

THE CITY FISCAL OF TACLOBAN, PETITIONER, VS. HON. PEDRO S. ESPINA, JUDGE, REGIONAL TRIAL COURT – BRANCH 7, GOVERNMENT CENTER, PALO, LEYTE; PC MAJOR FRANCISCO C. GEDORIO, JR., RE...

G.R. No. 83996. October 21, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The issue posed in this petition is whether the City Fiscal of Tacloban can file this petition questioning the validity of Presidential Decree No. 1850 which vests exclusive jurisdiction over offenses committed by the members of the Armed Forces of the Philippines and the Integrated National Police in the courts-martial.

On April 27, 1988, an information for murder was filed by the City Fiscal of Tacloban against Eduardo Tesado and Luthgardo Nieto, both regular members of the Philippine Constabulary, in the Regional Trial Court of the Eight Judicial Region. The case was docketed as Criminal Case No. 8410. It was raffled to Branch 7 with the respondent judge Hon. Pedro S. Espina presiding therein. An order of arrest was issued by the court on May 11, 1988 but the same remained unserved.

On May 23, 1988, a "Motion to Transfer Jurisdiction" was filed in behalf of said accused by one Atty. Gregorio E. Maunahan and Major Francisco C. Gedorio, Jr. of the Regional Staff Judge Advocate for RECOM-8 invoking P.D. No. 1850. Both of them were acting as counsels for said accused.

The trial court, after due hearing, issued an order on June 9, 1988 dismissing the information and ordering that the case be referred to the courts-martial of Region 8. The warrant of arrest issued by the court was also recalled.

On June 15, 1988, the City Fiscal filed a motion for reconsideration alleging that the trial court has jurisdiction over the subject matter and the persons of the accused and that P.D. No. 1850 was invalidated when the New Constitution took effect on Feb. 2, 1987. The motion was denied in an order of June 20, 1988.

Hence, the City Fiscal filed this petition for review on certiorari asking that said orders of the trial court dated June 9, 1988 and June 20, 1988 be set aside and that the trial court be ordered to take cognizance of Criminal Case No. 8410 and to try the same on its merits.

On July 19, 1988, the court, without giving due course to the petition, required the respondents to comment on the petition within ten (10) days from notice. The Solicitor General then filed a Manifestation and Comment stating, among others, that on June 28, 1988 he received a first indorsement from the petitioner dated June 22, 1988, seeking assistance in connection with the instant petition filed by him; that on July 5, 1988, he received a correspondence dated July 4, 1988 from the Philippine Constabulary Judge Advocate likewise requesting assistance; that on July 25, 1988, he received a second indorsement dated July 15, 1988, from the Undersecretary of Justice informing him that it disagrees with the action of the petitioner in filing the petition; and that on July 27, 1988, he informed the petitioner that his request for assistance could not be acted upon favorably.[1] The Solicitor

General questions the personality of the petitioner to institute this petition and asserts that he cannot represent petitioner, citing Republic vs. Partisala.[2]

The court finds that the petition should be denied as the City Fiscal has no authority to file the same.

Under Section 5, Rule 110 of the Rules of Court all criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the fiscal. The fiscal represents the People of the Philippines in the prosecution of offenses before the trial courts as the metropolitan trial courts, municipal trial courts, municipal circuit trial courts and the regional trial courts. However, when such criminal actions are brought to the Court of Appeals or this Court, it is the Solicitor General who must represent the People of the Philippines not the fiscal.

As succinctly observed by the Solicitor General, petitioner has no authority to file the petition in this Court. It is only the Solicitor General who can bring or defend such actions on behalf of the Republic of the Philippines or the People of the Philippines. And such actions not initiated by the Solicitor General should be summarily dismissed.[3]

Moreover, the Undersecretary of Justice disagreed with the action taken by petitioner in filing the petition directly with this Court without conferring anteriorly with the Chief State Prosecutor and the Solicitor General pursuant to Ministry Order No. 18 dated July 29, 1985.[4]

Obviously, the petition was filed not only without the authority of the Secretary of Justice but against his instructions.

It is also noted that the petition is brought in the name of petitioner when it should be in the name of the People of the Philippines. Neither is the petition accompanied with the certified true copies of the questioned orders of the trial court dated June 9, 1988 and June 20, 1988 as required by the Rules.

WHEREFORE, the petition is denied without pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[1] Annex "A" to the Petition; Annex "A" to the Manifestation.

[2] **118 SCRA 370, 373 (1982).**

[3] Republic v. Partisala, supra.

[4] Page 44, Rollo; p. 6, Manifestation and Comment of the Solicitor General.

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