

GELACIO V. SAMULDE, IN HIS OFFICIAL CAPACITY AS MUNICIPAL JUDGE, PETITIONER, VS. RAMON M. SALVANI, JR., IN HIS OFFICIAL CAPACITY AS PROVINCIAL FISCAL OF ANTIQUE, SUBSTITUTED BY ...

G.R. No. 78606. September 26, 1988

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This case involves a disagreement between an investigating judge and the provincial fiscal on whether it is mandatory for the former to issue a warrant for the arrest of the accused in view of his finding, after conducting a preliminary investigation, that there exists prima facie evidence that the accused committed the crime charged.

Municipal Judge Gelacio Samulde of Patnongon, Antique, conducted a preliminary investigation of Pelayo Arangale upon a complaint for robbery filed on October 29, 1985 by Maria Magbanua, alleging that Arangale harvested palay from a portion of her land directly adjoining Arangale's land (Crim. Case No. 2046-B, entitled "People of the Philippines vs. Pelayo Arangale").

After making a preliminary investigation based on the affidavits of the complainant and her witnesses and counter-affidavits of the respondent and his witnesses, as provided in Section 3, Rule 112 of the 1985 Rules on Criminal Procedure, Judge Samulde transmitted the records of the case to Provincial Fiscal Ramon Salvani with his finding that "there is prima facie evidence of robbery as charged in the complaint" (Annex A of Answer).

The fiscal returned the records to Judge Samulde on the ground that the transmittal of the records to his office was "premature" because Judge Samulde failed to include the warrant of arrest against the accused as provided in Section 5, Rule 112 of the 1985 Rules on Criminal Procedure.

Judge Samulde sent back the records to Fiscal Salvani. He pointed out that under Section 6, Rule 112, he may issue a warrant of arrest if he is satisfied "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," implying thereby that, although he found that a probable cause existed, he did not believe that Arangale should be immediately placed under custody so as not to frustrate the ends of justice. Hence, he refused to issue a warrant of arrest.

On October 9, 1986, a special civil action of mandamus was filed in the Regional Trial Court of Antique by Provincial Fiscal Salvani against Judge Samulde to compel the latter to issue a warrant for the arrest of Arangale.

During the pendency of the case in the lower court, Fiscal Salvani was replaced by Fiscal Leopoldo Villavert as provincial fiscal of Antique. Believing that the procedural question involved is important, Fiscal Villavert manifested to the Court that there is need to continue the case begun by his predecessor.

On February 12, 1987, the Regional Trial Judge Pedro Icamina dismissed the petition for mandamus on the ground that "the petitioner had not shown that he has a clear, legal right to the performance of the act to be required of respondent and that the latter had an imperative duty to perform (it)," citing this Court's decision in *Felix Morada vs. Hon. Hermogenes Caluag*, 5 SCRA 1128. Nevertheless, he ordered Judge Samulde to issue a

warrant for the arrest of Arangale in Crim. Case No. 2046-B in view of his (Judge Samulde's) resolution dated May 22, 1986, and to transmit the warrant, if the arrest is by virtue of a warrant, to the Provincial Fiscal for appropriate action in accordance with the provisions of Section 5, Rule 112 of the 1985 Rules on Criminal Procedure. He further advised the Municipal Judge "that henceforth he adheres to the same rule in similar cases where he conducts a preliminary investigation with a finding of a prima facie or probable cause." (pp. 23-32, Records.)

Unconvinced, Judge Samulde appealed to this Court.

The issue posed by this case necessitates an examination of the history and development of the rule on preliminary investigation. Section 13 of General Orders No. 58 dated April 23, 1900 of the U.S. Military Governor in the Philippines was the original source of the rule on preliminary investigation. It provided -

"SEC. 13. When a complaint or information alleging the commission of a crime is laid before a magistrate, he must examine, on oath, the informant or prosecutor and the witnesses produced, and take their depositions in writing, causing them to be subscribed by the parties making them. If the magistrate be satisfied from the investigation that the crime complained of has been committed, and that there is reasonable ground to believe that the party charged has committed it, he must issue an order for his arrest. If the offense be bailable, and the defendant offers a sufficient security, he shall be admitted to bail; otherwise he shall be committed to prison." (General Orders & Circulars, issued by the Office of U.S. Military Governor in the Philippine Islands, 1900, p. 3. Underscoring supplied.)

It was amended by Act 194 of the Public Laws enacted by the Philippine Commission with Amendments indicated, Vol. I, p. 527, which authorized every justice of the peace to conduct such investigation and order the arrest of the accused if he believed the complaint to be well founded.

"SEC. 1. Every justice of the peace in the Philippine Islands is hereby invested with authority to make preliminary investigation of any crime alleged to have been committed within his municipality, jurisdiction to hear and determine which is by law now vested in the judges of Courts of First Instance. It shall be the duty of every justice of the peace, when written complaint under oath has been made to him that a crime has been committed within his municipality and there is reason to believe that any person has committed the same, which complaint the justice believes to be well founded, or when he has knowledge of facts tending to show the commission of a crime within his municipality by any person, to issue an order for the arrest of the accused and have him brought before the justice of the peace for such preliminary examination." (Emphasis supplied.)

The rule was substantially unchanged under Rule 108 of the 1940 Rules of Court except that municipal judges and city fiscals were also authorized to conduct the preliminary investigation of offenses committed within their municipality or city cognizable by the Court of First Instance.

Under Rule 112 of the 1964 Rules of Court, the provincial fiscal was added to the enumeration of persons authorized to conduct a preliminary investigation.

In the 1985 Rules on Criminal Procedure, Section 2, Rule 112, the list grew even longer to include: a) provincial or city fiscals and their assistants; (b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts; (c) National and Regional state prosecutors; and (d) other officers authorized by law.*

Both the 1940 and 1964 Rules of Court provided for two (2) stages of the preliminary investigation, to wit: (1) the "previous inquiry or examination" of the complainant and his witnesses to determine whether a warrant of arrest should issue against the defendant, and (2) the preliminary investigation proper of the defendant himself to determine if he should be held for trial. Thus, the preliminary investigation was defined as:

"x x x a previous inquiry or examination made before the arrest of the defendant by the judge x x x for the

purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the defendant is probably guilty thereof, so as to issue a warrant of arrest and to hold him for trial." (Sec. 1, Rule 108, 1940 Rules of Court. Emphasis supplied.)

In Section 1, Rule 112 of the 1964 Rules of Court, the distinction between a preliminary examination and preliminary investigation was more clearly defined by using the term "preliminary examination" in Section 1 of the Rule to differentiate the first stage of the preliminary investigation (where only the testimonies of the complainant and his witnesses were taken), from the second stage where, after the arrest of the defendant, he was informed of the complaint against him and given a chance to testify and present his evidence (Sec. 10, Rule 112, 1964 Rules of Court). The purpose of the preliminary examination was still 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." (Sec. 1, Rule 112, 1964 Revised Rules of Court.)

In both the 1940 and 1964 Rules of Court, it was mandatory upon the investigating judge to issue a warrant for the arrest of the accused, if he was satisfied that the offense charged was committed and that the accused probably committed it. Accordingly, Section 7, Rule 108 of the 1940 Rules of Court provided:

"SEC. 7. Warrant of arrest, when issued. - If the judge be satisfied from the preliminary investigation conducted by him that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant or order for his arrest." (Underscoring ours.)

Section 6, Rule 112 of the 1964 Rules of Court similarly 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." (Emphasis supplied.)

Because the arrest of the accused was mandatory, the records to be transmitted by the investigating judge to the clerk of the Court of First Instance upon the conclusion of the preliminary investigation, included the warrant of arrest (Sec. 13, Rule 108, 1940 Rules of Court; Sec. 12, Rule 112, 1964 Revised Rules of Court).

However, the rule on preliminary investigation underwent some modifications in the 1985 Rules on Criminal Procedure, which is the applicable rule in this case. Under Section 1 of the present rule, the definition of the purpose of a preliminary investigation, does not contemplate the issuance of a warrant of arrest by the investigating judge or officer:

"SECTION 1. Definition. - Preliminary investigation is an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial."

The mandatory provision that the investigating judge "must issue a warrant of arrest" if he finds probable cause that the respondent committed the crime charged, found in all previous rules of criminal procedure, from General Orders No. 58 down to Rule 112 of the 1964 Revised Rules of Court, is absent in Section 1 of the 1985 Rules on Criminal Procedure.

Another significant change is that under the 1985 Rules on Criminal Procedure there is only one (1) way of conducting a preliminary investigation, and that is by affidavits and counter-affidavits submitted by the parties to the investigating judge under Section 3, Rule 112. On the basis of the affidavits, the investigating judge shall

"determine whether or not there is sufficient ground to hold the respondent for trial" (subpar. f). Gone is the requirement in the 1940 and 1964 Rules of Court that "he must issue a warrant or order" for the arrest of the defendant.

To determine whether a warrant of arrest should issue against the accused, the investigating judge must examine the complainant and his witnesses "in writing and under oath x x x in the form of searching questions and answers." When he is "satisfied 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 may issue the warrant as provided in Section 6, par. b, of the 1985 Rules on Criminal Procedure.

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

"(a)

By the Regional Court. - x x x.

"(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."

As correctly argued by the petitioner Judge Samulde, three (3) conditions must concur for the issuance of the warrant of arrest. The investigating judge must:

(a) have examined in writing and under oath the complainant and his witnesses by searching questions and answers;

(b) be satisfied that a probable cause exists; and

(c) that there is a need to place the respondent under immediate custody in order not to frustrate the ends of justice.

It is an entirely new rule, and it is plain to see that it is not obligatory, but merely discretionary, upon the investigating judge to issue a warrant for the arrest of the accused, even after having personally examined the complainant and his witnesses in the form of searching questions and answers, for the determination of whether a probable cause exists and whether it is necessary to arrest the accused in order not to frustrate the ends of justice, is left to his sound judgment or discretion.

In this particular case, since the robbery charge was the offshoot of a boundary dispute between two property owners, the investigating judge did not believe there was any danger of the accused absconding before the filing of the information against him by the fiscal, hence, he found no need to place him under immediate custody.

The provincial fiscal anchored his action for mandamus on Section 5, Rule 112 of the 1985 Rules on Criminal Procedure which provides that upon the termination of the preliminary investigation, the investigating judge should transmit to the provincial fiscal (instead of the clerk of Court of the CFI as provided in the 1940 and 1964 Rules of Court) the warrant of arrest and other records of the preliminary investigation. From that he deduced that

the investigating judge must issue a warrant for the arrest of the accused upon the conclusion of the preliminary investigation. That inference is not correct. The provision of Section 5, Rule 112 simply means that the warrant of arrest, if one was issued, shall be transmitted to the fiscal with the records of the preliminary investigation. If the investigating judge, in the exercise of his sound discretion, decides not to issue a warrant of arrest, then none need be transmitted to the fiscal, and he may not be compelled by mandamus to issue it (*Vda. de Crisologo vs. Court of Appeals*, 137 SCRA 231; *Pio vs. Marcos*, 56 SCRA 725; *PAL Employees Assn. vs. PAL, Inc.*, 111 SCRA 215). The fiscal's speedy and adequate remedy, if he believes that the accused should be immediately placed under custody so as not to frustrate the ends of justice, is not to file a mandamus action (which may take two years or more to finally resolve, as happened in this case), but as sensibly indicated by the petitioner, to immediately file the information so that the Regional Trial Court may issue a warrant for the arrest of the accused (Sec. 6, par. a, Rule 112, 1985 Rules on Criminal Procedure).

WHEREFORE, the appealed decision in Civil Case No. 2145 is set aside. No costs.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Medialdea, JJ., concur.

[*] The municipal mayor's authority to conduct a preliminary investigation and issue warrant of arrest in the absence of the municipal judge (Sec. 3, Rule 108, 1940 Rules of Court and Sec. 3, Rule 112, 1960 Revised Rules of Court) was abolished in Rule 112 of the 1985 Rules on Criminal Procedure but it is still found in Sec. 143 of the Local Government Code, B. P. Blg. 337.

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