

**FRANCISCO D. YAP AND CARLITO H. VAILOCES, PETITIONERS, VS.
THE HONORABLE INTERMEDIATE APPELLATE COURT, JUDGE
AURELIO LOMEDA AND ZOSIMO DY, SR., RESPONDENTS.**

G.R. No. 68464. March 22, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

By virtue of a Deed of Sale with Agreement to Mortgage dated July 6, 1983, petitioner Yap purchased from the Dumaguete Rural Bank, Inc. (Bank, for brevity) three parcels of land, namely Lots 3, 6 and 1 under TCT Nos. T-20301, T-14781 and T-14777, all situated in Ayungon, Negros Oriental.[1]

In the Deed of Sale, the Bank warranted that it was the owner of the three parcels sold to Yap.

Following the purchase, on September 2, 1983, Yap obtained a Writ of Possession from the Regional Trial Court of Negros Oriental, authorizing him to take physical possession of the three parcels purchased by him, together with the improvements thereon.[2]

Initially, no bond was required by the court. However, Yap put up a bond of P8,000.00, which the court approved.

Consequently, on September 5, 1983, Yap, accompanied by Deputy Provincial Sheriff Lucito Janiola and co-petitioner Vailoces, served the Writ of Possession on the overseer of the land. Two days thereafter, Yap caused the harvesting of the coconuts on the three parcels covered by the writ.

As of these dates, Yap was completely unaware of any defect or flaw in his transaction with the Bank.

On September 22, 1983, private respondent Zosimo Dy, Sr., claiming to be the owner of the three parcels involved in the transaction, filed a case for qualified theft against Yap and Vailoces, Deputy Sheriff Janiola, together with some 15 coconut gatherers, before the Municipal Circuit Court of Manjuyod, Ayungon and Bindoy, presided by respondent Judge Aurelio Lomeda.

It is to be noted that the alleged sale by the mortgagor to respondent Dy of the three parcels then covered by a subsisting mortgage with the Bank was without the knowledge much less, consent of said Bank.

During the preliminary investigation before Judge Lomeda, Yap and Vailoces filed a Motion to Quash the complaint on the strength of the Writ of Possession issued by the Regional Trial Court.

In an Order dated December 13, 1983, Judge Lomeda denied the Motion to Quash, finding probable cause against Yap and Vailoces but absolving the Sheriff and the coconut gatherers. In the same order, the Judge ordered the arrest of Yap and Vailoces.

While the Judge recognized the existence of the Writ of Possession as well as its valid issuance, to him the same was however evidentiary in nature and therefore, a matter of defense.

On January 3, 1984, Yap and Vailoces were arrested and detained -- Yap at the Bindoy Municipal Jail and

Vailoces at the Ayungon Municipal Jail. They refused to post bail, fully convinced that their incarceration was a travesty of law and the Constitution.

After their arrest, Judge Lomeda issued *motu proprio* an Order dated January 3, 1984, stating his reasons for denying petitioners' Motion to Quash and consequently ordering their arrest.

On the very day of their arrest, January 3, 1984, petitioners filed before the Regional Trial Court of Negros Oriental an urgent Petition for Habeas Corpus and/or Certiorari and Prohibition, praying for their immediate release and the nullification of all proceedings before Judge Lomeda.

On January 5, 1984, the Court rendered a decision granting Certiorari. In said Order, the Court annulled Judge Lomeda's Order of December 13, 1983 denying petitioners' Motion to Quash the complaint for qualified theft and ordered the dismissal of the case itself. It, however, denied the writ of habeas corpus.[3]

Respondent Zosimo Dy, Sr. appealed to the Intermediate Appellate Court (now, Court of Appeals). In a decision promulgated on July 31, 1984,[4] the appellate court reversed the Regional Trial Court, holding thus:

"WHEREFORE, the appealed decision dated January 5, 1984, in Sp. Proc. No. 2159 of the Regional Trial Court of Dumaguete City, Branch 37, annulling the resolution dated December 13, 1983 of the Municipal Trial Court of Manjuyod, Negros Oriental in Crim. Case No. A-839 entitled "People of the Philippines versus Francisco Yap and Carlito Vailoces, accused" is hereby set aside. The lower court is ordered to forward the records of said criminal case to the Provincial Fiscal of Negros Oriental for the filing (sic) of an information against the accused, if warranted."

It is respondent court's considered opinion that it is the Municipal Judge who has jurisdiction to conduct the preliminary investigation in order to determine whether there exists probable cause for the arrest of the accused. Hence accordingly, while the municipal judge is performing this function, certiorari would not lie to annul the result of said investigation.

On April 6, 1984, petitioners filed a Petition with this Court for the review of the appellate court's decision. However, on September 10, 1984, this Court resolved to dismiss said petition for lack of merit.

Petitioners then moved for reconsideration on October 9, 1984. Eventually, on October 24, 1984, this Court decided to give due course to petitioners' motion. As the case was pending resolution in this Court, on November 24, 1984, petitioners manifested that an order was issued by Judge Antonio R. Gonzales of the Regional Trial Court, Br. 43 of Dumaguete city dismissing the administrative case against Judge Lomeda, respondent herein, on the ground that the issue of serious misconduct in the issuance of the warrant of arrest is the very issue pending in this same case.[5]

The legal question posed by herein petitioners is whether a warrant of arrest for qualified theft issued by a municipal judge against petitioners, who acted on the basis of a writ of possession, can be annulled through a writ of certiorari granted by a regional trial court judge.

Certiorari does not lie to annul the municipal judge's order finding probable cause that the accused committed the crime charged and consequently ordering their arrest. It was well within the jurisdiction of the municipal judge to conduct the preliminary investigation, if only to determine whether a probable cause exists against the accused.

At this juncture, it is worth noting that the questioned order for the issuance of a warrant of arrest was issued on December 13, 1983. At that time, the procedure to be followed was that embodied in Batas Pambansa Blg. 129 (B.P. Blg. 129, for brevity) or the Judiciary Reorganization Act of 1981. Section 37 of said Act recognized the authority of the municipal trial courts to conduct preliminary investigation of crimes even if they were cognizable

by the Regional Trial Courts, provided only that said crimes were committed within the former's territorial jurisdictions.

It further provided, in the same section, that the preliminary investigation was to be conducted in accordance with the procedure prescribed in paragraphs (a), (b), (c) and (d) of Presidential Decree No. 911.[6] It is only after the Judge finds a prima facie case that the records of the case will be forwarded to the Provincial/City Fiscal who shall then file the corresponding information with the proper court.

Furthermore, the judge may issue a warrant of arrest, if after an examination in writing and under oath or affirmation of the complainant and his witnesses, he finds that a probable cause exists.

In other words, the issuance of a warrant of arrest is dependent on the finding of probable cause, which involves such evidence presented as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.[7]

There should then be no further questions regarding the issuance of the warrant by the municipal judge, respondent herein. Firstly, he had the authority to conduct the preliminary investigation regarding the criminal complaint against herein petitioners. Secondly, the issuance of said warrant was the consequence of a finding by respondent judge that probable cause existed after having conducted a preliminary investigation in accordance with the provisions of B.P. Blg. 129, P.D. 911 and the Rules of Court. Respondent judge cannot be faulted for abiding by the procedure dictated upon him by the law and jurisprudence obtaining at the time the complaint was brought before him.

What petitioners demanded of herein respondent judge was to admit, without questions, the writ of possession issued them by another trial court, as a valid title of their ownership over the parcels involved. We beg to disagree with the petitioners' position. Inasmuch as there were still questions unsettled regarding petitioners' writ of possession, their only basis then was their certificate of sale. As correctly held by respondent judge, and as laid down by this Court in various cases, the certificate of sale of real property is merely a memorial of the fact of sale and does not confer any right to the possession, much less the ownership of the real property executed. Rather, what constitutes effective conveyance is the deed of sale executed by the Sheriff at the expiration of the period of redemption.[8] Therefore, there was still much to be disputed and to be settled regarding petitioners' act of gathering the coconuts in said parcels of land -- which dispute can be resolved only if a trial on the merits was conducted. It goes without saying, that respondent judge was correct in not having immediately dismissed the complaint.

Anent the remedy resorted to by petitioners (referring to the petition for certiorari) from the Regional Trial Court of Negros Oriental presided by Judge Diez, the same should not have been granted. Petitioners were not without plain, speedy and adequate remedies in the ordinary course of the law against Judge Lomeda's order for their arrest. These remedies are as enumerated by respondent appellate court in its decision:[9]

- "1. they can post bail for their provisional release;
2. they can ask the Provincial Fiscal for a reinvestigation of the charge against them. If unsatisfied with the fiscal's resolution, they can ask for a review by the Minister of Justice; (Sec. 1(d), RA 5180 as amended by P.D. 911);
3. if their petition for review does not prosper, they can file a motion to quash the information in the trial court. (Rule 117, Rules of Court).
4. If the motion is denied, they can appeal the judgment of the court after the case shall have been tried on the merits."

Moreover, in the case of *Acharon vs. Purisima*,^[10] this Court held that when a motion to quash a criminal case is denied, the remedy is not certiorari but to go to trial without prejudice to reiterating the special defenses invoked in said Motion. In the event that an adverse decision is rendered after trial on the merits, an appeal therefrom should be the next legal step.

Hence, the regional trial court may not control, by certiorari, the respondent judge's discretion to determine whether or not a probable cause exists against the accused, more so if said discretion was not at all tainted with grave abuse.

WHEREFORE, premises considered, the decision of respondent Court of Appeals is hereby **AFFIRMED**.
SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[1] Rollo, p. 224.

[2] Rollo, p. 35.

[3] Rollo, p. 76.

[4] Penned by Associate Justice Carolina C. Griño-Aquino with the concurrence of Associate Justices Nestor B. Alampay and Edgardo L. Paras, Rollo, pp. 29-34.

[5] Rollo, pp. 345-346.

[6] "Section 1. Notwithstanding any provision of law to the contrary and except when an investigation has been conducted by a judge of first instance, city or municipal judge or other officer in accordance with law and the Rules of Court of the Philippines, no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal or his assistants or by a state prosecutor, without first conducting a preliminary investigation in the following manner:

"a. All complaints shall be accompanied by statements of the complainant and his witnesses as well as other supporting documents. The statements of the complainant and his witnesses shall be sworn to before any fiscal or state prosecutor or before any government official authorized to administer oath. The officer administering the oath must certify that he has personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

"b. If on the basis of the complainant's sworn statements and documents submitted, the investigating fiscal or state prosecutor finds no probable cause to conduct a preliminary investigation, he shall dismiss the case. If probable cause is established by complainant's evidence, he shall notify the respondent by issuing a subpoena requiring him to submit his counter-affidavit and the affidavits of his witnesses, if any, and other supporting documents, within ten (10) days from receipt of such subpoena. If respondent cannot be subpoenaed, or if subpoenaed he does not appear before the investigating fiscal or state prosecutor, the preliminary investigation shall proceed without him. To such subpoena shall be attached a copy of the complaint, the sworn statements and other documents submitted. Other evidence submitted shall be made available for examination of the respondent or his counsel. The statements of the respondent and his witnesses shall also be sworn to before any fiscal or state prosecutor or before any government official authorized to administer oath and with the same certification as above-mentioned. The respondent shall furnish the complainant copies of his counter-affidavits and other supporting documents.

"c. If a prima facie case is established by the evidence, the investigating fiscal or state prosecutor shall

immediately file the corresponding information in court. If he finds that there is no prima facie case, he shall dismiss the case unless he believes there are matters to be clarified in which case he may propound clarificatory questions to the parties or their witnesses affording both parties opportunity to be present but without right to examine or cross-examine. If the parties or their counsel so desire, they may submit questions to the fiscal which the latter may in his discretion propound to the parties concerned.

“d. The preliminary investigation shall proceed without need of requiring the parties and their witnesses to reaffirm their respective statements before the investigating fiscal or state prosecutor. Thereafter, he shall resolve the case within ten (10) days from its termination, furnishing the parties copies of his resolution stating briefly the findings of facts and the law supporting his action.

"The fiscal or state prosecutor shall certify under oath in the information to be filed by him that he has examined the complainant and his witnesses, that on the basis of the sworn statements and other evidence submitted before him there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, that the accused was informed of the complaint and of the evidence submitted against him and that he was given an opportunity to submit controverting evidence; Provided, That no assistant fiscal or state prosecutor may file an information or dismiss a case except with the prior authority or approval of the provincial or city fiscal or Chief State Prosecutor; Provided, Further, That where an assistant fiscal or state prosecutor who has investigated the case, recommends the dismissal of the case but his findings are reversed by the Provincial or City Fiscal or by the Chief State Prosecutor, as the case may be, on the ground that a prima facie case exists, the Provincial or City Fiscal or the Chief State Prosecutor may, by himself, and on the basis of the same sworn statements and evidence submitted, file the information against the respondent, or direct any other assistant fiscal or state prosecutor to do so, without conducting another preliminary investigation; Provided, Finally, That where the resolution of the Provincial or City Fiscal or the Chief State Prosecutor is, upon review, reversed by the Secretary of Justice, the latter may, where he finds that no prima facie case exists, authorize and direct the investigating fiscal concerned or any other fiscal or state prosecutor to cause or move for the dismissal of the case, or, where he finds a prima facie case, to cause the filing of an information in court against the respondent, based on the same sworn statements or evidence submitted, without the necessity of conducting another preliminary investigation."

[7] *Mayuga vs. Maravilla*, 18 SCRA 1115 (1966).

[8] *Manuel vs. PNB*, 101 Phil 968 (1957); *Gonzales vs. Calimbas and Poblete*, 51 Phil 355 (1927).

[9] *Rollo*, p. 33.

[10] 13 SCRA 309 (1965).

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