

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE ENRIQUE B. INTING, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 38, DUMAGUETE CITY, AND OIC MAYOR DOMINADOR S. REGALADO, JR...

G.R. No. 88919. July 25, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Does a preliminary investigation conducted by a Provincial Election Supervisor involving election offenses have to be coursed through the Provincial Fiscal now Provincial Prosecutor, before the Regional Trial Court may take cognizance of the investigation and determine whether or not probable cause exists?

On February 6, 1988, Mrs. Editha Barba filed a letter-complaint against OIC-Mayor Dominador Regalado of Tanjay, Negros Oriental with the Commission on Elections (COMELEC), for allegedly transferring her, a permanent Nursing Attendant, Grade I, in the office of the Municipal Mayor to a very remote barangay and without obtaining prior permission or clearance from COMELEC as required by law.

Acting on the complaint, COMELEC directed Atty. Gerardo Lituana, Provincial Election Supervisor of Dumaguete City: (1) to conduct the preliminary investigation of the case; (2) to prepare and file the necessary information in court; (3) to handle the prosecution if the evidence submitted shows a prima facie case and (3) to issue a resolution of prosecution or dismissal as the case may be. The directive to conduct the preliminary investigation was pursuant to COMELEC Resolution No. 1752 dated January 14, 1986. The resolution, in turn, is based on the constitutional mandate that the COMELEC is charged with the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections (Sec. 2, Article XII-C of the 1973 Constitution) and on the Omnibus Election Code which implements the constitutional provision. The Resolution provides, among others:

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"Further, Regional Election Directors and Provincial Election Supervisors are hereby authorized to conduct preliminary investigations of election offenses committed in their respective jurisdictions, file the corresponding complaints and/or informations in court whenever warranted, and to prosecute the same pursuant to Section 265 of the Omnibus Election Code." (Rollo, p. 15)

After a preliminary investigation of Barba's complaint, Atty. Lituana found a prima facie case. Hence, on September 26, 1988, he filed with the respondent trial court a criminal case for violation of section 261, Par. (h), Omnibus Election Code against the OIC-Mayor.

In an Order dated September 30, 1988, the respondent court issued a warrant of arrest against the accused OIC Mayor. It also fixed the bail at five thousand pesos (P5,000.00) as recommended by the Provincial Election Supervisor.

However, in an order dated October 3, 1988 and before the accused could be arrested, the trial court set aside its September 30, 1988 order on the ground that Atty. Lituanas is not authorized to determine probable cause pursuant to Section 2, Article III of the 1987 Constitution. The court stated that it "will give due course to the information filed in this case if the same has the written approval of the Provincial Fiscal after which the prosecution of the case shall be under the supervision and control of the latter." (at p. 23, Rollo, emphasis supplied)

In another order dated November 22, 1988, the court gave Atty. Lituanas fifteen (15) days from receipt to file another information charging the same offense with the written approval of the Provincial Fiscal.

Atty. Lituanas failed to comply with the order. Hence, in an order dated December 8, 1988, the trial court quashed the information. A motion for reconsideration was denied.

Hence, this petition.

The respondent trial court justifies its stand on the ground that the COMELEC through its Provincial Election Supervisor lacks jurisdiction to determine the existence of probable cause in an election offense which it seeks to prosecute in court because:

"While under Section 265 of the Omnibus Election Code approved on December 3, 1985 duly authorized legal officers of the Commission on Elections have the exclusive power to conduct preliminary investigation of all election offenses and to prosecute the same, it is doubtful whether said authority under the auspices of the 1973 Constitution, still subsists under the 1987 Constitution which has deleted in its Section 2, Article III, the phrase 'and such other responsible officer as may be authorized by law' in the equivalent section and article of the 1973 Constitution." (Rollo, p. 24)

The petition is impressed with merit.

We emphasize important features of the constitutional mandate that "x x no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge xx." (Article III, Section 2, Constitution)

First, the determination of probable cause is a function of the Judge. It is not for the Provincial Fiscal or Prosecutor nor for the Election Supervisor to ascertain. Only the Judge and the Judge alone makes this determination.

Second, the preliminary inquiry made by a Prosecutor does not bind the Judge. It merely assists him to make the determination of probable cause. The Judge does not have to follow what the Prosecutor presents to him. By itself, the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge to make his determination.

And third, Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper - whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial - is the function of the Prosecutor.

The Court made this clear in the case of *Castillo v. Villaluz* (171 SCRA 39 [1989]):

"Judges of Regional Trial Courts (formerly Courts of First Instance) no longer have authority to conduct preliminary investigations. That authority, at one time reposed in them under Sections 13, 14 and 16, Rule 112 of the Rules of Court of 1964, (See Sec. 4, Rule 108, Rules of Court of 1940; *People v. Solon*, 47 Phil. 443, cited in *Moran*, Comments on the Rules, 1980 ed., Vol. 4, pp. 115-116) was removed from them by the 1985 Rules on Criminal Procedure, effective on January 1, 1985, (Promulgated on November 11, 1984) which deleted all provisions granting that power to said Judges. We had occasion to point this out in *Salta v. Court of Appeals*, 143 SCRA 228, and to stress as well certain other basic propositions, namely: (1) that the conduct of a preliminary investigation is 'not a judicial function x x (but) part of the prosecution's job, a function of the executive,' (2) that wherever 'there are enough fiscals or prosecutors to conduct preliminary investigations, courts are counseled to leave this job which is essentially executive to them,' and the fact 'that a certain power is granted does not necessarily mean that it should be indiscriminately exercised.'

"The 1988 Amendments to the 1985 Rules on Criminal Procedure, declared effective on October 1, 1988, (The 1988 Amendments were published in the issue of *Bulletin Today* of October 29, 1988) did not restore that authority to Judges of Regional Trial Courts; said amendments did not in fact deal at all with the officers or courts having authority to conduct preliminary investigations.

"This is not to say, however, that somewhere along the line RTC Judges also lost the power to make a preliminary examination for the purpose of determining whether probable cause exists to justify the issuance of a warrant of arrest (or search warrant). Such a power -- indeed, it is as much a duty as it is a power -- has been and remains vested in every judge by the provision in the Bill of Rights in the 1935, the 1973 and the present (1987) Constitutions securing the people against unreasonable searches and seizures, thereby placing it beyond the competence of mere Court rule or statute to revoke. The distinction must, therefore, be made clear while an RTC Judge may no longer conduct preliminary investigations to ascertain whether there is sufficient ground for the filing of a criminal complaint or information, he retains the authority, when such a pleading is filed with his court, to determine whether there is probable cause justifying the issuance of a warrant of arrest. It might be added that this distinction accords, rather than conflicts, with the rationale of *Salta* because both law and rule, in restricting to judges the authority to order arrest, recognize that function to be judicial in nature."

We reiterate that preliminary investigation should be distinguished as to whether it is an investigation for the determination of a sufficient ground for the filing of the information or it is an investigation for the determination of a probable cause for the issuance of a warrant of arrest. The first kind of preliminary investigation is executive in nature. It is part of the prosecution's job. The second kind of preliminary investigation which is more properly called preliminary examination is judicial in nature and is lodged with the judge. It is in this context that we address the issue raised in the instant petition so as to give meaning to the constitutional power vested in the COMELEC regarding election offenses.

Article IX C Section 2 of the Constitution provides:

"Sec. 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

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(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of votes, investigate and, where appropriate, prosecute cases of violation of election laws, including acts or omission constituting election frauds, offenses, and malpractices. (Emphasis supplied)

In effect the 1987 Constitution mandates the COMELEC not only to investigate but also to prosecute cases of violation of election laws. This means that the COMELEC is empowered to conduct preliminary investigations in

cases involving election offenses for the purpose of helping the Judge determine probable cause and for filing an information in court. This power is exclusive with COMELEC.

"The grant to the COMELEC of the power, among others, to enforce and administer all laws relative to the conduct of election and the concomitant authority to investigate and prosecute election offenses is not without compelling reason. The evident constitutional intendment in bestowing this power to the COMELEC is to insure the free, orderly and honest conduct of elections, failure of which would result in the frustration of the true will of the people and make a mere idle ceremony of the sacred right and duty of every qualified citizen to vote. To divest the COMELEC of the authority to investigate and prosecute offenses committed by public officials in relation to their office would thus seriously impair its effectiveness in achieving this clear constitutional mandate.

From a careful scrutiny of the constitutional provisions relied upon by the Sandiganbayan, We perceived neither explicit nor implicit grant to it and its prosecuting arm, the Tanodbayan, of the authority to investigate, prosecute and hear election offenses committed by public officers in relation to their office as contradistinguished from the clear and categorical bestowal of said authority and jurisdiction upon the COMELEC and the courts of first instance under Sections 182 and 184, respectively, of the Election Code of 1978.

An examination of the provisions of the Constitution and the Election Code of 1978 reveals the clear intention to place in the COMELEC exclusive jurisdiction to investigate and prosecute election offenses committed by any person, whether private individual or public officer or employee, and in the latter instance, irrespective of whether the offense is committed in relation to his official duties or not. In other words, it is the nature of the offense and not the personality of the offender that matters. As long as the offense is an election offense jurisdiction over the same rests exclusively with the COMELEC, in view of its all-embracing power over the conduct of elections." (Corpus v. Tanodbayan, 149 SCRA 281 [1987])

Hence, the Provincial Fiscal, as such, assumes no role in the prosecution of election offenses. If the Fiscal or Prosecutor files an information charging an election offense or prosecutes a violation of election law, it is because he has been deputized by the COMELEC. He does not do so under the sole authority of his office. (People v. Basilla, et al. G.R. Nos. 83938-40, November 6, 1989). In the instant case, there is no averment or allegation that the respondent Judge is bringing in the Provincial Fiscal as a deputy of COMELEC. He wants the Fiscal to "approve" the COMELEC's preliminary investigation.

It is to be noted that on February 27, 1987 (when the 1987 Constitution was already in effect) the President issued Executive Order No. 134 which was the ENABLING ACT FOR ELECTIONS FOR MEMBERS OF CONGRESS ON MAY 11, 1987 AND FOR OTHER PURPOSES." Section 11 thereof provides:

"Prosecution. The Commission shall, through its duly authorized legal officers, have exclusive power to conduct preliminary investigation of all election offenses punishable as provided for in the preceding section, and to prosecute the same: Provided, That in the event that the Commission fails to act on any complaint within two (2) months from filing, the complainant may file the complaint with the Office of the Fiscal or with the Department of Justice for proper investigation and prosecution, if warranted.

The Commission may avail of the assistance of other prosecuting arms of the government."

It is only after a preliminary examination conducted by the COMELEC through its officials or its deputies that section 2, Article III of the 1987 Constitution comes in. This is so, because, when the application for a warrant of arrest is made and the information is filed with the court, the judge will then determine whether or not a probable cause exists for the issuance of a warrant of arrest.

Bearing these principles in mind, it is apparent that the respondent trial court misconstrued the constitutional

provision when it quashed the information filed by the Provincial Election Supervisor. As indicated above what the respondent trial court should have done was to enforce its September 30, 1988 order, to wit:

"Pursuant to Circular No. 12 of the Chief Justice of the Supreme Court dated June 30, 1987 and considering that after a personal examination of the evidence submitted by the investigating Provincial Election Supervisor III Negros Oriental (Designated Legal Officer), there is reasonable ground for this Court to rely on the certification of said Provincial Election Supervisor III in the information that a probable cause exists, let a warrant issue for the arrest of the accused fixing the bail at FIVE THOUSAND (P5,000.00) PESOS as recommended by the Provincial Election Supervisor III."

The order to get the approval of the Provincial Fiscal is not only superfluous but unwarranted.

WHEREFORE, the instant petition is GRANTED. The questioned Orders dated October 3, 1988, November 22, 1988 and December 8, 1988 are REVERSED and SET ASIDE. The respondent trial court's Order dated September 30, 1988 is REINSTATED. The respondent court is ordered to proceed hearing the case with deliberate speed until its termination.

SO ORDERED.

Fernan, C.J., (Chairman), Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

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