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necessary import permit and it brings in the remaining collateral goods worth about US$480,000.00.

WHEREFORE, the petition for review is denied and the resolution of the Court of Appeals promulgated on January 23, 1970, appealed from is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-46773. July 16, 1979]

ROBERT TABIL and AURORITA SIMBAJON, *petitioners, vs.* **THE HONORABLE CEFERINO T. ONG, Judge of the City Court, Branch III, Ozamiz City and ADOLFO PONCE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PRESIDENTIAL DECREE NO. 77, AS AMENDED BY PRESIDENTIAL DECREE NO. 911; APPLIES ONLY TO PRELIMINARY INVESTIGATIONS CONDUCTED BY FISCALS AND STATE PROSECUTORS.**— The very law itself — PD 77, as amended by PD 911 — states that it applies only to preliminary investigations conducted by fiscals and state prosecutors.

2. **ID.; ID.; ID.; ID.; THE LAW DOES NOT APPLY TO CASES FILED AND COGNIZABLE BY CITY AND MUNICIPAL COURTS.**— There is no doubt that the aforesaid decree does not apply to cases filed with and triable/cognizable by city and municipal courts, the law applicable thereto being Sec. 10, Rule 112 of the Revised Rules of Court.

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AQUINO, *J.*, *concurring*:

REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; RULE 112, SECTION 10, CONSTRUED.— It should be noted that the second paragraph of Section 10, Rule 112, in providing that "in cases triable in the municipal or city courts, the accused shall not be entitled as a matter of right to a preliminary investigation in accordance with this section," refers to the *second stage* of the preliminary investigation. A complaint for an offense, falling within the concurrent jurisdiction of the city court and the Court of First Instance, may be filed in the city court either for purposes of preliminary investigation only or for investigation and trial. In the former case, the city court may elevate the record to the Court of First Instance after conducting the preliminary investigation. In the latter case, the city court, after conducting the preliminary examination, may proceed to try the case on the merits.

BARREDO, *J.*, *concurring*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY EXAMINATION; CANNOT BE DISPENSED WITH.— I hold that *Banzon vs. Cabato*, 64 SCRA 419, and the cases therein cited, should be understood in the sense that a preliminary examination can under no circumstances be dispensed with, even if the preliminary investigation can be done away with. To be more correct, however, it would be best for respondent to state for the record, before proceeding any further, that a preliminary examination has been conducted by it, and, if in fact, it has not done so, to take the corresponding remedial steps on that score.

2. ID.; ID.; PRELIMINARY INVESTIGATION; BETTER PROCEDURE IN THE CONDUCT THEREOF.— I consider to be the better procedure, namely, that whenever a criminal complaint is filed in an inferior court charging an offense within its concurrent jurisdiction with the court of first instance, said inferior court should as a rule refrain from assuming jurisdiction solely to conduct the preliminary examination and investigation and should instead take cognizance thereof already for trial on the merits after conducting the preliminary examination. This procedure will certainly expedite the prosecution of offenses without diminishing, much less doing any violence to the rights of the accused or to any provision of law or the Constitution.

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APPEARANCES OF COUNSEL

Torcuato L. Galon for petitioners.
Ceferino T. Ong for and in his own behalf.

D E C I S I O N

SANTOS, *J.*:

This is a special civic action for *certiorari* and *mandamus* with prayer for preliminary injunction filed on August 29, 1977, to compel the respondent Judge, Hon. Ceferino T. Ong, to dismiss Criminal Case No. B-0112, entitled "*People of the Philippines, plaintiff, versus Robert Tabil, et al., accused*," pending before Branch III of the City Court of Ozamiz City, presided by respondent Judge.[1]

On September 2, 1977, We required the respondents to comment on the petition[2] and, at the same time, issued a temporary restraining order restraining the respondent Judge from further proceeding with the aforesaid Criminal Case.[3] Respondent Judge filed his comment on October 25, 1977[4] while private respondent failed to do so within the reglementary period which expired on September 24, 1977. Whereupon, in the resolution of January 16, 1978, We required private respondent to file an answer.[5] Again, private respondent failed to do so for which reason We considered this case submitted for decision without the aforesaid answer.[6]

The following are the material facts which spawned the present controversy.

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[1] *Rollo*, p. 2.

[2] *Id.*, p. 18.

[3] *Id.*, p. 19.

[4] *Id.*, p. 26.

[5] *Id.*, p. 36.

[6] *Id.*, p. 42.

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Petitioners are the owners-operators of a tailoring shop under the tradename and style "Zah-Zeel Stylaire" at the Public Market in Jimenez, Misamis Occidental. Private respondent Adolfo Ponce was the cutter thereat from May 1, 1975 until April 20, 1976 when he stopped reporting for work because of petitioners' refusal to further give him cash advances after he had received a total amount in cash of ₱300.00. As such cutter, he was given ₱1.00 per piece he cut, either trousers or polo shirts, ₱3.00 for ordinary clothes and ₱5.00 for hard or rugged textiles he sewed. As cutter, he was assigned a sewing machine for his use.[7]

A few days after April 20, 1976 — the day respondent Ponce stopped working — petitioners discovered that all the pattern papers, including textiles, were missing and two cones of thread were cut at the base and top so that the same cannot be used for any purpose. Likewise, orders of customers were cut not in accordance with the measurements taken, with the result that seven customers did not redeem their orders as the same did not fit them. Petitioners also discovered that the sewing machine assigned to respondent Ponce was out of order, with two main parts missing. The matter was reported to the Station Commander in Jimenez to whom private respondent admitted all the infractions and promised to return the parts of the sewing machine.[8] Respondent Ponce, however, failed to make good his promise. Hence, petitioners were constrained to file in the Municipal Court of Jimenez, Misamis Occidental two criminal cases against respondent Ponce, to wit: (1) malicious mischief with damages; and (2) violations of Presidential Decree No. 133.[9] Both cases were still pending in said Municipal Court at the time the instant petition was filed.[10]

In the meanwhile, or on February 15, 1977, respondent Ponce filed in the Labor Office in Ozamis City a complaint against

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[7] *Id.*, pp. 1-2.

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

[9] Criminal Case No. 4909 and Criminal Case No. 4908, respectively.

[10] *Rollo*, p. 5.

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petitioner Robert Tabil for "Illegal Termination, Violation of PD 851 & 525, non-payment of overtime, Sundays and holidays," docketed as STF Case No. 177-77. This case was set for hearing and on February 22, 1977 the parties met before Atty. Bartolome Domingo who conducted conciliatory proceedings. Petitioner Tabil explained that in the eyes of God he had no more obligation to respondent Ponce to which the latter "blurted out not to bring God in the proceedings." Petitioner Tabil retorted that that was the reason why Ponce stole the sewing machine parts. The conciliatory proceedings failed.[11]

On March 14, 1977, respondent Ponce filed in the City Court of Ozamiz City, respondent Judge Ong presiding, a complaint against petitioners for Grave Oral Defamation, by virtue of which the latter were arrested. The complaint[12] is worded as follows:

"The undersigned Complainant under oath accuses Robert Tabil and Aurorita Simbajon, both of Jimenez, Misamis Occidental, of the crime of Grave Oral Defamation, committed as follows:

That at or about 9:20 o'clock in the morning of February 22, 1977, at the Labor Office, Ozamiz City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating and helping one another, with intent to defame, ridicule and dishonor the offended party, did, then and there wilfully, feloniously and unlawfully utter the following defamatory and defamatory words in the presence of several persons addressed to the herein complainant, Adolfo Ponce, stating that the herein complainant is a thief and a robber, which words constitute offensive and scurrilous epithets tending to cast discredit and dishonor to the herein offended party.

Contrary to Article 358 of the Revised Penal Code.

Ozamiz City, Philippines, March 14, 1977.

SGD. ADOLFO V. PONCE
Complainant"

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

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

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Petitioners herein, accused below, moved to dismiss the aforesaid complaint on two grounds, to wit: (1) That there was no preliminary investigation conducted under Presidential Decree No. 77, as amended by Presidential Decree No. 911; and (2) That the facts charged do not constitute an offense because the same are privileged under Article 232 of the Presidential Decree No. 442 which reads:

"ARTICLE 232. *Privileged communication.* — Information and statements made at conciliation proceedings shall be treated as privileged communication and shall not be used as evidence in the Commission. Conciliators and similar officials shall not testify in any court or body regarding any matters taken up at conciliation proceedings conducted by them."

On April 19, 1977, the respondent Judge denied the motion to dismiss.[13] Thus —

"The accused filed a motion to dismiss based on two grounds, namely, 1. that there was no preliminary investigation conducted under P.D. No. 77, as amended by P.D. No. 911; 2. that the facts charged do not constitute an offense . . .

"As to the first ground, the Court finds that P.D. No. 77 as amended by P.D. No. 911 is not applicable in the present case. The accused are charged with Grave Oral Defamation under Art. 358 of the Revised Penal Code, the penalty of which ranges from *arresto mayor* in its maximum period to *prision correccional* in its minimum period, and therefore, the same crime falls under the concurrent jurisdiction of this Court and the Court of First Instance. Inasmuch as the case was filed in the City Court, our Supreme Court has held in several cases that preliminary investigation is not required when such cases are filed directly with lower courts, more so, that P.D. No. 77 refers only to preliminary investigation to be conducted by city fiscals and state prosecutors and does not deprive City Courts or Courts of First Instance to conduct their own preliminary investigations. As to the applicability of Republic Act 3828, the judge who issued the warrant, Hon. Judge Alfonso Penaco, has complied with the said provisions of the law, although he adopted only the investigation made by the police in accordance with the case of *Luna vs. Plaza.*

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[13] *Id.*, pp. 7-8.

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"As to the second ground, privileged communications are matters of evidence and must be proved during trial and therefore, this cannot be a ground for a motion to dismiss. Presidential Decree No. 442 speaks of conciliation proceedings but the incident which occurred on February 22, 1977 was only a conciliatory talk conducted by Atty. Bartolome Domingo. From the testimony of witness Bartolome Domingo, the conciliatory proceedings was conducted by conciliator Casiano T. Laguitao as per his certification dated February 28, 1977 (Exhibit "2"). The case, STF Case No. 077-77, was handled by conciliator Laguitao and any proceedings conducted by him would be the one referred to by P.D. No. 442 and considers the same as privileged.

"WHEREFORE, finding the motion to dismiss to be without merit, the same is hereby denied. Meanwhile, the hearing of this case is hereby reset to May 11, 1977, at 8:30 o'clock in the morning.

SO ORDERED.

Ozamiz City, Philippines, April 19, 1977

SGD. CEFERINO T. ONG
City Judge"

Not satisfied with the aforesaid order, petitioners made the instant recourse imputing to the respondent Judge the following alleged errors:

1. The Respondent City Judge erred in not appreciating the fact that the right to preliminary investigation could not be waived by the petitioners as accused in Criminal Case No. B3-0112 because under PD 77 as amended by PD 911 they are entitled to file their counter-affidavits.[14]

2. The Respondent City Judge erred in not granting the motion to dismiss Criminal Case No. B3-0112 entitled *People versus Robert Tabil and Aurorita Simbajon* anchored under Article 232 of Presidential Decree No. 442 otherwise known as The Labor Code which took effect on November 1, 1974 that any conciliatory proceedings in the Labor Office is privileged communication.[15]

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

[15] *Id.*, p. 10.

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Petitioners argue under the first assigned error that respondent City Judge violated RA 3828 and Presidential Decree No. 77, as amended by Presidential Decree No. 911, because instead of issuing a subpoena after complainant's evidence had shown a *prima facie* case, he issued a warrant for their arrest,[16] and under the second assigned error, they contend that the defamatory statements alleged in the complaint do not constitute a criminal offense because they were not uttered in public but in the course of an investigation in the "Labor Office, Ozamiz City," and the matters spoken "in the course of conciliatory proceedings, administrative at that, were privileged," per Article 232 of Presidential Decree No. 442.[17]

Anent the first assigned error, respondent Judge ruled that Presidential Decree No. 77, as amended by Presidential Decree No. 911, refers to preliminary investigations conducted by fiscals and state prosecutors, not to those conducted by judges under Rule 112, Sec. 10 of the Revised Rules of Court, citing *People vs. Abejuela*, L-29715, March 31, 1971, *People vs. Endan*, L-29833, 38 SCRA 324, and *Banzon vs. Cabato*, L-31447, June 27, 1975.[18]

With respect to the second assigned error, respondent Judge is of the opinion that whether or not the subject utterances are privileged communications, is a matter of evidence which must be established during the trial. He also maintains that Presidential Decree No. 442 does not apply because said law refers to conciliatory proceedings and what transpired on February 22, 1977 was only a "conciliatory talk," not the "conciliatory proceedings" contemplated under said decree. In other words, the utterances subject of the instant case occurred during the "informal talk" between the parties before Atty. Bartolome Domingo while the conciliatory proceedings were conducted by Conciliator Casiano T. Laguitao to whom the case was assigned for conciliation.[19]

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[16] *Id.*, p. 10.

[17] *Id.*, pp. 10-11.

[18] *Id.*, pp. 26-27.

[19] *Id.*, pp. 27-28.

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Since petitioners came to Us on a petition for *certiorari* and *mandamus* under Sections 1 and 3 of Rule 65 of the Revised Rules of Court, it is incumbent upon them to show that the respondent Judge "acted without or in excess of x x x his jurisdiction, or with grave abuse of discretion"[20] and/or unlawfully neglected "the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station," or unlawfully excluded another "from the use and enjoyment of a right or office to which such other is entitled,"[21] and there is no appeal, nor any other plain, speedy and adequate remedy in the ordinary course of law, when he denied their motion to dismiss.

We hold that petitioners failed to show that they are entitled to the issuance of the twin writs (1) of *certiorari* annulling the proceedings[22] of the respondent Judge and (2) of *mandamus* commanding the latter to dismiss the case,[23] respectively.

I

The contention of petitioners that the procedure that should be followed by city and municipal courts in conducting preliminary investigations of cases cognizable by them in the exercise of their original jurisdiction or concurrently with the Courts of First Instance is that prescribed by Presidential Decree No. 77,[24] as amended by Presidential Decree No. 911,[25] finds no legal support. The very law itself — Presidential Decree No. 77, as amended by Presidential Decree No. 911 — states that it applies only to preliminary investigations conducted by fiscals and state prosecutors. This is clearly discernible from its title, to wit: "AMENDING SECTION 1 OF REPUBLIC ACT NO. 5180 PRESCRIBING A UNIFORM SYSTEM OF

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[20] Sec. 1, Rule 65, Revised Rules of Court.

[21] Sec. 3, Rule 65, *Id.*

[22] Sec. 1, Rule 65, *Id.*

[23] Sec. 3, Rule 65, *Id.*

[24] Effective December 6, 1972.

[25] Effective March 23, 1976.

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PRELIMINARY INVESTIGATION BY PROVINCIAL AND CITY FISCALS AND THEIR ASSISTANTS, AND BY STATE ATTORNEYS OR THEIR ASSISTANTS." And any doubt on the matter is dispelled by its Section 1, as amended, which provides:

"SECTION 1. Notwithstanding any provision of law to the contrary and 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, no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal or his assistants or by a state prosecutor, without first conducting a preliminary investigation in the following manner:

"a. All complaints shall be accompanied by statements of the complainant and his witnesses as well as other supporting documents. The statements of the complainant and his witnesses shall be sworn to before any fiscal or state prosecutor or before any government official authorized to administer oath. The officer administering the oath must certify that he has personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

"b. If on the basis of the complainant's sworn statements and documents submitted, the *investigating fiscal or state prosecutor finds no probable cause to conduct a preliminary investigation, he shall dismiss the case. If probable cause is established by complainant's evidence, he shall notify the respondent by issuing a subpoena requiring him to submit his counter-affidavit and the affidavits of his witnesses, if any*, and other supporting documents, within ten (10) days from receipt of such subpoena. If respondent cannot be subpoenaed, or if subpoenaed he does not appear before the investigating fiscal or state prosecutor, the preliminary investigation shall proceed without him. To such subpoena shall be attached a copy of the complaint, the sworn statements and other documents submitted. Other evidence submitted shall be made available for examination of the respondent or his counsel. The statements of the respondent and his witnesses shall also be sworn to before any fiscal or state prosecutor or before any government official authorized to administer oath and with the same certification as above-mentioned. The respondent shall furnish the complainant copies of his counter-affidavits and other supporting documents.

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"c. If a *prima facie* case is established by the evidence, *the investigating fiscal or state prosecutor shall immediately file the corresponding information in court.* If he finds that there is no *prima facie* case, he shall dismiss the case unless he believes there are matters to be clarified in which case he may propound clarificatory questions to the parties or their witnesses affording both parties opportunity to be present but without right to examine or cross-examine. If the parties or their counsel so desire, they may submit questions to the fiscal which the latter may in his discretion propound to the parties concerned.

"d. The preliminary investigation shall proceed without need of requiring the parties and their witnesses to reaffirm their respective statements before the investigating fiscal or state prosecutor. Thereafter, he shall resolve the case within ten (10) days from its termination, furnishing the parties copies of his resolution stating briefly the findings of facts and the law supporting his action.

"*The fiscal or state prosecutor shall certify under oath in the information to be filed by him that he has examined the complainant and his witnesses, that on the basis of the sworn statements and other evidence submitted before him there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, that the accused was informed of the complaint and of the evidence submitted against him and that he was given an opportunity to submit controverting evidence: Provided, That no assistant fiscal or state prosecutor may file an information or dismiss a case except with the prior authority or approval of the provincial or city fiscal or Chief State Prosecutor, Provided, Further, That where an assistant fiscal or state prosecutor who has investigated the case recommends the dismissal of the case but his findings are reversed by the Provincial or City Fiscal or by the Chief State Prosecutor, as the case may be, on the ground that a prima facie case exists, the Provincial or City Fiscal or the Chief State Prosecutor may, by himself, and on the basis of the same sworn statements and evidence submitted, file the information against the respondent, or direct any other assistant fiscal or state prosecutor to do so without conducting another preliminary investigation; Provided, Finally, That where the resolution of the Provincial or City Fiscal or the Chief State Prosecutor is, upon review, reversed by the Secretary of Justice, the latter may, where he finds that no prima facie case exists, authorize and direct the investigating fiscal concerned or any other fiscal or state prosecutor to cause or move*

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for the dismissal of the case, or where he finds a *prima facie* case, to cause the filing of an information in court against the respondent, based on the same sworn statements or evidence submitted, without the necessity of conducting another preliminary investigation." (Emphasis supplied.)

From the foregoing, there is no doubt that the aforesaid decree does not apply to cases filed with and triable/cognizable by city and municipal courts, the law applicable thereto being Sec. 10, Rule 112 of the Revised Rules of Court which provides:

"SECTION 10. *Right of accused to preliminary investigation after arrest.* — After the arrest of the accused and his delivery to the Court, he shall be informed of the complaint or information filed against him. He shall be given access to the testimony and evidence presented against him at the preliminary examination, and, if he desires to testify or to present witnesses or evidence in his favor, he shall be allowed to do so. The testimony of the witnesses presented at the investigation need not be reduced to writing but that of the accused shall be taken in writing and subscribed by him.

In cases triable in the justice of the peace or municipal courts, the accused shall not be entitled as a matter of right to a preliminary investigation in accordance with this section." (Italics supplied).

Construing the aforesaid provision, We have held that the accused in a criminal case filed directly with, and within the jurisdiction of the city or municipal courts is not entitled to preliminary investigation, the conduct of the preliminary examination prior to the issuance of a warrant for his arrest, as shown by the examination and sworn statements of the complainant and his witnesses, being sufficient to establish whether "there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial."[26] The reason is that the ensuing trial on the merits takes the place of preliminary investigation, thus doing away with waste and/ or duplication of time and effort. Thus, in *Banzon*

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[26] Rule 112, Sec. 1 , Revised Rules of Court.

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vs. Hon. Cabato, etc., et al.,[27] reiterating the ruling laid down in *People vs. Abejuela* and *People vs. Endan*,[28] We held:

"This issue has been definitely resolved in the cases of *People v. Abejuela* and *People v. Endan*. This Court, speaking thru Mr. Justice Teehankee, held that the accused in an offense falling within the concurrent jurisdiction of the city courts and courts of first instance is not entitled to be heard in a preliminary investigation. By way of explanation, this Court said:

"1. It is settled dogma that the right to a preliminary investigation is of statutory character and the right thereto may be invoked only when specifically granted by the statute. In promulgating the present Revised Rules of Court effective January 1, 1964, the Court's intention to withhold the right of preliminary investigation from the accused in cases triable by municipal and city courts was made manifest and of record in the proceedings of the U.P. Law Center's Institute of the Revised Rules of Court conducted on December 12-14, 1963, by Mr. Justice Alejo Labrador (now retired), chairman, with Mr. Justice J.B.L. Reyes, as member, of the Court's Committee on Rules, thus:

> 'Now, Section 11 of Rule 108 of the old rules has been amended. Please turn to Section 10 of Rule 112 of the Revised Rules of Court on the right of the *accused to preliminary investigation*. After the arrest of the accused and his delivery to the Court, he shall be informed of the complaint or information filed against him. He shall be given access to the testimony and evidence presented against him at the preliminary examination, and, if he desires to testify or to present witnesses or evidence in his favor, he shall be allowed to do. The testimony of the witnesses presented at this investigation need not be reduced in writing but the testimony of the accused shall be taken in writing and subscribed by him. x x x
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> 'Now look at the second paragraph. We inserted that provision. It provides that *in cases triable by the justice of the peace or municipal courts, the accused shall not be entitled as a matter of right to a preliminary investigation* in accordance

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[27] L-31447, June 27, 1975, 64 SCRA 419.

[28] L-29715 and L-29833, respectively, both decided March 31, 1971, 38 SCRA 324; 425.

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with this Section. *He is not entitled to it because the case goes to trial already. That is the rule; the practice, rather.* This is a new provision.' (Italics ours).

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"Indeed, balancing the consideration, the withholding of the right of the preliminary investigation from the accused in cases triable by the inferior courts involving offenses with lower penalties than those exclusively cognizable by courts of first instance, could not be termed an unjust or unfair distinction. The loss of time entailed in the conduct of preliminary investigations, with the consequent extension of deprivation of the accused's liberty, in case he fails to post bail, which at times outlasts the period of the penalty provided by law for the offense, besides the mental anguish suffered in protracted litigations, are eliminated with the assurance of a speedy and expeditious trial for the accused, upon his arraignment (without having to undergo the second stage of the preliminary investigation), and of a prompt verdict on his guilt or innocence. On the other hand, the so-called first stage of preliminary investigation or the preliminary examination, conducted by the duly authorized officer, as borne out by the examination and sworn written statement of the complainants and their witnesses, generally suffices to establish the existence of reasonable ground to charge the accused with having committed the offense complained of.

"2. The lower court's construction of the provision in question is difficult to sustain, furthermore, because it would insert double qualifications in the Rules, where none has been provided. Thus, it would qualify Section 14 of the Rule by taking the rule to mean that 'no information for an offense cognizable by the Court of First Instance *concurrently with the inferior courts* shall be filed' without the accused having been given a chance to be heard in a preliminary investigation — when the rule is clearly expressed and intended to apply only when the case is *cognizable by the Court of First Instance*, be it one of its exclusive jurisdiction, or of concurrent jurisdiction *filed with it.* In addition, the lower court would further qualify Section 10 of the Rule by straining its clear and unambiguous provision to mean that the withholding of the right of preliminary investigation applies only in cases which are triable by the inferior courts *under their exclusive original jurisdiction* — when the rule plainly provides that there shall be no right of preliminary investigation in cases *triable*

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by the inferior courts, *without distinction* as to whether such cases be of their exclusive or concurrent jurisdiction.

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"5. The lower court's contention whereby it would qualify the application of Section 10 of the Rule providing for no preliminary investigation in cases which are triable by the inferior courts only to cases falling under their exclusive original jurisdiction, — because the trial in such cases is 'more of summary in nature since the proceedings are not recorded and judgment thereof is appealable to the court of first instance and it is tried *de novo* before the appellate court' — is untenable, in the light of the rule's rationale, as expounded by Mr. Justice Labrador, *supra*, that the ensuing trial on the merits take the place of preliminary investigation, without needless waste or duplication of time and effort, and a final verdict on the innocence (or guilt) of the accused is thereupon rendered, rather than an inconclusive dismissal of the charge by the fiscal in a preliminary investigation which would not constitute jeopardy."

Accordingly, We, therefore, hold that the respondent Judge is without authority to conduct the preliminary investigation of Criminal Case No. 22610 involving an offense falling within the concurrent jurisdiction of the City Court of Baguio and the Court of First Instance."

Verily, respondent Judge did not commit a grave abuse of discretion or acted without or in excess of his jurisdiction when he refused to dismiss the case.

II

In connection with the second assigned error, petitioners insist that the utterances subject of the criminal action below, constitute privileged communication under PD 442. The posture of petitioners is not tenable. For one thing, there is a factual issue on the nature of the proceedings held before the Labor Office on February 22, 1977. Respondents maintain that "Presidential Decree No. 442 speaks of conciliation proceedings but the incident which occurred on February 22, 1977 was only a conciliatory talk conducted by Atty. Bartolome Domingo" and that the conciliatory proceedings were "conducted by

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Conciliator Casiano T. Laguitao as per his certification dated February 28, 1977 (Exhibit '2')."[29] Petitioners entertain the contrary view — that is, the proceedings held before Atty. Domingo were those contemplated by PD 442. For another thing, the subject complaint[30] does not allege that the petitioners' statements "robber" and "thief" were uttered during the conciliatory proceedings at the Labor Office. Hence, petitioners claim that the aforesaid statements constitute privileged communication is a matter of defense to be ventilated at the trial where the parties may introduce their evidence to support their respective stands.

In fine, it cannot be said that the respondent Judge gravely abused his discretion, much less exceeded his jurisdiction, in denying petitioners' motion to dismiss.

WHEREFORE, judgment is hereby rendered DISMISSING the petition and LIFTING the temporary restraining order heretofore issued, with costs against petitioners. This decision is immediately final and executory, in order that the respondent Judge may be able to dispose of criminal case without further delay.

SO ORDERED.

Antonio, Concepcion Jr., and *Abad Santos, JJ.*, concur.

Barredo, J., concurs with a separate opinion.

Aquino, J., see attached concurring opinion.

BARREDO, *J.*, *concurring opinion*:

I concur, specially appreciating Justice Aquino's very well taken point that if respondent court's actuation is to be sustained, it is only on the assumption that it has already conducted the preliminary examination indispensably required by the Constitution before a warrant of arrest may be issued. Indeed, it is only the

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[29] *Rollo*, p. 8. Order denying motion to dismiss.

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

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preliminary investigation that this Court has, in existing jurisprudence, held not to be necessary before an inferior court may take cognizance for trial of a criminal case which under the law is within its concurrent jurisdiction with the court of first instance. Without such assumed predicate, the arrest of petitioners would be illegal and void. I hold that *Banzon vs. Cabato*, 64 SCRA 419, and the cases therein cited, should be understood in the sense that a preliminary examination can under no circumstances be dispensed with, even if the preliminary investigation can be done away with. To be more correct, however, it would be best for respondent to state for the record, before proceeding any further, that a preliminary examination has been conducted by it, and, if in fact, it has not done so, to take the corresponding remedial steps on that score.

Additionally, I venture the opinion that the ruling in *People vs. Padios*, 97 Phil. 19, does not preclude what I consider to be the better procedure, namely, that whenever a criminal complaint is filed in an inferior court charging an offense within its concurrent jurisdiction with the court of first instance, said inferior court should as a rule refrain from assuming jurisdiction solely to conduct the preliminary examination and investigation and should instead take cognizance thereof already for trial on the merits after conducting the preliminary examination. This procedure will certainly expedite the prosecution of offenses without diminishing, much less doing any violence to the rights of the accused or to any provision of law or the Constitution.

AQUINO, *J.*, *concurring opinion*:

I concur on the assumption that the city court of Ozamiz City, before issuing the warrant of arrest, conducted a *preliminary examination* (the *first stage* of the preliminary investigation), as required in Section 1, Rule 112 of the Rules of Court and in Section 3, Article IV of the Constitution. (See *Callanta vs. Villanueva*, L-24646, June 20, 1977, 77 SCRA 377 where the city judge of Dagupan City conducted the preliminary investigation of a grave oral defamation case.)

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It should be noted that the second paragraph of Section 10, Rule 112, in providing that "in cases triable in the municipal or city courts, the accused shall not be entitled as a matter of right to a preliminary investigation in accordance with this section," refers to the *second stage* of the preliminary investigation.

A complaint for an offense, falling within the concurrent jurisdiction of the city court and the Court of First Instance, may be filed in the city court either for purposes of preliminary investigation only or for investigation and trial.

In the former case, the city court may elevate the record to the Court of First Instance after conducting the preliminary investigation (*Neñaria vs. Veluz*, 91 Phil. 473; *People vs. Padios*, 97 Phil. 19).

In the latter case, the city court, after conducting the preliminary examination, may proceed to try the case on the merits (*Natividad vs. Robles*, 87 Phil. 834; *Alimajen vs. Valera*, 107 Phil. 244).

SECOND DIVISION

[G.R. No. L-48931. July 16, 1979]

ILAW AT BUKLOD NG MANGGAGAWA (IBM), *petitioners, vs.* **DIRECTOR OF LABOR RELATIONS, TRADE UNION CONGRESS OF THE PHILIPPINES, GENERAL MILLING CORPORATION, and ASSOCIATED LABOR UNIONS,** *respondents.*