. No pronouncement as to costs.

SO ORDERED.

Carpio,[*] (Acting C.J., Chairperson), Caguioa, J. Reyes, Jr., and Lazaro-Javier, JJ., concur.

[*] Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

[1] Rollo, pp. 21-57.

[2] Id. at 61-68. Penned by Associate Justice Socorro B. Inting with Associate Justices Apolinario D. Bruselas, Jr. and Rafael Antonio M. Santos, concurring.

[3] Id. at 69-71. Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Apolinario D. Bruselas, Jr. and Carmelita Salandanan Manahan, concurring.

[4] Id. at 72. Penned by Presiding Judge Roberto P. Buenaventura.

[5] Id. at 73.

[6] See undated Sinumpaang-Reklamong Salaysay; id. at 107-112.

[7] See Section 5 (i) of RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004, which reads:

Section 5. Acts of Violence Against Women and Their Children. — The crime of violence against women and their children is committed through any of the following acts:

x x x x

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children. (Underscoring supplied)

[8] See Marriage Contract dated November 17, 1987; rollo, p. 113.

[9] See Certificate of Live Birth of one Jimmy Ramirez Palacios, Jr., who was born on April 24, 1991; id. at 115.

[10] Id. at 117. Issued by Assistant City Prosecutor Pedro M. Tresvalles, approved by City Prosecutor Donald T. Lee.

[11] See id.

[12] Id. at 118-119.

[13] Id. at 121.

[14] Id. at 120.

[15] Dated September 2, 2016. Id. at 123-126.

[16] Not attached to the rollo.

[17] See rollo, pp. 123-125.

[18] Id. at 72.

[19] See Notice of Resolution in A.M. No. 11-6-10-SC entitled "GUIDELINES FOR LITIGATION IN QUEZON CITY TRIAL COURTS," dated February 21, 2012.

[20] See paragraph C (2) (b) of A.M. No. 11-6-10-SC, which reads:

C. Guidelines for Criminal Cases.

x x x x

2. Suspension of arraignment. - x x x

(a) x x x

(b) A motion for preliminary investigation shall only be granted where the accused was made subject to inquest proceedings, pursuant to Rule 112, Section 7 of the Rules of Court.

[21] See Vigorous Motion for Reconsideration dated November 10, 2016; rollo, pp. 127-129.

[22] Id. at 73.

[23] Dated February 7, 2017. Id. at 130-143.

[24] Id. at 61-68.

[25] See second page of the Information dated March 19, 2015 signed by ACP Tresvalles; id. at 119. The full text of the certification reads:

"I hereby certify that a preliminary investigation in this case has been conducted by me in accordance with law; that I have examined the complainant/s and on the basis of the sworn statements and other evidence submitted before me there is a reasonable ground to believe that the offense charged has been committed and the accused is/are probabl[y] guilty thereof; that the accused was/were informed of the complaint and evidence submitted against him/her/them and was given opportunity to submit controverting evidence; that the filing of this Information is with the prior authority and approval of the City Prosecutor.

x x x x"

[26] See id. at 65-66.

[27] Dated February 14, 2018. Id. at 157-172.

[28] Id. at 69-71.

[29] See Section 1, Rule 112 of the Rules of Court.

[30] *Yusop v. Sandiganbayan*, 405 Phil. 233, 239 (2001), citing *Tandoc v. Resultan*, 256 Phil. 485, 492 (1989).

[31] Section 1. Preliminary investigation defined; when required. - 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.

Except as provided in Section 7 of this Rule, a preliminary investigation is required to be conducted before the filing of a compliant or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine.

[32] Rollo, p. 80. Issued by Barangay Chairman Lawrence Philip DL. Roco.

[33] Id. at 83.

[34] Id. at 113.

[35] Dated October 25, 1994. Id. at 103-106.

[36] Id. at 81.

[37] Erroneously written as "Loto" in the petition for declaration of nullity of marriage.

[38] Secretary of Justice v. Lantion, 379 Phil. 165, 202-203 (2000), citing Cruz, Constitutional Law, 1993 Ed., pp. 102-106.

[39] Disciplinary Board, Land Transportation Office v. Gutierrez, G.R. No. 224395, July 3, 2017, citing Ebdane, Jr. v. Apurillo, 775 Phil. 298, 306 (2015).

[40] Secretary of Justice v. Lantion, supra note 38, at 203, citing Cruz, Phil. Administrative Law, 1996 ed., p. 64.

[41] See rollo, p. 66.

[42] The Government of the Philippines v. Aballe, 520 Phil. 181, 190 (2006); citation omitted.

[43] Yusop v. Sandiganbayan, supra note 30, at 242.

[44] See id.

[45] People v. Lacson, 448 Phil. 317, 373 (2003); citation omitted.

[46] See 1[st] Indorsement dated July 6, 2015; rollo, p. 122.

[47] See De Pedro v. Romasan Development Corporation, 748 Phil. 706, 730 (2014).

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