

**MARIO FL. CRESPO, PETITIONER, VS. HON. LEODEGARIO L. MOGUL,
PRESIDING JUDGE, CIRCUIT CRIMINAL COURT OF LUCENA CITY,
9TH JUDICIAL DIST., THE PEOPLE OF THE PHILIPPINES,
REPRESENTED...**

G.R. No. 53373. June 30, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The issue raised in this case is whether the trial court acting on a motion to dismiss a criminal case filed by the Provincial Fiscal upon instructions of the Secretary of Justice to whom the case was elevated for review, may refuse to grant the motion and insist on the arraignment and trial on the merits.

On April 18, 1977 Assistant Fiscal Proceso K. de Gala with the approval of the Provincial Fiscal filed an information for estafa against Mario Fl. Crespo in the Circuit Criminal Court of Lucena City which was docketed as Criminal Case No. CCC-1X-52 (Quezon) ‘77.[1] When the case was set for arraignment the accused filed a motion to defer arraignment on the ground that there was a pending petition for review filed with the Secretary of Justice of the resolution of the Office of the Provincial Fiscal for the filing of the information. In an order of August 1, 1977, the presiding judge, His Honor, Leodegario L. Mogul, denied the motion.[2] A motion for reconsideration of the order was denied in the order of August 5, 1977 but the arraignment was deferred to August 18, 1977 to afford time for petitioner to elevate the matter to the appellate court.[3]

A petition for certiorari and prohibition with prayer for a preliminary writ of injunction was filed by the accused in the Court of Appeals that was docketed as CA-4G. R. SP No. 06978[4] in an order of August 17, 1977 the Court of Appeals restrained Judge Mogul from proceeding with the arraignment of the accused until further orders of the Court.[5] In a comment that was filed by the Solicitor General he recommended that the petition be given due course.[6] On May 15, 1978 a decision was rendered by the Court of Appeals granting the writ and perpetually restraining the judge from enforcing his threat to compel the arraignment of the accused in the case until the Department of Justice shall have finally resolved the petition for review.[7]

On March 22, 1978 then Undersecretary of Justice, Hon. Catalino Macaraig, Jr., resolving the petition for review reversed the resolution of the Office of the Provincial Fiscal and directed the fiscal to move for immediate dismissal of the information filed against the accused.[8] A motion to dismiss for insufficiency of evidence was filed by the Provincial Fiscal dated April 10, 1978 with the trial court,[9] attaching thereto a copy of the letter of Undersecretary Macaraig, Jr. In an order of August 2, 1978 the private prosecutor was given time to file an opposition thereto.[10] On November 24, 1978 the Judge denied the motion and set the arraignment stating:

"ORDER

For resolution is a motion to dismiss this case filed by the prosecuting fiscal premised on insufficiency of evidence, as suggested by the Undersecretary of Justice, evident from Annex "A" of the motion wherein among other things, the Fiscal is urged to move for dismissal for the reason that the check involved having been issued for the payment of a pre-existing obligation the liability of the drawer can only be civil and not criminal.

The motion's thrust being to induce this Court to resolve the innocence of the accused on evidence not before it but on that adduced before the Undersecretary of Justice, a matter that not only disregards the requirements of due process but also erodes the Court's independence and integrity, the motion is considered as without merit and therefore hereby DENIED.

WHEREFORE, let the arraignment be, as it is hereby set for December 18, 1978 at 9:00 o'clock in the morning.

SO ORDERED.”[11]

The accused then filed a petition for certiorari, prohibition and mandamus with petition for the issuance of preliminary writ of prohibition and/or temporary restraining order in the Court of Appeals that was docketed as CA-G.R. No. SP-08777.[12] On January 23, 1979 a restraining order was issued by the Court of Appeals against the threatened act of arraignment of the accused until further orders from the Court.[13] In a decision of October 25, 1979 the Court of Appeals dismissed the petition and lifted the restraining order of January 23, 1979.[14] A motion for reconsideration of said decision filed by the accused was denied in a resolution of February 19, 1980.[15]

Hence this petition for review of said decision was filed by accused whereby petitioner prays that said decision be reversed and set aside, respondent judge be perpetually enjoined from enforcing his threat to proceed with the arraignment and trial of petitioner in said criminal case, declaring the information filed not valid and of no legal force and effect, ordering respondent Judge to dismiss the said case, and declaring the obligation of petitioner as purely civil.[16]

In a resolution of May 19, 1980, the Second Division of this Court without giving due course to the petition required the respondents to comment to the petition, not to file a motion to dismiss, within ten (10) days from notice. In the comment filed by the Solicitor General he recommends that the petition be given due course, it being meritorious. Private respondent through counsel filed his reply to the comment and a separate comment to the petition asking that the petition be dismissed. In the resolution of February 5, 1981, the Second Division of this Court resolved to transfer this case to the Court En Banc. In the resolution of February 26, 1981, the Court En Banc resolved to give due course to the petition.

Petitioner and private respondent filed their respective briefs while the Solicitor General filed a Manifestation in lieu of brief reiterating that the decision of the respondent Court of Appeals be reversed and that respondent Judge be ordered to dismiss the information.

It is a cardinal principle that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal.[17] The institution of a criminal action depends upon the sound discretion of the fiscal. He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence, in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt.[18] The reason for placing the criminal prosecution under the direction and control of the fiscal is to prevent malicious or unfounded prosecution by private persons.[19] It cannot be controlled by the complainant.[20] Prosecuting officers under the power vested in them by law, not

only have the authority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their office.[21] They have equally the legal duty not to prosecute when after an investigation they become convinced that the evidence adduced is not sufficient to establish a prima facie case.[22]

It is through the conduct of a preliminary investigation[23], that the fiscal determines the existence of a prima facie case that would warrant the prosecution of a case. The Courts cannot interfere with the fiscal's discretion and control of the criminal prosecution. It is not prudent or even permissible for a Court to compel the fiscal to prosecute a proceeding originally initiated by him on an in-forma-tion, if he finds that the evidence relied upon by him is insufficient for conviction.[24] Neither has the Court any power to order the fiscal to prosecute or file an information within a certain period of time, since this would interfere with the fiscal's discretion and control of criminal prosecutions.[25] Thus, a fiscal who asks for the dismissal of the case for insufficiency of evidence has authority to do so, and Courts that grant the same commit no error.[26] The fiscal may re-investigate a case and subsequently move for the dismissal should the re-investigation show either that the defendant is innocent or that his guilt may not be established beyond reasonable doubt.[27] In a clash of views between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the defendant, those of the fiscal's should normally prevail.[28] On the other hand, neither an injunction, preliminary or in final nor a writ of prohibition may be issued by the Courts to restrain a criminal prosecution[29] except in the extreme case where it is necessary for the courts to do so for the orderly administration of justice or to prevent the use of the strong arm of the law in an oppressive and vindictive manner.[30]

However, the action of the fiscal or prosecutor is not without any limitation or control. The same is subject to the approval of the provincial or city fiscal or the chief state prosecutor as the case maybe and it maybe elevated for review to the Secretary of Justice who has the power to affirm, modify or reverse the action or opinion of the fiscal. Consequently the Secretary of Justice may direct that a motion to dismiss the case be filed in Court or otherwise, that an information be filed in Court.[31]

The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case.[32] When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.[33]

The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action.[34] While it is true that the fiscal has the quasi judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court.[35] The only qualification is that the action of the Court must not impair the substantial rights of the accused,[36] or the right of the People to due process of law.36-a

Whether the accused had been arraigned or not are whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.

However, one may ask, if the trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possibly be designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can the fiscal be expected to handle the prosecution of the case thereby defying the superior order of the Secretary of Justice.

The answer is simple. The role of the fiscal or prosecutor as we all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite of his opinion to the contrary, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under such circumstances much less should he abandon the prosecution of the case leaving it hands of a private prosecutor for then the entire proceedings will be null and void.[37] The least that the fiscal should do is to continue to appear for the prosecution although he may turn over the presentation of the evidence to the private prosecutor but still under his direction and control.[38]

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.

In order therefor to avoid such a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal maybe disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court. The matter should be left entirely for the determination of the Court.

WHEREFORE, the petition is DISMISSED for lack of merit without pronouncement as to costs.

SO ORDERED.

Yap, Fernan, Narvasa, Melencio-Herera, Gutierrez, Jr., Cruz, Paras, Feliciano, Bidin, Sarmiento, and Cortes, JJ., concur.

Teehankee, C.J., reserving the filing of a separate opinion.

Padilla, J., no part; senior partner of counsel for private respondent is a close relative.

[1] Copy of information, Annex A to Annex E; pp. 54-55, Rollo.

[2] Annex C to Annex E; pp. 70-71 Rollo.

[3] Annex D to Annex E; p. 72, supra.

[4] Annex E to Annex E; pp. 73-108, supra.

[5] Annex F to Annex C; p. 109, supra.

- [6] Annex G to Annex E; pp. 110-118, Rollo.
- [7] Annex H to Annex E; pp. 119-129, *supra*.
- [8] Annex I to Annex E; pp. 130-132, *supra*.
- [9] Annex J to Annex E; pp. 133-139, *supra*.
- [10] Annex K to Annex E; p. 140, *supra*.
- [11] Annex L to Annex E; pp. 141-142, *supra*.
- [12] Annex E; pp. 42-53, *supra*.
- [13] p. 145, *supra*.
- [14] Annex A to petition; pp. 23-26, *supra*.
- [15] Annex D; pp. 40-41, *supra*.
- [16] pp. 5-21, *supra*.
- [17] Section 4, Rule 110 of the Rules of Court, now Section 5, Rule 110 of 1985 Rules on Criminal Procedure, *People v. Valdemoro*, 102 SCRA 170.
- [18] *Gonzales vs. Court of First Instance*, 63 Phil. 846.
- [19] *U.S. vs. Narvas*, 14 Phil. 410.
- [20] *People vs. Sope*, 75 Phil. 810; *People vs. Liggayu*, 97; Phil, 865; *Zulueta vs. Nicolas*, 102 Phil. 944; *People vs. Natoza*, G.R. L-8917, Dec. 14, 1956.
- [21] *Bagatua vs. Revilla*, G.R. L-12247, August 26, 1958.
- [22] *Zulueta vs. Nicolas*, *supra*.
- [23] Sections 1 and 2 of Rule 112 of the Rules of Court; Presidential Decree 911; Sections 1-4, Rule 112 of the 1985 Rules on Criminal Procedure.
- [24] *People vs. De Moll*, 68 Phil. 626.
- [25] *Asst. Provincial Fiscal of Bataan vs. Dollete*, 103 Phil. 914; *People vs. Pineda*, G.R. No. L-26222, July 21, 1967, 20 SCRA 748
- [26] *People vs. Natoza*, *supra*; *Pangan vs. Pasicolan*, G.R. L-12517, May 19, 1958.
- [27] *People vs. Jamisola*, No. L-27332, Nov. 28, 1969; *People vs. Agasang*, 66 Phil. 182.
- [28] *People vs. Pineda*, *supra*.
- [29] *Kwong Sing vs. City of Manila*, 41 Phil. 103, 112.
- [30] *Dimayuga vs. Fernandez*, 43 Phil. 304, 307; *University of the Philippines vs. City Fiscal of Quezon City*, G.R. No. L-18562, July 31, 1961.
- [31] PD 911, now Section 4, Rule 112 of the 1985 Rules on Criminal Procedure; *Estrella vs. Orendain, Jr.*, 37 SCRA 650-652, 654-655; *Gonzales vs. Serrano*, L-25791, Sept. 23, 1968, 25 SCRA 64; *Caeg vs. Abad Santos*, N-40044, March 10, 1975, 63 SCRA 96; *Oliveros vs. Villaluz*, L-33362, July 30, 1971, 40 SCRA 327; *Noblejas*

vs. Salas, L-31788 and 31792, Sept. 15, 1975, 67 SCRA 47; Vda. de Jacob vs. Puno, 131 SCRA 144; Circular No. 13, April 19, 1976 of the Secretary of Justice.

[32] Herrera vs. Barreto 25 Phils. 245; U.S. vs. Limsiongco, 41 Phils. 94; De la Cruz vs. Mujer, 36 Phils. 213; Section 1 Rule 110, Rules of Court, now Section 1 also Rule 110, 1985 Rules on Criminal Procedure.

[33] 21 C.J.S. 123; Carrington

[34] U.S. vs. Barreto, 32 Phils. 444.

[35] Asst. Provincial Fiscal of Bataan vs. Dollete, Supra.

[36] People vs. Zabala, 58 O.G. 5028.

36-a Galman vs. Sandiganbayan, 144 SCRA 43-101.

[37] People vs. Beriales, 70 SCRA 361 (1976).

[38] U.S. vs. Despabiladeras, 32 Phils. 442; U.S. vs. Gallego, 37 Phils. 289; People vs. Hernandez, 69 Phils. 672; U.S. vs. Labil, 27 Phils. 82; U.S. vs. Fernandez, Phils. 539; People vs. Velez 77, Phils. 1026.

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