

## THIRD DIVISION

[ G.R. No. 170447, June 23, 2009 ]

**BIENVENIDO DIÑO AND RENATO COMPARATIVO, PETITIONERS,  
VS. PABLO OLIVAREZ,<sup>[1]</sup> RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Petitioners Bienvenido Diño and Renato Comparativo assail the Decision<sup>[2]</sup> of the Court of Appeals dated 28 September 2005 in CA-G.R. SP No. 89230, nullifying the Orders<sup>[3]</sup> dated 12 January 2005, 9 March 2005, and 31 March 2005 of Judge Fortunito L. Madrona of Branch 274 of the Regional Trial Court (RTC) of Parañaque City, in Criminal Cases No. 04-1104 and No. 04-1105.

Petitioners instituted a complaint for vote buying against respondent Pablo Olivarez. Based on the finding of probable cause in the Joint Resolution issued by Assistant City Prosecutor Antonietta Pablo-Medina, with the approval of the city prosecutor of Parañaque, two Informations<sup>[4]</sup> were filed before the RTC on 29 September 2004 charging respondent Pablo Olivarez with Violation of Section 261, paragraphs a, b and k of Article XXII of the Omnibus Election Code, which read:

Criminal Case No. 04-1104

That on or about the 10<sup>th</sup> day of May 2004, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Remedios Malibiran and Pablo Olivarez, conspiring and confederating together and both of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously, engage in vote buying activities on election day of May 10, 2004, by distributing or giving Uniwide gift certificates, a thing of value, as consideration to induce or influence the voters to vote for candidate Pablo Olivarez, a candidate for the City Mayor of Parañaque, in violation of Omnibus Election Code.

Criminal Case No. 04-1105

That on or about the 10<sup>th</sup> day of May, 2004, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Carmelo Jaro and Pablo Olivarez, conspiring and confederating together and both of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously, engage in vote buying activities on election day of May 10, 2004, by distributing or giving Uniwide gift certificates, a thing of value, as consideration to

induce or influence the voters to vote for candidate Pablo Olivarez, a candidate for the City Mayor of Parañaque, in violation of the Omnibus Election Code.

The arraignment of the respondent was initially set on 18 October 2004.<sup>[5]</sup>

On 7 October 2004, respondent filed before the Law Department of the Commission on Elections (COMELEC) an "[a]ppeal of [the] Joint Resolution of the City Prosecutor of Parañaque City with Motion to Revoke Continuing Authority" pursuant to Section 10, Rule 34 of the 1993 COMELEC Rules of Procedure. Respondent argued that the pendency of the appeal of the Joint Resolution before the COMELEC should prevent the filing of the Informations before the RTC as there could be no final finding of probable cause until the COMELEC had resolved the appeal. Moreover, he argued that the charges made against him were groundless.<sup>[6]</sup>

In a letter<sup>[7]</sup> dated 11 October 2004, the Law Department of the COMELEC directed the city prosecutor to transmit or elevate the entire records of the case and to suspend further implementation of the Joint Resolution dated 20 September 2004 until final resolution of the said appeal before the COMELEC *en banc*.

On 11 October 2004, respondent filed a Motion to Quash the two criminal informations on the ground that more than one offense was charged therein, in violation of Section 3(f), Rule 117 of the Rules of Court, in relation to Section 13, Rule 110 of the Rules of Court.<sup>[8]</sup> This caused the resetting of the scheduled arraignment on 18 October 2004 to 13 December 2004.<sup>[9]</sup>

Before Judge Madrona could act on the motion to quash, Assistant Prosecutor Pablo-Medina, with the approval of the city prosecutor, filed on 28 October 2004 its "Opposition to the Motion to Quash and Motion to Admit Amended Informations."<sup>[10]</sup> The Amended Informations sought to be admitted charged respondent with violation of only paragraph a, in relation to paragraph b, of Section 261, Article XXII of the Omnibus Election Code.<sup>[11]</sup>

On 1 December 2004, Judge Madrona issued an Order resetting the hearing scheduled on 13 December 2004 to 1 February 2005 on account of the pending Motion to Quash of the respondent and the Amended Informations of the public prosecutor.<sup>[12]</sup>

On 14 December 2004, respondent filed an "Opposition to the Admission of the Amended Informations," arguing that no resolution was issued to explain the changes therein, particularly the deletion of paragraph k, Section 261, Article XXII of the Omnibus Election Code. Moreover, he averred that the city prosecutor was no longer empowered to amend the informations, since the COMELEC had already directed it to transmit the entire records of the case and suspend the hearing of the cases before the RTC until the resolution of the appeal before the COMELEC *en banc*.<sup>[13]</sup>

On 12 January 2005, Judge Madrona issued an order denying respondent's Motion to Quash dated 11 October 2004, and admitted the Amended Informations dated 25

October 2004.<sup>[14]</sup> Respondent filed an Urgent Motion for Reconsideration dated 20 January 2005 thereon.<sup>[15]</sup>

On 1 February 2005, Judge Madrona reset the arraignment to 9 March 2005, with a warning that the arraignment would proceed without any more delay, unless the Supreme Court would issue an injunctive writ.<sup>[16]</sup>

On 9 March 2005, respondent failed to appear before the RTC. Thereupon, Judge Madrona, in open court, denied the Motion for Reconsideration of the Order denying the Motion to Quash and admitting the Amended Informations, and ordered the arrest of respondent and the confiscation of the cash bond.<sup>[17]</sup>

On 11 March 2005, respondent filed an "Urgent Motion for Reconsideration and/or to Lift the Order of Arrest of Accused Dr. Pablo Olivarez,"<sup>[18]</sup> which was denied in an Order dated 31 March 2005. The Order directed that a bench warrant be issued for the arrest of respondent to ensure his presence at his arraignment.<sup>[19]</sup>

On 5 April 2005, the Law Department of the COMELEC filed before the RTC a Manifestation and Motion<sup>[20]</sup> wherein it alleged that pursuant to the COMELEC's powers to investigate and prosecute election offense cases, it had the power to revoke the delegation of its authority to the city prosecutor. Pursuant to these powers, the COMELEC promulgated Resolution No. 7457<sup>[21]</sup> dated 4 April 2005. The dispositive portion of Resolution No. 7457 states:

Considering the foregoing, the Commission **RESOLVED**, as it hereby **RESOLVES**, to **APPROVE** and **ADOPT** the recommendation of the Law Department as follows:

1. To revoke the deputation of the Office of the City Prosecutor of Parañaque to investigate and prosecute election offense cases insofar as I.S. Nos. 04-2608 and 04-2774, entitled "Renato Comparativo vs. Remedios Malabiran and Pablo Olivarez" and "Bienvenido et. al. vs. Sally Rose Saraos, et. al.," respectively, are concerned; and
2. To direct the Law Department to handle the prosecution of these cases and file the appropriate Motion and Manifestation before the Regional Trial Court of Parañaque, Branch 274, to hold in abeyance further proceedings on Criminal Case Nos. 1104 and 1105 until the Commission has acted on the appeal of respondents.

Let the Law Department implement this Resolution.

Thus, the Law Department of the COMELEC moved (1) that the RTC hold in abeyance further proceedings in Criminal Cases No. 04-1104 and No. 04-1105 until the COMELEC has acted on respondent's appeal; and (2) to revoke the authority of the city prosecutor of Parañaque to prosecute the case, designating therein the lawyers from the Law Department of the COMELEC to prosecute Criminal Cases No. 04-1104 and No. 04-1105.

On 8 April 2005, respondent filed a Special Civil Action for *Certiorari* before the Court of Appeals docketed as CA-G.R. SP No. 89230, assailing the Orders, dated 12 January 2005, 9 March 2005 and 31 March 2005 of the RTC. The appellate court granted the appeal in a Decision dated 28 September 2005 declaring that the COMELEC had the authority to conduct the preliminary investigation of election offenses and to prosecute the same. As such, the COMELEC may delegate such authority to the Chief State Prosecutor, provincial prosecutors, and city prosecutors. The COMELEC, however, has the corresponding power, too, to revoke such authority to delegate. Thus, the categorical order of the COMELEC to suspend the prosecution of the case before the RTC effectively deprived the city prosecutor of the authority to amend the two informations. The appellate court also pronounced that Judge Madrona erred in admitting the amended informations, since they were made in excess of the delegated authority of the public prosecutor, and his orders to arrest the respondent and to confiscate the latter's cash bond were devoid of legal basis.

[22] The *fallo* of the Decision reads:

**UPON THE VIEW WE TAKE OF THIS CASE, THUS,** the petition at bench must be, as it hereby is, **GRANTED**. The impugned Orders of the public respondent Judge Fortunito L. Madrona of Branch 274, Regional Trial Court of Parañaque City dated 12 January 2005, 9 March 2005, and 31 March 2005 are hereby **VACATED** and **NULLIFIED**. The Temporary Restraining Order issued in the instant petition is made **PERMANENT**. Without costs in this instance.[23]

Hence, the present petition under Rule 65 where the petitioners enumerate the following assignments of error, to wit:

#### I

THE HONORABLE COURT OF APPEALS ERRED IN NULLIFYING THE ORDER OF THE COURT A QUO AS IT BASICALLY ERRED IN ITS APPRECIATION THAT THE TWO AMENDED INFORMATIONS WERE FILED AT A TIME WHEN THE PUBLIC PROSECUTOR HAD NO MORE AUTHORITY TO DO SO;

#### II

THE HONORABLE COURT OF APPEALS ERRED IN GIVING CREDENCE TO ACCUSED'S ALLEGATION THAT COMELEC RESOLUTION WAS RECEIVED BY THE PROSECUTOR "DAYS BEFORE THE (sic) FILED THE AMENDED INFORMATIONS;"

#### III

THE HONORABLE COURT OF APPEALS ERRED IN DECLARING AS

This Court finds merit in the present petition.

At the outset, it should be noted that the appropriate remedy for petitioners is to file a petition for review on *certiorari* under Rule 45 of the Rules of Court, and not a petition for *certiorari* under Rule 65 as petitioners aver in their Manifestation and Motion dated 9 January 2006. However, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, this Court has decided to treat the present petition for *certiorari* as having been filed under Rule 45, especially considering that it was filed within the reglementary period for the same. Petitioners received the Court of Appeals' Resolution on 24 November 2005 and filed an Urgent Motion for Extension of Time to Appeal on 6 December 2005, within the 15-day reglementary period for the filing of a petition for review on *certiorari*. This Court granted the motion of petitioners for an extension of 30 days from 9 December 2005, the expiration of the reglementary period, and the petitioners were able to file their petition on 6 January 2006 within the period for extension granted by this Court. It cannot therefore be claimed that this petition is being used as a substitute for appeal after the remedy has been lost through the fault of the petitioner. [25]

The main issues in this case are (1) whether or not the Office of the City Prosecutor of Parañaque had acted in excess of its jurisdiction when it filed the Amended Informations, and whether Judge Madrona had acted in excess of his jurisdiction when he admitted the said Amended Informations and denied the respondent's motion to quash; and (2) whether or not Judge Madrona had acted in accordance with law when he issued the warrant for the arrest of respondent and ordered the confiscation of his cash bond due to the latter's failure to appear for arraignment.

There is no dispute that the COMELEC is empowered to investigate and prosecute election offenses, and that the Chief State Prosecutor, the provincial prosecutors and city prosecutors, acting on its behalf, must proceed within the lawful scope of their delegated authority. Section 265 of the Omnibus Election Code provides:

Section 265. *Prosecution.*—The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.

Section 2, Rule 34 of the COMELEC Rules of Procedure provides for the continuing delegation of authority to other prosecuting arms of the government, an authority that the COMELEC may revoke or withdraw in the proper exercise of its judgment.