

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. DIEGO RED ET AL., DEFENDANTS AND APPELLEES.*G. R. Nos. 33533-33535, 33708-33740. February 26, 1931*

Ponente: ROMUALDEZ, J.

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This is an appeal from the order by which the Court of First Instance of Marinduque dismissed the thirty-six informations numbered above, submitted together for our consideration.

The provincial fiscal of Marinduque, conducting the prosecution, contends that the court has committed an error in ordering the dismissal of these cases.

The order from which this appeal has been taken reads as follows:

"As the undersigned judge examined the records of these cases, taking criminal case No. 486 as a sample, he noticed an anomalous and irregular fact which violates the express provision of section 13, Code of Criminal Procedure. The fiscal who filed all the charges, addressed a letter to the deputy clerk of Boac, which is self-explanatory, wherein said fiscal informs his correspondent that he has filed 36 informations against inspectors and voters in the municipality of Santa Cruz, for violation of the Election Law, requesting said deputy clerk to 'forward those informations to Lucena in order to expedite the issuance of the proper warrants of arrest * * *.' The judge of Lucena never called either Fiscal Aquino or Fiscal Rivera to be examined as to the merits of the information in the cases above enumerated. From the numbering of the papers in the record it is evident that the district judge issued the warrant of arrest upon the simple strength of the information and the letter explaining its transmission, without making the investigation provided for in section 13, Code of Criminal Procedure. The undersigned judge will have nothing to do with a proceeding against the law, considering that the scope and intent of section 13, General Order No. 58, is to safeguard the individual's sacred rights, such as the right to life, liberty, property, etc. To deprive a citizen of his freedom without following a procedure specifically required by law, namely, that the judge entertaining an information, particularly one filed by the provincial fiscal, must, under the present law, examine under oath the prosecuting fiscal and such witnesses as he may desire to make use of, reducing into writing the testimony of the witnesses; in a Court of First Instance, the services of the stenographer may be utilized—this should be understood under section 13 of the Law of Criminal Procedure. And this section provides that only when the judge, after conducting this investigation, considers that the crime charged has been committed, and that there is reason to believe the defendant guilty of it, that the warrant of arrest or detention may be issued against the accused person. It is clear that the warrant should not issue before such an investigation has been made by the judge. The fact that the fiscal has asked by letter that the informations be sent to Lucena for the issuance of the warrants of arrest, is inadequate and cannot serve as a sufficient reason for disregarding an explicit requirement of the law. To hold otherwise would be extremely dangerous to society. Not even the Governor-General is free to disregard the law. A bill or proposed measure can become a law only after being duly passed by the Legislature, and approved by the Governor-General, as prescribed by the Jones Law.

"The two fiscals now present, Messrs. Aquino and Rivera have argued that this court should proceed with the case for the reason that, at any rate, the defendant" have waived the preliminary investigation and that they

have demurred,' maintaining that, under the circumstances, the radical defect pointed out by the court, in the irregularity and anomaly of these proceedings has thereby been cured. The court dissents with regret from this point of view taken by the two fiscals, deeming their arguments inconclusive, and declines to continue the proceedings due to the defect indicated heretofore, that the formalities of the law have not been observed in issuing the warrant of arrest, in that no investigation was made of the government's evidence in support of the informations, nor can it be held that the purely judicial power of ascertaining whether or not there exist grounds for holding the accused persons criminally liable, was correctly exercised.

"Yesterday, April 2, 1930, the judge held conference in his office at the request of the prosecution and of counsel for the defense, and in the presence of all these parties, Fiscal Aquino communicated to the judge his intention to ask for the dismissal of thirty-three of the thirty-six cases wherein he had tiled the information with which this order is concerned, saying he was ready to prosecute only cases Nos. 477, 486, and 481; and that he was prevented from making this request in open court for the dismissal of the thirty-three cases by the determination of counsel insisting upon the continuance of the cases being prosecuted at some other time; but the judge informed both the fiscals and the defense that the continuance of the three cases would not be granted, that those cases had to be prosecuted at any price during the special session in the municipality of Santa Cruz, Marinduque, in which the Government had an interest.

"Attorney Jose P. Laurel, made the following statement this morning in the course of the discussion:

" 'Counsel for the defense desires to state for purposes of the record, that at the official conference held in the office of Honorable Judge Teodoro, the fiscal was disposed to have thirty-three out of the thirty-six cases dismissed, and his failure to do so was due to the fact that the defense desired to ask for the continuance of the trial of cases Nos. 477, 486, and 481. After hearing Fiscal Aquino and the present speaker, Hon. Judge Teodoro had no objection to the dismissal of the thirty-three cases. The judge, then would have granted the continuance of the remaining three out of the thirty-six cases.'

"For these reasons, and because the undersigned judge will not override an express provision of law imposing a specific duty upon judges in cases like the present one, the proceedings are dismissed, with costs de oficio.

"Let the exception taken by the two fiscals present be of record, for the desired effect. So ordered."

Section 13 of General Order No. 58, as amended by Act No. 3042, prescribes a summary examination before the arrest of the person accused. This investigation is "merely to determine whether a warrant of arrest should issue on the information filed by the prosecution" (U. S. vs. Mendoza, 4 Phil., 124), and is different 'from the preliminary investigation made after the arrest of the accused in cases of crimes, such as those charged in these informations, falling within the original jurisdiction of a Court of First Instance; these preliminary investigations, conducted according to Acts Nos. 194 and 1627, are made for the purpose of inquiring, in case a plea of guilty has not been entered, whether there is reasonable ground to hold that an offense has been committed, and that the defendant has committed it; and, if so, providing, for the detention of the accused *Qinless* the offense beailable, and bond be given for provisional liberty) upon orders of the proper Court of First Instance; or, if there be no reasonable ground to believe the accused guilty, then, to order that he be set at liberty. (Sec. 2, Act No. 194.)

The record affirmatively shows (G. R. No. 33535, pp. 65-68) that in the instant cases, the summary examination prescribed in section 13, General Order No. 58 was not made, and, therefore, the disputable presumption provided in section 334, Nos. 14 and 31, Code of Civil Procedure, cannot be invoked, since it has been destroyed by contradictory evidence.

The ruling in the case of *People vs. Dorado and Delcano* (G. R. No. 21540)[1] wherein it was held that the defendants were estopped from discussing the validity of their arrest, having furnished a bond for their provisional liberty, is not applicable to the case at bar. Therevfe a disparity of circumstances between the two cases. The present defendants were arrested towards the end of January, 1929, on the Island and Province of Marinduque by

order of the judge of the Court of First Instance of Lucena, Tayabas, at a time when there were no court sessions being held in Marinduque. In view of these circumstances and the number of the accused, it may properly be held that the furnishing of the bond was prompted by the sheer necessity of not remaining in detention, and in no way implied their waiver of any right, such as the summary examination of the case before their detention. That they had no intention of waiving this right is clear from their motion of January 23, 1929, the same day on which they furnished a bond, and the fact that they renewed this petition on February 23, 1929, praying for the stay of their arrest for lack of the summary examination; the first motion being denied by the court on January 24, 1929 (G. R. No. 33708, page 8), and the second remaining undecided, but with an order to have it presented in Boac, Marinduque.

Therefore, the defendants herein cannot be said/to have waived the right granted to them by section 18 General Order No. 58, as amended by Act No. 3042.

Subsequently, the trial court ordered a preliminary investigation (not that prescribed in section 13 of General Order No. 58, as amended, but that provided for in Acts Nos. 194 and 1627) and it is this preliminary investigation, properly so-called according to current legal terminology in the Philippines, which the defendants later on waived; but this waiver has no reference to the right mentioned in section 13, General Order No. 58, and should not be understood as a waiver of the summary examination therein provided for.

Under all the circumstances of the case we find the order appealed from to be in accordance with the facts and the law, affirming it without express pronouncement of costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns, and Vill-Real, JJ., concur.

[1] Promulgated February 12, 1924, not reported.

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