

SECOND DIVISION

[G.R. No. 240676, March 18, 2019]

**JIMMY LIM PALACIOS, PETITIONER, V. THE PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition^[1] for review on *certiorari* are the Decision^[2] dated January 18, 2018 and the Resolution^[3] dated July 11/2018 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 150260, which upheld the Orders dated October 5, 2016^[4] and January 25, 2017^[5] of the Regional Trial Court of Quezon City, Branch 86 (RTC) denying petitioner Jimmy Lim Palacios' (petitioner) motion for reinvestigation and to recall warrant of arrest.

The Facts

The present case stemmed from a complaint^[6] for violation of Section 5 (i) of Republic Act No. (RA) 9262^[7] otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" filed by Maria Cecilia Ramirez (Ramirez) against petitioner. Ramirez alleged that she and petitioner were married^[8] on November 17, 1987 and thereafter, had a son.^[9] However, petitioner abandoned them and refused to give them financial support, acts which constitute economic abuse under Section 5 (i) of RA 9262. Further, in her *Sinumpaang-Reklamang Salaysay* filed before the Office of the City Prosecutor, Quezon City (OCP-QC), she alleged that petitioner's residence where he may be served with summons is **Block 3 Lot 24 Turquoise St., Las Piñas Royale Estate, Naga Road, Brgy. Pulang Lupa Dos, Las Piñas City**.

In a Resolution^[10] dated March 19, 2015, the OCP-QC recommended that petitioner be indicted for the crime charged. In resolving the case based on the evidence proffered solely by Ramirez, the investigating prosecutor held that petitioner failed to appear during the preliminary investigation and submit his counter-affidavit despite being given ample opportunity to do so.^[11] Consequently, the corresponding Information^[12] was filed before the RTC, docketed as Crim. Case No. R-QZN-15-04286 and a warrant^[13] for petitioner's arrest was issued pursuant to the RTC Order^[14] dated May 12, 2015 (May 12, 2015 Order).

Sometime in September 2016, petitioner, through his lawyer, filed before the RTC an extremely very urgent motion for reinvestigation and to recall warrant of arrest,^[15] decrying violation of his right to due process upon learning of the case that Ramirez filed against him and the RTC's May 12, 2015 Order directing the issuance of a warrant of arrest. He averred that he only learned of the subject complaint when, in a criminal case that he had filed against her, his lawyer was furnished with a copy of

her *Kontra-Salaysay*^[16] where the May 12, 2015 Order was attached as an annex. He further alleged that he would not have been denied of his right to due process and to a preliminary investigation had Ramirez not concealed his true and correct address, *i.e.*, **Block 9 Lot 6 Pag-Ibig Homes, Talon IV, Las Piñas City**. As a result of the fraud employed by Ramirez, petitioner asserted that he was not able to interpose his valid and meritorious defenses to show that no probable cause exists to charge him in this case.^[17]

The RTC Ruling

In an Order^[18] dated October 5, 2016, the RTC denied petitioner's motion, citing A.M. No. 11-6-10-SC^[19] which states that a motion for preliminary investigation shall only be granted where the accused was subjected to inquest proceedings,^[20] which was not the case here.

Petitioner's motion for reconsideration^[21] was denied in an Order^[22] dated January 25, 2017. Thus, he elevated the case to the CA *via* a petition for *certiorari*^[23] ascribing grave abuse of discretion on the part of the RTC.

The CA Ruling

In a Decision^[24] dated January 18, 2018, the CA dismissed the petition and affirmed the assailed RTC Orders upon finding that petitioner was given the opportunity to participate in the preliminary investigation, based on the certification^[25] of Assistant City Prosecutor Pedro M. Tresvalles (ACP Tresvalles) dated March 19, 2015. Likewise, it was observed that ACP Tresvalles had examined Ramirez's statements and the pieces of evidence, and on the basis thereof, found that there was probable cause. Furthermore, it was determined that the accused was informed of the complaint and evidence against him and was given an opportunity to submit controverting evidence. Finally, the CA affirmed the RTC's finding that pursuant to A.M. No. 11-6-10-SC, a motion for preliminary investigation shall only be granted when accused was subjected to inquest proceedings, which was not so in this case.^[26]

Petitioner's motion for reconsideration^[27] was denied in a Resolution^[28] dated July 11, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the denial of petitioner's motion for preliminary investigation and to recall warrant of arrest.

The Court's Ruling

The petition is impressed with merit.

Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.^[29] The rationale of preliminary investigation is to "protect the accused from the inconvenience, expense[,] and burden of defending himself in a formal trial unless

the reasonable probability of his guilt shall have been first ascertained in a fairly summary proceeding by a competent officer."^[30] Section 1,^[31] Rule 112 of the Rules of Court requires the conduct of a preliminary investigation before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to fine.

In this case, although the OCP-QC conducted a preliminary investigation relative to the complaint filed by Ramirez against petitioner, the latter bewails the lack of notice to him of the proceedings, which resulted in his failure to participate in the preliminary investigation. He claims that Ramirez committed fraud by intentionally giving the wrong address in her *Sinumpaang-Reklamong Salaysay* instead of his true and correct residence address, which is **Block 9 Lot 6 Pag-Ibig Homes, Talon IV, Las Piñas City**, as evidenced by: (a) a Certification^[32] dated July 10, 2017 issued by Barangay Talon Kwartro, Las Piñas City; (b) his Seaman's Service Record Book,^[33] and (c) their Marriage Contract^[34] dated November 17, 1987. To bolster his claim that Ramirez was fully aware of his correct address, he pointed out that in the petition^[35] for declaration of nullity of their marriage and the Affidavit of Withdrawal^[36] dated May 3, 1990, both of which Ramirez filed, she indicated his address at Block 9 Lot 6^[37] Pag-Ibig Homes, Talon, Las Piñas, Metro Manila. Thus, petitioner contends that he was denied due process when Ramirez supplied the wrong address when she filed the present complaint against him.

Due process is comprised of two (2) components – substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal.^[38] The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.^[39] "Non-observance of these rights will invalidate the proceedings. Individuals are entitled to be notified of any pending case affecting their interests, and upon notice, they may claim the right to appear therein and present their side and to refute the position of the opposing parties."^[40]

The Court has punctiliously examined the available records of this case and found no showing that indeed, petitioner had been duly notified of the charges filed against him by Ramirez or served with a *subpoena* relative to the preliminary investigation conducted by the OCP-QC. The Court therefore takes exception to the CA's observation^[41] that petitioner failed to prove that he was denied participation in the preliminary investigation, for it would have been impossible for him to prove such negative allegation. Instead, under the circumstances, it was incumbent upon respondent to show that petitioner had been duly notified of the proceedings and that, despite notice, he still failed to appear or participate thereat. In the absence of such proof, the Court therefore finds that petitioner had not been given an opportunity to be heard. Case law states that "[w]hen service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence."^[42]

It bears to stress that the right to preliminary investigation is *substantive*, not merely formal or technical.^[43] As such, to deny petitioner's motion for reinvestigation on the basis of the provisions of A.M. No. 11-6-10-SC would be to