

## SECOND DIVISION

[ G.R. No. 104645, July 23, 1998 ]

**ALELIO BERNALDEZ PEN, PETITIONER, VS. HON. ANITA AMORA DE CASTRO, JUDGE, BR. 46, REGIONAL TRIAL COURT, BACOLOD CITY, RESPONDENT.**

### D E C I S I O N

**PURISIMA, J.:**

Presented on 26 April 1991, in Criminal Case No. 10126 before the Regional Trial Court, Branch 46, Bacolod City, the Information<sup>[1]</sup> charging Ernesto Java y Palmares and one John Doe with a violation of Article 38 (a) and (b) in relation to Article 39 (b)<sup>[2]</sup> of the Labor Code, as amended, alleges:

*"That on or about the month of April, 1991, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, conspiring, confederating, and mutually helping each other, did, then and there wilfully, unlawfully and feloniously recruit the said herein offended parties:*

*Guillerma Sarmiento*

*Jose Jayme*

*Francisco Gomez*

*Wilfredo Estrebor*

*Jelson Jaime*

*Evelyn Lauron*

*Reynaldo Gomez*

*Juanito Jaime*

*Rodrigo Ondrado*

*Jocelyn Lauron*

*for employment in the Province of Zambales, Luzon, Philippines, under the business name of Good Wisdom for All Nations, Inc., without first securing the necessary license or authority to engage in recruitment activities in Bacolod City from the Department of Labor and Employment, in violation of the aforementioned law.*

*Contrary to law.”*

On May 29, 1991, two weeks before the scheduled arraignment thereunder, the City Prosecutor, Atty. Melquiades N. Centeno, submitted an “Urgent Motion To Amend the Information”;<sup>[3]</sup> stating, inter alia:

“That contrary to the Information that the other accused is a John Doe, copies of the Affidavits of offended parties and [of the] Bacolod City PNP indorsements had clearly identified the other accused as one by the name of ALELIO BERNALDEZ PEN of Good Wisdom for All Nations Inc., located at Room 402, Travellers Inn, Makati Avenue, Makati, Metro Manila;

That likewise the Information failed to allege the qualifying circumstances attending the offense charged and making its penalties [sic] fall under Section 39 (a) of the Labor Code of the Philippines as amended.”<sup>[4]</sup>

However, the name John Doe was retained inadvertently in such Amended Information.<sup>[5]</sup> And so, on August 27, 1991, the same City Prosecutor sent in a Second Amended Information<sup>[6]</sup> naming the co-accused John Doe as ALELIO BERNALDEZ PEN, and in view of the fact that a capital offense is charged, no bail was recommended. The second amended Information was accompanied by a Resolution,<sup>[7]</sup> averring, among others, thus:

“As maybe recalled Ernesto Java was accused together with Mr. Alelio B. Pen while the former was then detained, the latter was at large.

As a standard operating procedure in such cases, where one is at large, regular preliminary investigation is conducted on the respondent Pen.

Respondent was subpoenaed in his nown (sic) address, but the return showed that he can no longer be subpoenaed thereat. Under the circumstances of the case against him may already be decided on the basis of the evidence of the complainant and his witnesses [Sec. 3 (d) Rule 112 Revised Rules on Criminal Procedure].

The evidence on record are the sworn testimonies of the complaining witnesses that the accused Ernesto Java and respondent Alelio Bernaldez Pen were working, conspiring and confederating together in recruiting the complainant (sic) as workers for the proposed building of Avenue Square in the province of Zambales, Philippines under the auspices of the Good Wisdom for All Nations, of which Mr. Pen is the President. Taken from the complainants were P200.00 each as consideration for their services. Recent events hwever, (sic) showed that the job offered were non-existing but a scheme to lure the victims and exact money from them. Furthermore, the firm was not registered as a licensed recruiter by the DOLE.

The evidence of complainant (sic) has been found to be sufficient in form and substance. And considering that complaint is un rebutted it is given force and effect.”

On September 20, 1991, then Presiding Judge Jose Aguirre issued an Order<sup>[8]</sup> admitting the second amended Information and on the strength thereof, issued a warrant of arrest against the herein petitioner, Alelio B. Pen.

On October 7, 1991, petitioner filed with the Office of the City Prosecutor a Motion To Declare Resolution Dated August 27, 1991 A Total Nullity or Null and Void,<sup>[9]</sup> contending that the said Resolution violated movant’s right to preliminary investigation. While subject motion was pending before the Office of the City Prosecutor, Judge Jose Aguirre was transferred to the sala vacated by the late Judge Cicero Querubin and as a result, Branch 46 of the Regional Trial Court in Bacolod City was left vacant until Judge Anita Amora De Castro, the respondent judge herein, assumed as Presiding Judge of Branch 46.

Petitioner’s motion attacking the August 27, 1991 Resolution aforementioned was unacted upon, for more than three (3) months, by the City Prosecutor, so much so that on January 14, 1992, petitioner filed with Judge Anita Amora de Castro a Motion for Preliminary Investigation, <sup>[10]</sup> pointing out that since Illegal Recruitment is an offense cognizable by the Regional Trial Court where no complaint or information may be filed without a preliminary investigation having been first conducted (Sec 3, Rule 112, Revised Rules of Court), non-observance of such rule over his objection was violative of his right to due process.

On January 30, 1992, the respondent Judge found petitioner’s stance meritorious, and ordered the City Prosecutor to conduct the requisite preliminary investigation. On the following day, January 31, 1992, the respondent judge directed<sup>[11]</sup> the issuance of alias warrant for the immediate arrest of petitioner.

It is petitioner’s submission that the respondent judge acted with grave abuse of discretion amounting to lack of jurisdiction in causing the issuance of an alias warrant of arrest although the City Prosecutor was not yet through with the preliminary investigation. Absent an appeal or any plain, speedy, and adequate remedy in the ordinary course of law available to him under the premises, petitioner came to this court via the present Petition for Certiorari under Section 1, Rule 65 of the Revised Rules of Court.

In her Comment thereon dated June 3, 1992, the respondent Judge justified her challenged Order; ratiocinating, as follows:

*“To the mind of the respondent Judge, the fact that the City Prosecutor of Bacolod City was directed by her to conduct a preliminary investigation of the case at bar did not legally inhibit her from issuing an alias warrant since an amended information had already been filed and admitted by the court, a warrant of arrest already issued with a capital offense. These constitute compelling reasons for his immediate custody in the interest of justice and a speedy administration of the same.”<sup>[12]</sup>*

The pivot of inquiry in this case is the propriety of issuance of subject alias warrant of arrest. Resolution of this pivotal issue hinges on two (2) questions - whether the respondent judge was authorized by law to issue the alias warrant of arrest in question without first terminating the preliminary investigation; and whether, under the attendant circumstances, respondent judge complied with the constitutional provision that no warrant of arrest shall issue except upon probable cause to be determined personally by the judge?<sup>[13]</sup>

The petition is devoid of merit.

Section 3, Rule 112 of the 1985 Rules on Criminal Procedure, provides:

"Procedure - Except as provided for in Section 7 hereof,<sup>[14]</sup> no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted in the following manner:

(a) The complaint shall state the known address of the respondent and be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents, in such number of copies as there are respondents, plus two (2) copies for the official file. The said affidavits shall be sworn to before any fiscal, state prosecutor or government official authorized to administer oath, or, in their absence or unavailability, a notary public, who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss the same if he finds no ground to continue with the inquiry, or issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents. Within ten (10) days from receipt thereof, the respondent shall submit counter-affidavit and other supporting documents. He shall have the right to examine all other evidence submitted by the complainant.

(c) Such counter-affidavits and other supporting evidence submitted by the respondent shall also be sworn to and certified as prescribed in paragraph (a) hereof and copies thereof shall be furnished by him to the complainant.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall base his resolution on the evidence presented by the complainant.

(e) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the investigating officer which the latter may propound to the parties or