

CITY FISCAL NESTORIO M. PLACER, ASST. CITY FISCALS AGELIO L. BRINGAS, ERNESTO M. BROCOY, RAFAEL V. FLORES, FELIXBERTO L. GUIRITAN, MACARIO B. BALANSAG AND ROSARITO F. DABALOS, A...

G.R. Nos. 60349-62. December 29, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

The legal question raised in this petition is whether the certification of the investigating fiscal in the information as to the existence of probable cause obligates respondent City Judge to issue a warrant of arrest.

The antecedent facts are not disputed. During the period from March 30 to April 14, 1982, petitioners, the City Fiscal of Butuan City and his assistants filed in the City Court of Butuan the following informations, to wit:

CRIMINAL CASE NO.

TITLE

12209

People vs. Jimmy Tan

Slight Phy. Inj.

12210

People vs. Carlito Fortun

Violation of P.D. 1306

12211

People vs. Jarail Majini

-do?

12212

People vs. Amelita Dy

Violation of B.P. 22

12213

People vs. Angelito Dy

-do?

12214

People vs. Jesus Aloyan

Estafa

12215

People vs. Bebot Lauron

Mal. Mischief

12216

People vs. Mariano Trani Antonio Monghit

Usurpation of authority

12217

People vs. Elorde Subingbing, Fernando Sagay

Alarm & Scandal

12218

People vs. Perla Trasga

Grave oral defamation

12219

People vs. Renato Dayan

Estafa

12220

People vs. Edgardo Dayan

Estafa

12221

People vs. Benito Sy Ibañez

Viol. of B.P. 22

12222

People vs. Benito Sy Ibañez

-do?

These informations, except the last four, docketed as Criminal Cases Nos. 12219, 12220, 12221 and 12222, were certified to by the respective investigating fiscals as follows: "that a preliminary examination has been conducted by me in this case, having examined the complainant and his witnesses; that on the basis of the sworn statements and other evidence submitted before this Office, there is reasonable ground to believe that the crime charged has been committed and that herein accused is probably guilty thereof." The informations in Criminal Cases Nos. 12219 and 12220 bore the certification of 3rd Assistant Fiscal Felixberto Guiritan "that I am filing this

information upon directive of the Minister of Justice, who upon review of the resolution of the undersigned investigating fiscal has found prima facie case against herein accused",[1] while the informations in Criminal Cases Nos. 12221 and 12222 were certified to by 2nd Assistant Fiscal Ernesto M. Brocoy in this wise: "I am filing this information upon directive of the City Fiscal pursuant to the provisions of P.D. No. 911, who, upon review of the resolution of the investigating fiscal now on temporary detail with the office of the Provincial Fiscal of Surigao del Sur, has found prima facie case against the herein accused."[2]

Following receipt of said informations, respondent judge issued an order setting on April 5, 1982 the hearing of said criminal cases for the purpose of determining the propriety of issuing the corresponding warrants of arrest. After said hearing, respondent issued the questioned orders dated April 13, 15, 16 and 19, 1982, requiring petitioners to submit to the court the affidavits of the prosecution witnesses and other documentary evidence in support of the informations to aid him in the exercise of his power of judicial review of the findings of probable cause by petitioners.[3]

Petitioners filed two separate motions for reconsideration of said orders, contending that under P.D. Nos. 77 and 911, they are authorized to determine the existence of a probable cause in a preliminary examination/investigation, and that their findings as to the existence thereof constitute sufficient basis for the issuance of warrants of arrest by the court.[4] On April 28, 1982, respondent judge denied said motions and reiterated his order to petitioners to submit the supporting affidavits and other documents within five (5) days from notice.[5]

Hence, petitioners filed this petition for certiorari and mandamus to set aside the aforesaid orders and to compel respondent to issue the warrants of arrest in Criminal Cases Nos. 12209-12222.

Meanwhile, the respondent, in addition to his duties as presiding judge of Branch I of the City Court of Butuan, was also assigned to preside over Branch II of said court, as Judge Jesus Ruiz, presiding judge of said sala, had retired from the service. The informations filed by petitioners in Branch II likewise remained dormant because of respondent's firm refusal to issue the corresponding warrants of arrest for want of affidavits of the witnesses. Thus, as disclosed by petitioner's urgent motion,[6] no warrants had been issued in 113 informations as of July 15, 1982.

On July 12, 1982, respondent judge received Our May 19, 1982 Resolution requiring him to comment on the petition. However, interpreting the same as a denial of the petition itself, respondent issued on the following day, July 13, an Omnibus Order directing petitioners to submit immediately the supporting affidavits and other evidence in Criminal Cases Nos. 12209-12222. Having failed to secure a reconsideration of said Omnibus Order, petitioners finally submitted the required affidavits and documents on July 15, 1982 in order to avoid further delay in the prosecution of these cases.

This move on the part of the petitioners would have rendered the instant petition moot and academic. But while respondent gave due course to some of said cases either by issuing the warrants of arrest or taking some other appropriate action,[7] he refused to issue the warrants in Criminal Cases Nos. 12417, 12418, 12419, 12420 and 12422, and instead ordered the records thereof remanded to the City Fiscal "for further preliminary investigation or reinvestigation," for on the bases of said affidavits, respondent found no prima facie case against the accused.

Petitioners therefore filed a motion with this Court to restrain respondent from enforcing the orders subject of the main petition and to compel him to accept, and take cognizance of, all the informations filed in his court. They contend that the fiscal's certification in the information of the existence of probable cause constitutes sufficient justification for the judge to issue a warrant of arrest; and that such certification binds the judge, it being supported by the presumption that the investigating fiscal had performed his duties regularly and completely.

Upon the other hand, respondent justifies his order as an exercise of his judicial power to review the fiscal's findings of probable cause. He further maintains that the failure of petitioners to file the required affidavits destroys the presumption of regularity in the performance of petitioners' official duties, particularly in the light of the long standing practice of the Office of the City Fiscal of Butuan of attaching to the informations filed with the court the affidavits of prosecution witnesses and other documentary evidence presented during the preliminary investigation.

The issue to be resolved is whether or not the respondent city judge may, for the purpose of issuing a warrant of arrest, compel the fiscal to submit to the court the supporting affidavits and other documentary evidence presented during the preliminary investigation.

We sustain the position of respondent judge.

The primary requirement for the issuance of a warrant of arrest is the existence of probable cause. Section 3, Article IV of the 1973 Constitution provides that -

"x x x no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer, as may be recognized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce x x x."

P.D. No. 911 authorizes the fiscal or state prosecutor to determine the existence of probable cause. Thus,

"If on the basis of complainant's sworn statements and documents submitted, the investigating fiscal or state prosecutor finds no probable cause to conduct a preliminary investigation, he shall dismiss the case. If probable cause is established by complainant's evidence, he shall notify the respondent by issuing a subpoena x x x. (Sec. 1 [b], RA 5180, as amended by P.D. Nos. 77 and 911).

"The fiscal or state prosecutor shall certify under oath in the information to be filed by him that he has examined the complainant and his witnesses; that on the basis of the sworn statements and other evidence submitted before him there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, x x x" (Sec. 1 [d], id.).

There is thus no dispute that the judge may rely upon the fiscal's certification of the existence of probable cause and, on the basis thereof, issue a warrant of arrest. But does such certification bind the judge to come out with the warrant? We answer this query in the negative. The issuance of a warrant is not a mere ministerial function; it calls for the exercise of judicial discretion on the part of the issuing magistrate. This is clear from the following provisions of Section 6, Rule 112 of the Rules of Court:

"Warrant of arrest, when issued. - If the judge be satisfied from the preliminary examination conducted by him or by the investigating officer that the offense complained of has been committed and that there is reasonable ground to believe that the accused has committed it, he must issue a warrant or order for his arrest."

Under this section, the judge must satisfy himself of the existence of probable cause before issuing a warrant or order of arrest. If on the face of the information the judge finds no probable cause, he may disregard the fiscal's certification and require the submission of the affidavits of witnesses to aid him in arriving at a conclusion as to the existence of a probable cause. This has been the rule since *U.S. vs. Ocampo*[8] and *Amarga vs. Abbas*[9]. And this evidently is the reason for the issuance by respondent of the questioned orders of April 13, 15, 16, 19, 1982 and July 13, 1982. Without the affidavits of the prosecution witnesses and other evidence which, as a matter of long-standing practice had been attached to the informations filed in his sala, respondent found the informations inadequate bases for the determination of probable cause. For as the ensuing events would show, after petitioners had submitted the required affidavits, respondent wasted no time in issuing the warrants of arrest in the cases

where he was satisfied that probable cause existed.

Germane to the issue at hand is the Rule on Summary Procedure in Special Cases^[10] applicable to the following, to wit:

"I. B. Criminal Cases:

(1.) Violation of traffic laws, rules and regulations;

(2) Violations of the rental laws;

(3) Violations of municipal or city ordinances;

(4) All other criminal cases where the penalty prescribed by law for the offense charged does not exceed six (6) months imprisonment, or a fine of One Thousand Pesos [P1,000.00], or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom; Provided, however, that in offenses involving damage to property through reckless negligence, this Rule shall govern where the imposable fine does not exceed Ten Thousand Pesos [P10,000.00]."

In said cases, the filing of the affidavits of witnesses with the court is mandatory. Section 9, par. 2 of said Rule prescribes that "the complaint or information must be accompanied by the affidavits of the complainant and of his witnesses in such number of copies as there are defendants plus two (2) copies for the court's files."

Section 10 of the Summary Rule provides:

"On the basis of the complaint or information and the affidavits accompanying the same, the court shall make a preliminary determination whether to dismiss the case outright for being patently without basis or merit, or to require further proceedings to be taken. In the latter case, the court may set the case for immediate arraignment of an accused under custody, and if he pleads guilty, may render judgment forthwith. If he pleads not guilty, and in all other cases, the court shall issue an order, accompanied by copies of all the affidavits submitted by the complainant, directing the defendant(s) to appear and submit his counter-affidavit and those of his witnesses at a specified date not later than ten (10) days from receipt thereof.

"Failure on the part of the defendant to appear whenever required, shall cause the issuance of a warrant for his arrest if the court shall find that a probable cause exists after an examination in writing and under oath or affirmation of the complainant and his witnesses.

The obvious purpose of requiring the submission of affidavits of the complainant and of his witnesses is to enable the court to determine whether to dismiss the case outright or to require further proceedings.

One last point. It appears that after petitioners had submitted the required affidavits of witnesses, the respondent judge ordered Criminal Cases Nos. 12417, 12418, 12419, 12420 and 12420 remanded to the City Fiscal for further preliminary investigation or reinvestigation. We hold that respondent did not abuse his discretion in doing so. From the informations and affidavits presented to him, he found the charges patently without basis or merit. For respondent to issue the warrants of arrest and try the accused would only expose the latter to unnecessary harassment, anxiety and expense. And as already pointed out, under the Rule on Summary Procedure in Special Cases, the respondent judge has the power to order the outright dismissal of the charge if, from the information and the affidavits attached thereto, he finds the same to be patently without basis or merit.

WHEREFORE, the petition is hereby dismissed. No costs.

SO ORDERED.

Makasiar (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.
Aquino, J., no part.

- [1] Annexes K and L, pp. 33-34, 35-36, Rollo.
- [2] Annexes M and N, pp. 38-40, Rollo.
- [3] Annexes 2, AA, BB and CC, pp. 69-74, Rollo.
- [4] Annexes DD and EE, pp. 75-77, Rollo.
- [5] Annexes FF, p. 82, Rollo.
- [6] Dated July 15, 1982, p. 103, Rollo.
- [7] Certification of the Clerk of Court dated August 20, 1982, p. 136, Rollo.
- [8] 18 Phil. 1.
- [9] 98 Phil. 739.
- [10] This Summary Rule took effect on August 1, 1983.

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