

RICHARD C. HOEY, PETITIONER, VS. THE PROVINCIAL FISCAL OF RIZAL, AND THE MINISTER OF JUSTICE, RESPONDENTS.

G.R. Nos. 61323-24. June 29, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

In October 1980 and November 1980, petitioner Richard C. Hoey filed complaints with the Office of the Provincial Fiscal of Rizal against Raul Leveriza, Jr., and Henry Unson, Jr., officers of Manotoc Securities, for violation of Batas Pambansa Blg. 22, otherwise known as the Bouncing Check Law. After preliminary investigation, the investigation fiscal found probable cause and filed the informations in the then Court of First Instance of Rizal, in Pasig, docketed as Criminal Cases Nos. 44548 and 44549.

Accused Raul Leveriza, Jr. filed a Motion for Reconsideration in both cases with the Office of the Provincial Fiscal which, after a reinvestigation of the two (2) cases was made, corresponding Motions to Dismiss, dated June 7, 1982, were presented in court for the reason that -

"x x x x x x x x

"4. After analysing all the allegations of the accused in the Motion for Reconsideration and the oppositions filed thereto by the offended party, the undersigned finds that the subject matter in this case is a guarantee check and as such is not covered by Batas Pambansa Bilang 22, hence the Information filed in this case does not charge an offense and should therefore be dismissed, a copy of the Resolution of the undersigned dated May 31, 1982 duly approved by Provincial Fiscal B. Jose Castillo recommending for the dismissal of this case is hereto attached as Annex 'A' and made an integral part hereof;

"5. Although it was only accused Raul Leveriza, Jr. who filed the instant Motion for Reconsideration since the Information filed in this case does not charge an offense the Information should be dismissed not only against Raul Leveriza, Jr but also against his co-accused Enrique Unson, Jr." (p. 24, Rollo)

Petitioner Richard C. Hoey, complainant in the two (2) Criminal Cases Nos. 44548 and 44549, opposed the Motion to Dismiss, stating among others that -

"Raul Leveriza, Jr. and Henry Unson, Jr. were officers of Manotoc Securities Inc. That Raul Leveriza, Jr. had diverted and converted the public funds entrusted to the corporation by the public as Manotoc Securities was engaged in the business of soliciting money from the public to finance client accounts in their stock-market operations who wanted to buy or margin viable securities. That through his position as Executive Vice-President, he was able to divert those funds to the amount of P10,422,573.00 to finance his own, his family's and friends/projects and or corporations to the prejudice and damage of the public investors such as RICHARD C. HOEY the complainant herein.

"That as part of his scheme he and accused Henry Unson caused to issue and signed two (2) checks to the order of the complainant herein which bounced due to a 'closed account.'

"That IBAA Check No. HO-01293423 dated 6 November 1979 for the amount of P59,508.00 bounced due to a closed account as well as IBAA Check No. HO-01293422 dated November 14, 1979 for the amount of P82,634.20.

"The signatories were Raul Leveriza, Jr. and Henry Unson, Jr. for both checks filed as Criminal Cases Nos. 44548 and 44549.

"Though the accused Raul Leveriza, Jr. suddenly moved out of his known residence at Marbella I Condominium, Roxas Blvd, without leaving a forward-ing address in order not to be found, his lawyers were furnished copies as to the Rejoinder-Affidavits of the complainant during the preliminary investigation. The accused Raul Leveriza, Jr chose to remain unrepresented in that proceeding.

"Upon termination of the preliminary investigation and after the filing of the information, in order to delay proceedings, his lawyers suddenly appeared and filed a Motion for Reconsideration which was granted.

"That there were two issues raised in the re-investigation namely:

1. Whether or not a crossed check is a check;
2. Whether or not a check issued for guarantee is punishable under Batas Pambansa Bilang 22." (pp. 30-30-A, Rollo)

Before the lower court could act on the Motion to Dismiss, Mr. Richard C. Hoey filed this petition with prayer that a writ of mandamus with prohibition be issued ordering the Honorable Provincial Fiscal of Rizal to prosecute the two cases for violation of the Bouncing Check Law and to desist from pursuing, or "to withdraw the two Motions to Dismiss thereby preventing the dismissal of the cases and causing the continuation of the trial on the merits." (p. 5, Rollo)

Section 4, Rule 110 of the Revised Rules of Court, specifically provides that "all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal." Thus, it is clear that the question of instituting a criminal charge in court is one addressed to the sound discretion of the investigating fiscal; and, the assumption is, the information he lodges in court is supported by facts brought about by an inquiry made by him. On the other hand, this Court has ruled in *Alberto vs. de la Cruz*, 98 SCRA 406, that "a fiscal by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to support the allegations thereof. Although this power and prerogative of the Fiscal, to determine whether or not the evidence at hand is sufficient to form a reasonable belief that a person committed an offense, is not absolute and subject to judicial review, it would be embarrassing for the prosecuting attorney to be compelled to prosecute a case when he is in no position to do so, because in his opinion, he does not have the necessary evidence to secure a conviction, or he is not convinced of the merits of the case. The better procedure would be to appeal the Fiscal's decision to the Ministry of Justice and/or ask for a special prosecutor."

However, in cases where informations have already been filed in court, the latter acquires jurisdiction over them. Otherwise stated, the jurisdiction of the court became vested upon the filing of the information and, once acquired, its jurisdiction continues until the termination of the case.

In the two (2) criminal cases in question, it is a fact that the informations have already been filed in court. It should therefore dispose of them, one way or the other, resolving all motions brought before it including the Motions to Dismiss, dated June 7, 1982, filed by the Fiscal, or deciding the cases on the merit. The prosecuting fiscal has no more control over said cases, the same having been transferred to the court. We have a situation where, akin to the pronouncement made by the present Chief Justice in *Lansang vs. Garcia*, 42 SCRA 452, whenever a formal complaint is presented in court against an individual, the court steps in and takes control

thereof until the same is finally disposed of.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Fernando, C.J., Makasiar, Concepcion, Jr., Guerrero, Melencio-Herrera, Plana, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

Teehankee, J., files a separate concurrence.

Abad Santos, J., in the result.

Escolin, J., reserves his vote.

Aquino, J., no part.

CONCURRING OPINION

TEEHANKEE, J.:

I concur. Mandamus on the part of the offended party-petitioner that respondent Provincial Fiscal be ordered to prosecute the two pending criminal cases for violation of the Bouncing Check Law and to desist from pursuing the pending motions to dismiss filed by him with the trial court will not lie. The Court's decision correctly states (at page 5) that the informations have already been filed in court which has now acquired jurisdiction over the two criminal cases which shall continue until the termination of the cases and that, therefore, it is the said court which "should therefore dispose of them, one way or the other, resolving all motions brought before it including the Motions to Dismiss dated June 7, 1982 filed by the Fiscal, or deciding the cases on the merits. The prosecuting fiscal has no more control over said cases, the same having been transferred to the court."

This is but in line with the leading case of Assistant Provincial Fiscal of Bataan vs. Dollete (103 Phil. 914), wherein this Court upheld the action of the therein respondent judge in denying the petitioner fiscal's motion for dismissal of the criminal case as "wholly within his right and discretion," but set aside the second part of respondent judge's order directing petitioner fiscal to file the corresponding information and instead "suggested that the respondent judge either order the offended parties to submit to an investigation to be conducted by petitioner, so that the latter may gather the necessary evidence to support the prosecution, or to convince himself of the merits of the case, from the point of view of the Government, or else, considering the attitude of the petitioner, and to avoid embarrassment, to have either the trial court or the offended parties make manifestations to the Department of Justice for the designation of an Acting Provincial Fiscal."

The present petition which would bypass the trial court is, therefore, properly dismissed for prematurity. The pending motions to dismiss the two criminal cases have been properly addressed by respondent fiscal to the trial court which should now properly resolve them. The questions presented are based on documentary evidence and it is up to the trial court to determine the merits thereof on the basis of the documented facts and the applicable law and to grant or deny the motions to dismiss accordingly.

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