

THIRD DIVISION

[G.R. No. 96229, March 25, 1997]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. GLORIOSA S. NAVARRO, AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 20, NAGA CITY, RESPONDENT.

D E C I S I O N

PANGANIBAN, J.:

In remanding the complaint or information to the provincial prosecutor, may a regional trial court judge name or designate a particular assistant prosecutor to conduct the preliminary investigation of the case?

This is the main question raised in this special civil action for certiorari under Rule 65 of the Rules of Court assailing the Order dated June 18, 1990, as well as the other orders dated July 6, 1990, August 28, 1990 and September 6, 1990 issued by Respondent Judge Gloriosa S. Navarro.^[1] The impugned Order dated June 18, 1990, the tenor of which was repeated in the subsequent orders, specifically directed Assistant Prosecutor Novelita Villegas-Llaguno to conduct the preliminary investigation on a criminal case for qualified theft filed against a minor, Carlos Barbosa Jr.

The pertinent text of the challenged Order dated June 18, 1990, reads:^[2]

"The records will show that the complaint was directly filed with the Regional Trial Court by TSG Jose Sanchez of the Philippine Constabulary and subsequently raffled to this Court.

Prov. Pros. Lirag on his part admitted the error committed by Asst. Pros. Cajot in dismissing this case. In fact when it came to his knowledge 'he directed Prosecutor Cajot to return the case to the court with the necessary Motion to Dismiss as it is only the Court which can order the dismissal of the case and the release of the accused.' However, Pros. Lirag made an observation alleging that 'while he does not condone the action taken by Prosecutor Cajot, as it not in accord with the present practice and procedure', yet he sees merit in the action taken by Pros. Cajot as it allegedly contributed to the speedy disposition of cases. Such observation is without any legal basis considering the fact that speedy disposition of cases does not include undue haste and disregard of the practice and procedure precisely adopted to insure due process. Obviously, his directive was not complied with by Pros. Cajot.

On the part of Pros. Cajot, he contended that in dismissing this case he relied in (sic) Sec. 5, of Rule 112 of the 1985 Rules of Criminal Procedure, forgetting however that such provision is applicable only to

cases forwarded to the office of the fiscal from the lower court which conducted the preliminary investigation and not to cases already filed with the Regional (sic) Trial Court. Moreover, the case of Quinto v. Villaluz cited by Pros. Cajot is not in point considering that it involved the lack of jurisdiction of the CFI because the complaint involving the same case was previously filed with the Circuit Criminal Court. Likewise, the doctrine in the case of Salcedo vs. Suarez is off tangent.

It appearing therefore that the dismissal of this case without any preliminary investigation conducted was improper being contrary to the doctrine enunciated in Crespo v. Mogul (151 SCRA 462) and St. (sic) Rosa Mining v. Asst. Prov. Fiscal of Dagupan (153 SCRA 367, the order (sic) of dismissal dated March 21, 1990 is set aside. Consequently, Asst. Pros. Llaguno who is assigned to this Court is ordered to conduct a preliminary investigation in accordance with the Rules within 15 days from receipt of this order.

SO ORDERED.”

The Facts

The facts are undisputed and are narrated with clarity in the petition before us,^[3] as follows:

“On February 20, 1990, T/Sgt. Jose V. Sanchez, PC Investigator, 244th PC Company in Concepcion Grande, Naga City filed a complaint for qualified theft directly with the Regional Trial Court of Naga City against minor Carlos Barbosa.

Subsequently, the Public Attorney’s Office, as counsel for the respondent Barbosa, filed a Motion to Quash the Complaint on the ground that Sgt. Sanchez is not authorized to file a complaint or information in Court.

Judge Gregorio Manio, Jr., as presiding judge in Branch 19, Regional Trial Court and the pairing judge of the respondent, issued an order^[4] remanding the case for preliminary investigation and assigned the adjudication thereof to Prosecutor Salvador Cajot.^[5]

Before Prosecutor Cajot could conduct the required preliminary investigation, Sgt. Sanchez filed a motion to withdraw the complaint with the Prosecution Office.

Acting on said motion, Prosecutor Cajot issued an Order^[6] dated March 21, 1990 and approved by the Provincial Prosecutor, granting the motion to withdraw the complaint and ordering the release of the accused from detention. A copy of said Order was furnished the Regional Trial Court.

On June 6, 1990, respondent Judge Gloriosa Navarro ordered^[7] the Provincial Prosecutor and Prosecutor Cajot to explain why they encroached on the jurisdiction of the court over the case. On June 7, 1990, the Provincial Prosecutor filed his explanation.^[8]

On June 13, 1990, (P)rosecutor Salvador G. Cajot filed his explanation^[9] asserting

the jurisdiction of the prosecutors office in the conduct of preliminary investigation and that when the court ordered that the records of the case be remanded to the Office of the Prosecutor to conduct the preliminary investigation, the court divested itself of its control and jurisdiction over the case.

On June 18, 1990, the Honorable Judge Gloriosa S. Navarro issued an Order setting aside the Order of Prosecutor Cajot dated March 21, 1990 and ordered^[10] Assistant Prosecutor Novelita Llaguno, who was appearing in her sala, to conduct the required preliminary investigation.

On June 29, 1990, Prosecutor Llaguno filed a motion for reconsideration^[11] taking exception to the Order dated June 18, 1990 on the ground that any resolution she may issue might run counter with the previous order of her superiors and thus render 'office policies disorganized, procedures disorderly and chaotic, resulting to the embarrassment of the administration of justice x x x.'

On July 4, 1990, Prosecutor Cajot filed a motion for reconsideration^[12] alleging among others, (that:) (a) (h)e did not issue an order of dismissal but an order granting the motion to withdraw. There is, therefore, no more complaint to speak of before the court; (b) (t)he prosecutor, in conducting the preliminary investigation, has the exclusive power and authority to dismiss the complaint immediately if he finds no grounds to continue with the inquiry, otherwise he files the Information, if he finds cause to hold the respondent for trial; (c) (t)he finding/recommendation of the investigating prosecutor is subject to review only by the Provincial (sic) Prosecutor and the action of the latter, by the Secretary of Justice; (d) (w)hen the Court remanded the case to the Prosecution Office for the required preliminary investigation; the Court divested itself of its control and jurisdiction over the case; (and) (e) (the f)iling of information is within the discretionary authority of the fiscal.

On July 6, 1990, an Order^[13] was issued by the Honorable Court denying both motions for reconsideration and reiterated its previous order to Prosecutor Novelita Llaguno to comply with the order of the court dated June 18, 1990, granting her 15 days to conduct the preliminary investigation from receipt of the copy of (the) Order.

On July 13, 1990, the Provincial Prosecutor filed a motion^[14] to set aside the orders issued by respondent judge stating (1) that she has no authority to designate a particular prosecutor to handle the case (Abugotal vs. Tiro, 66 SCRA 196); (2) that the court will be acting without or with grave abuse of discretion should it insist on Prosecutor Llaguno to conduct the preliminary investigation; and (3) that the record of said case be forwarded to the Provincial Prosecution's Office for it to conduct the preliminary investigation. A Supplemental Motion^[15] to withdraw the case so that the same may not remain pending with the court while the case is under preliminary investigation was also filed on July 24, 1990 x x x.

On August 28, 1990, the Honorable Court denied both motions on the grounds that: (a) (t)he case of Abugotal vs. Tiro (66 SCRA 196) which prohibits the courts from appointing a particular fiscal to conduct the required preliminary investigation, is not in point as the said case refers to reinvestigation while the instant case refers to preliminary investigation; and (b) (t)he Honorable Court is apprehensive that if the Motion to Amend Orders are granted, there is nothing that will prevent the Provincial Prosecutor from implementing the orders issued by Prosecutor Salvador

Cajot and the latter will just act in conformity with his previous action.^[16]

On September 4, 1990, the Provincial Prosecutor filed a Motion for Reconsideration^[17] dated September 3, 1990.

On September 6, 1990, the Honorable Court denied the Motion for Reconsideration for lack of merit."^[18]

On April 16, 1991, Petitioner People of the Philippines, represented by the Solicitor General, filed the present petition seeking the annulment of the assailed orders of Respondent Judge Navarro.

On May 27, 1991, this Court in a minute resolution dismissed the petition for having been filed out of time and for its failure to state material dates as required by paragraph 4 of Circular 1-88.^[19] However, on May 17, 1993,^[20] this Court reconsidered its resolution of May 27, 1991, and reinstated the petition for certiorari.

The Issue

The sole issue raised in petitioner's memorandum is:^[21]

"Whether or not respondent trial court committed grave abuse of discretion when it issued various orders appointing and designating a particular prosecutor to conduct the preliminary investigation."

Petitioner argues that Respondent Judge Navarro cannot name a particular prosecutor to conduct the preliminary investigation of the case, because such designation is contrary to extant jurisprudence.^[22] On the other hand, Respondent Judge Navarro, in her memorandum, maintains that existing jurisprudence applies only to reinvestigation and not to cases where there was no preliminary investigation at all. She reasons that:^[23]

"x x x in assigning Asst. Prosecutor Novelita Llaguno, a fiscal appearing before this Court, to conduct the required preliminary investigation, it is to insure the compliance of the order --to conduct a real preliminary investigation and to prevent the case (from) being assigned to those who have participated in the erroneous procedure leading to the termination of this case before the Prosecutor's Office."

The Court's Ruling

We find for petitioner.

It must be stressed that preliminary investigation is an executive, not a judicial, function.^[24] As the officer authorized to direct and control the prosecution of all criminal actions,^[25] a prosecutor is primarily responsible for ascertaining whether there is sufficient ground to engender a well-founded belief that an offense has been