

**ROLANDO PONSICA, ROGELIO ARNAIZ, FR. NICO HOFSTEDE,
BERNARDINO PATIGAS, ZACHEUS ROJO, GODOFREDO RETIRACTON,
LORETO BERING, ROGELIO ARTAJA, JOVITO MARATAS, CARLOS
ALLEONES, MILO ...**

G.R. No. 72301. July 31, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

The chief issue raised by the petitioners in this case is whether or not Section 143 of the Local Government Code[1] granting power to the municipal mayor to conduct preliminary investigations and order the arrest of the accused, was repealed by the 1985 Rules on Criminal Procedure promulgated by this Court; and is, in addition, unconstitutional as vesting the power to conduct preliminary investigations in an official who cannot be deemed a "neutral and detached magistrate" within the contemplation of Section 3, Article IV of the 1973 Constitution. The issue is hereby resolved adversely to the petitioners, with the stressed qualification that the mayor's power to order arrest ceased to exist as of February 2, 1987 when the new Constitution was ratified by the Filipino people, and that, in any event, the investigation actually conducted by respondent mayor in the case at bar was fatally defective.

Shortly after noon on September 20, 1985, an attempt was made by firemen and soldiers to disperse a crowd of demonstrators massed in front of the Municipal Building of Escalante, Negros Occidental, with the use first, of water spewed from fire hoses, and later, tear gas. Eventually there was gunfire. Within moments, rallyists lay dead on and by the National Road. The fatalities numbered fifteen (15), according to the military officers; twenty-nine (29), according to the demonstrators.

In the afternoon of that day, Escalante Town Mayor Braulio Lumayno, in view of the absence of the Municipal Circuit Court Judge (Emilio Ignalaga), took cognizance of a complaint filed by the Military Station Commander charging some of the rallyists with the felony of inciting to sedition, and after avowedly conducting an investigation of the witnesses presented by the complainant, issued an order for the arrest of certain of the demonstrators. His order reads as follows:

"It appearing that the Presiding Municipal Circuit Court Judge, Hon. Emilio M. Ignalaga, is on official leave of absence and, in the interest of justice, the undersigned has to urgently act on the complaint filed by the Station Commander, against the above-named accused for 'INCITING TO SEDITION' and, on the basis of the evidence submitted after a searching question and answer were conducted and, being satisfied that said crime has been committed, in order not to frustrate the ends of justice, it is necessary that the above-named accused be placed under custody. Let therefore, a warrant of arrest be issued for said above-named accused.

"Bail recommended: P12,000.00."[2]

In the record of the Court a quo appear the following inter alia:

- 1) Complaint for "Inciting to Sedition" (RPC 142, as amended by PD 183 and PD 1974), signed by a Capt. Jugan, and sworn to before Mayor Lumayno on Sept. 20, 1985, bearing the stamped notation of filing with the MTC: "9/24/85, 4:00 PM";[3]
- 2) 2-page Affidavit of Capt. Sanson, dated, and sworn to before Actg. City Fiscal Abros (Cadiz City) on Sept. 20 1985;[4]
- 3) 3-page document, "Searching Questions and Answers" signed by Capt. Sanson, dated, and sworn to before Mayor Lumayno on, September 20, 1985;[5]
- 4) 3-page sworn statement of Godofredo Hoyo-A y Jayme, General Manager of the Balintawak-Escalante Water District;[6]
- 5) Affidavit of Leopoldo Villalon;[7]
- 6) Affidavit of Elpidio Carbajosa;[8] and
- 7) Affidavit of Eduardo Flores.[9]

The gist of the testimony of Capt. Sanson and the other affiants is that on September 20, 1985, the demonstrators, numbering "about 1,000", had blockaded the main highway in front of the Escalante Municipal Building, by massing themselves on the road as well as by piling stones, coconut trunks and pieces of wood in the middle of the highway. They were also "shouting invectives, seditious and scurrilous words against the government." Negotiations with Ponsica, Chairman of the Escalante Chapter of "BAYAN" (Bagong Alyansang Makabayan), to have the road cleared having been unavailing, firemen on firetrucks began to train a "torrent of water" from their fire hoses on the demonstrators. The rallyists retaliated by hurling stones at the firemen. One of them "approached the security of the firetruck and stabbed him." Others climbed aboard the trucks and tried to grab the firehoses and firearms of the officers. At this point, on Capt. Sanson's orders, his "back-up teams" of soldiers commenced to throw tear gas at the crowd. One of the demonstrators picked up a tear gas canister and hurled it back at the soldiers. At the same time gunfire from "different assorted firearms" emanated from the rallyists; and some of the shots hit the blinker of a firetruck and the headlight of another. The soldiers shot back. This exchange of gunfire resulted in "fourteen (14) demonstrators killed on the spot." Recovered at the scene were a rifle; a U.S. 45 cal. pistol; 2 "homemade" pistols; 14 steel arrows and 4 assorted slings; 30 assorted knives; a "pogakhang" with 2 live cartridges; 2 grenades; and several empty shells of different caliber. Hours later, another corpse, identified as that of a demonstrator, too, was brought to the PC Headquarters.

The petitioners however give a different version of the facts. What happened, according to them, was that at 9 o'clock in the morning on that day, a group of demonstrators, "composed mostly of laid-off sugar field workers," gathered in front of Escalante Municipal Hall "in the exercise of their constitutionally guaranteed right to freedom of expression and to assemble peacefully to petition the government for redress of grievances".[10] About an hour afterwards; fire trucks arrived one after another, as well as jeeploads of soldiers and CHDF members, in full combat gear. Shortly after noon, after "going thru the motions of negotiating with the demonstrators," the military officers ordered the crowd to disperse; but without warning, fire hoses were trained on and sprayed water at the demonstrators. When the rallyists did not budge, tear gas canisters were thrown at them. A demonstrator picked up a canister and threw it at an "empty space in the plaza" The soldiers and CHDF members thereupon fired indiscriminately at the crowd, killing 29 and injuring at least 30 persons.[11]

After the Mayor had referred the case to Municipal Trial Court Judge Ignalaga on September 24, 1985,[12] an "URGENT MOTION TO QUASH WARRANT OF ARREST" was filed on September 26, 1985 by petitioners' counsel on the ground that a mayor no longer has authority to conduct preliminary investigations or issue warrants of arrest that authority having been "withheld in the 1985 New Rules on Criminal Procedure." [13] This was

opposed by the Station Commander[14] who invoked Section 143 of the Local Government Code providing that "(i)n case of temporary absence of the Judge assigned to the municipality, the mayor may conduct the preliminary examination in criminal cases when, in his opinion the investigation cannot be delayed without prejudice to the interest of justice." A reply was filed by the petitioners after their receipt of the opposition "only last October 8, 1985".[15] They contended that the "power of the municipal mayor to conduct preliminary investigation and issue a warrant of arrest under the 1964 Revised Rules of Court ** (had been) impliedly repealed by the 1985 New Rules on Criminal Procedure"; that "the 1985 New Rules on Criminal Procedure being a special law, controls over provisions of the Local Government Code (BP 337, 1983), which is a general law"; and in any case, "subject warrants of arrest should be reviewed and revoked as done without observance of legal requisites."

By Resolution dated Oct 11, 1985,[16] the Judge confirmed the mayor's arrest order. He opined that in the absence of the judge, the mayor still has authority to conduct preliminary investigations and issue arrest warrants, since Rule 112, Sec. 2 (d), of the 1985 Rules, includes as among those authorized to conduct preliminary investigations, "Such other officers as may be authorized by law"; and the Local Government Code of 1983, Section 143, grants a town mayor authority to conduct preliminary examinations in case of the temporary absence of the judge when such investigation cannot be delayed without prejudice to the interest of justice. The Judge declared that in the case at bar, the mayor had conducted the examination personally, and having in the exercise of his discretion found probable cause, issued the warrants of arrest in question; and conceding arguendo irregularity in that the preliminary examination was conducted without according the parties the assistance of lawyers (contrary to par. 2, Sec 143, Chap. 3, Title 2, Book II, Local Government Code), this does not render the proceedings void because at any rate, the mayor had duly observed the uniform procedure under PD 91 (citing: *Peo v. Paran*, 52 Phil 712; *Hashim v Boncan*, 71 Phil 216; *Lino v Fugoso*, 77 Phil. 933).

It is Mayor Lumayno's order for the petitioners' arrest of September 20, 1985, and Judge Ignalaga's Order of October 11, 1985 "validating that order of arrest" that the petitioners would have this Court nullify and perpetually enjoin.[17]

In their petition for certiorari and prohibition filed on October 15, 1985, and their Memorandum of January 21, 1986,[18] they assert that:

1) while Section 3, Rule 112 of the 1964 Rules of Court, empowers the municipal mayor, "in case of temporary absence of both the municipal and the auxiliary municipal judges from the municipality, town or place wherein they exercise their jurisdiction, to make the preliminary examination in criminal cases when such examination cannot be delayed without prejudice to the interest of justice," that power has been removed from him by the 1985 New Rules on Criminal Procedure which "do not mention the Municipal Mayor as among the officers authorized to conduct preliminary investigation (Section 2, Rule 112), much less to issue an order of arrest (Section 6, *Ibid.*)";[19]

2) Section 143 of BP Blg. 337 (Local Government Code) -- under which the order of arrest in question is presumably made to rest -- cannot withstand the "constitutional test" of Section 3, Article IV,[20] which safeguards the right against unreasonable searches and seizures, and requires the interposition of a "judge, or such other responsible officer as may be authorized by law", meaning "a neutral and detached magistrate competent to determine probable cause (*Shadwick v. City of Tampa*, 40 LW 4758; *Castillo v. Jias*, 62 SCRA 124; *Ang Tibay v. CIR*, 69 Phil. 635; *Zambales Chromite, etc. v. C.A.*, 934 SCRA 2617)"; and since a mayor is obviously not such a magistrate (*U.S. v. Chadwick*, 433 U.S. 197), the orders of arrest at bar are constitutionally infirm;[21] moreover, said Section 143 of the Local Government Code is "merely a rule of procedure ** (and is thus) deemed to have been superseded by the New Rules of Criminal Procedure";[22]

3) the Mayor's examination "falls short of the requirements of 'searching questions and answers'; the statements of the witnesses supposedly interrogated by the mayor, are either merely conclusions of law or sterile as regards seditious utterances, hence, probable cause was non-existent;[23] and

4) Article 142 of the Revised Penal Code, as amended -- under which the petitioners are charged -- is based on the US Sedition Act of 1798, which has been declared by the US Supreme Court as "repugnant to the constitutional guarantee of freedom of speech and expression (New York Times Co. v. Sullivan, 376 U.S. 254)"; hence, said Article 142 is also fatally flawed and therefore, the warrant of arrest in question was in effect issued for "a crime which in the context of the constitutionally guaranteed freedom of speech and expression does not exist." [24]

In his comment filed with this Court,[25] Judge Ignalaga argues that -

1) The validity of the preliminary examination on the basis of which the arrest warrants were issued, may not be raised for the first time in the Supreme Court, but should first be ventilated before the RTC having cognizance of the crime.[26] In any case, upon the considerations set out in his resolution of October 11, 1985, the preliminary examination in question is valid.[27]

2) The petitioners raise factual issues which are best left for determination by the RTC, the Supreme Court not being a trier of facts.[28]

3) The Mayor in fact followed the procedure in the constitution prior to issuing the arrest warrants.[29]

4) The constitutionality of PD 1974 should be assailed by separate petition.[30]

The Solicitor General at the time, Estelito Mendoza, also filed a comment on December 6, 1985.[31] The comment addressed itself only to the issue of "the validity of the law authorizing municipal mayors to issue warrants of arrest and the law punishing inciting to sedition," in view of the fact that the respondents had presented their own separate comments on the petition.[32] The comment points out that:

1) Section 3, Article IV, of the 1973 Constitution, which mentions a "judge, or such other responsible officer as may be authorized by law" as vested with competence to conduct preliminary investigations, is an innovation. In implementation thereof, BP Blg. 337 was enacted on February 10, 1983, empowering mayors to conduct preliminary investigations (Sec. 143). This is a recognition of the truism that the determination of probable cause is but a quasi-judicial function (Ocampo v US, 58 L ED 1231).[33] Petitioners' American authorities are not applicable: the mayor is the highest official in the municipality; he exercises only general supervision over the police but is not directly involved in police work; the old rules precisely expressed a recognition of the capability of mayors to determine probable cause, and the omission of mayors in the 1985 Rules simply means that the determination of officers who may be authorized to conduct preliminary investigations was deemed best left to legislation.[34]

2. The Philippine sedition law is not akin to the US Sedition Law; in any event, our own sedition law has passed the test of constitutionality (Espuelas v People, 90 Phil 524).[35]

Solicitor General Sedfrey A. Ordonez subsequently declared that he "stands by the constitutionality of the statutes the petitioners question and, therefore, sustains the position taken by his predecessor in office";[36] this, in response to this Court's resolution dated May 15, 1986, requiring the parties to state whether supervening events had transpired materially affecting the case.[37]

It is clear from the outset that the issue before this Court does not involve the adjudgment of the guilt or innocence of the soldiers in the tragic and regrettable killings in front of the Escalante Town Hall in the early afternoon of that day, the twentieth of September, 1985, an event that caused a great outcry of lamentation and

condemnation throughout the land. This is a matter that should be and is in fact now subject of a separate criminal proceeding. Neither is the propriety of the victims' exercise of their constitutional rights of free speech and free assembly for redress of grievances in the premises at issue here. The basic question before the Court is divorced of the drama and the passion of those issues; it deals mainly with the dry, unexciting, but nonetheless important matter of whether or not the municipal mayor has the power to conduct preliminary investigations in the light of the 1985 amendments of the rules governing criminal procedure in the Rules of Court. The answer to the question entails a re-examination and analysis of the relevant legal provisions.

The 1964 Rules of Court explicitly gave the mayor authority to conduct preliminary investigations.

"SEC. 3. Preliminary examination by the municipal mayor. -- In case of temporary absence of both the municipal and the auxiliary municipal judges from the municipality, town, or place wherein they exercise their jurisdiction, the municipal mayor shall make the preliminary examination in criminal cases when such examination cannot be delayed without prejudice to the interest of justice. He shall make a report of any preliminary examination so made to the municipal or to the auxiliary municipal judge immediately upon the return of one or the other. He shall have authority in such cases to order the arrest of the defendant and to grant him bail in the manner and cases provided for in Rule 114."[38]

The Rules of 1940 contained an identical provision, in Section 3, Rule 108.

The 1985 Rules on Criminal Procedure did not reproduce this provision, and did not include the mayor in the enumeration of the officers authorized to conduct preliminary investigations, those listed being judges of municipal trial courts and municipal circuit trial courts; city or provincial fiscals and their assistants; national and regional state prosecutors; and "such other officers as may be authorized by law."[39]

"SEC. 6. When warrant of arrest may issue. -

"(a) By the Regional Trial Court. - Upon the filing of an information, the Regional Trial Court may issue a warrant for the arrest of the accused.

"(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. (n)."[40]

It is of course the deletion in the 1985 rules of reference to the municipal mayor as among those authorized to conduct preliminary investigations and order arrests upon which the petitioners chiefly rely as basis for their impugnation of Mayor Lumayno's preliminary investigation and order of arrest based thereon.

The matter is however treated of not solely by the Rules of Court but also by the 1973 Constitution, Section 3, Article IV whereof reads:

"SEC. 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."[41]

Parenthetically, it may be noted that Section 3, Rule III of the 1935 Constitution mentioned only "the judge" as having power to determine probable cause and issue search and arrest warrants.

The matter is further dealt with in Section 143 of Batas Pambansa Bilang 337, otherwise known as the Local Government Code, which took effect on February 10, 1983. This section evidently deems the mayor a "responsible officer" in contemplation of the cited constitutional provision, and explicitly authorizes him to conduct preliminary examinations in criminal cases and order the arrest of the accused upon probable cause.

"SEC. 143. Authority of the Mayor to Conduct Preliminary Examination.

"(1) In case of temporary absence of the judge assigned to the municipality, the mayor may conduct the preliminary examination in criminal cases when, in his opinion the investigation cannot be delayed without prejudice to the interest of justice.

"(2) No examination shall be conducted unless the parties are assisted by lawyers.

"(3) In cases where he may conduct preliminary examination, the mayor shall, upon probable cause after examination of witnesses, have authority to order the arrest of the accused and to grant him bail in the manner and cases provided in the Revised Rules of Court and order his provisional release.

"(4) The mayor shall make a report of any preliminary examination so made immediately after the return of the judge assigned in the area, or upon the designation of his replacement." [42]

The 1973 Constitution plainly and unmistakably grants to the legislature the power to determine which "responsible officers", aside from judges, may issue warrants of arrest after examination under oath or affirmation of the complainant and the witnesses he may produce. And as plainly and unmistakably, the legislature, the Batas Pambansa, has in the Local Government Code made the determination that the mayor is such a "responsible officer" and has in consequence authorized him to conduct preliminary investigations in criminal cases and order the arrest of the accused upon a finding of probable cause.

The first issue raised by the petitioners -- that in September, 1985 the mayor no longer had power to conduct preliminary investigations and issue arrest warrants [43] -- must therefore be resolved against them. The argument that Section 143 of the Local Government Code is just "a rule of procedure merely having incorporated Rule 112, Section 2 of the old rules of Criminal Procedure," and should therefore be deemed "superseded by the New Rules of Criminal Procedure pursuant to the power of this ** Court to promulgate rules of procedure (Article X, Section 5 [5], Constitution **)" [44] cannot be sustained. However superior the Supreme Court may be to the other branches of government in the realm of adjudication, its power to ordain rules of court was at the time inferior to the law-making power of the legislature. [45] It is true that the 1935 Constitution repealed all procedural laws then in force "as statutes" and declared them to be "rules of court"; but this was only so that they could be subject to repeal or modification by the Supreme Court, which was given the power to promulgate rules of procedure, [46] and has since been exercising such power by promulgating the Rules of Court of 1940 and of 1964, and the 1985 Rules on Criminal Procedure, etc. But the 1935 and 1973 Constitutions explicitly conferred on the legislature the power to repeal, alter or supplement those rules of court, although it would appear that that power is no longer granted to it by the 1987 Charter. [47]

Now, the conditions under which the mayor could conduct preliminary investigations are also clearly indicated by the law, to wit:

- 1) in case of the temporary absence of the judge assigned to the municipality; and
- 2) in his (the mayor's) opinion, the investigation cannot be delayed without prejudice to the interests of justice.

On these occasions, the mayor may order the arrest of the accused upon a finding of probable cause after searching examination of the complainant and the witnesses the latter may present.

In the case at bar, there is no showing that these conditions have not been met. Indeed, quite apart from the presumption that official duty has been regularly performed,[48] and the affirmative statements of respondent officials that on that fateful 20th day of September, 1985, Judge Ignalaga was in Manila[49] "on official leave or absence,"[50] the petitioners have not put the fulfilment of those conditions at issue at all, or the matter of whether or not the accused were "assisted by lawyers" in the course of the investigation.[51]

The petitioners also challenge the constitutionality of Section 143 of the Local Government Code, it being claimed that the mayor has been thereby authorized to conduct preliminary investigations and issue warrants of arrest, although he can not be deemed a "neutral and detached magistrate" within the contemplation of Section 3, Article IV of the 1973 Constitution.[52]

The competence of the Batasang Pambansa to decide and declare by statute which "responsible officers", aside from judges, should be entrusted with the authority to conduct preliminary investigations and issue arrest warrants cannot be doubted in view of the clear language of the Constitution.[53] And the determination by the Batasan that a municipal mayor is one such "responsible officer" who may properly be entrusted with the function of conducting preliminary investigations and ordering arrests of suspects upon probable cause, can not be subject of judicial review, absent any indication that the legislative proceedings leading to that statutory determination are void on account of some grave cause. Certainly, the wisdom of the statute, or the validity of the reasons underlying it, or the adequacy of the statistics, facts and circumstances considered by the legislature in its enactment, are beyond the sphere of inquiry of the courts.[54] The Batasan was apparently of the belief that a municipal mayor could be sufficiently objective and impartial as to be relied upon to conduct preliminary investigations and issue orders of arrest in the exceptional situation when the judge assigned in the municipality was absent. The petitioners disagree. They contend that the mayor cannot in the very nature of things be "neutral and detached." The disagreement, and the fact that plausible reasons may be adduced by one side or the other on the proposition does not make the question a justiciable one. The theory advocated by the petitioners that the mayor's "deep involvement in law enforcement functions is likely to color his judgment as a trier of probable cause", [55] does not induce persuasion. In the first place the premise cannot be conceded. While it is true that the mayors do "exercise general supervision over units and elements of the INP stationed or assigned in their respective jurisdictions," they are not themselves directly involved in police work and cannot in any sense be described, as the petitioners do, as being deeply involved in law enforcement functions. And even if that "deep involvement" be conceded, it does not follow that this would necessarily preclude their assuming "the cold neutrality of an impartial judge" in conducting preliminary investigations of persons suspected of crimes.

But it must be emphasized here and now that what has just been described is the state of the law as it was in September, 1985. The law has since been altered. No longer does the mayor have at this time the power to conduct preliminary investigations, much less issue orders of arrest. Section 143 of the Local Government Code, conferring this power on the mayor has been abrogated, rendered *functus officio* by the 1987 Constitution which took effect on February 2, 1987, the date of its ratification by the Filipino people. Section 2, Article III of the 1987 Constitution pertinently provides that "no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the person or things to be seized." The constitutional proscription has thereby been manifested that thenceforth, the function of determining probable cause and issuing, on the basis thereof, warrants of arrest or search warrants, may be validly exercised only by judges, this being evidenced by the elimination in the present Constitution of the phrase, "such other responsible officer as may be authorized by law" found in the counterpart provision of said 1973 Constitution,[56] -- who, aside from judges, might conduct preliminary investigations and issue warrants of arrest or search warrants.

As the law now stands, the mayor may no longer conduct preliminary investigation, the authority to do so being limited under Section 2, Rule 112 of the Rules of Court to (1) provincial or city fiscals and their assistants; (2) judges of the Municipal Trial Courts and Municipal Circuit Trial Courts; (3) national and regional state prosecutors; and (d) such other officers as may be authorized by law.[57] But only "the judge" may issue search and arrest warrants after due determination of probable cause.[58]

The petitioners' assault, on the other hand, upon the constitutionality of Article 141 of the Revised Penal Code, defining and penalizing the felony of inciting to sedition, upon the claim that it was "borrowed" from the U.S. Sedition Act of 1798 which in turn has been struck down as inconsistent with the First Amendment of the American Constitution,[59] is repelled by the Solicitor General's arguments.[60]

"In the first place, ** our law on inciting to sedition is not akin to the US Sedition Act of 1798 which was imposed on the American colonies by their British ruler. With the success of the American revolution, the 1798 Sedition Act naturally ceased to have effect as it would be utterly incongruous to punish those who sought the overthrow of the British government in America.

" * * *

" * * *.

"To annul our law on sedition is to give license to those who seek the application of lawless methods in the advancement of their political views. Our constitution surely does not contemplate this."

Finally, the petitioners postulate that in the determination of the existence of probable cause from the constitutional aspect, it is required that: "(1) The judge (or) officer must examine the ** witnesses personally; (2) The examination must be under oath; and (3) The examination must be reduced to writing in the form of searching questions and answers. (Marinas v. Siochio, 104 SCRA 403)."

In the light of these principles they contend: firstly, that the mayor's questioning of the witnesses was not "searching" enough; and secondly, that the witnesses' testimony does not establish prima facie the commission of the felony of inciting to sedition.

The fact is that as shown by the record, questions about the material events were in truth propounded by Mayor Lumayno to the chief witness, Capt. Sanson;[61] and no proof to the contrary has been submitted. The circumstance that the answers given by Capt. Sanson to the mayor's questions are closely reflective of the contents of his affidavit should not come as a surprise and cannot, without more, be taken as debilitating or nullifying the interrogation.

The petitioner's second point is much more substantial and is decisive of the controversy. The petitioners are correct in their claim that Capt. Sanson's testimony[62] does not in truth contain any facts demonstrating the actuality of the crime of inciting to sedition, which is the crime for which arrest warrants were issued by Mayor Lumayno. The facts recited by Capt. Sanson may perhaps warrant a charge of traffic obstruction, or grave coercion, or malicious mischief, or illegal possession of firearms or deadly weapons, or maybe, attempted murder or homicide. But it is barren of facts to support an accusation of inciting to sedition.

The other evidence on record exhibits the same barrenness.

Two witnesses, Godofredo Hoyo-A and Elpidio Carbajosa, advert in their affidavits[63] to the shouting of "seditious words," etc. Hoyo-A is quoted as deposing that "the demonstrators were already unruly ** (and kept) on shouting anti-government slogans, ** invectives and seditious words against the government";[64] that certain of the petitioners were identified as being "against the government, ** and using the (Mt. Carmel) School in

doctrining (sic) the students against the government";[65] that petitioner Rogelio Arnaiz had delivered a speech in which he had said, "Rumpagon ang dictatorial na regimen ni Pres Marcos, pamatukan ang NSL, ibagsak ang military kagwalaon ang CHDF, suklan nato ang gobyerno", a woman speaker had said the same thing, and a third speaker, petitioner Daniel Gempesala, also stated: Lumpagon ang dictatorial na regimen ni Marcos, kag ibagsak ang Gobyerno";[66] and they had elicited a response from the people there who had raised their right hands and repeated the shouted "slogan".[67] Carbajosa in his turn declared that the demonstrators ** were shouting for trouble and ready to make revolution with the use of arms."[68]

Another affiant, Eduardo Flores, stated that the demonstrators were unruly, "tumultuously shouting seditious words against the government and shouting for revolution."[69]

The sworn statement of the only other witness, Leopoldo Villalon,[70] is totally innocuous as far as proving the elements of inciting to sedition is concerned.

The evidence can not justify the action taken by the respondent Mayor and Judge. The Court thus declares as sorely inadequate and mortally defective the avowed evidentiary foundation for Mayor Lumayno's finding of probable cause respecting the commission by the petitioners of the crime of inciting to sedition. The affiants' declarations in their sworn statements which might otherwise be pertinent to the offense, are generalities, mere conclusions of theirs, not positive averments of particular facts within their personal knowledge. They do not identify the specific persons supposed to have perpetrated the crime charged, except two. But even the identification of these two is of no moment. For except as regards Capt. Sanson, whose testimony, to repeat, is in any case ineffectual to prove the precise offense ascribed to the petitioners, there had been no searching interrogation by Mayor Lumayno of the witnesses as required by the Constitution. Hence, whatever credit could possibly have been accorded to the affidavit of Hoyo-A -- which ventures to quote the exact words allegedly shouted by petitioners Arnaiz and Gempesela, and an unidentified woman -- was thereby effectively foreclosed.

WHEREFORE, the writs of certiorari and prohibition are granted. The order of respondent Mayor Lumayno issued on September 20, 1985 and the resolution promulgated by respondent Judge Ignalaga on October 11, 1985 are annulled and set aside, and the respondents are perpetually forbidden to enforce or in any way implement the orders for the arrest of any of the petitioners. No costs.

Teehankee, C.J., Yap, Fernan, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, and Cortes, JJ., concur.

Sarmiento, J., no part.

[1] B.P. Blg. 337, eff. Feb. 10, 1983

[2] Rollo, p. 85

[3] Annex B, petition; rollo, p. 73

[4] Annex A, id.; rollo, pp. 74-75

[5] Annex A-1, id.; rollo, pp. 76-78

[6] Annex 1-d, "Comment to the Petition" of respondent Judge Ignalaga; rollo, pp. 79-81

[7] Annex 1-e, id.; rollo, p. 82

[8] Annex 1-f, id.; rollo, p. 83

- [9] Annex 1-g, id.; rollo, p. 84
- [10] Rollo, p. 4
- [11] Id., pp. 4-5
- [12] See footnote No. 2, and rollo, p. 8
- [13] Rollo, p. 28
- [14] Id., p. 92-93
- [15] Id., pp. 95-98
- [16] Petitioners' Annex F, rollo, pp. 32-36; Respondent Judge's Annex 7, rollo, pp. 99-103
- [17] Rollo, pp. 2-3, 16
- [18] Id., pp. 2-17; 136-151
- [19] Id., p. 9.
- [20] 1973 Constitution
- [21] Rollo, pp. 10-12, 137-139
- [22] Id., p. 140
- [23] Id., pp. 140-143
- [24] Id., pp. 13-15; 143-148
- [25] Id., pp. 64-104 (filed Nov. 13, 1985); see also, the comment filed on November 13, 1985 by the other respondents, Capt. Modesto Sanson, Capt. Rafael Jugan, and Mayor Braulio Lumayno: rollo, pp. 59-62
- [26] Id., p. 68
- [27] Id., pp. 67-68
- [28] Id., pp. 68-70
- [29] Id., p. 70
- [30] Id.
- [31] Id., pp. 115-124
- [32] Id., pp. 115-116
- [33] Id., pp. 116-118
- [34] Id., pp. 118-122
- [35] Id., pp. 122-124
- [36] Compliance dated June 4, 1986; rollo, pp. 168-169
- [37] Rollo., p. 172
- [38] Rule 112, emphasis supplied

[39] Sec. 2, Rule 112

[40] Rule 112, emphasis supplied

[41] Emphasis supplied. As will be noted, the reference to "such other responsible officer as may be authorized by law" is echoed in Sec. 2, Rule 112 earlier cited [footnote No. 38], which mentions, as among those authorized to conduct preliminary investigation, "Such other officers as may be authorized by law."

[42] Emphasis supplied

[43] SEE footnote No. 18

[44] Petitioners' Memorandum, p. 5; rollo, p. 140

[45] See Martin, *The New Constitution, etc., with Notes & Comments* (1973 ed.), pp. 485-486; Feria, *Civil Procedure* (1969 ed.), p. 3

[46] Sec. 13, ART. VIII, 1935 Constitution

[47] Sec. 13, ART. VIII, 1935 Constitution; Sec. 5 [5], ART. X, 1973 Constitution; Sec. 5 [5], ART. VIII, 1987 Constitution; SEE, HOWEVER. SEC. 10, ART. XVIII

[48] Sec. 5, m, Rule 131, Rules of Court

[49] See p. 2, respondent Judge's Comment, at p. 65 of the rollo

[50] See Annex C, petition, rollo, p. 26

[51] Sec. 143, (2), Local Government Code, *supra*; see also, footnote No. 15

[52] Rollo, pp. 137-140; see footnotes No. 19-21

[53] See footnote No. 40 and related text

[54] *U.S. v. Ten Yu*, 24 Phil. 1; *Morfe v. Mutuc*, 22 SCRA 424; *Province of Pangasinan v. Secretary of Public Works and Communications*, 30 SCRA 134; *Sand v. Abad Santos Educational Institution*, 58 SCRA 33

[55] Rollo, p. 138

[56] See footnote No. 41 and related text, *supra*. The phrase, "such other responsible officer as may be authorized by law," is also found in Section 2, Rule 112 of the 1985 Rules on Criminal Procedure, which enumerates the officers authorized to conduct preliminary investigation. But the 1935 Constitution (Sec. 3, Art. III), as already earlier noted, also restricted the power to "the judge."

[57] Sec. 2, Rule 112, 1985 Rules on Crim. Procedure

[58] Sec. 2, ART. III, 1987 Constitution; see *Sayo v. Chief of Police of Manila*, 80 Phil. 859, 866-867

[59] Rollo, pp. 143-148; see footnote No. 23

[60] *Id.*, pp. 122-124

[61] Annex A-1, petition: rollo, pp. 21-23

[62] Annexes A and A-1, petition; Annexes 1-b and 1-c, Judge Ignalaga's Comment

[63] Annexes 1-d and 1-f, respectively, of Judge Ignalaga's Comment

[64] Q & A No. 09, Annex 1-d

[65] Q & A No. 13, id.

[66] Q & A No. 16, id.

[67] Q & A No. 17, id.

[68] Last paragraph, Annex 1-f

[69] Annex 1-g; rollo, p. 84

[70] Annex 1-e; rollo, p. 82

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