

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VIVENCIO ORAIS AND DAMIAN JIMENEZ, DEFENDANTS.
FORTUNATO N. SUAREZ, COMPLAINANT AND APPELLANT.**

G.R. No. 45431. June 30, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This case is now before us on appeal by the complainant, Fortunato N. Suarez, from the order issued by the Court of First Instance of Tayabas, on motion of the prosecuting attorney, dismissing the complaint filed by the aforementioned complainant and offended party against Vivencio Oraís and Damian Jimenez for arbitrary detention.

In support of his appeal, appellant raises the following questions of law: First, whether the dismissal is erroneous and constitutes a glaring abuse of discretion; and, second, whether the offended party may appeal from the order of dismissal.

As the determination of the first question depends upon that of the second, we shall now proceed to consider and resolve the latter, that is, whether the offended party may appeal from the order of dismissal.

In the case of *Gonzalez vs. Court of First Instance of Bulacan* (36 Off. Gaz., 2059), this court said:

"The person injured by the commission of an offense may choose between bringing the civil action independently of the criminal action (article 111, in connection with article 117, Spanish Code of Criminal Procedure of September 14, 1882), to recover through the courts damages arising from the criminal liability of the author of the crime of which he was the victim, in view of the provision of article 100 of the Revised Penal Code to the effect that every person criminally liable is also civilly liable, or appear as a party in the criminal action instituted by the promoter fiscal at the initiative of either the injured person or said promoter fiscal (article 112, Spanish Code of Criminal Procedure of September 14, 1882). In this latter case the position occupied by the offended party is subordinate to that of the promotor fiscal because, as the promoter fiscal alone is authorized to represent the public prosecution, or the People of the Philippine Islands, in the prosecution of offenders, and to control the proceeding, and as it is discretionary with him to institute and prosecute a criminal proceeding, being at liberty to commence it or not or to refrain from prosecuting it or not, depending upon whether or not there is, in his opinion, sufficient evidence to establish the guilt of the accused beyond a reasonable doubt, except when the case is pending in the Court of First Instance, the continuation of the offended party's intervention depends upon the continuation of the proceeding. Consequently, if the promoter fiscal desists from pressing the charge or asks the competent Court of First Instance in which the case is pending for the dismissal thereof, and said court grants the petition, the intervention of the person injured by the commission of the offense ceases by virtue of the principle that the accessory follows the principal. Consequently, as the offended party is not entitled to represent the People of the Philippine Islands in the prosecution of a public offense, or to control the proceeding once it is commenced, and as his right to intervene therein is subject to the promotor fiscal's right of control, it can not be stated that an order of dismissal decreed upon petition of the promotor fiscal himself deprives the offended party of his right to appeal from an order

overruling a complaint or information, which right belongs exclusively to the promotor fiscal by virtue of the provisions of section 44 of General Orders, No. 68. To permit a person injured by the commission. of an offense to appeal from an order dismissing a criminal case issued by a Court of First Instance upon petition of the promotor fiscal, would be tantamount to giving said offended party the direction and control of a criminal proceeding in violation of the provisions of the above-cited section 107 of General Orders, No. 58."

We cannot find any reason or cause for altering the doctrine enunciated in the said case of Gonzalez vs. Court of First Instance of Bulacan concerning the right of the offended party, who does not seek restitution, reparation or indemnity, to appeal from an order of dismissal issued by a Court of First Instance on motion of the prosecuting attorney.

With regard to the second assignment of alleged error consisting in that "the dismissal ordered is erroneous and constitutes a glaring abuse of discretion," we have already pointed out in the oft-repeated case of Gonzalez vs. Court of First Instance of Bulacan that if the provincial fiscal and the Court of First Instance have committed a grave abuse of discretion, the first by refusing to file an information and proceed with the case, and the latter by granting the motion for dismissal of the case filed by the fiscal, the offended party has the extraordinary legal remedy of mandamus to compel the fiscal to file the information and prosecute the case, and the judge, who dismissed the same on motion of the said fiscal, to restore the case and decide it on its merits.

In view of the foregoing considerations, the appeal interposed by the complainant Fortunato N. Suarez, because improperly allowed, is hereby dismissed with costs. So ordered.

Avanceña, C. J., Diaz, and Laurel, JJ., concur.

Abad Santos and Imperial, JJ., We dissent from the decision of the majority for the same reasons stated in our dissenting opinion in the case of Gonzalez vs. Court of First Instance of Bulacan, supra.

DISSENTING

CONCEPCION, J.:

I concur in the opinion of Justices Jose A. Santos and Carlos A. Imperial for the same reasons on which their dissent is founded. In addition, I believe that the doctrine laid down in the case of Gonzalez vs. Court of First Instance of Bulacan (G. R. No. 45233, cited by the majority), has been abandoned by that of Baes vs. Court of First Instance and Provincial Fiscal of Laguna (37 Off. Gaz., 2319), in which this court, reverting to the doctrine enunciated in the case of United States vs. Perez (1 Phil., 203), held that the offended party may appeal from an order of dismissal of the Court of First Instance on motion of the prosecuting attorney, and for this reason we ordered the issuance of a writ of mandamus so that the judge would admit the appeal interposed by the offended party.

The circumstance that in the case of Baes vs. Court of First Instance of Laguna, the motion for dismissal was based on the fact that the acts complained of did not constitute an offense, while the ground of the motion in the case of Gonzalez vs. Court of First Instance of Bulacan was that the evidence brought forth at the preliminary investigation and in that conducted by the fiscal was not sufficient to show the guilt of the accused, would not change the question because the difference between the two grounds was purely accidental, there existing in both cases, however, the same reason for the proper and logical application of the legal principle found in section 107 of General Orders, No. 58 which expressly recognizes the right of the injured party to appeal from any action of

the court denying him a right.

The majority having decided in this case that the appeal was improperly allowed, it is useless to discuss whether the dismissal ordered by the court is erroneous or not.

RESOLUTION

August 30, 1938

VILLA-REAL, J.:

This involves a motion for reconsideration of the decision of this court rendered in the present case, for the following reasons: First, that a distinction is made therein without any legal, moral or scientific basis; second, that the basis of said distinction is erroneous; third, that it involves a political crime; fourth, that the error committed is one of law and not of fact; and fifth, that the remedy of mandamus is not authorized by law.

As the determination of the other questions depends upon that of the second, we shall consider first the latter which consists in that the decision rendered by this court in the case now before us is erroneous for the reason that it is based upon a mistaken interpretation of the opinion of the late Chief Justice, Cayetano Arellano, in the case of *United States vs. Municipal Council of Santa Cruz de Malabon* (1 Phil., 731, 732).

Section 107 of General Orders, No. 58, which is pertinent to the case, provides:

"Sec. 107. The privileges now secured by law to the person claiming to be injured by the commission of an offense to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same shall not be held to be abridged by the provisions of this order; but such person may appear and shall be heard either individually or by attorney at all stages of the case, and the court upon conviction of the accused may enter judgment against him for the damages occasioned by his wrongful act. It shall, however, be the duty of the promoter fiscal to direct the prosecution, subject to the right of the person injured to appeal from any decision of the court denying him a legal right."

Construing the legal provisions above-transcribed in the case hereinbefore cited, Chief Justice Arellano, speaking for this court, said:

"Under the American system the prosecution of public offenses is reserved to the representative of the Government to such an extent that the individual citizen can not bring an action for that purpose. He is protected by his right to bring a personal action for the damage which the commission of a crime may occasion him. As to him the crime is but the source of a civil obligation. General Orders, No. 58, series of 1900, which has established the principles and rules of criminal procedure peculiar to that system of legislation, as a concession to the period of transition from one system of legislation to another, has compromised only with the private penal action of the injured party, but with that of the latter alone—not with the action which under the former law on the subject of criminal procedure might be brought by any citizen who might desire to aid the action of the Government. It was necessary to maintain the private penal action of the injured party himself, in consequence of the continued operation of the Penal Code, for two reasons: First, because, on principle, the declaration of the criminal liability carries with it the declaration of the resulting civil obligation; second, because there are crimes which can not be prosecuted other than at the formal instance of the person injured.

"For this reason, under the heading 'rights of the person injured by the offense,' article 107 was drawn, according to which, 'the privilege now secured by law to the person claiming to be injured by the commission of an offense to take part in the prosecution of the offense and recover damages for the injury sustained by reason of the same shall not be abridged by the provisions of this order.' It is evident that the special and

accentuated inclusion of the right of the person injured, not recognized in the general principles which form the basis of this procedural system, is the most express exclusion of any other right, such as that arising from the popular penal action, not recognized in the American system. * * *

It should be noted that the illustrious former Chief Justice of this court, in speaking of the person who can commence the prosecution of public offenses and of the rights reserved to private individuals who have been injured by the commission of an offense, said, "the prosecution of public offenses is reserved to the representative of the Government to such an extent that the individual citizen cannot bring an action for that purpose. He is protected by his right to bring a personal action for the damage which the commission of a crime may occasion him." It is not, therefore, in the criminal action alone that the injured party is permitted to take part, but also in that where the civil action is included in order to demand damages sustained by reason of the commission of the offense, because the prosecution of public offenses is reserved to the representative of the Government. And this private penal action is necessary, continued the learned Chief Justice, because the Penal Code provides that every person criminally liable for a felony is also civilly liable; and, further, because there are felonies which cannot be prosecuted in any other manner than at the formal instance of the offended party. Undoubtedly, it is by reason of this principle of the penal law that section 107 of General Orders, No. 58 has reserved to the injured party the rights he had under the Spanish system of taking part in the prosecution of a felony in order to demand the civil liability arising therefrom. It could not have been the intention of the legislator to allow the injured party to take part in the prosecution of the offense regardless of whether or not his person or his interests have suffered damages. The phrase "to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same" limits this intervention to those cases in which the offended party has suffered damages born of the criminal act. If the legislative intention had been otherwise, it could have simply said "to take part in the prosecution", because if the injured party has a right to intervene in the prosecution, he also has a right to ask for damages if he has sustained them, by virtue of the provisions of article 108 of the Spanish Code of Criminal Procedure of 1872 which says "that the civil action must be commenced at the same time with the penal action by the public prosecutor even when there is no private prosecutor * * *", and of article 112 of the same Code to the effect that "the penal action alone having been instituted, the civil action is also deemed commenced, unless the injured party renounces it or expressly reserves his right to exercise it on the termination of the trial of the criminal case, should this lie."

Chief Justice Arellano was one of the members of the committee which framed General Orders, No. 58, consequently, he knew the intention of said committee in using the phrase "to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same." In this sense said section 107 of General Orders, No. 58 has been interpreted in various decisions, the most applicable of which are *United States vs. Heery* (25 Phil., 600, 606), in which it was said, "Under the Spanish criminal law, an injured person had the right to intervene in the prosecution of the accused for the purpose of having his damages ascertained;" and in the case of *United States vs. Namit* (38 Phil., 926, 931), it was declared: "* * * It is true that section 107 of this law recognizes the existence of the civil liability connected with the commission of crime and reserves 'the privileges' previously secured by law to the person injured by the commission of an offense to take part in the prosecution and to recover damages. * * * Upon reading the entire section 107 of General Orders No. 58, it appears obvious that the right which was intended to be saved by the reservation therein made was the right of the party injured to appear and to be heard in all stages of the case with reference to such liability and to obtain a judgment for the damages occasioned by the wrongful act, as well as the further right to appeal from any decision of the court denying any legal right connected therewith." It is, therefore, clear that the right which section 107 of General Orders, No. 58 reserves to the injured party is that of intervening in the prosecution for the sole purpose of enforcing the civil liability born of the criminal act and not of demanding punishment of the accused.

Furthermore, the very provisions of section 107 of General Orders, No. 58 which require that if the court finds the accused guilty, it should render judgment concerning his civil liability, imply that the injured party may intervene in the prosecution if he seeks damages, but if he files no such claim or if the offense is one of those which do not necessarily produce civil liability, the court can not make any pronouncement with respect to it.

The case of *United States vs. Municipal Council of Santa Cruz de Malabon*, supra, was promulgated on February 16, 1903, or more than thirty-five years ago. The doctrine therein enunciated has been followed in numerous decisions and there exists no moral or public reason which demands that it be changed, since it does not adversely affect a party whose interests have been injured by the commission of a crime, but on the contrary favors him.

In the mandamus proceedings instituted by the Rev. Father Jose M. Baes against the Hon. Judge of First Instance and the provincial fiscal of Laguna (G. R. No. 45780, 37 Off. Gaz., 2319), a complaint had been filed by said petitioner Rev. Father Jose M. Baes against Enrique Villarosa et al., in which these were charged by the former with the crime of "offending the religious feelings." The complaint was dismissed by the Court of First Instance of Laguna to which it was remanded on motion of the provincial fiscal on the ground that the acts therein mentioned did not constitute the crime imputed to the defendants. We held in said case that the complainant had the right to appeal from the order of dismissal because the object was to determine whether or not the acts complained of constituted the crime charged or any other offense. The question involved was one of law because it dealt with the qualification of the acts alleged in the complaint. In the case of *Gonzalez vs. Court of First Instance of Bulacan* (36 Off. Gaz., 2059), the question was whether or not the evidence presented in the preliminary investigation and that filed with the provincial fiscal was sufficient to establish prima facie the guilt of the accused. This is a question of fact because it dealt with the sufficiency of the evidence to support the charge. (64 Corpus Juris, pages 303-309, sees. 318-320). There exists, therefore, a fundamental difference between the question involved in the Baes case and that raised in the Gonzalez case.

Although in the first case, the acts complained of rather constituted the crime of trespass to property defined and penalized in article 281 of the Revised Penal Code, which includes civil liability, the fact that it was not alleged in the complaint that the complainant suffered any damage would have made it proper for us to consider the petition for mandamus as filed for the purpose of compelling the trial judge to allow not the appeal but the complaint in which the acts charged constituted the crime of trespass to property and not of offending the religious feelings because the designation of the crime by the fiscal in an information is not what determines its nature, but the acts alleged in the complaint and established at the trial. Since the injured party has no right to intervene in the prosecution and to appeal, unless he claims damages or the crime charged is one of those which give rise to civil liability, his only remedy is that of mandamus to compel the prosecuting attorney to file the corresponding information based on the acts alleged in the complaint constituting an offense, and established at the preliminary investigation, and the judge, who dismissed the complaint on motion of the prosecuting attorney, to restore the case, if it is found that both have committed an abuse of discretion.

The movant cites the case of *United States vs. Barredo* (32 Phil., 444, 457), for the purpose of showing that the Court of First Instance of Tayabas, whose order of dismissal was the object of appeal, exceeded its jurisdiction, and quotes a part of the decision in the case of *State vs. McGinley* (153 Wis., 5), which this court quoted in the said Barredo case, and which says:

"In *State vs. McGinley* (153 Wis., 5), it was said: 'Upon just what ground the trial court condemned the action of the examining magistrate does not clearly appear. If, in deciding that the evidence was insufficient to make out a prima facie case, the judge viewed such evidence from the standpoint of a trial court, grievous error was committed. An examination to see whether an accused person shall be placed on trial for an offense charged against him, is a mere inquest. The examining magistrate has very broad latitude in the matter—if the evidence,

in any reasonable view of it, satisfies him that a crime within the charge made has been committed and there is reasonable cause to believe the accused is the guilty party he is warranted in holding him to bail. If there is evidence sufficient to give the magistrate any room whatever for the exercise of judgment,—in other words, any jurisdiction to decide the questions of fact within the broad field of probability, then his decision can not be reversed in the matter attempted in this instance."

In the cited case of *State vs. McGinley*, *supra*, the facts were as follows:

"The defendant in error was informed against for keeping a house of ill-fame, also for letting premises for the purpose of being so used. A plea in abatement was interposed, raising the question of whether the evidence on the preliminary examination was sufficient to warrant the decision holding the accused for trial before the circuit court. There was a preliminary examination, regular in form. On such examination there was evidence tending to prove that lewd women, for at least two days, occupied a room in a saloon building owned by the accused and used such room for purposes of prostitution, and that men resorted thereto for and executed such purpose; that the accused had knowledge of the facts and either kept the place and harbored the women for the business for which such room was used, or let the place to them therefor; that he encouraged men to resort to the place and to consort with such women; that he profited by their presence, at least by sale of liquor to them and to men who were attracted thereto by such presence, and that he really helped carry on the business for the women by encouraging or permitting men to resort there.

"The court sustained the plea upon the ground that the evidence was not sufficient to make out a *prima facie* case under sec. 4589 of the Statutes."

The question raised by a motion for dismissal in the said case of *State vs. McGinley*, *supra*, was whether the evidence produced at the preliminary investigation conducted by the justice of the peace was sufficient to support the order by which the case was remanded to the circuit court for trial. In that case it was the accused and not the prosecuting attorney who asked for the dismissal, and the circuit court, in issuing the order of dismissal, based its action on the fact that the evidence in the preliminary investigation made by the justice of the peace was not sufficient to establish *prima facie* the guilt of the accused. In the case now before us, the dismissal was sought by the fiscal on the ground of the insufficiency not only of the evidence in the preliminary investigation conducted by the justice of the peace, but also of that presented to him. The action of the fiscal in asking for the dismissal, and that of the Court of First Instance of Tayabas in dismissing the case because of insufficiency of the evidence to establish *prima facie*, at least, the guilt of the accused, are authorized by the decisions of this court and are in accordance with our present system of criminal procedure by which the remand of a case falling within the jurisdiction of the Court of First Instance from the justice of the peace, who conducted the preliminary investigation, gives the former authority to try it on the merits and decide or dismiss it. And although the fiscal has discretionary power of refusing to proceed with the case, he can not dismiss it *motu proprio*, but must ask the competent court to do so. (*U. S. vs. Abanzado*, 37 Phil., 658; *U. S. vs. Barredo*, *supra*.) The decision in the case of *State vs. McGinley*, *supra*, is, therefore, not applicable.

Our criminal procedural law does not make any distinction between common and political crimes as to the procedure which must be observed in the prosecution of both, and the rules governing appeal in said crimes are the same. The right of appeal is not inherent but granted by law (*U. S. vs. Gomez Jesus*, 31 Phil., 218; *Duarte vs. Dade*, 32 Phil., 36; *U. S. vs. Makaraig*, 54 Phil., 904). The appeal from an order of dismissal of a criminal case in which damages are not claimed or are not necessarily produced by the commission of the felony, issued on motion of the fiscal, who finds the evidence in the preliminary investigation as well as that presented to him insufficient to establish, at least *prima facie*, the guilt of the accused, not being authorized by law, the same can not be availed of by the offended party. But he may as we have already said, resort to the extraordinary remedy of *mandamus* to compel the fiscal to proceed with the case and the judge, who ordered the dismissal, to restore it, if

the evidence in the preliminary investigation and that submitted to the fiscal establishes prima facie the guilt of the accused.

"While as already shown the discretion of the court will not ordinarily be controlled by mandamus, it is not universally true that the writ will not issue to control such discretion or to require a judicial tribunal to act in a particular way. Where the discretion of a court can be legally exercised in only one way, mandamus will lie to compel the court so to exercise it; and in some cases mandamus has been employed to correct the errors of inferior tribunals and to prevent a failure of justice or irreparable injury where there is a clear right, and there is an absence of any other adequate remedy, as for instance where no appeal lies, or where the remedy by appeal is inadequate. It may also be employed to prevent an abuse of discretion or to correct an arbitrary action which does not amount to the exercise of discretion." (38 Corpus Juris, sec. 85, pp. 608, 609.)

The appeal which section 107 of General Orders, No. 58 authorizes the offended party to interpose from any resolution of the court denying him a right is not from every resolution but only from that which denies him his right to intervene in the prosecution of the crime which gives rise to civil liability for the purpose of claiming damages. (U. S. vs. Naitait, supra.)

In view of the foregoing and finding no merit in the motion for reconsideration, the same is hereby denied. So ordered.

Avanceña, C. J., Diaz, and Laurel, JJ., concur.

DISSENTING

CONCEPCION, J.:

I hold to all the views expressed in my dissent from the decision of the majority the reconsideration of which is sought in a motion filed by the appellant. I desire to make additional observations for the purpose of discussing more thoroughly the question involved in the case, namely, whether the party injured by the commission of an offense has the right to intervene in the prosecution of the same in all cases or whether he has such right only when he may file a claim for damages.

The majority have chosen to uphold the latter proposition, citing in support thereof the decision of this court penned by the late Chief Justice Arellano in the case of United States vs. Municipal Council of Santa Cruz de Malabon (1 Phil., 731).

I will not attempt to discuss that decision which is entitled to my highest respects. I desire solely to invite attention to the fact that the only question resolved therein by this court is, that the action known under Spanish legislation as popular action which, according to article 235 of the Compilacion General Reformado of 1880 relating to criminal procedural provisions, could be exercised by all Spanish citizens, has ceased to exist since General Orders, No. 58 has been in force. In the said case of United States vs. Municipal Council of Santa Cruz, supra, the Philippine Sugar Development Co., Ltd., urged the holding of a preliminary investigation. The provincial fiscal did not believe it proper to file an information because he did not consider the facts appearing in the papers sent to him as constituting a felony under the Penal Code. The judge dismissed the complaint in the preliminary investigation. From this action of the court the said entity appealed to this court.

Now, then, in the decision to which I have just referred it was held that the popular action is not recognized under the system of American criminal procedure, and as it was not shown that the company had been prejudiced by the

act alleged to be an offense, it had no right to institute criminal proceedings and appeal from the dismissal of the complaint in the preliminary investigation. This was the principal point decided by this court. What is the meaning and scope of the provision of the cited article 107 giving the offended party the right to intervene in a criminal case? This point has neither been discussed nor directly passed upon in said decision or in the others cited by the majority.

This granted, I maintain that the said provision of article 107 of General Orders, No. 58 authorizes the offended party to take part in the prosecution of an offense regardless of whether or not he has the right to demand damages. In support of my contention are the following considerations:

First. The article referred to of General Orders, No. 58 reads as follows:

"Sec. 107. The privileges now secured by law to the person claiming to be injured by the commission of an offense to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same shall not be held to be abridged by the provisions of this order; but such person may appear and shall be heard either individually or by attorney at all stages of the case, and the court upon conviction of the accused may enter judgment against him for the damages occasioned by his wrongful act. It shall, however, be the duty of the promotor fiscal to direct the prosecution, subject to the right of the person injured to appeal from any decision of the court denying him a legal right."

Now, according to the Penal Code which was in force when General Orders, No. 58 was promulgated, there were certain persons injured by the commission of a felony who could not only take part in its prosecution, but whose complaint or initiative was necessary before the criminal action may be commenced. Such was the case with the crimes of adultery, concubinage, seduction, rape, abduction, insults and calumny. (Articles 434, 437, 448, 465, and 467 of the Penal Code.) But not in all these cases did the Penal Code grant to the offended party the right to indemnification. The offended party in the crime of adultery does not enjoy such a right (*U. S. vs. Noriega and Tobias*, 31 Phil., 310), neither does the person insulted or calumniated. If the theory of the majority were sound, the offended party in such offenses could not take part in their prosecution, and yet until the approval of Act No. 1773 on October 11, 1907, that is to say, seven years after the promulgation of General Orders, No. 58, the crimes of adultery, insults and calumny could not be prosecuted unless at the Instance of the offended party. Since the approval of said Act No. 1773, all the offenses above-mentioned have been considered as public crimes; "Provided, however," says section 1 of the law, "That no prosecution for the crimes of adulterio, estupro, or injuria committed against persons * * * shall be instituted except upon the complaint of the aggrieved person or of the parents, grandparents or guardian of such person." The interpretation thus given by the majority to the provision of said section 107 of General Orders, No. 58 limiting the right of the offended party to take part in the prosecution of an offense to the sole case where he has a claim for damages, is not in harmony with the real purpose of the law.

Second. The very words employed in said section 107 of General Orders, No. 58 when it speaks of the rights of the injured party to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same, sufficiently show that the law grants two distinct rights the first of which may be exercised alone or simultaneously with the second. If such were not the purpose of the law, it would have said that the offended party may take part in the prosecution of the offense to enforce the civil liability proceeding therefrom; but having used the disjunctive and, it seems that there can be no doubt that the law grants two rights: the right to intervene and the right to claim indemnity.

I am, therefore, of the opinion that the appellant, alleged to be the injured party in the commission of the offense of arbitrary detention, has the right to intervene in substantiating the complaint he has himself filed and, consequently, has the right to appeal from the order of the court dismissing his complaint.

Abad Santos and Imperial, JJ., We join in the dissenting opinion of Justice Concepcion and dissent, furthermore, from the resolution of the majority for the same reasons enumerated in our dissenting opinion in the case of Gonzalez vs. Court of First Instance of Bulacan (36 Off. Gaz., 2059).

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