737 Phil. 334

THIRD DIVISION

[G.R. No. 183994, June 30, 2014]

WILLIAM CO A.K.A. XU QUING HE, PETITIONER, VS. NEW PROSPERITY PLASTIC PRODUCTS, REPRESENTED BY ELIZABETH UY,[1] RESPONDENT.

D E C I S I O N

PERALTA, J.:

Assailed in this petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules on Civil Procedure (*Rules*) are the April 30, 2008[2] and August 1, 2008[3] Resolutions of the Court of Appeals (*CA*) in CA-G.R. SP No. 102975, which dismissed the petition and denied the motion for reconsideration, respectively. In effect, the CA affirmed the January 28, 2008 Decision[4] of the Regional Trial Court (*RTC*) Branch 121 of Caloocan City, which annulled and set aside the Orders dated September 4, 2006[5] and November 16, 2006[6] of the Metropolitan Trial Court (*MeTC*), Branch 50 of Caloocan City, permanently dismissing Criminal Case Nos. 206655-59, 206661-77 and 209634.

The facts are simple and undisputed:

Respondent New Prosperity Plastic Products, represented by Elizabeth Uy (*Uy*), is the private complainant in Criminal Case Nos. 206655-59, 206661-77 and 209634 for Violation of Batas Pambansa (*B.P.*) Bilang 22 filed against petitioner William Co (*Co*), which were raffled to the MeTC Branch. 49 of Caloocan City. In the absence of Uy and the private counsel, the cases were provisionally dismissed on June 9, 2003 in open court pursuant to Section 8, Rule 117 of the Revised Rules of Criminal Procedure (*Rules*).[7] Uy received a copy of the June 9, 2003 Order on July 2, 2003, while her counsel-of-record received a copy a day after.[8] On July 2, 2004, Uy, through counsel, filed a Motion to Revive the Criminal Cases.[9] Hon. Belen B. Ortiz, then Presiding Judge of the MeTC Branch 49, granted the motion on October 14, 2004 and denied Co's motion for reconsideration.[10] When Co moved for recusation, Judge Ortiz inhibited herself from handling the criminal cases per Order dated January 10, 2005.[11] The cases were, thereafter, raffled to the MeTC Branch 50 of Caloocan City. On March 17, 2005, Co filed a petition for *certiorari* and prohibition with prayer for the issuance of a temporary restraining order (*TRO*)/writ of preliminary injunction (*WPI*) before the RTC of Caloocan City challenging the revival of the criminal cases.[12] It was, however, dismissed for lack of merit on May 23, 2005.[13] Co's motion for reconsideration was, subsequently, denied on December 16, 2005.[14] Co then filed a petition for review on *certiorari* under Rule 45 before the Supreme Court, which was docketed as G.R. No. 171096.[15] We dismissed the petition per Resolution dated February 13, 2006.[16] There being no

motion for reconsideration filed, the dismissal became final and executory on March 20, 2006.[17]

Before the MeTC Branch 50 where Criminal Case Nos. 206655-59, 206661-77 and 209634 were re-raffled after the inhibition of Judge Ortiz, Co filed a "Motion for Permanent Dismissal" on July 13, 2006.[18] Uy opposed the motion, contending that the motion raised the same issues already resolved with finality by this Court in G.R. No. 171096.[19] In spite of this, Judge Esteban V. Gonzaga issued an Order dated September 4, 2006 granting Co's motion.[20] When the court subsequently denied Uy's motion for reconsideration on November 16, 2006,[21] Uy filed a petition for *certiorari* before the RTC of Caloocan City. On January 28, 2008, Hon. Judge Adoracion G. Angeles of the RTC Branch 121 acted favorably on the petition, annulling and setting aside the Orders dated September 4, 2006 and November 16, 2006 and directing the MeTC Branch 50 to proceed with the trial of the criminal cases.[22] Co then filed a petition for *certiorari* before the CA, which, as aforesaid, dismissed the petition and denied his motion for reconsideration. Hence, this present petition with prayer for TRO/WPI.

According to Co, the following issues need to be resolved in this petition:

1. WHETHER OR NOT THE DISMISSAL OF THE CRIMINAL CASES AGAINST PETITIONER ON THE GROUND OF DENIAL OF HIS RIGHT TO SPEEDY TRIAL CONSTITUTES FINAL DISMISSAL OF THESE CASES;

2. WHETHER OR NOT THE METC ACTED WITH JURISDICTION IN REVIVING THE CRIMINAL CASES AGAINST PETITIONER WHICH WERE DISMISSED ON THE GROUND OF DENIAL OF HIS RIGHT TO SPEEDY TRIAL; and

3. ASSUMING *POR GRATIA ARGUMENTI* THE CASES WERE ONLY PROVISIONALLY DISMISSED:

    a. WHETHER THE ONE-YEAR TIME BAR OF THEIR REVIVAL IS COMPUTED FROM ISSUANCE OF THE ORDER OF PROVISIONAL DISMISSAL;
    b. WHETHER THE ACTUAL NUMBER OF DAYS IN A YEAR IS THE BASIS FOR COMPUTING THE ONE-YEAR TIME BAR;
    c. WHETHER THE PROVISIONALLY DISMISSED CASES AGAINST PETITIONER ARE REVIVED *IPSO FACTO* BY THE FILING OF MOTION TO REVIVE THESE CASES.[23]

Co argues that the June 9, 2003 Order provisionally dismissing Criminal Case Nos. 206655-59, 206661-77 and 209634 should be considered as a final dismissal on the ground that his right to speedy trial was denied. He reasons out that from his arraignment on March 4, 2002 until the initial trial on June 9, 2003, there was already a "vexatious, capricious and oppressive" delay, which is in violation of Section 6 of Republic Act 8493 (*Speedy Trial Act of 1998*)[24] and Section 2, Paragraph 2, Rule 119 of the Revised Rules of Criminal Procedure[25] mandating

that the entire trial period should not exceed 180 days from the first day of trial. As the dismissal is deemed final, Co contends that the MeTC lost its jurisdiction over the cases and cannot reacquire jurisdiction over the same based on a mere motion because its revival would already put him in double jeopardy.

Assuming that the criminal cases were only provisionally dismissed, Co further posits that such dismissal became permanent one year after the issuance of the June 9, 2003 Order, not after notice to the offended party. He also insists that both the filing of the motion to revive and the trial court's issuance of the order granting the revival must be within the one-year period. Lastly, even assuming that the one-year period to revive the criminal cases started on July 2, 2003 when Uy received the June 9, 2003 Order, Co asserts that the motion was filed one day late since year 2004 was a leap year.

The petition is unmeritorious.

At the outset, it must be noted that the issues raised in this petition were also the meat of the controversy in Co's previous petition in G.R. No. 171096, which We dismissed per Resolution dated February 13, 2006. Such dismissal became final and executory on March 20, 2006. While the first petition was dismissed mainly due to procedural infirmities, this Court nonetheless stated therein that *"[i]n any event, the petition lacks sufficient showing that respondent court had committed any reversible error in the questioned judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case."* Hence, upon the finality of Our February 13, 2006 Resolution in G.R. No. 171096, the same already constitutes as *res judicata* between the parties. On this ground alone, this petition should have been dismissed outright.

Even if We are to squarely resolve the issues repeatedly raised in the present petition, Co's arguments are nonetheless untenable on the grounds as follows:

First, Co's charge that his right to a speedy trial was violated is baseless. Obviously, he failed to show any evidence that the alleged "vexatious, capricious and oppressive" delay in the trial was attended with malice or that the same was made without good cause or justifiable motive on the part of the prosecution. This Court has emphasized that "'speedy trial' is a relative term and necessarily a flexible concept."[26] In determining whether the accused's right to speedy trial was violated, the delay should be considered in view of the entirety of the proceedings.[27] The factors to balance are the following: (a) duration of the delay; (b) reason therefor; (c) assertion of the right or failure to assert it; and (d) prejudice caused by such delay.[28] Surely, mere mathematical reckoning of the time involved would not suffice as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum, and that particular regard must be given to the facts and circumstances peculiar to each case.[29] "While the Court recognizes the accused's right to speedy trial and adheres to a policy of speedy administration of justice, we cannot deprive the State of a reasonable opportunity to fairly prosecute criminals. Unjustified postponements which prolong the trial for an unreasonable length of time are what offend the right of the accused to speedy trial."[30]

Second, Co is burdened to establish the essential requisites of the first paragraph of

Section 8, Rule 117 of the *Rules*, which are conditions *sine qua non* to the application of the time-bar in the second paragraph thereof, to wit: (1) the prosecution with the express conformity of the accused or the accused moves for a provisional (*sin perjuicio*) dismissal of the case; or both the prosecution and the accused move for a provisional dismissal of the case; (2) the offended party is notified of the motion for a provisional dismissal of the case; (3) the court issues an order granting the motion and dismissing the case provisionally; and (4) the public prosecutor is served with a copy of the order of provisional dismissal of the case.[31] In this case, it is apparent from the records that there is no notice of any motion for the provisional dismissal of Criminal Cases Nos. 206655-59, 206661-77 and 209634 or of the hearing thereon which was served on the private complainant at least three days before said hearing as mandated by Section 4, Rule 15 of the Rules.[32] The fact is that it was only in open court that Co moved for provisional dismissal "*considering that, as per records, complainant had not shown any interest to pursue her complaint.*"[33] The importance of a prior notice to the offended party of a motion for provisional dismissal is aptly explained in *People v. Lacson*:[34]

> x x x It must be borne in mind that in crimes involving private interests, the new rule requires that the offended party or parties or the heirs of the victims must be given adequate a priori notice of any motion for the provisional dismissal of the criminal case. Such notice may be served on the offended party or the heirs of the victim through the private prosecutor, if there is one, or through the public prosecutor who in turn must relay the notice to the offended party or the heirs of the victim to enable them to confer with him before the hearing or appear in court during the hearing. The proof of such service must be shown during the hearing on the motion, otherwise, the requirement of the new rule will become illusory. Such notice will enable the offended party or the heirs of the victim the opportunity to seasonably and effectively comment on or object to the motion on valid grounds, including: (a) the collusion between the prosecution and the accused for the provisional dismissal of a criminal case thereby depriving the State of its right to due process; (b) attempts to make witnesses unavailable; or (c) the provisional dismissal of the case with the consequent release of the accused from detention would enable him to threaten and kill the offended party or the other prosecution witnesses or flee from Philippine jurisdiction, provide opportunity for the destruction or loss of the prosecution's physical and other evidence and prejudice the rights of the offended party to recover on the civil liability of the accused by his concealment or furtive disposition of his property or the consequent lifting of the writ of preliminary attachment against his property.[35]

Third, there is evident want of jurisprudential support on Co's supposition that the dismissal of the cases became permanent one year after the issuance of the June 9, 2003 Order and not after notice to the offended party. When the *Rules* states that the provisional dismissal shall become permanent one year after the issuance of the order temporarily dismissing the case, it should not be literally interpreted as such. Of course, there is a vital need to satisfy the basic requirements of due process;

thus, said in one case:

> Although the second paragraph of the new rule states that the order of dismissal shall become permanent one year after the issuance thereof without the case having been revived, the provision should be construed to mean that the order of dismissal shall become permanent one year after service of the order of dismissal on the public prosecutor who has control of the prosecution without the criminal case having been revived. The public prosecutor cannot be expected to comply with the timeline unless he is served with a copy of the order of dismissal.[36]

We hasten to add though that if the offended party is represented by a private counsel the better rule is that the reckoning period should commence to run from the time such private counsel was actually notified of the order of provisional dismissal. When a party is represented by a counsel, notices of all kinds emanating from the court should be sent to the latter at his/her given address.[37] Section 2, Rule 13 of the *Rules* analogously provides that if any party has appeared by counsel, service upon the former shall be made upon the latter.[38]

Fourth, the contention that both the filing of the motion to revive the case and the court order reviving it must be made prior to the expiration of the one-year period is unsustainable. Such interpretation is not found in the *Rules.* Moreover, to permit otherwise would definitely put the offended party at the mercy of the trial court, which may wittingly or unwittingly not comply. Judicial notice must be taken of the fact that most, if not all, of our trial court judges have to deal with clogged dockets in addition to their administrative duties and functions. Hence, they could not be expected to act at all times on all pending decisions, incidents, and related matters within the prescribed period of time. It is likewise possible that some of them, motivated by ill-will or malice, may simply exercise their whims and caprices in not issuing the order of revival on time.

Fifth, the fact that year 2004 was a leap year is inconsequential to determine the timeliness of Uy's motion to revive the criminal cases. What is material instead is Co's categorical admission that Uy is represented by a private counsel who only received a copy of the June 9, 2003 Order on July 3, 2003. Therefore, the motion was not belatedly filed on July 2, 2004. Since the period for filing a motion to revive is reckoned from the private counsel's receipt of the order of provisional dismissal, it necessarily follows that the reckoning period for the permanent dismissal is likewise the private counsel's date of receipt of the order of provisional dismissal.

And *Sixth*, granting for the sake of argument that this Court should take into account 2004 as a leap year and that the one-year period to revive the case should be reckoned from the date of receipt of the order of provisional dismissal by Uy, We still hold that the motion to revive the criminal cases against Co was timely filed. A year is equivalent to 365 days regardless of whether it is a regular year or a leap year.[39] Equally so, under the Administrative Code of 1987, a year is composed of 12 calendar months. The number of days is irrelevant. This was our ruling in *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*,[40] which was subsequently reiterated in *Commissioner of Internal Revenue v. Aichi Forging*