

JUAN LOPEZ DUNOG, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, PROVINCIAL FISCAL ENRIQUE B. INTING OF BOHOL, AND PANTALEON U. DEL ROSARIO, RESPONDENTS.*G.R. Nos. 77850-51. March 25, 1988*

Ponente: SARMIENTO, J.

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Again, the question as to whether or not a trial court may deny a motion submitted by the Provincial Fiscal to dismiss an information previously filed by him and insist on trial on the merits of the case, comes to us with this Petition For Review of the decision* of the respondent Court of Appeals. The assailed decision sets aside the Orders of the trial court and enjoins the Judge** from proceeding with the trial of the criminal aspect of Criminal Case No. 4319. Although this case is docketed under two G.R. Nos., there being two petitions filed in the Court of Appeals, viz: CA-G.R. SP No. 08533, entitled, Provincial Fiscal of Bohol, Petitioner, versus Honorable Fernandez Ruiz as Presiding Judge of Bohol, Branch IV, Petitioner-Respondent, and CA-G.R. SP No. 08549, entitled, Pantaleon U. Del Rosario, Petitioner, versus Honorable Fernandez Ruiz, as Presiding Judge of the Regional Trial Court of Bohol, Branch IV, Respondent, only one petition was filed.

The antecedent facts are the following:

On October 9, 1985, First Assistant Provincial Fiscal of Bohol Angel S. Ucat, Jr. issued a resolution finding a prima facie case for the filing of an information for estafa against Pantaleon del Rosario;[1] that the case stemmed from an alleged misappropriation by the private respondent, with grave abuse of confidence, of the proceeds of the sale of 24 heads of Heifer cattle, under a contract of agency; that the same resolution was approved by the respondent Provincial Fiscal of Bohol, Enrique B. Inting;[2] that on October 15, 1985, an information charging the private respondent with estafa was filed with the Regional Trial Court of Bohol, and docketed as Criminal Case No. 4319, entitled, "The People of the Philippines versus Capt. Pantaleon V. del Rosario;"[3] that, again, the information was approved by the respondent Provincial Fiscal;[4] that on the last week of October, 1985, and after the information had already been filed in court, the private respondent filed a Motion For Reinvestigation with the public respondent Provincial Fiscal;[5] and that the petitioner submitted his Opposition And/Or Comment to private respondent's Motion For Reinvestigation.[6]

On November 9, 1985, acting on the said Motion For Reinvestigation, the respondent Provincial Fiscal, reversing himself and his First Assistant Fiscal, this time found no prima facie case against the same private respondent.[7]; that on the same date, the respondent Provincial Fiscal filed an Omnibus Motion For Postponement Of Arraignment And To Allow Withdrawal Of Information in the above-mentioned Criminal Case No. 4319;[8] that the petitioner, the private respondent, and the respondent Provincial Fiscal filed their respective Comments, Manifestations, and Rejoinders; that on December 4, 1985, the Presiding Judge of the Regional Trial Court of Bohol resolved to deny the respondent Provincial Fiscal's Motion to Withdraw Information;[9] and that from the denial of the Motion for Reconsideration,[10] two petitions for certiorari and prohibition with preliminary

injunction were filed by the respondent Provincial Fiscal and the private respondent before the respondent Court of Appeals.[11]

On October 30, 1986, the respondent Court of Appeals promulgated its Decision in favor of the respondent Provincial Fiscal and the private respondent setting aside the questioned orders dated December 4, 1985 and February 21, 1986 of the trial court, granting the Motion to Withdraw Information filed by the Provincial Fiscal, and enjoining the Presiding Judge from proceeding with the trial of the criminal aspect of Criminal Case No. 4319, among others.[12] From the denial of the petitioner's Motion for Reconsideration, this case was elevated to us.

We find merit in the Petition.

The rule is now well-settled that once a complaint or information is filed in court any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court.[13] Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in court he cannot impose his opinion on the trial court.[14] For while it is true that the fiscal has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court, once the case had already been brought to court, whatever disposition the fiscal may deem proper thereafter should be addressed to the court for its consideration and approval.[15]

This doctrine is not without judicial history. As early as 1903, in the case of *U.S. vs. Valencia*,[16] the Court thru Justice Willard ruled that after the complaint has been presented and certainly after the trial has been commenced, the court and not the fiscal has full control of it, and that the complaint can not be withdrawn by the fiscal without the consent of the court. Elucidating further on the meaning of this doctrine, the Court, in 1915, speaking thru Justice Carson in the case of *U.S. vs. Barredo*,[17] stated that provincial fiscals are not clothed with power, without the consent of the court, to dismiss or nolle prosequi criminal actions actually instituted, and pending further proceedings, and that the power to dismiss is vested solely in the court, i.e., the presiding judge. Through the years this doctrine has been upheld in numerous cases.[18] In 1958, in the case of *Assistant Provincial Fiscal of Bataan vs. Dollete*,[19] the doctrine was put to test when the Court, thru Justice Montemayor, ruled that the denial of a motion to dismiss implies the prosecution of the case, although not necessarily by the same fiscal who moved for dismissal, for it is rather embarrassing for a 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 conviction or he himself is not convinced of the merits of the case. It was however, in 1967, in the case of *People vs. Pineda*,[20] when the doctrine had its severe test when this Court declared that the question of instituting a criminal charge is one addressed to the sound discretion of the investigating Fiscal, and it follows to reason that in a clash of views between the judge who did not investigate and the Fiscal who did, those of the Fiscal's should normally prevail. Two years later, in 1969, the doctrine continued to be threatened in the case of *People vs. Jamisola*,[21] when the Court pronounced that under Rule 110 of the Rules of Court, the Fiscal has the direction and control of the prosecution, and that in the exercise of that authority, the Fiscal may re-investigate the case and subsequently move for its dismissal should the reinvestigation show either that the defendant is innocent or that his guilt may not be established beyond reasonable doubt. In 1977, in the case of *Salcedo vs. Suarez*,[22] the Court, thru Justice Teehankee, now Chief Justice, ruled that the Provincial Fiscal has the power to conduct his own investigation or reinvestigation of a case, and thereafter he may either move to dismiss the case subject to the sound discretion of the judge who usually grants, although he may deny the same. Thus, recognition of the doctrine continues.

The doctrine of the power of the court to deny a motion to dismiss filed by a prosecuting fiscal in further affirmation of the *U.S. vs. Barredo* ruling in 1915 was settled last year, 1987, by this Court in the cases of Mario

Fl. Crespo vs. Hon. Leodegarito L. Mogul, et al.,[23] and Sta. Rosa Mining Company vs. Assistant Provincial Fiscal Augusto Zabala, et al.[24]

The apprehension of the Court on a trial court's granting of a motion to dismiss filed by a fiscal after a reinvestigation is best expressed in the case of Edillon vs. Narvios.[25] We stated:

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Generally, a judge allows the dismissal of a case for lack of evidence, upon the fiscal's motion because the prosecution of the case is under the direction and control of the fiscal. As was noted in *U.S. vs. Barredo*, 32 Phil. 444, 451, when a fiscal files a motion to dismiss, "it rests in the sound discretion of the judge whether to accede to such motion or not. Ordinarily, of course, he will dismiss the action in accordance with the suggestion of an experienced fiscal who has personally investigated the facts."

What appears to be irregular in Judge Narvios' management of the case against Ibones was his granting of the latter's motion for the reinvestigation of the case by the fiscal on the inconsistent grounds that he was not allowed to present his evidence and that he intended "to present newly discovered evidence."

Of course, Judge Narvios was simply following a practice, which is not salutary and which is not sanctioned by the Rules of Court, whereby criminal cases already filed in court are held in abeyance and a reinvestigation by the prosecution is allowed.

As a general rule, that practice should be discouraged or should not be tolerated because it generates the impression (at least to lawyers like complainant Edillon who was not born yesterday) that the accused would be able to fix his case or that it would be easier for him to manipulate and maneuver its dismissal in the fiscal's office.

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There is one more point that we have to stress. It was erroneous for the respondent appellate court not to take cognizance of the Comment filed by the private prosecutor on the ground that he has no personality to appear in the proceeding, ostensibly because the offended party has no right to appeal even from an order of dismissal upon motion of the fiscal.[26] In all petitions under Rule 65 of the Rules of Court questioning the official orders of judges, including the justices of Court of Appeals, the latter are only formal parties. The burden of defending their challenged action falls on the private respondent as provided under Section 5 of the same Rule.

The respondent court or judge need not file any separate pleading or comment distinct from that of the private respondent who is obligated to appear and defend the court or judge concerned, unless the summons or order to comment specifically and expressly requires the court or the judge himself to comply with the directive of the superior court. Judges who are made respondents are mere formal parties and are not to be distracted from their main function of trying and adjudicating cases in their own courts.[27]

WHEREFORE, the petition is hereby GRANTED. The Decision of the respondent Court of Appeals, dated October 30, 1986, is hereby REVERSED. The questioned Orders dated December 4, 1985, and February 21, 1986, of the trial court are hereby REINSTATED. Public respondent, Provincial Fiscal or any other person who may be assigned or appointed to act in his place or stead, is hereby ordered to continue prosecuting Criminal Case No. 4319 until the same is terminated. No pronouncement as to costs.

This Decision is IMMEDIATELY EXECUTORY.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

[*] Magsino, Celso, J.; Camilon, Serafin and Herrera, Manuel, JJ., Concurring.

[**] Judge Fernando S. Ruiz, Regional Trial Court of Bohol, 7th Judicial Region, Branch IV, City of Tagbilaran.

[1] Rollo, 146-147.

[2] Petition, rollo, 8 and 57.

[3] Id., 8, 58-60.

[4] Id., 8-9.

[5] Id., 9.

[6] Id., 9, 62-63.

[7] Id., 10, 64-74, 148.

[8] Id., 10, 75-76, 148.

[9] Id., 10, 84-88, 148.

[10] Id., 10, 148-149.

[11] Id., 95-100, 145-146.

[12] Id., 13-14, 115-124, 145-146.

[13] Mario Fl. Crespo vs. Hon. Leodegario L. Mogul, et al., G.R. No. 53373, June 30, 1987.

[14] Id.

[15] Asst. Provincial Fiscal of Bataan vs. Dollete, No. L-121296, May 28, 1958, 103 Phil. 914.

[16] No. 1036, January 21, 1903, 1 Phil. 642.

[17] No. 9278, December 7, 1915, 32 Phil. 444.

[18] U.S. vs. Abanzado, February 15, 1918, 37 Phil. 658; Kwong Sing vs. The City of Manila, October 11, 1920, 41 Phil. 103; U.S. vs. Perfecto, September 9, 1921, 42 Phil. 113; Dimayuga vs. Fernandez, April 15, 1922, 43 Phil. 304; Gonzales vs. CFI of Bulacan, December 29, 1936, 63 Phil. 846; People vs. Ovilla, June 27, 1938, 65 Phil. 722; People vs. Orais, et al., June 30, 1938, 65 Phil. 744; People vs. De Moll, September 30, 1939, 68 Phil. 626.

[19] 103 Phil. 914.

[20] No. 26222, July 21, 1967, 20 SCRA 748.

[21] No. 27332, November 28, 1969, 30 SCRA 555.

[22] No. L-46103-12, October 28, 1977, 80 SCRA 237.

[23] G.R. No. 53373, June 30, 1987.

[24] G.R. No. L-44723, August 31, 1987.

[25] Adm. Case No. 1753, August 21, 1980, 99 SCRA 174.

[26] Rollo, p. 117.

[27] Taroma vs. Gasidan, No. L-37296, October 30, 1975, 67 SCRA 508.

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