

**PEOPLE OF THE PHILIPPINES AND ALEJANDRINO C. CABEBE, IN HIS CAPACITY AS PROVINCIAL PROSECUTOR OF ILOCOS SUR, PETITIONERS, VS. HON. EFREN O. RAMOS, IN HIS CAPACITY AS PRESIDING A...**

*G.R. No. 95370. March 10, 1992*

Ponente: CRUZ, J.

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**CRUZ, J.:**

These cases have been consolidated because they both involve the interpretation of Section 5 of Rule 110 of the 1985 Rules on Criminal Procedure reading as follows:

SEC. 5 - Who must prosecute criminal actions. - All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. However, in the Municipal Trial Courts or Municipal Circuit Trial Courts when there is no fiscal available, the offended party, any peace officer or public officer charged with the enforcement of the law violated may prosecute the case. This authority ceases upon actual intervention of the fiscal or upon elevation of the case to the Regional Trial Court.

In G.R. No. 95370, the petitioners question the order of Judge Efren C. Ramos of the Regional Trial Court of Vigan, Ilocos Sur,[1] dismissing the petition against two orders of Judge Francisco R. Ranches of the Municipal Circuit Trial Court of Caoayan-Sta. Catalina, Ilocos Sur, requiring Alejandrino C. Cabebe as Provincial Prosecutor of Ilocos Sur to personally attend the trial of seven criminal cases pending before the latter court.[2]

The petitioners claim that all these cases were commenced on complaint by the offended parties or the corresponding peace officers and without the intervention of the Provincial Prosecutor. Assistant Fiscal Ramon D. Verzosa participated in only one of these cases but no public prosecutor was assigned to replace him when he died because Cabebe's office was understaffed. Cabebe informed Judge Ranches of this problem and requested him to allow the offended parties or peace officers to handle the prosecution of the cases. However, Judge Ranches rejected this request and issued the questioned orders, which on appeal to the Regional Trial Court of Vigan, Ilocos Sur, were substantially sustained by Judge Ramos.

Required to submit a Comment, Judge Ranches pointed out that, contrary to the allegations in the petition, not all the seven cases were commenced by complaint, one of them having been instituted through an information filed by State Prosecutor Nilo C. Mariano. Annexed to the Comment were certified true copies of the minutes of the proceedings in the said cases to show that Fiscal Verzosa had actually participated in the prosecution of six of these cases until his death, while Fiscal Panem attended the seventh.[3] The respondent judge also challenged the petitioners' claim that there were not enough prosecutors to handle the said cases and implied that the Office of the Provincial Prosecutor of Ilocos Sur was in fact not overworked. For his final argument, he stressed the exception in Section 5, as affirmed in *People v. Beriales*,[4] that the authority given to offended parties and peace officers to handle the prosecution of cases under certain conditions shall cease upon actual intervention of the fiscal or upon elevation of the case to the Regional Trial Court. Judge Ramos raised virtually the same

justifications in his own Comment.

In G.R. No. 101227, the petitioners also seek certiorari, prohibition and mandamus with preliminary injunction, this time against Judge Pacito B. Vizcarra of the Municipal Trial Court of Bantay, Ilocos Sur, for requiring the attendance of the Office of the Provincial Prosecutor of Ilocos Sur in a criminal case pending before that court.[5] Also faulted is his order directing Second Assistant Provincial Prosecutor Jaime P. Filler to explain why he should not be punished for contempt for refusing to prosecute the said case.[6]

The petitioners claim that a private practitioner was handling the prosecution of that case under the authority and direction of the Provincial Prosecutor. Cabebe had earlier informed the court that no prosecutor could be assigned to the case because nine of his ten prosecutors were assigned to the Regional Trial Court of Vigan, Ilocos Sur, and one to the Municipal Trial Court of Vigan pursuant to a directive of the Department of Justice.[7] Nevertheless, acting on the objection of defense counsel to the absence of a public prosecutor, Judge Vizcarra deferred the trial of the case and in four separate orders required Cabebe or any of his assistants to enter his appearance and prosecute the case.[8]

In the Comment he filed as required by this Court, Judge Vizcarra said that the criminal case was commenced by the filing of an information for theft by Second Assistant Provincial Prosecutor Ulpiano Campos and not by mere complaint. After the arraignment of the accused and the postponement of the trial for various reasons, Filler appeared before the court and moved for time to study the case. The motion was granted and the hearing re-set but about two weeks later Filler asked to be excused, arguing that the filing of the information by his office did not signify its actual intervention in the case. It was for this reason that Filler was required to show cause why he should not be punished for contempt. Like Judge Ranches and Judge Ramos in the other case, Judge Vizcarra also invoked the last sentence of Section 5 to justify his questioned orders.

The issues having been joined, the Court now proceeds to resolve them.

A study of Section 5 will show that a criminal case falling under the jurisdiction of a municipal trial court or a municipal circuit trial court may be prosecuted by the offended party, any peace officer or any officer charged with the enforcement of the law violated only: 1) when there is no fiscal (or prosecutor) available; and 2) as long as the fiscal has not intervened or the case has not been elevated to the regional trial court.

In the cases at bar, it is claimed by the petitioners that there are no prosecutors available because the Office of the Provincial Prosecutor of Ilocos Sur is understaffed and its distribution by the Department of Justice among the several courts in the province precluded its handling of the seven cases in the Municipal Circuit Trial Court in Caoayan-Sta. Catalina, and the lone case before the Municipal Trial Court of Bantay.

We have examined the said directive and find that this allegation is inaccurate, to say the least. Annex F clearly shows that Fiscal Roman Mario V. Panem has been assigned to the Municipal Trial Court of Vigan and the Municipal Circuit Trial Court of Caoayan-Sta. Catalina, Ilocos Sur, and Fiscal Primo T. Cabotaje, Jr. to the Municipal Trial Court of Bantay, Ilocos Sur. It is true that, according to the directive, assignments to the municipal trial courts and the municipal circuit trial courts are made "only upon call for assistance by police officers, offended parties, law enforcement officers and the proper courts in the interest of justice." Such call has been made, however, by the respondent judges.

The argument of the petitioners that the respondent judges should not be allowed to interfere with the administration of the Office of the Provincial Prosecutor is not acceptable. In requiring that office to prosecute the cases before them, the said respondent judges were merely enforcing the basic rule in Section 5 that "all criminal actions either commenced by complaint or information shall be prosecuted under the direction and control of the

fiscal." The questioned orders were in fact based, albeit unwittingly, on the directive of the Department of Justice.

We also note the following allegations of Judge Vizcarra in his Comment, which have not been refuted by the petitioners:

The petitioners stated that Provincial Prosecutor Alejandrino Cabebe and/or his assistant prosecutors should not be required to prosecute criminal cases before the Municipal Trial Court of Ilocos Sur considering the insufficient number of prosecutors to serve all courts in the province. They have never alleged much less shown to the Municipal Trial Court of Bantay, Ilocos Sur and to the Honorable Supreme Court why they claim that there are insufficient prosecutors to serve the courts in the province. Before September 4, 1991, Prosecutor Filler was not assigned to any Regional Trial Court or any Municipal Trial Court of Ilocos Sur. It was only on September 4, 1991, after these incidents which gave rise to the petition, that Prosecutor Cabebe assigned Prosecutor Filler as an alternate or corroborating prosecutor of Branch 24 of the Regional Trial Court of Cabugao, Ilocos Sur. Nevertheless, since September 4, 1991 to the present, Prosecutor Filler has never appeared to prosecute any criminal case before Branch 24 of the Regional Trial Court of Cabugao, Ilocos Sur. Similarly, Prosecutor Cabebe is not assigned to any Regional Trial Court or Municipal Trial Court of Ilocos Sur although in very few and minor cases in which Prosecutor Cabebe is presumably personally interested he appears in the prosecution of cases before the Municipal Trial Court of Vigan, Ilocos Sur. The Regional Trial Court of Vigan, Ilocos Sur has three branches, Branch 20 presided by Honorable Florencio Ruis who holds session only on Tuesdays and Thursdays in the morning as Judge Ruiz is regularly assigned to Branch 24 of the Regional Trial Court of Cabugao, Ilocos Sur, Branch 21 presided by Honorable Efren Ramos who holds session mainly in the morning and Branch 25 of the Regional Trial Court of Vigan, Ilocos Sur presided by Honorable Herminia Pascua who holds session at Vigan, Ilocos Sur for fifteen (15) days in one month, as she also holds session on the other fifteen (15) days in the Regional Trial Court of Tagudin, Ilocos Sur. Prosecutor Primo Cabotaje, Jr. the assigned prosecutor in Branch 20 therefore prosecutes cases only in the mornings of Tuesdays and Thursdays. Prosecutor Redentor Cardenas, the prosecutor assigned in Branch 21 usually prosecutes cases before Branch 21 of the Regional Trial Court only in the mornings and rarely in the afternoons. Prosecutor Jessica Vilorio who is assigned to prosecute criminal cases in Branch 25 of the Regional Trial Court of Vigan, Ilocos Sur prosecutes criminal cases only in fifteen (15) days for one month and usually only in the mornings as the Court seldom holds session in the afternoon. Aside from these, Provincial Prosecutor Cabebe, Prosecutor Filler and Prosecutor Nonnatus Caesar Rojas could also appear in the very few cases (about one or two times a month) of the Municipal Trial Courts of Ilocos Sur wherein the public prosecutors have actually intervened.

Judge Ranches commented on the same matter thus, also without refutation:

The reason of petitioner Cabebe that there is a shortage of assistant fiscals that is why he is not assigning an assistant prosecutor to handle the prosecution of criminal cases in the sala of the undersigned respondent is not true. There is no shortage. In the municipality of Vigan alone, which is only three (3) kilometers distance to Caoayan, there are five (5) assistant fiscals, namely: Assistant Provincial Prosecutors Primo T. Cabotaje, Jr., Jessica G. Vilorio, Jaime P. Filler, Roman Mario Panem and Redentor Cardenas. There are only three (3) RTC branches conducting hearings in Vigan. Branch XX presided by then Hon. Ariston L. Rubio and the prosecuting fiscal is Primo T. Cabotaje, Jr., Branch XXV presided by Hon. Herminia Pascua who conducts hearings only on the first fifteen (15) days of every month, her official station being Tagudin, Ilocos Sur. The prosecuting fiscal is Jessica G. Vilorio, Branch XXI now presided by Hon. Efren O. Ramos, one of the respondents herein and the prosecuting fiscal is Redentor Cardenas. Said Judges conduct trials only in the morning that is the reason why the Municipal Circuit Trial Court of Caoayan usually sets case for hearings in the afternoon.

The argument that there are no prosecutors to handle the said cases must therefore be rejected.

Coming now to the second limitation, we find that in G.R. No. 95370, Assistant Provincial Prosecutor Verzosa

participated in the hearings of Criminal Cases Nos. 1798, 1804, 1805, 1761, 1876, and 1871, and Prosecutor Roman Mario Panem in the hearing of Criminal Case No. 1841, as shown by the minutes attached to the Comment of Judge Ranches. Verzosa and Panem were not only available but actually intervened in these seven cases, thus placing them under the general rule rather than the exception in Section 5. No contrary evidence has been submitted by the petitioners to belie the entries in the minutes.

In G.R. No. 101227, the record shows that Filler's appearance before Judge Vizcarra was limited to his asking for time to study the case and his subsequent request to be excused from prosecuting it. It is necessary therefore to determine whether the mere filing of the information by the Office of the Provincial Prosecutor, as was done in the prosecution for estafa before that court, should be considered an actual intervention by the prosecutor that would disauthorize the exception in Section 5.

In his Reply to the respondents' Comments in both petitions, the Solicitor General argues that:

The mere filing of the Information can not be the "actual intervention" contemplated by the Rules. If respondent Vizcarra's interpretation were followed, there would be no instance when a private prosecutor could intervene in a criminal case, except in private crimes where the offended party filed the case. This is so because all Informations, except in private crimes, are filed by the prosecutor.

Section 5 does not say it is only the private crime that may be prosecuted on complaint of the offended party. All offenses falling under the jurisdiction of the municipal trial courts and the municipal circuit trial courts are allowed to be commenced by complaint by the parties named in Section 5 and without the participation of the public prosecutor's office. Indeed, the petitioners admitted as much when they stressed and argued in G.R. No. 95370 that "the aforementioned cases were filed by the offended parties themselves, peace officers or public officers charged with the enforcement of the law violated... The Office of the Provincial Prosecutor had no hand or intervention in their filing."

It is noteworthy that none of the crimes involved in these petitions is a private offense coming under Article 344 of the Revised Penal Code. Criminal Case Nos. 1761 and 1876 are complaints for estafa, Criminal Case Nos. 1798, 1804 and 1805 are for grave oral defamation and Criminal Case No. 1841 is for slight physical injuries. The petitioners have not questioned the jurisdiction of the respondent judges over these cases and in fact have requested that the trial thereof proceed without their participation.

The Court feels that in those cases where the prosecutors themselves have filed the criminal charges, there is all the more reason for them to actively intervene in their prosecution. Having presumably made the necessary investigation of these cases before filing the corresponding informations, they are in the best position to handle their prosecution on the basis of their initial findings. If the prosecutor had not determined the prima facie guilt of the accused, he should not have filed the information in the first place. At any rate, there is something not quite correct in the prosecutor filing the information himself and then leaving the offended party in the lurch, as it were, by asking him to fend for himself in prosecuting the case.

The exception provided in Section 5 must be strictly applied as the prosecution of crime is the responsibility of officers appointed and trained for that purpose. The violation of the criminal laws is an affront to the People of the Philippines as a whole and not merely the person directly prejudiced, who is merely the complaining witness. This being so, it is necessary that the prosecution be handled by persons skilled in this function instead of being entrusted to private persons or public officers with little or no preparation for this responsibility. The exception should be allowed only when the conditions therefor as set forth in Section 5, Rule 110 of the Rules on Criminal Procedure have been clearly established.

We find that the respondent judges were correct in requiring the Office of the Provincial Prosecutor of Ilocos Sur

to participate in the prosecution of the criminal cases pending before their respective courts. However, it is not necessary for the Provincial Prosecutor himself to personally handle the prosecution of the criminal cases, and in requiring him to do so, Judge Ranches committed grave abuse of discretion. The Court notes that although Judge Ramos sustained Judge Ranches's order for the participation of the Office of the Provincial Prosecutor in the trial of the criminal cases, he nevertheless did not require petitioner Cabebe to personally prosecute this. Judge Ramos was correct in allowing Cabebe to merely assign any of his assistants to attend the said hearings.

WHEREFORE, the petitions in G.R. No. 95370 and G.R. No. 101227 are both DENIED except that Provincial Prosecutor Alejandrino Cabebe shall not be required to personally undertake the prosecution of the cases involved in G.R. No. 95370. Subject to this modification, the challenged orders of the respondent judges are AFFIRMED. No costs.

**SO ORDERED.**

Narvasa, C.J., Griño-Aquino, and Medialdea, JJ., concur.

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[1] Rollo (G.R. No. 95370), p. 18.

[2] Ibid., pp. 23-25.

[3] Id., pp. 39-43.

**[4] 70 SCRA 361, 76 SCRA 42.**

[5] Rollo (G.R. No. 101227), p. 1.

[6] Ibid., p. 24.

[7] Id., p. 28.

[8] id., pp. 20-25.

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