

**HADJI IBRAHIM SOLAY PANGANDAMAN, MAGAMBAAN
PANGANDAMAN, MACARIAN PANGANDAMAN, MAMINTAL
PANGANDAMAN, PACALUNDO PANGANDAMAN, MANGORAMAS
PANGANDAMAN, MACADA OB P. PANGORANGAN, KILAT...**

G.R. No. 71782. April 14, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

The petitioners ask this Court:

1)

to annul the warrant for their arrest issued by respondent Judge Dimaporo T. Casar of the Municipal Circuit Court of Masiu, Lanao del Sur, in Criminal Case No. 1748 entitled “People vs. Hadji Ibrahim Solay Pangandaman, et al.”;

2)

to prohibit the Judge from taking further cognizance of said Criminal Case No. 1748; and

3)

to compel the Judge to forward the entire record of Criminal Case No. 1748 to the Provincial Fiscal of Lanao del Sur for proper disposition.[1]

Their plea is essentially grounded on the claim that the warrant for their arrest was issued by the respondent Judge without a proper preliminary investigation.[2] The Solicitor General agrees and recommends that their petition be granted and the warrant of arrest voided.[3]

On July 27, 1985, a shooting incident occurred in Pantao, Masiu, Lanao del Sur, which left at least five persons dead and two others wounded. What in fact transpired is still unclear. According to one version, armed men had attacked a residence in Pantao, Masiu, with both attackers and defenders suffering casualties.[4] Another version has it that a group that was on its way to another place, Lalabuan, also in Masiu, had been ambushed.[5]

On the following day, Atty. Mangurun Batuampar, claiming to represent the widow of one of the victims, filed a letter-complaint with the Provincial Fiscal at Marawi City, asking for a “full blast preliminary investigation” of the incident.[6] The letter adverted to the possibility of innocent persons being implicated by the parties involved on both sides -- none of whom was, however, identified -- and promised that supporting affidavits would shortly be filed. Immediately the Provincial Fiscal addressed a “1st indorsement” to the respondent Judge, transmitting Atty. Batuampar’s letter and requesting that “all cases that may be filed relative ** (to the incident) that happened

in the afternoon of July 27, 1985,” be forwarded to his office, which “has first taken cognizance of said cases.”[7]

No case relative to the incident was, however, presented to the respondent Judge until Saturday, August 10, 1985, when a criminal complaint for multiple murder was filed before him by P.C. Sgt. Jose L. Laru-an, which was docketed as Case No. 1748.[8] On that same day, the respondent Judge “examined personally all (three) witnesses (brought by the sergeant) under oath thru * * (his) closed and direct supervision,” reducing to writing the questions to the witnesses and the latter’s answers.[9] Thereafter the Judge “approved the complaint and issued the corresponding warrant of arrest” against the fourteen (14) petitioners (who were named by the witnesses) and fifty (50) “John Does.”[10]

An “ex-parte” motion for reconsideration was filed on August 14, 1985 by Atty. Batuampar (joined by Atty. Pama L. Muti), seeking recall of the warrant of arrest and subsequent holding of a “thorough investigation” on the ground that the Judge’s initial investigation had been “hasty and manifestly haphazard” with “no searching questions” having been propounded.[11] The respondent Judge denied the motion for “lack of basis”[12] hence the present petition.

While they concede the authority of the respondent Judge to conduct a preliminary investigation of the offenses involved, which are cognizable by Regional Trial Courts, the petitioners and the Solicitor General argue that the Judge in the case at bar failed to conduct the investigation in accordance with the procedure prescribed in Section 3, Rule 112 of the Rules of Court[13] and that that failure constituted a denial to petitioners of due process which nullified the proceedings leading to the issuance of the warrant for the petitioners’ arrest.[14] It is further contended that August 10, 1985 was a Saturday during which “Municipal Trial Courts are open from 8:00 a.m. to 1:00 p.m. only, * * *” and “* * * it would hardly have been possible for respondent Judge to determine the existence of probable cause against sixty-four (64) persons whose participations were of varying nature and degree in a matter of hours and issue the warrant of arrest in the same day;”[15] and that there was undue haste and an omission to ask searching questions by the Judge who relied “mainly on the supporting affidavits which were obviously prepared already when presented to him by an enlisted PC personnel as investigator.”[16]

The petitioners further assert that the respondent Judge conducted the preliminary investigation of the charges “* * * in total disregard of the Provincial Fiscal * * *” who, as said respondent well knew, had already taken cognizance of the matter twelve (12) days earlier and was poised to conduct his own investigation of the same[17] and that issuance of a warrant of arrest against fifty (50) “John Does” transgressed the Constitutional provision requiring that such warrants should particularly describe the persons or things to be seized.[18]

There can be no debate about the proposition that in conducting a preliminary investigation of any crime cognizable by the Regional Trial Courts, a judge of an inferior court (other than in Metro-Manila or the chartered cities, where no authority to conduct preliminary investigation is vested in such officials) must observe the procedure prescribed in Section 3 of Rule 112, 1985 Rules on Criminal Procedure. And although not specifically so declared, the procedure mandated by the Rule actually consists of two phases or stages.

The first phase consists of an ex-parte inquiry into the sufficiency of the complaint and the affidavits and other documents offered in support thereof. And it ends with the determination by the Judge either: (1) that there is no ground to continue with the inquiry, in which case he dismisses the complaint and transmits the order of dismissal, together with the records of the case, to the provincial fiscal; or (2) that the complaint and the supporting documents show sufficient cause to continue with the inquiry and this ushers in the second phase.

This second phase is designed to give the respondent notice of the complaint, access to the complainant’s evidence and an opportunity to submit counter-affidavits and supporting documents. At this stage also, the Judge may conduct a hearing and propound to the parties and their witnesses questions on matters that, in his view, need

to be clarified. The second phase concludes with the Judge rendering his resolution, either for dismissal of the complaint or holding the respondent for trial, which shall be transmitted, together with the record, to the provincial fiscal for appropriate action.

The procedure above described must be followed before the complaint or information is filed in the Regional Trial Court. Failure to do so will result in a denial of due process.[19]

Here, no information has as yet been filed with the Regional Trial Court. There is no pretense that the preliminary investigation has been completed, insofar as the respondent Judge is concerned, and that he does not intend to undertake the second phase. In this situation, it cannot be said that he has failed to observe the prescribed procedure. What has happened is simply that after receiving the complaint and examining the complainant's witnesses, and having come to believe, on the basis thereof, that the offenses charged had been committed, the respondent Judge issued the warrant now complained of against the fourteen (14) respondents (now petitioners) named and identified by the witnesses as the perpetrators of the killings and injuries, as well as against 50 "John Does."

The real question, therefore, is whether or not the respondent Judge had the power to issue the warrant of arrest without completing the entire prescribed procedure for preliminary investigation. Stated otherwise, is completion of the procedure laid down in Section 3 of Rule 112 a condition sine qua non for the issuance of a warrant of arrest?

There is no requirement that the entire procedure for preliminary investigation must be completed before a warrant of arrest may be issued. What the Rule[20] provides is that no complaint or information for an offense cognizable by the Regional Trial Court may be filed without completing that procedure. But nowhere is it provided that the procedure must be completed before a warrant of arrest may issue. Indeed, it is the contrary that is true. The present Section 6 of the same Rule 112 clearly authorizes the municipal trial court to order the respondent's arrest even before opening the second phase of the investigation if said court is satisfied that a probable cause exists and there is a necessity to place the respondent under immediate custody in order not to frustrate the ends of justice.

"Sec. 6. Warrant of arrest may issue. --

*****(b)** By the Municipal Trial Court. -- If the municipal trial judge conducting the preliminary investigation is satisfied after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice, he shall issue a warrant of arrest." [21]

This was equally true under the former rules, where the first phase of the investigation was expressly denominated "preliminary examination" to distinguish it from the second phase, or preliminary investigation proper. Thus, the former Section 6 of Rule 112 provided:

"SEC. 6. Warrant of arrest, when issued. -- If the judge be satisfied from the preliminary examination conducted by him or by the investigating officer that the offense complained of has been committed and that there is reasonable ground to believe that the accused has committed it, he must issue a warrant or order for his arrest."

In *Mayuga vs. Maravilla*, [22] this Court found occasion to dwell in some detail on the process of preliminary investigation and, incidentally, to affirm the power of a justice of the peace or municipal judge conducting a preliminary investigation to order the arrest of the accused after the first stage (preliminary examination), saying:

“Appellant should bear in mind that a preliminary investigation such as was conducted by the Justice of the Peace has for its purpose only the determination of whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof, and if so, the issuance of a warrant of arrest. And it should not be forgotten that a preliminary investigation has two stages: First, a preliminary examination of the complainant and his witnesses prior to the arrest of the accused; and, second, the reading to the accused after his arrest of the complaint or information filed against him, and his being informed of the substance of the evidence against him, after which he is allowed to present evidence in his favor, if he so desires. Probable cause, in regard to the first stage of preliminary investigation, depends on the discretion of the judge or magistrate empowered to issue the warrant of arrest. It suffices that facts are presented to him to convince him, not that a person has committed the crime, but that there is probable cause to believe that such person committed the crime charged. The proceeding is generally ex parte unless the defendant desires to be present and while under the old Rules the Justice of the Peace or investigating officer must take the testimony of the complainant and the latter’s witnesses under oath, only the testimony of the complainant shall be in writing and only an abstract of the testimony of the other is required. Regarding preliminary investigation, it has thus been ruled that ‘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.’ * * *”[23]

The rule on arrest after preliminary examination has, of course, been modified somewhat since the occurrence of the facts upon which Mayuga was decided, but not to abrogate the authority of the investigating judge to order such arrest, and only to prescribe the requirement that before he may do so, he must examine the witnesses to the complaint, the examination to be under oath and reduced to writing in the form of searching questions and answers. This modification was introduced by Republic Act 3838, approved June 22, 1963, amending Section 87 of the Judiciary Act of 1948, and the “searching questions and answers” requirement is incorporated in the present Section 6 of Rule 112 already quoted.

The argument, therefore, must be rejected that the respondent Judge acted with grave abuse of discretion in issuing the warrant of arrest against petitioners without first completing the preliminary investigation in accordance with the prescribed procedure. The rule is and has always been that such issuance need only await a finding of probable cause, not the completion of the entire procedure of preliminary investigation.

Also without appreciable merit is petitioners’ other argument that there was scarcely time to determine probable cause against sixty-four persons (the fourteen petitioners and fifty “Does”) within a matter of hours on a Saturday when municipal trial courts are open only from 8:00 a.m. to 1:00 p.m. That argument founders upon the respondent Judge’s positive affirmations that he had personally and closely examined under oath the three witnesses to the complaint[24] and that he had issued the warrant of arrest “believing that the offense thus filed had been committed.”[25] Nothing in the record before this Court belies or discredits those affirmations which have, besides, the benefit of the legal presumption that official duty has been regularly performed.[26] The contention that the witnesses to the complaint had merely sworn before the respondent Judge to statements prepared beforehand and submitted by a military investigator[27] must, in view of the foregoing considerations and for lack of any support in the record, be dismissed as mere speculation.

The same argument also unwarrantedly assumes that the respondent Judge limited the proceedings on preliminary examination to the usual Saturday office hours of 8:00 a.m. to 1:00 p.m., in addition to not making any persuasive showing that such proceedings could not have been completed within that time-frame. For all that appears, said respondent could have put off the 1:00 p.m. adjournment until he had finished interrogating the witnesses to his satisfaction. And there is really nothing unusual in completing within a three-hour period the questioning of three witnesses in a preliminary examination to determine the existence of probable cause.

The record which, lacking proof to the contrary, must be accepted as an accurate chronicle of the questioned proceedings, shows prima facie that the respondent Judge had personally examined the witnesses to the complaint, and a consideration of the latter's sworn answers to his questions satisfies this Court that the finding of probable cause against the petitioners was neither arbitrary nor unfounded.

The three witnesses to the complaint, Misandoning Monasprang, a student, Lawandato Ripors, an engineering graduate, and Sanny Monib, a farmer, gave mutually corroborative accounts of the incident. Under separate questioning, they declared that they were members of a party that was passing by Pantao on its way to Lalabuan from Talaguian, all in Masiu, Lanao del Sur, at about 10:00 a.m. on July 27, 1985, when they were ambushed and fired upon by an armed group which included the petitioners and about fifty other unidentified persons; that five of the party had been killed and two (the witnesses Lawandato Ripors and Sanny Monib) wounded; that even after they had killed their victims, the ambushers had continued to fire at the dead bodies; that the witnesses managed to escape their attackers and return to Talaguian, where they informed their relatives about what had happened, and thence went to the municipal hall in Masiu to report to the authorities; that the dead victims were recovered only late in the afternoon of that day because the authorities could not "penetrate" the area and the ambushers refused to release the bodies; and that the ambush was an offshoot of a grudge between the families of the ambushers and those of the victims.[28]

The witnesses named and identified the dead victims as Cadar Monasprang, Macacrao Guiling, Macrang Hadji Alawi, Alicman Ripors and Malabato Diator. All of them also identified by name each of the fourteen petitioners as members of the ambush group. The respondent Judge can hardly be faulted for finding enough cause to hold the petitioners named in the statements of three eyewitnesses to killings perpetrated in broad daylight.

In *Luna vs. Plaza*,[29] this Court ruled that the term "searching questions and answers" means -

"* * * only, taking into consideration the purpose of the preliminary examination which is to determine "whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof so that a warrant of arrest may be issued and the accused held for trial," such questions as have tendency to show the commission of a crime and the perpetrator thereof. What would be searching questions would depend on what is sought to be inquired into, such as: the nature of the offense, the date, time, and place of its commission, the possible motives for its commission; the subject, his age, education, status, financial and social circumstances, his attitude toward the investigation, social attitudes, opportunities to commit the offense; the victim, his age, status, family responsibilities, financial and social circumstances, characteristics, etc. The points that are the subject of inquiry may differ than case to case. The questions, therefore must to a great degree depend upon the Judge making the investigation. * * *"

Upon this authority, and considering what has already been stated above, this Court is not prepared to question the propriety of the respondent Judge's finding of probable cause or substitute its judgment for his in the matter of what questions to put to the witnesses during the preliminary examination.

Upon the facts and the law, therefore, the warrant of arrest in question validly issued against the petitioners, such issuance having been ordered after proceedings, to which no irregularity has been shown to attach, in which the respondent Judge found sufficient cause to commit the petitioners to answer for the crime complained of.

Insofar, however, as said warrant is issued against fifty (50) "John Does" not one of whom the witnesses to the complaint could or would identify, it is of the nature of a general warrant, one of a class of writs long proscribed as unconstitutional and once anathematized as "totally subversive of the liberty of the subject." [30] Clearly violative of the constitutional injunction that warrants of arrest should particularly describe the person or persons to be seized,[31] the warrant must, as regards its unidentified subjects, be voided.

The fact that the Provincial Fiscal may have announced his intention of investigating the incident himself did not, in the view of the Court, legally inhibit the respondent Judge from conducting his own inquiry into the matter if, as is made to appear here, it was regularly brought before him and no formal complaint was filed before the Fiscal. Courtesy may have dictated that in those circumstances he leave the investigation to the Fiscal and simply endorse to the latter the complaint filed with him; duty did not, and if he nonetheless chose to conduct his own investigation, nothing in the rules states or implies that he could not do so.

Be that as it may, since the action and final resolution of the respondent Judge after completing the second stage of the preliminary investigation are subject to review by the Provincial Fiscal, practical considerations of expediency and the avoidance of duplication of work dictate that the latter official be permitted to take over the investigation even in its present stage.

WHEREFORE, the warrant complained of is upheld and declared valid insofar as it orders the arrest of the petitioners. Said warrant is voided to the extent that it is issued against fifty (50) "John Does." The respondent Judge is directed to forward to the Provincial Fiscal of Lanao del Sur the record of the preliminary investigation of the complaint in Criminal Case No. 1748 of his court for further appropriate action. Without pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[1] Rollo, pp. 2, 16

[2] Rollo, pp. 7-15

[3] Id., pp. 93-95, 117

[4] Petition; Rollo, p. 4

[5] Annexes C-1, C-2, C-3, Petition; Rollo, pp. 22-24

[6] Rollo, pp. 4, 19

[7] Rollo, p. 20

[8] Id., p. 21

[9] Id., p. 21 (overleaf)

[10] Id., pp. 25, 28

[11] Id., pp. 26-27

[12] Id., p. 28

[13] The new rules on criminal procedure which became effective on January 1, 1985.

[14] Rollo, pp. 8-10, 89-91

[15] Id., p. 94

[16] Id., p. 14

[17] Rollo, pp. 6, 11-12

[18] Sec. 3, Art. IV; Rollo, pp. 6, 12-13

[19] *Mariñas vs. Siochi*, 104 SCRA 423; *Tabil vs. Ong*, 91 SCRA 451; *Banzon vs. Cabato, etc.*, 64 SCRA 419; *People vs. Paras*, 56 SCRA 248; *People vs. Abejuela and Endan*, 38 SCRA 324; *People vs. Oandasan*, 25 SCRA 277; *Luna vs. Plaza*, 26 SCRA 311; *San Diego vs. Hernandez*, 24 SCRA 110; *People vs. Monton*, 23 SCRA 1024.

[20] Section 3, first paragraph, of Rule 112, Rules of Court, which also excepts cases where a lawful arrest without warrant has been made (Sec. 7 of the same Rule).

[21] Sec. 6, and Sec. 9(b), Rule 112, Rules of Court, effective January 1, 1985; Sec. 37, B.P. 129; Sec. 3, Art. IV, Constitution.

[22] 18 SCRA 1115

[23] *Supra*; citing Rule 108, Secs. 1, 6 and 11, of the old Rules of Court (now Secs. 1, 5 and 12 of Rule 112, with modifications); *Lozada vs. Hernandez*, 92 Phil. 1051; *Biron vs. Cea*, 78 Phil. 673; *Rodriguez vs. Arellano*, 96 Phil. 954; *U.S. vs. Ocampo*, 18 Phil. 1; *People vs. Moreno*, 77 Phil. 548; *Hashim vs. Boncan*, 71 Phil. 216.

[24] Annex “C”, Petition; Rollo, p. 21 (overleaf); the certification written thereon reads: “A PRELIMINARY EXAMINATION has been conducted in this case, having examined personally all witnesses under oath thru my closed and direct supervision.”

[25] Annex “F”, Petition; Rollo, p. 28

[26] Sec. 5(m), Rule 131, Rules of Court

[27] Rollo, pp. 9-10

[28] Annexes C-1, C-2, C-3, Petition

[29] 26 SCRA 310

[30] *Bouvier’s Law Dictionary*, 3rd Rev., Vol 1, p. 1349 citing May, *Const. Hist. of England*

[31] Art. IV, Sec. 3, Constitution

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