

ANIANO BIRON, PETITIONER, VS. SULPICIO V. CEA, JUSTICE OF THE PEACE OF TABACO, ALBAY, AND EDUARDO BIRON, RESPONDENTS.

G.R. No. 48110. September 16, 1942

Ponente: MORAN, J.

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MORAN, J.:

On December 27, 1940, petitioner here, Aniano Biron, filed with the respondent justice of the peace of Tabaco, Albay, a complaint for grave threats against one Eduardo Biron. After the preliminary examination of the complainant, respondent justice of the peace issued a warrant for the arrest of the defendant. Informed of the charge and of the evidence presented by the complainant, defendant, after his arrest, "adduced his own evidence. After the preliminary investigation was thus terminated, respondent justice of the peace entertained the opinion that the crime committed by the defendant was merely light threats and, accordingly, ordered the cancellation of the warrant of arrest issued, declined to transmit the case to the Court of First Instance, and declared that complainant may file a new charge for light threats. Complainant, whereupon, instituted with this Court the present mandamus proceedings to compel the respondent justice of the peace to transmit to the clerk of the Court of First Instance of Albay the warrant of arrest, an abstract of the testimony of the witnesses, the undertaking or bail of the defendant, or his person if he is not on bail, and all other papers of the case.

Two questions are here raised: (1) whether or not, after a preliminary investigation, a justice of the peace, under the Rules of Court, has power to discharge the defendant if he finds him, according to evidence, probably not guilty of the offense charged; and (2) in what instances is a justice of the peace, after preliminary investigation, bound to transmit the abstract of the testimony to the clerk of the Court of First Instance having jurisdiction of the offense.

Preliminary investigation is now the subject of Rule 108, of the new Rules of Court, section 1 of which reads as follows:

"Preliminary investigation is a previous inquiry or examination made before the arrest of the defendant by the judge or officer authorized to conduct the name, with whom a complaint or information has been filed imputing the commission of an offense cognizable by the Court of First Instance, for the purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the defendant is probably guilty thereof, so as to issue a warrant of arrest and to hold him for trial."

While apparently a preliminary investigation, according to this section, is confined to an examination to be made before the arrest of the defendant, the words "and to hold him for trial" appearing at the end of the section clearly indicate that a preliminary investigation is intended not only to a determination as to whether or not the accused should be arrested, but also whether there are reasonable grounds "to hold him for trial" before the Court of First Instance. The complementary provision to this effect may be found in section 11, Rule 108, which reads as follows:

"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."

A preliminary investigation has accordingly two stages: the first, the preliminary examination of the complainant and his witnesses prior to the arrest of the accused (See Rule 108, section 8), and the second, the reading to the accused, after his arrest, of the complaint of information filed against him, and his being informed of the substance of the evidence adduced against him, after which he is allowed to present evidence in his favor, if he so desires. And, as we have said in *Hashim vs. Boncan* (40 Off. Gaz., 13th Sup., p., 13), the purpose of the first stage is to determine whether or not there is ground for the issuance of a warrant of arrest (see also section 7, Rule 108), and of the second, whether or not the offender should be released or held for trial before the competent court.

It is argued that, after the second stage of the preliminary investigation, the justice of the peace has no authority to release the defendant, his ministerial duty being then only to transmit the abstract of the testimony and other papers of the preliminary investigation to the clerk of the Court of First Instance. Reliance is placed upon section 13 of Rule 108, Rules of Court, which reads as follows:

"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."

Apparently, under this provision, a justice of the peace, after the second stage of the preliminary investigation, can do nothing except to transmit the abstract of the testimony and other papers of the preliminary investigation to the Court of First Instance, and the inference is thus made that the justice of the peace has absolutely no authority to order the release of the defendant. But this provision should be read in conjunction with all other provisions of Rule 108. Since as above stated, the purpose of the second stage of the preliminary investigation is to determine whether or not the accused should be held for trial in the Court of First Instance, by necessary implication, the justice of the peace conducting such preliminary investigation, upon conclusion thereof and before transmitting the abstract to the Court of First Instance, is duty-bound to state his conclusion as to the result of such investigation, by declaring either that there are reasonable grounds to believe that the crime has been committed and the accused is guilty thereof, or that the accused should be released because of insufficiency of evidence. Although there is no express provision directing the justice of the peace to do so, it is, however, inherent in or incidental to the power given the justice of the peace to conduct a preliminary investigation. Well known is the principle now incorporated in the Rules of Court (Rule 124, section 6), that when a power is conferred upon a court or judicial officer, all the means necessary to carry it into effect are deemed included in the power thus conferred. To hold that, after the second stage of the preliminary investigation, the justice of the peace has no authority to release the defendant even if the evidence is, in his opinion, conclusive to support his action, would render the preliminary investigation a useless ceremony. Giving the accused a chance to introduce his evidence, and declaring, at the same time, that such evidence cannot help him for, at any rate, he would be held for trial, is to render the whole procedure a farce. Worse still, it would defeat the fundamental purpose of the new Rules of Court, which is "to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding." (Rule 1, section 2, new Rules of Court.) As we have repeatedly said, the object of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from open and public accusation of crime, from the trouble, expense and anxiety of public trial, and also to protect the state from useless and expensive trials. (*U. S. vs. Grant*, 18 Phil., 122, 147; *Hashim vs. Boncan*, 40 Off. Gaz., 13th Sup., p. 13.)

We come now to the second question: In what instances is a justice of the peace bound to transmit to the clerk of Court of First Instance the record of the preliminary investigation? Section 13 of Rule 108 has been taken substantially from section 59 of the Code of Criminal Procedure drafted by the American Law Institute, wherein it is provided that "when the magistrate has discharged the defendant or has held him to answer," he shall transmit the record of the preliminary investigation to competent court. The quoted words are eliminated in section 13 of Rule 108 as unnecessary, for even without them the provision would have the same import. Said section, as it is now worded, clearly means that, upon the conclusion of the preliminary investigation, whatever its result might be, whether the accused is released or is held for trial in the Court of First Instance, it is the duty of the justice of the peace to transmit to the clerk of the Court of First Instance the warrant of arrest, the abstract of the testimony of witnesses, the undertaking or bail of the defendant, and the person of the defendant if not on bail. But, of course, if the defendant has been released, there is no need of transmitting his person or his bail to the Court of First Instance. The purpose of compelling the justice of the peace to transmit the record of the preliminary investigation to the clerk of the Court of First Instance in both instances is to provide the fiscal with a basis for whatever action he may desire to take in the premises, either to prepare the corresponding complaint or information, or, if the accused has been discharged, to seek his re-arrest upon a new complaint if he believes the order of the justice of the peace to be erroneous.

On the other hand, we believe that when a justice of the peace, in violation of section 13 of Rule 108, refuses to transmit the record of the preliminary investigation to the clerk of the Court of First Instance having jurisdiction of the offense, the proper remedy is not a special civil action for mandamus, but a mere motion in the Court of First Instance. Since, under the law,, a Court of First Instance has administrative supervision over justices of the peace within its jurisdiction, it may order them to comply with their administrative duties provided in section 13 of Rule 108. But we will not deny the writ in the instant case this being the first notice given of the existence of such administrative remedy.

Upon the questions here presented, we therefore hold that the respondent justice of the peace has power, after a preliminary investigation is completed, to order the release of the defendant and the cancellation of the warrant for his arrest if he finds the evidence insufficient to hold the defendant for trial, but that even in such event, the justice of the peace is bound to transmit to the clerk of the Court of First Instance having jurisdiction of the offense, the record and the papers mentioned in section 13 of Rule 108, new Rules of Court.

It is hereby ordered that the respondent justice of the peace transmit without delay to the clerk of the Court of First Instance of Albay the record and other papers of the preliminary investigation conducted against the accused Eduardo Biron, without costs.

Yulo, C. J., Ozaeta and Bocobo, JJ., concur.

CONCURRING AND DISSENTING

PARAS, J.,

I agree to the doctrine that a justice of the peace has authority to discharge the defendant after a preliminary investigation, but dissent from the ruling that, even after such discharge, the justice of the peace is bound to transmit the record of the case to the clerk of the Court of First Instance. A correct interpretation of section 13 of Rule 108 of the Rules of Court would seem to require such transmission only when the defendant is held to answer. Section 59 to the Code of Criminal Procedure drafted by the American Law Institute from which section 13 was copied, expressly requires the transmission of the record even though the defendant is discharged, and

such express requirement was apparently intended to standardize the practice since a great majority of the statutes in the different States required the transmission only when the defendant is held to answer the charges. The omission in our Rules of the express requirement found in the American pattern is a clear indication of its rejection, and of a desire to reiterate the provision of section 13 of Act No. 1627 to the effect that in preliminary investigations the justice of the peace should forward to the provincial fiscal a brief statement of the substance of the testimony where the defendant is bound over to the Court of First Instance.

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