

EDEN D. PAREDES, PETITIONER, VS. SANDIGANBAYAN, RESPONDENT.

G.R. No. 89989. January 28, 1991

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The issues in this habeas corpus case are: (1) whether the arrest and detention of the petitioner after a preliminary investigation that was conducted by the Tanodbayan without notice to him, are valid, and (2) whether the crime charged against him has already prescribed.

On January 21, 1976, Ceferino S. Paredes, Jr., then the Provincial Attorney of Agusan del Sur, applied for a free patent for Lot No. 3097-A, PLS-67, with an area of 1,391 square meters, located beside the Washington Highway in San Francisco, Agusan del Sur. His application was favorably acted upon by the Land Inspector, Armando Luison. On May 11, 1976, OCT No. P-8379 was issued to him (p. 19, Rollo).

Eight (8) years later, on June 27, 1984, the Sangguniang Bayan of the Municipality of San Francisco passed Resolution No. 40, requesting the Sangguniang Panlalawigan of Agusan del Sur to assist it in recovering Lot No. 3097 from Attorney Paredes because the land had been designated and reserved as a school site. The Sangguniang Bayan requested the provincial fiscal to file a perjury charge against Attorney Paredes, Jr. (p. 15, Rollo). The resolution was approved by the Sangguniang Panlalawigan (p. 16, Rollo). On March 28, 1985, Civil Case No. 512, for annulment of Attorney Paredes' title, was filed by the Republic in the Regional Trial Court, Branch 6, Agusan del Sur (p. 17, Rollo).

During the pendency of Civil Case No. 512, Teofilo Gelacio, former vice-mayor of San Francisco, Agusan del Sur, filed with the Tanodbayan on October 28, 1986, a criminal complaint charging Attorney Paredes with having violated Section 3(a) of the Anti-Graft & Corrupt Practices Act (R.A. 3019) because he allegedly used his office as Provincial Attorney to influence, persuade, and induce Armando Luison, Land Inspector of the District Land Office in Agusan del Sur, to favorably indorse his free patent application. Section 3(a) of the Anti-Graft Law provides:

"SEC. 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

"(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense."

On February 23, 1987, the Tanodbayan (now Ombudsman) referred the case to Fiscal Ernesto Brocoy of Butuan City (TBP Case No. 86-03368) for preliminary investigation.

Fiscal Brocoy issued summons to Attorney Paredes, Jr. to appear at the preliminary investigation of the case on August 29, 1987. However, the summons were served on November 19, 1987 upon the INP Station Commander of San Francisco, instead of Atty. Paredes. The summons did not reach Attorney Paredes. Nevertheless, without waiting for proof of service of the summons on the accused, Fiscal Brocoy proceeded to conduct the preliminary examination of the complainant and his witnesses. On August 29, 1988, the fiscal issued a resolution finding a prima facie case of violation of Section 3(a) of R.A. 3019 committed by the accused. The Fiscal's resolution was approved by Tanodbayan Prosecutor Josephine Fernandez on June 26, 1989 (p. 22, Rollo).

Attorney Paredes filed a motion for reconsideration of the Tanodbayan's resolution. He assailed the validity of the preliminary investigation that was conducted by Fiscal Brocoy without notice to him (pp. 23-25, Rollo). His motion for reconsideration was denied.

In the local elections on January 18, 1988, Attorney Paredes was elected governor of Agusan del Sur.

On May 20, 1988, the Regional Trial Court of Agusan del Sur rendered a decision in Civil Case No. 512, annulling Governor Paredes' Free Patent No. (X-8) 1253 and his OCT No. P-8379 and restoring the land "to the mass of public domain" (pp. 85-98, Rollo).

On August 28, 1988, an information was filed against Governor Paredes in the Sandiganbayan (Crim. Case No. 13800) and a warrant for his arrest, fixing bail of P20,000 for his provisional liberty, was issued on August 30, 1989 and served upon him (p. 12, Rollo). He refused to post bail in "protest against the injustice to him as Governor." (p. 68, Rollo.) Consequently, he was detained in the municipal jail of San Francisco.

On September 20, 1989, this petition for habeas corpus was filed by his wife, Mrs. Eden Paredes, against the Sandiganbayan. She alleged that the warrant for her husband's arrest was void because the preliminary investigation was void, and, that the crime charged in the information against him had already prescribed.

In his Return of the Writ, the Solicitor General, as counsel for the Sandiganbayan, agreed that lack of notice to Governor Paredes of the preliminary investigation was "a fatal defect" invalidating not only the preliminary investigation, but also the information prepared by the Tanodbayan, and the warrant of arrest issued by the Sandiganbayan (p. 54, Rollo). The Solicitor General agreed with the petitioner's contention that the ten-year prescriptive period of the offense under Section 11 of R.A. 3019, assuming it was committed on January 21, 1976, expired on January 21, 1986. Although the prescriptive period was increased to fifteen (15) years under Section 4, B.P. Blg. 195 of March 16, 1982, the Solicitor General opined that the new law may not be applied retroactively to Paredes.

On the other hand, the Ombudsman argued that the Sandiganbayan was improperly made respondent in this case because it does not have custody of Governor Paredes; that the lack of preliminary investigation did not affect the validity of the information nor the jurisdiction of the Sandiganbayan; and, that the crime has not yet prescribed because the period of prescription commences to run not on the day the crime was committed but on the day it was discovered by the offended party, the authorities, or their agents (Art. 91, Revised Penal Code).

At the hearing of the petition of September 27, 1989, the Court directed the petitioner to implead the Tanodbayan, through the Special Prosecutor, as well as the Ombudsman, as respondents. The Clerk of Court was instructed to furnish them with copies of the petition and to require them to answer within ten (10) days. The hearing of this case was reset on October 18, 1989 at 9:30 o'clock in the morning and provisional liberty was granted Governor Ceferino Paredes, Jr. on his own recognizance pending the determination of the petition.

On October 6, 1989, the Office of the Special Prosecutor filed its comment on the petition for habeas corpus. The Special Prosecutor argued that since Paredes was charged in the Sandiganbayan for violation of Republic Act

3019, and as the Sandiganbayan has jurisdiction over that offense, it is authorized to issue a warrant for his arrest and a writ of habeas corpus may not issue to free him from the custody of the law.

After careful deliberation over the petition and the comments thereon of the Solicitor General, the Special Prosecutor and the Ombudsman/Tanodbayan, the Court finds insufficient merit in the petition. The settled rule is that the writ of habeas corpus will not issue where the person alleged to be restrained of his liberty is in custody of an officer under a process issued by the court which has jurisdiction to do so (*Luna vs. Plaza*, 26 SCRA 310; *Celeste vs. People*, 31 SCRA 391; *Canary vs. Director of Prisons*, 36 SCRA 39; *Ventura vs. People*, L-46576, November 6, 1978).

The petitioner alleges that the information against Governor Paredes is invalid because the preliminary investigation was invalid and the offense charged has already prescribed. Those circumstances do not constitute valid grounds for the issuance of a writ of habeas corpus. The absence of a preliminary investigation does not affect the court's jurisdiction over the case nor impair the validity of the information or otherwise render it defective (*People vs. Casiano*, L-15309, February 16, 1961; *People vs. Figueroa*, L-24273, April 30, 1969). The remedy of the accused in such a case is to call the attention of the court to the lack of a preliminary investigation and demand, as a matter of right, that one be conducted. The court, instead of dismissing the information, should merely suspend the trial and order the fiscal to conduct a preliminary investigation. Thus did we rule in *Ilagan vs. Enrile*, 139 SCRA 349.

"If the detained attorneys question their detention because of improper arrest, or that no preliminary investigation has been conducted, the remedy is not a petition for a Writ of Habeas Corpus but a Motion before the trial court to quash the Warrant of Arrest, and/or the Information on grounds provided by the Rules, or to ask for an investigation/reinvestigation of the case. 'Habeas corpus would not lie after the Warrant of commitment was issued by the Court on the basis of the Information filed against the accused. So it is explicitly provided for by Section 14, Rule 102 of the Rules of Court x x x.'" (Underscoring supplied).

Ilagan was a reiteration of this Court's ruling in *People vs. Casiano*, 1 SCRA 478 (1961) that:

"The absence of a preliminary investigation does not affect the court's jurisdiction over the case. Nor does it impair the validity of the information or otherwise render it defective. If there was no preliminary investigation and the defendant, before entering his plea, calls the attention of the court to the absence of a preliminary investigation, the court, instead of dismissing the information, should conduct such investigation, order the fiscal to conduct it or remand the case to the inferior court so that the preliminary investigation may be conducted."

The same rule was reiterated in the decision of this court in *Doromal vs. Sandiganbayan*, G.R. No. 85468, September 7, 1989.

The defense of prescription of the offense charged in the information should be pleaded in the criminal action otherwise it would be deemed waived (*U.S. vs. Serapio*, 23 Phil. 584, 598 citing *Aldeguez vs. Hoskyn*, 2 Phil. 500; *Domingo vs. Osorio*, 7 Phil. 405; *Maxilom vs. Tabotabo*, 9 Phil. 390; *Harty vs. Luna*, 13 Phil. 31; *Sunico vs. Ramirez*, 14 Phil. 500). It is a proper ground for a motion to quash which should be filed before the arraignment of the accused (Secs. 1 & 2, Rule 117, 1985 Rules of Criminal Procedure; *People vs. Castro*, L-6407, July 29, 1954) for whether the crime may still be prosecuted and penalized should be determined in the criminal case not in a special proceeding of habeas corpus.

"All questions which may arise in the orderly course of a criminal a prosecution are to be determined by the court to whose jurisdiction the defendant has been subjected by the law, and the fact that a defendant has a good and sufficient defense to a criminal charge on which he is held will not entitle him to his discharge on habeas corpus." (12 R.C.L. 1206.) (Italics ours)

WHEREFORE, finding no merit in the petition, the same is hereby denied. The accused, Ceferino Paredes, Jr. should file a bail bond of P20,000, fixed by the Sandiganbayan for his provisional liberty. Costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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