

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ELIGIO OVILLA, DEFENDANT. PETRA FLORES, COMPLAINANT AND
APPELLANT.**

G.R. No. 45357. June 27, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal by the offended party, Petra Flores, from the following order of the Court of First Instance of Laguna:

"The provincial fiscal having filed a motion in the above-entitled case praying for the dismissal of the case, and the court having found meritorious the reasons alleged therein, said case is hereby dismissed, as prayed, with costs de oficio, and the bond filed for the temporary release of the accused is hereby ordered cancelled. It is so ordered."

The only question presented on appeal is one of procedure and consists, according to the appellant, in "whether or not the provincial fiscal has authority to conduct another preliminary investigation and thereafter ask the Court of First Instance to dismiss the criminal case remanded by the justice of the peace, after the latter had conducted the preliminary investigation and issued an order to the effect that there was probable cause to prosecute the offense charged which falls within the jurisdiction of the Court of First Instance."

In *United States vs. Barredo* (32 Phil., 444, 449-451), this court 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 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. In this jurisdiction provincial fiscals are not clothed with power, without the consent of court, to dismiss or nolle prosequi criminal actions actually instituted, and pending further proceedings. The power to dismiss is vested solely in the courts, that is to say in the presiding judge thereof.

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"The duty imposed upon the provincial fiscal in such cases is either to go forward with the prosecution or to move the court to dismiss the complaint, and in either event to move with the promptitude necessary to secure the right of the accused to a speedy trial. It is, in part, to aid him in determining the course to be adopted at this stage of the proceedings that provision is made in section 2 of Act No. 302 for official investigations by provincial fiscals. But it is to be observed that it is expressly provided that: "This section shall not be construed to authorize a provincial fiscal to act as justice of the peace in any preliminary investigation, but only as

authorizing him to secure the attendance of witnesses before him in making necessary investigation for the purpose of instituting or carrying on criminal prosecutions.'

"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."

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, to examine the evidence submitted to the justice of the peace and such other evidence 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. The provincial fiscal of Laguna complied with all these requirements before asking for the dismissal of the present case, thereby keeping within the powers conferred upon him by section 1687 of the Revised Administrative Code.

Wherefore, finding no merit in the sole error assigned by the appellant Petra Flores, the offended party in this case, the order appealed from is hereby affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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