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SECOND DIVISION

[G.R. No. L-45849. May 5, 1979]

GALILEO D. SIBALA and PEOPLE OF THE PHILIPPINES, *petitioners, vs.* **HON. AIDA GIL DAMASO, Judge of the Court of First Instance of Davao Oriental (Branch IV); ERNESTO CARDIÑO, PRIMO MALIWANAG, ERNESTO DEL ROSARIO, and NICANOR GUERRA,** *respondents.*

SYLLABUS

REMEDIAL LAW; COURTS; COURTS OF FIRST INSTANCE, WITH JURISDICTION TO CONDUCT PRELIMINARY INVESTIGATION. — Judges of the Court of First Instance have jurisdiction to conduct preliminary investigation of libel cases directly filed with them. The CFI judge may conduct such investigation although a similar complaint had been previously filed with the fiscal if it appears that the fiscal had not conducted the investigation, said fiscal having held such investigation in abeyance pending the outcome of a contempt proceeding against complainant.

APPEARANCES OF COUNSEL

Galileo D. Sibala for and in his own behalf.

Primo P. Maliwanag, Jr. for respondents Cardiño and Maliwanag.

Daniel P. Rubillar, Jr. for respondents Del Rosario and Guerra.

DECISION

CONCEPCION JR., *J.*:

Petition for *certiorari* to annul and set aside the order of the respondent Judge dismissing a complaint for libel directly filed with the court, as well as the order denying the motion for the reconsideration of the said order.

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The petitioner, Galileo D. Sibala, and the private respondents Ernesto Cardiño and Primo Maliwanag are the opposing counsels in case G.R. No. L-41143 of this Court, entitled, "*Sulpicio Agapay,* petitioner, *versus Judge Vicente Bullecer, et al.,* respondents," a petition for *certiorari* with preliminary injunction. The private respondents, Ernesto del Rosario and Nicanor Guerra, are the President and Manager, respectively, of the Davao Timber Corporation, private respondent in said case G.R. No. L-41143.

In the Memorandum for the respondents filed in the above-mentioned case, the private respondents, affirmed that the herein petitioner, Galileo Sibala, is guilty of breach of unprofessional and unethical conduct by "employing in the pursuance thereof means which are not consistent with truth and honor and who repeatedly encouraged either the commencement or the continuance of an action due to corrupt motive or interest."[1] As a consequence, Atty. Sibala filed a complaint for libel against herein private respondents before the provincial Fiscal of Davao Oriental.

In turn, the herein private respondents filed a motion in case G.R. No. L-41143, to punish Atty. Sibala for contempt of court *and this Court directed Atty. Sibala to comment on the motion.* In view thereof, the investigating fiscal suspended and held in abeyance the investigation of the complaint for libel to await the Court's final resolution of the motion to punish Atty. Sibala in contempt of this Court.[2]

Subsequently realizing that the prescriptive period of the offense is about to expire, Atty. Sibala filed a similar complaint for libel with the Court of First Instance of Davao Oriental on July 9, 1976.[3] After the filing of the complaint in court, Atty. Sibala remembered that he still had a pending complaint with the Fiscal's Office for the same offense. Accordingly, on July 13, 1976, Atty. Sibala filed a motion with the Fiscal's Office "for the withdrawal of all the exhibits/affidavits that have been filed

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[1] *Rollo,* p. 10.

[2] *Id.,* pp. 16-17.

[3] *Id.,* p. 9.

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herein, as he has already filed a criminal case for libel involving the same facts/circumstances as have arisen herein, so that the same may be presented to the court of proper jurisdiction accordingly."[4]

The herein private respondents, filed a motion to dismiss the complaint upon the grounds that the Court of First Instance of Davao Oriental has no jurisdiction to conduct a preliminary investigation of the case and that the statements, alleged to be libelous, are absolutely privileged.[5]

On November 23, 1976, the respondent court issued an order,[6] the dispositive portion of which reads, as follows:

"WHEREFORE, in view of the above, the Complaint is hereby DISMISSED without prejudice to complainant taking his complaint to the proper agencies provided for by law."

Atty. Sibala filed a motion to reconsider this order,[7] but the same was denied on February 16, 1976.[8]

Whereupon, Atty. Sibala filed the instant recourse.

Commenting on the petition, the respondent Judge stated that the law is specific that the preliminary investigation of a criminal action for written defamation shall be conducted by the Provincial Fiscal, the City Fiscal, or the municipal court of the city or capital of the province where such action may be instituted and that the preliminary investigation contemplated under the provisions of Sec. 13, Rule 112 of the Revised Rules of Court, authorizing the court of first instance to conduct a preliminary investigation of a complaint directly filed with it without previous preliminary examination and investigation conducted by the fiscal, cannot be performed by the court since

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[4] *Id.*, p. 47.

[5] *Id.*, p. 13.

[6] *Id.*, p. 30.

[7] *Id.*, p. 31.

[8] *Id.*, p. 33.

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the petitioner had already sought the fiscal's office as his first choice in the said investigation.[9]

The private respondents Cardiño and Maliwanag similarly claim that the respondent court has no jurisdiction to conduct a preliminary investigation of the complaint because Rep. Act No. 4363, amending Article 360 of the Revised Penal Code, expressly provides that the preliminary investigation of criminal actions for written defamation shall be conducted by the provincial fiscal, city fiscal, or the municipal court of the city or capital of the province where such actions may be instituted and does not apply in cases of libel pursuant to the doctrine enunciated in the concurring opinion of Chief Justice Moran in the case of *Espiritu vs. De la Rosa*,[10] and assumed as a settled rule in *Montelibano vs. Ferrer*.[11] The private respondents further claim that the petition is moot and academic since the case has already prescribed. Moreover, the alleged libelous statements are privileged communication which cannot be made the basis of a libel charge.[12]

The private respondents, Ernesto del Rosario and Nicanor Guerra, also claim that the respondent court did not abuse its discretion in dismissing the complaint for the reason that the respondent court has no jurisdiction to conduct a preliminary investigation and examination in complaints for written defamation since the applicable law on the matter, Rep. Act No. 4363, a special law, expressly provides that the preliminary investigation shall be conducted by the provincial or city fiscal or by the municipal court or the city or capital of the province where such action may be instituted. The private respondents cite the decision of the Court in the case of *People vs. Hechanova, et al.*,[13] in support of their contention.[14]

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[9] *Id.*, p. 40.

[10] 78 Phil. 827.

[11] 97 Phil. 228.

[12] *Rollo*, p. 53.

[13] G.R. No. L-26459, November 29, 1973, 54 SCRA 101.

[14] *Rollo*, p. 36.

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The petitioner, Atty. Galileo Sibala, upon the other hand, also citing the case of *People vs. Hechanova, supra*, maintains that a court of first instance may conduct a preliminary examination and investigation of a complaint for libel directly filed with it.

There is merit in the petition. In the case of *Escribano vs. Avila;*[15] this Court ruled that judges of first instance have jurisdiction to conduct a preliminary investigation of a libel case directly filed with the court, so that the respondent judge erred in dismissing the herein petitioner's complaint for libel. The case of *People vs. Hechanova, et al.*, cited by the parties, is not applicable to this case since no preliminary investigation or examination has been conducted in this case as the investigating fiscal suspended and held in abeyance the investigation of the complaint upon being informed of the contempt proceedings filed against the petitioner with this Court.

WHEREFORE, the writ prayed for is granted and the orders issued by the respondent judge in Criminal Case No. 660 Cir 71 of the Court of First Instance of Davao Oriental, entitled, "*People of the Philippines,* plaintiff *versus Ernesto Cardiño, et al.,* accused," dated November 23, 1976 and February 16, 1977 are hereby annulled and set aside. The respondent judge is consequently ordered to proceed with the hearing of the case in the ordinary course of law. Costs against the private respondents.

SO ORDERED.

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

Barredo, J., on leave.

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