

## **N. T. HASHIM, PETITIONER, VS. MARCELO T. BONCAN, JUDGE OF FIRST INSTANCE OF MANILA, AND THE CITY FISCAL OF MANILA, RESPONDENTS.**

*G.R. No. 47777. January 13, 1941*

Ponente: LAUREL, J.

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### **LAUREL, J.:**

On August 6, 1940, the petitioner, N. T. Hashim, was caught red-handed in possession of counterfeit treasury certificates of the Commonwealth of the Philippines. He was placed under arrest, without warrant, by the operatives of the Division of Investigation of the Department of Justice, but was released on the same day upon filing a bond. The following day, August 7, 1940, a complaint was filed against him with the Office of the City Fiscal, and after the corresponding investigation conducted by the respondent Fiscal under section 2465 of the Revised Administrative Code, as amended by Commonwealth Act No. 537, the following information was lodged against him:

"The undersigned accuses N. T. Hashim of a violation of article 168 of the Revised Penal Code, committed as follows:

"That on or about the 6th day of August, 1940, in the City of Manila, Philippines, the said accused did, then and there willfully, unlawfully, feloniously, and knowingly have in his possession and under his control five hundred sixty (560) false or falsified 50-peso treasury certificates of the Commonwealth of the Philippines, with intent to use the same contrary to law.

"Gregorio S. Narvasa "  
Assistant Fiscal

"Subscribed and sworn to before me, this 7th day of August, 1940, in the City of Manila, Philippines, by Gregorio S. Narvasa, Assistant Fiscal of said City.

"Sixto de la Costa "  
Judge, Court of First Instance

"A preliminary investigation has been conducted in this case under my direction, the witness having been examined under oath in accordance with the provisions of Commonwealth Act No. 537.

"Gregorio S. Narvasa "  
Assistant Fiscal

"Subscribed and sworn to before me, this 7th day of August, 1940, in the City of Manila, Philippines, by Gregorio S. Narvasa, Assistant Fiscal of said City.

"SIXTO DE LA COSTA "  
Judge, Court of First Instance."

The case was docketed as criminal case No. 61464 of the Court of First Instance of Manila. On the strength of the respondent fiscal's sworn statement that he had conducted a preliminary investigation and that he had examined the witnesses under oath, according to law, Judge of First Instance Sixto de la Costa issued a warrant for the arrest of the petitioner. He was later admitted to bail.

Before the petitioner could be arraigned, the following incidents transpired in the trial court: On August 14, 1940, counsel for the petitioner filed a motion under sections 11 and 13 of Rule 108 of the Rules of Court, asking that the respondent fiscal furnish the clerk of court with the testimony of the witnesses who testified at the preliminary investigation, or an extract thereof, as well as with the alleged 560 counterfeit treasury certificates. The respondent fiscal opposed the motion on the ground that the provisions of Rule 108 of the Rules of Court on "Preliminary Investigation" do not apply to preliminary investigations conducted by the Fiscal for the City of Manila or any of his assistants, and that the said motion is not well taken. On August 19, counsel for the petitioner put in an additional motion praying that, should his motion of August 14, 1940, be acted upon adversely and the respondent Fiscal's objection thereto be sustained, the Court itself immediately conduct the investigation provided in section 4 of Rule 108 of the Rules of Court, directing the Clerk of Court to attach to the record an abstract of the testimony of the witnesses at said investigation. The respondent Fiscal filed an objection to the additional motion on the ground, among others, that "there is no necessity for this Honorable Court to conduct a preliminary investigation in this case because the substitute therefor had already been performed in accordance with law by the office of the fiscal of the City of Manila." To this objection counsel for the petitioner filed a rejoinder on August 21, 1940. On August 22, 1940, the respondent judge denied the various motions of the petitioner on substantially the same grounds advanced by the respondent fiscal in his objections thereto.

By another motion of August 26, 1940, counsel for the petitioner asked that the warrant of arrest issued in the case be cancelled and insisted that the court conduct the preliminary investigation referred to in section 1, Rule 108 of the Rules of Court. This motion was followed by an opposition of the respondent fiscal, by petitioner's reply to said opposition, by a rejoinder of the respondent fiscal, and by petitioner's reply to said rejoinder. The petitioner's motion of August 26, 1940, was again denied by the respondent judge on September 6, 1940. A motion for reconsideration of September 11, 1940, met with a like fate on September 16, 1940. The petitioner excepted to the orders of the respondent judge of August 22, 1940, September 6, 1940, September 16, 1940 and announced his intention to bring up the case to this Court on certiorari and mandamus.

The petition for certiorari and mandamus filed with this court recites in greater detail the proceedings which we have just set out in briefest outline, and closes with the prayer: (a) that the order of arrest issued against the accused in criminal case No. 61464 of the Court of First Instance of Manila be set aside; (b) that the respondent Judge conduct a preliminary investigation in the said case under section 1 of Rule 108 of the Rules of Court and the pertinent provision of the Constitution of the Philippines; (c) that should the preliminary investigation conducted by the respondent fiscal be upheld, that the said respondent be ordered to furnish the clerk of the Court of First Instance of Manila with an abstract of the testimony of the witnesses at said investigation and with such other evidence adduced therein; (d) that the arraignment of the petitioner be suspended during the pendency of these proceedings, and (e) for such other remedy as may be just and equitable. The Solicitor-General, on behalf of the respondent judge, and the respondent fiscal, in his own representation, are one in resisting the petition.

The question for decision is whether, in a preliminary investigation conducted by the fiscal for the City of Manila, the accused is entitled to be informed of the substance of the testimony and of the evidence presented against him. This, in turn, inevitably takes in the broader question of whether or not existing legislation under which the City Fiscal conducts preliminary investigations has been repealed and supplanted by the New Rules of Court.

Section 2465 of the Revised Administrative Code, as amended by Commonwealth Act No. 537, provides that

"The Fiscal of the city shall cause to be investigated all charges of crimes, misdemeanors, and violations of ordinances, and have the necessary informations or complaints prepared or made against the persons accused." Section 2474 of the Revised Administrative Code (Manila Charter) pertinently provides that "In cases triable only in the Court of First Instance the defendant shall not be entitled as of right to a preliminary examination in any case where the fiscal of the city, after a due investigation of the facts, shall have presented an information against him in proper form." The power is reaffirmed—and not taken away—by section 2, Rule 108 of the Rules of Court providing that "Every justice of the peace, municipal judge or city fiscal shall have jurisdiction to conduct preliminary investigation of all offenses alleged to have been committed within his municipality or city, cognizable by the Court of First Instance." Petitioner now contends that the power is coupled with a duty, among others, to transmit an abstract of the testimony of witnesses under section 13, Rule 108, reading:

"Sec. 13. Transmission of abstract.—Upon the conclusion of the preliminary investigation, the judge or corresponding officer shall transmit without delay to the clerk of the Court of First Instance having jurisdiction of the offense (a) the warrant, if the arrest was by virtue of a warrant; (b) an abstract of the testimony of the witnesses; (c) the undertaking or bail of the defendant, and (d) the person, of the defendant if not on bail."

It is said that by the phrase "the corresponding officer" section 13 meant the respondent fiscal. We do not think so. It may refer to the municipal mayor who, in stated cases, is also authorized to conduct preliminary investigation (section 3, Rule 108.) That it has no reference to the respondent fiscal will bear a little explanation. Formerly, the purpose of sending up the substance of the testimony of witnesses at the preliminary investigation was to enable the fiscal to go forward with the case by complaint or information. In *U. S. vs. Rafael* (23 Phil., 184, 187) this purpose is elaborated as follows: "The purpose of requiring the justice of the peace to forward to the provincial fiscal a brief statement of the substance of the testimony, evidently is to enable the provincial fiscal to decide, in the first instance, whether he shall present a complaint against the defendant, and in the second, to enable him, in case he decides to prosecute, to properly formulate said complaint. It is practically impossible, in the thickly populated provinces of the Philippine Islands, for the provincial fiscal to personally attend all of the trials and preliminary investigations held before the justices of the peace. The purpose of the provisions of said section 13 is evidently to enable the provincial fiscal to have sufficient information to enable him to decide whether or not the defendant, in the trial before the justice of the peace or in a preliminary investigation, shall be further prosecuted in the Court of First Instance." If, as above shown, the abstract of testimony is intended for the fiscal, the duty of transmittal is plainly cast not upon him but upon another. Further, if the said abstract is for the use and guidance of the fiscal, failure to transmit is certainly not prejudicial to the petitioner, and he may not enjoin transmittal as of right.

On the other hand, section 13 of Rule 108 assumes that "the judge or corresponding officer" is by law authorized to issue a warrant of arrest, so much so that he is there required to transmit "(a) the warrant, if the arrest was by virtue of a warrant." We know of no law authorizing the City Fiscal to issue a warrant of arrest. The section also assumes the two-stage preliminary investigation provided for justices of the peace and municipal judges and not for the respondent Fiscal. Thus it opens with the statement "Upon the conclusion of the preliminary investigation the judge or corresponding officer shall transmit \* \* \*," implying thereby that one investigation has already been concluded, and another is to follow or is contemplated, based on the papers sought to be transmitted. Under existing laws, the City Fiscal conducts but a single investigation, and this is a summary one. To say that the respondent fiscal is bound by the procedure provided in the cited section is to duplicate proceedings, where at present there is but one, and to flout the spirit of simplicity and dispatch underlying the new Rules. Finally, the section under scrutiny requires "the judge or corresponding officer" also to transmit "(c) the person of the defendant if not on bail." The respondent fiscal would be at a loss to comply with this requirement because he has no direct control over the person of the accused, not being empowered to order his arrest or release. All this induces one conclusion and one only—that the preliminary investigation conducted by the City Fiscal is without

the purview of and need not conform to the procedure marked out in section 13 of Rule 108.

Petitioner next makes the point that his right to be informed of the substance of the testimony and evidence presented against him finds support in still another provision, that of section 11 of Rule 108 reading:

"Sec. 11. Rights of defendant after arrest.—After the arrest of the defendant and his delivery to the court, he shall be informed of the complaint or information filed against him. He shall also be informed of the substance of the testimony and evidence presented against him, and, if he desires to testify or to present witnesses or evidence in his favor, he may be allowed to do so. The testimony of the witnesses need not be reduced to writing but that of the defendant shall be taken in writing and subscribed by him."

This section also has reference to the preliminary investigation conducted by justices of the peace and municipal judges, namely, the investigation before and for the purpose of the issuance of the warrant of arrest, and that thereafter made for the purpose of either releasing the offender or filing the corresponding information against him. This examination corresponds to the preliminary investigation conducted by a justice of the peace or municipal judge after the arrest of the defendant in accordance with Acts 194, 1450 and 1627. To subject the respondent Fiscal to the provisions of this section is, as elsewhere emphasized, to prolong an otherwise brief investigation which said officer is authorized to conduct under existing laws. Hence, our persuasion that section 11, like section 13, of Rule 108 was not meant to apply to the preliminary investigations conducted by the City Fiscal.

It is contended, however, that existing legislation authorizing the City Fiscal to conduct preliminary investigations should be deemed repealed and supplanted by the new Rules of Court. Otherwise, it is said, there would be no uniformity in said Rules as ordained by the Constitution. We do not share this view. The power of the respondent Fiscal to proceed as he did against the petitioner first received the imprint of judicial approval in *U. S. vs. Wilson*, 4 Phil., 317, wherein it was held: "It is claimed, also that the judgment of conviction is erroneous because no preliminary investigation was held, as required by sections 12 and 13 of General Orders, No. 58. This claim is answered by reference to Act No. 612 of the Commission, which in section 2 provides as follows: 'In cases triable only in the Court of First Instance of Manila the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the prosecuting attorney, after due investigation of the facts under section 39 of the act of which this is an amendment, shall have presented an information against him in proper form.'" This was followed by other cases, among them. *U. S. vs. McGovern*, 6 Phil., 621; *U. S. vs. Ocampo*, 18 Phil., 1; *U. S. vs. Grant and Kennedy*, 18 Phil., 122, and *U. S. vs. Carlos*, 21 Phil., 553. The reason for the rule is set out in *U. S. vs. Ocampo*, supra, as follows: "The prosecuting attorney for the city of Manila is presumed to be as competent to conduct a preliminary investigation as the average person designated by law to conduct a 'preliminary examination' under the provisions of General Orders, No. 58. He is a sworn officer of the court, and the law imposes upon him the duty of making such investigations. For such purpose the legislature may designate whom it pleases within the judicial department."

The framers of the Rules could not have intended to brush aside these lessons of experience and to tear down an institution recognized by law and decision and sanctioned by years of settled practice. They could not have failed to keep intact an effective machinery in the administration of criminal justice, as expeditious and simple as any reform they have infused into the new Rules. To sustain the theory of repeal is to wipe out these advantages. Not only this. If neither section 11 nor section 13 of Rule 108 is applicable to the preliminary investigation conducted by the City Fiscal, as we have above shown, and if existing legislation thereon is to be deemed repealed, then the matter would be left uncovered by rule or law. There would thus be a void crying for urgent reform. There would be no such void if the old and tried procedure is kept in being, untouched by the new Rules. Withal, our own knowledge of the history of this portion of the Rules here involved does not warrant an interpretation not

contemplated when we drafted and deliberated upon these Rules. And while, perhaps, the language could have been clearer and the arrangement made more logical, consideration of expediency and the avowed purpose of preliminary investigation point to the already trodden path hereinabove indicated.

Viewed in the light of fundamental principles, the right to a preliminary investigation is statutory, not constitutional. Its oft-repeated purpose is to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions. The new Rules were drafted in the light of the Court's experience with cases where preliminary investigations had dragged on for weeks and even months. The Court had intended to remove this clog upon the judicial machinery and to make a preliminary investigation as simple and as speedy as is consistent with the substantial rights of the accused. The investigation is advisedly called preliminary, to be followed by the trial proper. The investigating judge or prosecuting officer acts upon probable cause and reasonable belief, not upon proof beyond a reasonable doubt. The occasion is not for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. When all this is fulfilled, the accused will not be permitted to cast about for fancied reasons to delay the proceedings; the time to ask for more is at the trial. The petitioner's case is a good example. A preliminary investigation was conducted by the respondent Fiscal at which evidence was adduced warranting the filing of an information against the petitioner. The information was filed in court, and the presiding judge, upon the strength of the said preliminary investigation and sworn information, issued a warrant for the arrest of the petitioner. To ask for the abstract of testimony at this stage of the proceedings, ostensibly for no other purpose than to scrutinize the same evidence which convinced the respondent Fiscal and the presiding Judge that there was probable ground to proceed against the petitioner, is, in effect, to ask for another preliminary investigation. Not this, however, but a trial upon the merits, is what section 4 of Rule 108 ordains. The petition for certiorari and mandamus is hereby dismissed, with the costs to the petitioner. So ordered.

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

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## CONCURRING

### IMPERIAL, J.:

I concur in the result. I am of the opinion, however, that petitioner's right to examine and impugn the evidence taken at the preliminary investigation conducted by Assistant Fiscal Gregorio S. Narvasa may be accomplished at the trial of the case after proper foundation shall have been laid down. Petition dismissed.

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