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SECOND DIVISION

[G.R. No. L-46938. June 14, 1979]

EVANGELISTO RACELA, *petitioner, vs.* **THE HON. AGUSTIN C. BAGASAO, Presiding Judge, Branch VI, Fourth Judicial District, Court of First Instance of Nueva Ecija, and ROLANDO FELICIANO,** *respondents.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; A JUDGE OF FIRST INSTANCE HAS THE AUTHORITY TO CONDUCT PRELIMINARY INVESTIGATION OF A LIBEL CASE FILED WITH THE COURT; REASON THEREFOR.— The Court categorically ruled that judges of first instance are vested with authority to conduct a preliminary investigation of a case for libel directly filed with the court since "the lawmaking body, by means of the amendment, never intended to take away the jurisdiction of the proper Court of First Instance to conduct a preliminary investigation in libel cases," and that the "amendment merely sought to strip the ordinary municipal court (not the municipal court of the provincial capital or the city court) of its power to hold a preliminary investigation of written defamations."

APPEARANCES OF COUNSEL

Cornelio C. Cardenas and *Valeriano Peralta* for petitioner.
Raymundo Blanco for private respondent.

D E C I S I O N

CONCEPCION JR., *J.*:

Petition for *certiorari* to annul and set aside the order of the respondent judge denying the motion to dismiss a criminal case for Libel, as well as the orders denying the motions for its reconsideration.

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The March 20, 1976 issue of the Bulletin Today, a newspaper of general circulation throughout the Philippines, carried a news item entitled: "Olongapo stinks as trash piles up," imputing certain anomalies and violations of the contract for the collection of garbage in Olongapo City. Feeling aggrieved, the contractor, Rolando Feliciano, a resident of Malayantoc, Sto. Domingo, Nueva Ecija, filed a complaint for Libel against Evangelisto Racela, a duly elected *barangay* captain and member of the City Sangguniang Bayan of Olongapo, and Roberto Flores, also a member of the Sangguniang Panlungsod of Olongapo City, with the Provincial Fiscal of Nueva Ecija. Since the accused are public officers, the Provincial Fiscal sought clearance and authority from the Secretary of Justice to conduct a preliminary investigation of the case,[1] but, the request was denied for the reason that the libelous imputations partake of the nature of absolutely privileged communication within the purview of the second paragraph of Art. 354 of the Revised Penal Code since the statements were made during the special session of the City Sangguniang Bayan.[2]

Upon learning of such denial, Rolando Feliciano withdrew his complaint from the Fiscal's Office and filed the same directly with the Court of First Instance of Nueva Ecija.[3] The respondent judge, to whom the case was assigned, thereafter set the case for preliminary examination and investigation. The accused Evangelisto Racela objected and filed a motion to dismiss the case for the reason that a criminal complaint had been filed with the Fiscal's Office and the same is still pending therein,[4] but, the respondent court denied the motion for lack of merit.[5] Citing the case of *People vs. Hechanova*,[6] the accused Racela

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[1] *Rollo*, p. 55.

[2] *Id.*, p. 56.

[3] *Id.*, p. 67.

[4] *Id.*, p. 29.

[5] *Id.*, p. 34.

[6] G.R. No. L-25459, Nov. 29, 1973, 54 SCRA 101.

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filed a motion for the reconsideration of this order upon the ground that the respondent court has no jurisdiction to conduct a preliminary investigation of the case since a preliminary investigation had already been conducted by the Fiscal and the case was dismissed by the Secretary of Justice.[7] The respondent court, however, denied the motion, maintaining that it has the power and authority to conduct a preliminary examination and investigation of a case directly filed with it pursuant to Sec. 13, Rule 112 of the Revised Rules of Court, and that the case of *People vs. Hechanova*, cited by the accused is not applicable since the Fiscal in the present case, as contradistinguished from the cited case, has not yet conducted a preliminary investigation of the case, but merely made an *ex-parte* study of the affidavits of the complainant and his witnesses.[8] Hence, the present petition.

Simplified, the issue is whether or not a judge of first instance may conduct a preliminary investigation of a libel case directly filed with the court. In a recent decision, in the case of *Escribano vs. Avila*,[9] the Court categorically ruled that judges of first instance are vested with authority to conduct a preliminary investigation of a case for libel directly filed with the court since "the lawmaking body, by means of the amendment,[10] never intended to take away the jurisdiction of the proper Court of First Instance to conduct a preliminary investigation in libel cases," and that the "amendment merely sought to strip the ordinary municipal court (not the municipal court of the provincial capital or the city court) of its power to hold a preliminary investigation of written defamations." Hence, the instant petition is without merit.

WHEREFORE, the petition should be, as it is hereby, DISMISSED. Costs against the petitioner.

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[7] *Rollo*, p. 35.

[8] *Id.*, pp. 44, 51.

[9] G.R. No. L-30375, September 12, 1978.

[10] Republic Act No. 4363, approved June 19, 1965.

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SO ORDERED.

Antonio (Acting Chairman), Aquino, Santos, and *Abad Santos, JJ.*, concur.

Barredo, J., is on leave.

FIRST DIVISION

[G.R. No. L-30271. June 15, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEONARDO DAHIL,** *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; WITHDRAWAL THEREOF WILL NOT BE ALLOWED IF IT WOULD MEAN THAT THE ERRONEOUS PENALTY IMPOSED BY THE TRIAL COURT WOULD STAND.**— The Court, however, could not give due course to appellant's proposed withdrawal of his appeal because such withdrawal, if given due course, would mean that the erroneously excessive penalty of *reclusion perpetua* imposed by the lower court would be allowed to stand. Defendant-appellant is entitled to the Court's judgment imposing the appropriate penalty.

2. **CRIMINAL LAW; PENALTIES; HOW TO RAISE BY TWO DEGREES THE PENALTY OF *PRISION MAYOR* IN ITS MINIMUM AND MEDIUM PERIODS.**— While the trial court correctly stated that under Article 310 of the Revised Penal Code, the crime committed was qualified theft (of a motor vehicle) and the imposable penalty of *prision mayor* in its minimum and medium periods has to be raised by two degrees, it imposed an erroneously excessive penalty in two particulars: The penalty higher by two degrees would be *reclusion temporal* in its medium and maximum periods, not *reclusion perpetua.*