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filed by the parties, and that under Section 3 of Republic Act 5967, said city court exercised original jurisdiction over the same concurrently with the Court of First Instance of Misamis Oriental, the appeal of respondents was rightly made by them to the Court of Appeals.

WHEREFORE, the petition is dismissed, and to avoid further unnecessary proceedings, respondent Court of Appeals should declare the petition in CA-G.R. No. SP-07900 moot and academic and dismiss the same. The Court of First Instance of Misamis Oriental should desist taking cognizance of the appeal of herein private respondents from the decision in Case No. 4176 aforementioned in favor of allowing them to prosecute the same in the Court of Appeals, and to that end should order the return of the records to the court of origin. Accordingly, the City Court of Cagayan de Oro City should, upon the return of the records thereto, act on respondents' record on appeal and otherwise give due course to their appeal to the Court of Appeals, unless there is any other legal ground for not allowing the same. Costs against petitioner.

Fernando (Chairman), Antonio, Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

EN BANC

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

JOSE ESCRIBANO, *petitioner, vs.* **HON. DAVID P. AVILA, as Presiding Judge of the Court of First Instance of Cotabato (First Branch) and SALIPADA K. PENDATUN,** *respondents.*

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SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; GRANT OF POWER TO CONDUCT PRELIMINARY EXAMINATION TO CIRCUIT CRIMINAL COURTS BY VIRTUE OF SECTION 3, ARTICLE IV, 1973 CONSTITUTION. — The 1973 Constitution, as did the 1935 Constitution, confers the power to conduct preliminary examination preparatory to issuing a warrant of arrest, to a circuit criminal court judge. Even then, however, he should for sound policy reasons curb any eagerness or propensity to make use of such competence. In the absence of a statutory grant, the Court of First Instance cannot exercise the power of holding a preliminary investigation, as it partakes more of the prosecuting rather than the judicial function, unlike a preliminary examination which, as the first step in the deprivation of one's liberty, is deemed best left in the judicial hands.

APPEARANCES OF COUNSEL

Jose W. Diokno for petitioner.
M. C. Sicat for private respondent.

D E C I S I O N

AQUINO, *J.*:

This case is about the jurisdiction of the Court of First Instance to conduct the preliminary investigation of a complaint for written defamation.

On September 25, 1968 Congressman Salipada K. Pendatun, the governor-elect of Cotabato, filed directly with the Court of First Instance of that province (now North Cotabato) a complaint for libel against Mayor Jose Escribano of Tacurong, Cotabato (now the province of Sultan Kudarat). The complaint was subscribed and sworn to before respondent Judge David P. Avila. It was supported by the affidavit of Acting Governor Simeon Datumanong.

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In that complaint Escribano was charged with having said in a speech, which was broadcasted on August 26, 1968 by a radio station at Cotabato City, that "Mr. Pendatun is the worst animal that ever live (lived) in this province" (Criminal Case No. 5283).

Escribano questioned Judge Avila's authority to conduct the preliminary investigation of the offense. Judge Avila in his orders of March 5, 20 and 27, 1969 ruled that he had the power to conduct the preliminary investigation. He received complainant's evidence.

On April 1, 1969 Escribano filed in this Court against Judge Avila and Pendatun the instant special civil actions of *certiorari* and prohibition, praying that the said orders of Judge Avila be set aside. The respondents were required to answer the petition. No restraining order was issued.

On April 18 Escribano filed a supplemental petition to annul Judge Avila's order of March 29, 1969. In that order he found that Pendatun's evidence had "established a probable cause to believe that" libel by radio had been committed and that Escribano "probably committed the same." Judge Avila ordered the arrest of Escribano, fixed the bail at three thousand pesos, and referred the case to the city fiscal of Cotabato for the filing of the corresponding information. A warrant of arrest was issued on March 31. Sometime before April 16 the city fiscal filed an information for libel against Escribano.

On August 10, 1970 this Court issued a resolution restraining Judge Avila from proceeding with the arraignment of Escribano.

The issue is whether the Court of First Instance of Cotabato is invested with authority to conduct the preliminary investigation of the crime of libel committed by means of radio at Cotabato City or whether that power is lodged exclusively in the city attorney of that city.

Petitioner Escribano, in support of his contention that city fiscal of Cotabato is the only functionary empowered conduct the preliminary investigation of the libel charge, invokes the

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following provisions of the charter of Cotabato City, Republic Act No. 2364, as amended by Republic Act No. 3332:

"SEC. 23. *The city attorney — His compensation, powers and duties.* — The provisions of Commonwealth Act Numbered Four hundred nine to the contrary notwithstanding, the city shall have an attorney who shall be the chief legal adviser of the city . . . The city attorney shall have the following powers and duties:

xxx xxx xxx

"(f) He shall investigate all charges of crimes, misdemeanors and violations of laws and city ordinances and prepare the informations or make the necessary complaints against the persons accused. x x x.

"(g) He shall have charge of the prosecution of all crimes, misdemeanors and violations of laws and city ordinances triable in the Court of First Instance of Cotabato, and the municipal court of the city, and shall discharge all the duties in respect to criminal prosecutions enjoined by law upon provincial fiscals."

He cites the ruling in *Sayo vs. Chief of Police*, 80 Phil. 859; *Montelibano vs. Ferrer and Benares,* 97 Phil. 228, and *Guerrero vs. Ferrer,* 106 Phil. 1163, that in chartered cities the city fiscal has the exclusive authority to conduct preliminary investigations.

He also invokes the following provisions of Article 360 of the Revised Penal Code, which were inserted by Republic Act No. 4363, approved on June 19, 1965, and which do not empower the Court of First Instance to conduct's preliminary investigation of written defamations:

"Preliminary investigation of criminal actions for written defamations as provided for in the chapter shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such actions may be instituted in accordance with the provisions of this article."

On the other hand, complainant Pendatun and respondent Judge rely on Section 13, Rule 112 of the Rules of Court to support their view that the Court of First Instance of Cotabato could conduct the preliminary investigation:

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"SEC. 13. *Preliminary examination and investigation by the judge of the Court of First Instance.* — Upon complaint filed directly with the Court of First Instance, without previous preliminary examination and investigation conducted by the fiscal, the judge thereof shall either refer the complaint to the municipal judge referred to in the second paragraph of Section 2 hereof for preliminary examination and investigation, or himself conduct both preliminary examination and investigation simultaneously in the manner provided in the preceding sections, and should be find reasonable ground to believe that the defendant has committed the offense charged. shall issue a warrant for his arrest,.and thereafter refer the case the fiscal for the filing of the corresponding information."

Was it intended by Republic Act No. 4363, in specifying that the preliminary investigation of criminal actions for written defamations may be conducted by the provincial or city fiscal of the province or city, or the municipal court of the city or capital of the province, where the criminal action may be filed, to exclude the Court of First Instance from conducting such preliminary investigation and to entrust that power exclusively to those fiscals and courts? (Libel by means of radio is a written defamation under Article 355 of the Revised Penal Code).

As admitted by the petitioner, the purpose of the amendment is to prevent the complainants in written defamation cases from harassing the accused by means of out-of-town libel suits, meaning complaints filed in remote municipal courts (*Time, Inc. vs. Reyes,* L-28882, May 31, 1971, 39 SCRA 303, 311; p. 11, Memorandum, p. 113, *Rollo*).

The rule is that in construing a statute the mischief intended to be removed or suppressed and the causes which induced the enactment of a law are important factors to be considered in its construction (2 Sutherland on Statutory Construction, 885-886, cited in *Philippine Sugar Centrals Agency vs. Collector of Customs*, 51 Phil. 131, 145).

Therefore, it is safe to conclude that the enumeration in the amendatory law of the public of officers and the courts that may conduct the preliminary investigation of complaints for written defamation was designed to divest the *ordinary*

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*municipal cour*t of that power but not to deprive the proper Court of First Instance of that same power.

Article 360 in its original form provided that the venue of the criminal and civil actions for written defamations is the province wherein the libel was published, displayed or exhibited, regardless of the place where the same was written, printed or composed. Article 360 originally did not specify public officers and the courts that may conduct preliminary investigation of complaints for libel.

Before Article 360 was amended, the rule was that a criminal action for libel may be instituted in any jurisdiction where libelous article was published or circulated, irrespective of where it was written or printed (*People vs. Borja*, 43 Phil. 618). Under that rule, the criminal action is transitory and the injured party has a choice of venue.

Experience had shown that under that old rule the offended party could harass the accused in a libel case by laying the venue of the criminal action in a remote or distant place.

Thus, in connection with an article published in the *Daily Mirror* and the *Philippines Free Press*, Pio Pedrosa, Manuel V. Villareal and Joaquin Roces were charged with libel in the justice of the peace court of San Fabian, Pangasinan (*Amansec vs. De Guzman,* 93 Phil. 933). To forestall such harassment, Republic Act No. 4363 laid down the following rules on the venue of the criminal and civil actions in written defamations:*

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* ART. 360. *Persons responsible.* — x x x

x x x x x x x x x

"The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense:

"*Provided however,* That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is

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1. General rule: The action may be filed in the Court of First Instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense.

2. If the offended party is a public officer with office in Manila at the time the offense was committed, the venue is Manila or the city or province where the libelous article is printed and first published.

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printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published:

"*Provided, further,* That the civil action shall be filed in the same court where the criminal action is filed and vice versa:

"*Provided, furthermore.* That the court where the criminal action or civil action for damages is first filed. shall acquire jurisdiction to the exclusion of other courts:

"*And provided, finally.* That this amendment shall not apply to cases of written defamations. the civil and/or criminal actions to which have been filed in court at the time of this law."

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EXPLANATORY NOTE

For the Bill Which Became Republic Act No. 4363.

"The accompanying measure proposes to amend Article 360 of the Revised Penal Code. as amended by Republic Act. No. 1289.

"This Article provides that the criminal and civil action for damages in cases of written defamations shall be filed simultaneously or separately with the court of first instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense: and that where the libel is published. circulated. displayed or exhibited in a province or city wherein neither the offender nor the offended party resides. the civil and criminal actions may be brought in the court of first instance thereof.

"*Under the present law, an alleged offender can be easily subjected to hardships, inconveniences and harassments because the criminal complaint may be filed in a very remote place so long as there is proper venue.* This

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3. Where an offended party is a public official with office outside of Manila, the venue is the province or the city where he held office at the time of the commission of the offense or where the libelous article is printed and first published.

4. If an offended party is a private person, the venue is his place of residence at the time of the commission of the offense or where the libelous article is printed and first published.

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provision is wholly responsible for many out-of-town libel suits. The attached bill proposes to minimize or limit the filing of out-of-town libel suits by providing that the complaint may be filed only in the proper court of the province or city where the libelous article is printed and first published.

"Furthermore, this bill seeks to provide the venue for the complaint in cases of written defamations where one of the offended parties is a public officer. This proposal is very necessary in the interest of public service.

"While the present law provides that the criminal complaint for written defamations may be filed with the proper court where the accused or the offended party resides at the time of the commission of the offense, the term `residence' is vague in the sense that it may refer to `legal residence' or the place where the person actually lives. This term clarified in the proposed bill as referring to physical or actual residence. The law should be clear on this point to avoid delays in its enforcement or implementation arising from certain technicalities.

"Consistent with the purpose of preventing out-of-town libel suits, this bill also proposes to vest only certain officers, judicial or otherwise, with the power of conducting preliminary investigations in complaints for defamation. *Like venue, this proposal will prevent the filing of criminal complaints for defamation in far-flung municipalities which are particularly inaccessible to the accused.*

"Obscurities in the law should be removed, more particularly in penal laws where the liberty of an individual is always involved. A defective law which may cause undue hardships for persons against whom it is enforced should be corrected immediately. This is the case of our libel law. It has been resorted to most often to harass certain individuals and this harassment occurs because of the defects in the law.

"In view of the foregoing, approval of this bill is earnestly requested.

"(Sgd.) INOCENCIO V. FERRER
Congressman, Second District
Negros Occidental"

(Congressional Record dated May 20, 1965, pp. 424-425).

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The common feature of the foregoing rules is that whether the offended party is a public officer or a private person, he has always the option to file the action in the Court of First Instance of the province or city where the libelous article is printed or first published.

Congress did not confine the amendatory law to laying down the guidelines for the venue of criminal and civil actions. Since, as already noted, its purpose is to minimize the filing in municipal courts of out-of-town libel suits, the lawmaking body, in order to attain that objective, deprived the ordinary municipal courts of the power to conduct the preliminary investigation of a criminal action for written defamation.

In other words, the amendment contains not only the rules limiting the venue of the criminal and civil actions to the Court of First Instance of the province or city where the libelous matter is printed and first published, or where the offended party held office or resided at the time the libel was committed, but it also specifies that the preliminary investigation should be conducted by the provincial or city fiscal of the province or city or by the municipal court of the city or capital of the province where the action may be instituted, (See *People and Navarro vs. Hechanova*, L-26459, November 29, 1973, 54 SCRA 101).

It should be repeated that the amendment, in specifying those who may conduct the preliminary investigation, deprived the ordinary municipal court of that power in cases written defamations. And it should be recalled that the power of the ordinary municipal court to conduct such preliminary investigations under the old law facilitated the filing of libel cases in remote municipal courts and the consequent harassment of the accused.

That purpose of the amendment has nothing to do with power of the Court of First Instance to conduct preliminary investigations in criminal cases cognizable by it. To retain power of the Court of First Instance would in a way be an implementation of the purpose of the amendment, which is to prevent complainants, from harassing and embarrassing the accused with libel suits in distant municipalities.

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Therefore, it can be stated without fear of successful contradiction that the lawmaking body, by means of that amendment, never intended to take away the jurisdiction of the proper Court of First Instance to conduct a preliminary investigation in libel cases. The amendment merely sought to strip 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.

The fact that the Court of First Instance is not mentioned in Article 360 as a tribunal that may conduct the preliminary investigation of libel cases would seem to suggest that it cannot conduct such preliminary investigation, following the *maxim inclusio unius est exclusio alterius* (the inclusion of one thing is the exclusion of another or the enumeration of particular things excludes the idea of something else not mentioned, applied in *Acosta vs. Flor*, 5 Phil. 18; *De la Rosa vs. Revita Santos,* 10 Phil. 148, 149; *Conde vs. Abaya,* 13 Phil. 249; *Tavora vs. Gavina,* 79 Phil. 421, 435; *In re Guzman,* 73 Phil. 51; *In re Estate of Enriquez and Reyes*, 29 Phil. 167; *Weigall vs. Shuster,* 11 Phil. 340, 357; *Vega vs. Municipal Board of Iloilo*, 94 Phil. 949, 953; *Gomez vs. Ventura*, 54 Phil. 726; *Mendenilla vs. Onandia,* 115 Phil. 534, 539; *Canlas and Manila Pencil Co. vs. Republic,* 103 Phil. 712, 716; *Lao Oh Kim vs. Reyes,* 103 Phil. 1139).

Under that canon of legal hermeneutics, where a statute directs the performance of certain acts by a particular person or class of persons, it implies that it shall not be done otherwise or by a different person or class of persons (82 C.J.S. 667-668).

That maxim is not a rule of law. It is just a tool of statutory construction or a means of ascertaining the legislative intent. It is not of universal application and is not conclusive. It cannot be used to defeat the plainly indicated purpose of the lawmaking body (82 C.J.S. 668). The maxim is inapplicable if there is some special reason for mentioning one thing and none for mentioning another which is otherwise within the statute, so that the absence of any mention of such other will not exclude it (82 C.J.S. 670).

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The maxim does not apply in case a statute appears upon its face to limit the operation of its provisions to particular persons or things by enumerating them, but no reason exists why other persons or things not so enumerated should not have been included, and manifest injustice will follow by not so including them (*Springer vs. Philippine Islands,* 72 Law. ed. 845, 227 U.S. 189; *People vs. Manantan,* 115 Phil. 657, 668).

"The maxim is no more than an auxiliary rule of interpretation to be ignored where other circumstances indicate the enumeration was not intended to be exclusive" (*Manabat vs. De Aquino*, 92 Phil. 1024, 1027).

The maxim cannot be applied in this case because, as shown above, the fact that the Court of First Instance is not mention in the amendment, as being empowered to conduct a preliminary investigation in cases of written defamation, has nothing to do with the purpose of the amendment. It should be stressed that in construing a law, the court must look to the object to be accomplished, the evils and mischief sought to be remedied, or the purpose to be subserved, and it should give the law a reasonable or liberal construction which will best effect its purpose rather than one which will defeat it (82 C.J.S. 593).

It is reasonable to surmise that the Court of First Instance was not mentioned due to inadvertence. That oversight is not unusual since preliminary investigations are usually conducted by municipal courts and fiscals. In practice, a preliminary investigation by the Court of First Instance is the exception, not the general rule.

In this connection, it is pertinent to cite the recent ruling that the power of the Court of First Instance to conduct preliminary investigation is derived from the constitutional provision that "no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce" (Sec. 1[3], Art. III, now Sec. 3, Art. IV, 1973 Constitution; *Collector of Customs vs. Villaluz,* L-34038, June 18, 1976 and five other cases, 71 SCRA 356).

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Implicit in that provision is the constitutional grant of power to the judge to hold a preliminary examination and to issue warrants of arrest and search warrants. That which is plainly implied in the language of a law is as much a part as that which is expressed (*In re McCulloch Dick,* 38 Phil. 41, 45, 90). The term "judge" embraces a judge of the Court of First Instance. Its coverage is not restricted to judges of inferior courts.

The silence of Article 360 on the power of a judge of the Court of First Instance to conduct a preliminary investigation of criminal actions for written defamations does not preclude a judge of that court from holding such investigation.

However, the exercise of that power is tied up with the rules on the venue of a criminal action for written defamation. That power is lodged in the Court of First Instance of the city or province where the libelous article was printed or first published or where the offended party actually resided, or where the offended public official held office, at the time of the commission of the offense.

Escribano's contention that in chartered cities the city fiscal has the exclusive authority to conduct preliminary investigations is not correct. While section 23(f) of the Charter of Cotabato City (Republic Act No, 2364) empowers its city attorney to "investigate all charges of crimes, misdemeanors and violations of laws and city ordinances and prepare the necessary informations or make the necessary complaints against the persons accused," that power is not exclusive.

Section 78 of the same charter provides that the municipal or city court of Cotabato City "may also conduct preliminary investigations for any offense, without regard to the limits of punishments," a provision which is found in Section 87 of the Judiciary Law and in Section 2, Rule 112 of the Rules of Court.

That same power is found in the last sentence of Section 41 of Republic Act No. 409, the Revised Charter of Manila, which took effect on June 18, 1949 or after S*ayo vs. Chief of Police of Manila*, 80 Phil. 859 was decided.

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But that provision is not found in Commonwealth Act No. 326, the charter of Bacolod City, under which *Montelibano vs. Ferrer,* 97 Phil. 228 and *Guerrero vs. Ferrer,* 106 Phil. 1163 were decided, nor is it found in the old Manila Charter contained in the Revised Administrative Code.

Hence, in the *Sayo, Montelibano* and *Guerrero* cases, it was held that the city court could not conduct preliminary investigations. (See *Callanta vs. Villanueva,* L-24646 and L-24674, June 20, 1977, 77 SCRA 377).

WHEREFORE, the petition is dismissed with costs against the petitioner.

SO ORDERED.

Castro, C.J., Antonio, Muñoz Palma, Santos, Fernandez, and *Guerrero, JJ.*, concur.

Teehankee, Jr., J., concurs in a separate opinion.

Fernando, J., dissents in separate opinion.

Barredo, J., dissents on the ground that it is his firm conviction that court of first instance have no power to conduct preliminary investigations as he explained in his separate opinion in Villaluz, 71 SCRA 412-425.

Makasiar, J., concur in so far as the opinion is connected with ruling in the Villaluz case (71 SCRA 356)

Concepcion Jr., J., took no part.

TEEHANKEE, *J., concurring*:

I concur in the dismissal of the petition. The mere non-mention of judges of the Court of First Instance as among those authorized to conduct preliminary investigations of criminal actions for written defamation under R.A. 4363 (which amended Art. 360 of the Revised Penal Code so as to provide a more restricted venue for criminal and civil action for damages in cases of written defamation under said Code, cannot be construed to mean a withdrawal of the constitutional and statutory power

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of the Court of First Instance to conduct preliminary investigations.

As the Court held in *Collector of Customs vs. Villaluz*[1] "the power of the city prosecutors to conduct preliminary examination and investigation (minus the authority to issue warrant of arrest or search warrant) is purely statutory. On the other hand, the judge derives his authority not only from the Rules of Court, but also and originally — from the fundamental to which all other laws are subordinate. If an objection must be raised, it should be against the authority of the fiscal to exercise such power of preliminary investigation, which, as has been stated, is merely statutory. No less than the Constitution confers upon the judge the power to conduct such examination and investigation."

Aside from the provision of Rule 112, Section 13 of the Rules of Court, the statutory power of judges of the Court of First Instance to conduct preliminary investigations is recognized and reaffirmed in Republic Act 5180, "An Act prescribing a uniform system of preliminary investigation by provincial and city fiscals and their assistants, and by state attorneys or their assistant" . . . *except* when an investigation has been conducted by a judge of first instance, city or municipal judge or other officer in accordance with law and the Rules of Court of the Philippines."

While the aforesaid amendatory R.A. 4363 was enacted to minimize the filing in municipal courts of out-of-town libel suits expressly for the purpose of preventing harassment of the alleged offenders in written defamation cases through the filing of such suits in remote towns, the said Act did not in law remove the general power of the judges of such ordinary municipal courts of their power derived from the Constitution, as well as from the statute and Rules of Court, to conduct preliminary investigations. Rather, what was effected was a withdrawal of the venue and jurisdiction over such case from the ordinary

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[1] 71 SCRA 356, 385-386 (1976), per Makasiar, *J.*

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municipal courts which was a valid exercise of the power of Congress to define and allocate the jurisdiction of the various lower courts.

The main opinion mentions in passing that "in the *Sayo*,[2] *Montelibano*,[3] and *Guerrero*[4] cases it was held that the city court could not conduct preliminary investigations,"[5] thus giving the impression that the ruling in said cases that under the charters of the cities of Manila and Bacolod the power to conduct preliminary investigations is exclusively lodged in the city fiscal is still in force. I hold the view that the city charter provisions of Manila and Bacolod (as well as Quezon City[6] and Cebu[7] for that matter) do not grant the city fiscal and his assistants sole authority to conduct preliminary investigations for offenses committed within their respective cities to the exclusion of the regular courts therein. Such city charter provisions, to my mind, merely constitute the basis of the city fiscal's authority to conduct preliminary investigations but do not serve to withdraw from the Courts of First Instance as well as from the city courts therein their power to conduct preliminary examinations and investigations.

I believe that this was the thrust of the Court's holding in *Collector of Customs vs. Villaluz, supra*, that

"It is true that this COURT held expressly and impliedly that under the charters of the cities of Manila, Bacolod and Cebu, the power to conduct preliminary investigation is exclusively lodged in the city prosecutor (*Sayo vs. Chief of Police*, 80 Phil. 859, 868-869, May 12, 1948; *Espiritu vs. De la Rosa,* 45 OG 196; *Montelibano vs. Ferrer*, 97 Phil. 228, June 23, 1955; and *Balite vs. People*, 18 SCRA 280, 285-286, Sept. 30, 1966). But the charters of the cities of Manila, Bacolod

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[2] *Sayo vs. Chief of Police*, 80 Phil. 859 (1948).

[3] *Montelibano vs. Ferrer*, 97 Phil. 228 (1955).

[4] *Guerrero vs. Ferrer*, 106 Phil. 1163 (1959).

[5] At page 12.

[6] See *People vs. Hechanova*, 54 SCRA 101 (1973).

[7] See *Balite vs. People*, 18 SCRA 280 (1966).

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and Cebu do not contain any provision making such grant power to city prosecutors *exclusive* of the courts (Kapunan, *Criminal Procedure*, 3rd Edition, 1960), which *cannot* be deprived of such authority to conduct preliminary examination because said prerogative of the courts *emanates* from the *Constitution itself.* Unless the Constitution is amended the judge cannot be divested such a power, which is an essential element of the cardinal right of individual against unreasonable searches and seizures. If the present city charters conferred on city fiscals or city prosecutors the power to issue warrants of arrest, it would be an unconstitutional grant of power under the 1935 Constitution. As heretofore intimated, the present practice or rule of court authorizing the judge to issue warrants of arrest based on the preliminary investigation conducted by city fiscal, seems to violate the 1935 Constitution, which require judge himself to conduct the preliminary examination. Neither the judge nor the law can delegate such an authority to another public officer without trenching upon this constitutional guarantee against unreasonable searches and seizures.

"The theory that Courts of First Instance and Circuit Criminal Courts Judges cannot exercise the power of preliminary examination and investigation, and that as a necessary consequence, they also issue warrants of arrest, obviously collides with the 1935 and 1973 Constitutions.

"Moreover, the theory tolerates an unthinkable — because anomalous — situation wherein the Court of First Instance and the Circuit Criminal Court must wait for prosecutors and courts inferior to them to conduct the preliminary examination and/or to issue the needed warrants of arrest before they could effectively exercise their power to try and decide the cases falling under their respective jurisdiction. This situation would make the Courts of First Instance and Circuit Criminal Courts totally dependent upon state prosecutors and municipal courts, which are inferior to them, for their proper functioning. The possibility that the administration of criminal justice might stand still will not be very remote."[8]

Consequently, the rulings in the cited cases of *Sayo*, *Montelibano, Guerrero* and other cases must be deemed to have been abandoned and it must be held now that as a general

[8] At pages 386-387; italics supplied.

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rule and without exception, Courts of First Instance and city courts, regardless of the provisions in their charters which grant the city fiscal authority to also conduct preliminary investigations, must be deemed to have retained the power of preliminary examination and investigation, which cannot be taken from them by mere statute.

This is as a matter of strict power, since the function of the courts as we stressed in *Villaluz, supra*, is the hearing and determination of cases in litigations before them. Hence, as therein stated, pursuant to the Court's constitutional power of administrative supervision over all courts,[9] "Circuit Criminal Judges [as well as Court of First Instance and City Court Judges], therefore, should not encumber themselves with the preliminary examination and investigation of criminal complaints, which they should refer to the x x x provincial or city fiscal, who in turn can utilize the assistance of the state prosecutor to conduct such preliminary examination and investigation."[10]

FERNANDO, *J., dissenting*:

It is with regret that I find myself unable to join the scholarly and exhaustive opinion of Justice Aquino. He is of the view that "the recent ruling that the power of the Court of First Instance to conduct a preliminary investigation is derived from the constitutional provision that 'no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce' (Sec. 1[3], Art. III, now Sec. 3, Art. IV, 1973 Constitution; *Collector of Customs v. Villaluz*, L-34038, June 18, 1976 and five other cases, 71 SCRA 356)."My concurrence in Villaluz[1] did not go that far.

I explained why: "At that, there is still need, it seems to me, for a few words not only to set forth the extent of my agreement

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[9] Article X, Section 6, 1973 Constitution.

[10] 71 SCRA 400; notes in brackets supplied.

[1] *Collector of Customs v. Villaluz*, L-34038, June 18, 1976, 71 SCRA 356.

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with my brethren but also to indicate what for me are the precise limits of our holding. The full and exhaustive treatment of the specific issue dealing with the power of the circuit criminal courts to conduct preliminary examination, with historical and textual allusions to the previous judicial pronouncements and comparable statutory provisions, certainly a virtue to be commended, may for those not sufficiently discerning, yield implications which, for me, go further than is intended by us. It is my understanding then that the decision reached is at most an affirmation that the present Constitution, as did the 1935 Constitution, confers the power to conduct preliminary examination preparatory to issuing a warrant of arrest, to a circuit criminal court judge. Even then, however, he should for sound policy reasons curb any eagerness or propensity to make use of such competence."[2]

The next paragraph of my concurrence deals with the matter further: "To repeat, it is solely the first stage in the criminal process that may lead to the apprehension of the accused that has been passed upon by this Court. It has not considered the second stage, that of preliminary investigation proper, one of equal significance. As far back as 1910, its importance was stressed in *United States v. Grant and Candy*. Thus: "The object or purpose of a preliminary investigation, or a previous inquiry of some kind, before an accused person is placed upon trial, is to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from an open and public accusation of crime, from the trouble, expense, and anxiety of a public trial, and also to protect State from useless ands expensive trials.' It is of the essence then that the accused should be heard. There are overtones in the opinion of the Court susceptible to being misinterpreted in this regard, if it be assumed that upon the termination of the preliminary examination the arraignment and trial could then proceed. I would dissociate myself from such a view. I am gratified therefore that it is made explicit therein that our ruling is limited to the power of a judge under the Circuit Criminal Court Act to conduct a preliminary

[2] *Ibid.*, 402.

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investigation, it is my understanding that the question has been left open."[3]

With the categorical pronouncement in the opinion of the Court that Villaluz is to be interpreted as recognizing the power of the Court of First Instance to conduct a preliminary investigation by virtue of the constitutional provision cited, which for me, applied only to preliminary examinations, I have no choice but to dissent. It is my considered view that in the absence of statutory grant, a court of first instance cannot exercise the power of holding a preliminary investigation, as it partakes more of the prosecuting rather than the judicial function, unlike a preliminary examination, which as the first step in the deprivation of one's liberty, is deemed best left in judicial hands.[4]

IKALAWANG DIBISYON

[G.R. No. L-46027. September 15, 1978]

Provincial Fiscal JOSEFINO C. DRACULAN and 4th Assistant Provincial Fiscal PATRICIO T. DURIAN, *mga humihiling, vs.* **HON. PROCORO J. DONATO, District Judge, Court of First Instance of Isabela and JAIME GUMPAL,** *mga pinanagot.*

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[3] *Ibid.*, 402-403.

[4] Entertaining as I do such a belief, I am not among those are pleased with the grant of such power not only "to the judge" but also to "such other responsible officer as may be authorized by law. ***." (Cf. Article IV, Section 3 of the present Constitution having spoken, it is for the judiciary to obey.