

THIRD DIVISION

[G.R. Nos. 211933 & 211960, April 15, 2015]

ROBERTA S. SALDARIEGA, PETITIONER, VS. HON. ELVIRA D.C. PANGANIBAN, PRESIDING JUDGE, BRANCH 227, REGIONAL TRIAL COURT, NATIONAL CAPITAL REGION, QUEZON CITY AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Before us is a special civil action for *certiorari*^[1] under Rule 65 of the Rules of Court, dated April 21, 2014 filed by Roberta S. Saldariega (*petitioner*), through counsel, assailing the Order dated June 14, 2013 issued by respondent Presiding Judge Elvira D.C. Panganiban, which granted the motion to reopen Criminal Case Nos. Q-1 1-173055 and Q-1 1-173056, for allegedly having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The facts of the case, as culled from the records, are as follows:

On November 8, 2011, the Office of the City Prosecutor, Quezon City filed two (2) Informations against petitioner Roberta S. Saldariega for violation of Sections 5 and 11, Article 2, Republic Act No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, docketed as Criminal Case Nos. Q-1 1-173055 and Q-1 1-173056, respectively.^[2] Said cases were raffled to Branch 227, Regional Trial Court, Quezon City, presided by herein respondent Judge Elvira D.C. Panganiban.

Court hearings were set for the subject cases, however, the prosecution's principal witness PO2 Nelson Villas (*PO2 Villas*), one of the arresting officers, failed to attend said scheduled hearings, specifically on October 22, 2012 and October 25, 2012.^[3] Thus, during the May 16, 2013 hearing, respondent judge issued an Order provisionally dismissing the cases with the express consent of the accused-petitioner,^[4] the dispositive portion of which reads as follows:

X X X X

Today is supposedly set for the continuation of the direct testimony of PO2 Nelson Villas. However, although notified, said witness failed to appear simply on the ground that there is a deceased relative, the body of whom, he will accompany to the province.

The records show that on December 10, 2012, he testified partially on direct examination and he was notified of the March 26, 2013 continuation of his testimony, but despite Notice in open Court, he failed to appear. Likewise, the Court noticed that the other prosecution witness, PO3 Rionaldo Sabulaan never appeared despite Notice received. It

appears from the records that only the Forensic Chemist testified on September 13, 2012, but the Forensic Chemist does not have any personal knowledge of the source of the evidence she examined, and also on the facts and circumstances affecting the arrest of the accused. Thus, the defense counsel invoked the right of the accused to speedy trial. The Public Prosecutor did not object to the dismissal, provided the dismissal is only provisional. Hence, let these cases be ordered PROVISIONALLY DISMISSED WITH THE EXPRESS CONSENT OF THE ACCUSED AND HER COUNSEL.

X X X X

SO ORDERED.^[5]

On June 5, 2013, PO2 Villas filed a Motion to Re-open the Case against petitioner. PO2 Villas explained that his failure to appear during the hearings of the cases was due to the untimely death of his father-in-law.^[6] He further averred that PO3 Rinaldo Sabulaan, one of the arresting officers, is no longer assigned at the Cubao Police Station and had been transferred at the Batasan Police Station since November 2012, thus, could not have received his subpoena which is directed at his former place of assignment.

In the disputed Order^[7] dated June 14, 2013, respondent Judge granted the motion and ordered the re-opening of the cases against petitioner and set the cases for continuation of hearing.

Petitioner moved for reconsideration. She argued that the provisional dismissal of the criminal cases is considered an acquittal and PO2 Villas had no personality to file the motion to re-open the case.^[8]

In an Order^[9] dated February 18, 2014, respondent denied petitioner's motion for reconsideration.

On April 29, 2014, the Court resolved to require respondents to comment on the instant petition.^[10]

In their Comment^[11] dated June 11, 2014, the Office of the Solicitor General, through then Solicitor General Francis H. Jardeleza,^[12] maintained that respondent judge committed no grave abuse of discretion in issuing the assailed Orders dated June 14, 2013 and February 18, 2014. It argued that petitioner did not expressly object to the motion to revive the criminal cases.

Thus, the instant petition raising the following issues:

I

WHETHER OR NOT WITNESS PO2 NELSON VILLAS CAN FILE A MOTION TO REOPEN A PROVISIONALLY DISMISSED CASE WITHOUT THE PARTICIPATION OF A PUBLIC PROSECUTOR.

II

WHETHER OR NOT THE BRANCH CLERK OF COURT HAS THE RIGHT TO RECEIVE A MOTION TO RE-OPEN THAT DOES NOT CONTAIN A NOTICE OF HEARING AND A SHOWING THAT THE OTHER PARTY WAS GIVEN A COPY THEREOF.

III

WHETHER OR NOT THE RESPONDENT JUDGE HAS THE AUTHORITY TO ACT FAVORABLY UPON SAID MOTION.

IV

WHETHER OR NOT THE PROVISIONAL DISMISSAL OF CRIMINAL CASES NOS. Q-1 1-173055-56 WITH THE CONSENT OF THE ACCUSED BUT PREDICATED ON FAILURE TO PROSECUTE WHICH VIOLATES THE RIGHT OF THE ACCUSED TO SPEEDY TRIAL IS NOT EQUIVALENT TO AN ACQUITTAL, SUCH THAT ITS REVIVAL WOULD CONSTITUTE DOUBLE JEOPARDY.

V

WHETHER OR NOT THE ABSENCE OF PROSECUTION'S PRINCIPAL WITNESS PO2 NELSON VILLAS FOR FOUR (4) CONSECUTIVE HEARINGS HAD BEEN CONSIDERED WAIVER PURSUANT TO A.M. NO. 11-6-10-SC.

RULING

We deny the petition.

The Court notes that the instant case suffers from procedural infirmities which this Court cannot ignore. While this petition is to be treated as one for *certiorari* under Rule 65, it is still dismissible for violation of the hierarchy of courts. Although the Supreme Court has concurrent jurisdiction with the RTC and the CA to issue writs of *certiorari*, this should not be taken as granting parties the absolute and unrestrained freedom of choice of the court to which an application will be directed. Direct resort to this Court is allowed only if there are special, important and compelling reasons clearly and specifically spelled out in the petition, which are not present in this case.

[13]

Moreover, this being a petition on *certiorari* under Rule 65, the issues raised herein should be confined solely to questions of jurisdiction. Thus, while in the course of the discussion, it may be necessary to thresh out pertinent factual issues, the same is limited for the purpose of resolving the issue on jurisdiction, that is, whether the trial court committed grave abuse of discretion resulting to lack or in excess of jurisdiction.

When a criminal case is provisionally dismissed with the express consent of the accused, the case may be revived by the State within the periods provided under the 2nd paragraph of Section 8, Rule 117 of the Rules of Criminal Procedure.

A case shall not be provisionally dismissed except with the express consent of the

accused and with notice to the offended party. Here, a perusal of the Order, dated May 16, 2013, stresses in no uncertain terms that the dismissal of the case was provisional, *i.e.*, the case could be revived at some future time. If petitioner believed that the case against her should be dismissed with prejudice, she should not have agreed to a provisional dismissal. She should have moved for a dismissal with prejudice so that the court would have no alternative but to require the prosecution to present its evidence. There was nothing in the records showing the accused's opposition to the provisional dismissal nor was there any after the Order of provisional dismissal was issued. She cannot claim now that the dismissal was with prejudice. Thus, if a criminal case is provisionally dismissed with the express consent of the accused, as in this case, the case may be revived by the State within the periods provided under the 2nd paragraph of Section 8, Rule 117 of the Rules of Criminal Procedure. There is no violation of due process as long as the revival of a provisionally dismissed complaint was made within the time-bar provided under the law.

Generally, the prosecutor should have been the one who filed the motion to revive because it is the prosecutor who controls the trial. But in this particular case, the defect, if there was any, was cured when the public prosecutor later actively participated in the denial of the accused's motion for reconsideration when she filed her Comment/Objection thereto. In the Order denying the motion, the trial court stated that *"in her Comment/Objection, the Public Prosecutor begged to disagree primarily on the ground that double jeopardy has not set in, because the provisional dismissal of the case was with the express consent of the accused."*^[14] The court even went further when it stated that *"although the Motion to Re-open the case was filed by the witness without securing the conformity of the Public Prosecutor, in effect, the prosecutor has conformed to the re-opening of the case because she (the prosecutor) finds that the failure of the witness to appear on two (2) hearings was due to the death of the father in law on March 23, 2013 and the death of his aunt on May 12, 2013, as substantiated by the respective Certificates of Death of the said relatives."*^[15]

Moreover, in the case at bar, it must be noted that the accused is charged with a public crime, hence, it is a victim-less crime. Unlike in private crimes where the participation of the private offended party is generally required for the recovery of civil liability, in the instant case, there is no particular private offended party who can actually file the motion to revive. Hence, in some instances, as in this case, it is the arresting officer, PO2 Villas, who filed the motion to revive the case out of his sense of duty as a police officer and compelled by his sense of obligation considering that he knew his absence was the cause why the complaint was provisionally dismissed.

We could not entirely blame PO2 Villas in filing the motion to revive since we are aware that in drug-related cases, the arresting officers are usually required to explain by their superiors when a case is provisionally dismissed due to their failure to appear during trial. Thus, in order to exonerate themselves from a possible administrative and criminal liability, the arresting officers would then opt instead to file the motion to revive on their own.

The provisional dismissal of the case does not operate as an acquittal since its dismissal was made with the express consent of the accused, thus, there is no