

SECOND DIVISION

[G.R. No. 153176, March 29, 2004]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. ZEIDA AURORA B. GARFIN, IN HER CAPACITY AS PRESIDING JUDGE OF RTC, BRANCH 19, OF THE CITY OF NAGA AND SERAFIN SABALLEGUE, RESPONDENTS.

DECISION

PUNO, J.:

For determination in this petition is a question in procedural law - - - whether an information filed by a state prosecutor without the prior written authority or approval of the city or provincial prosecutor or chief state prosecutor should be dismissed after the accused has entered his plea under the information.

Petitioner comes before us with a petition for certiorari and mandamus under Rule 65 of the Revised Rules of Court, seeking to declare as null and void the Orders issued by the Regional Trial Court of Naga City, Branch 19 dated February 26, 2002^[1] and April 3, 2002^[2] which dismissed for lack of jurisdiction the case of People vs. Serafin Saballegue, Criminal Case No. RTC 2001-0597, and denied petitioner's motion for reconsideration.

The antecedent facts are undisputed.

On June 22, 2001, private respondent was charged with violation of Section 22(a) in relation to Sections 19(b) and 28(e) of Republic Act No. 8282, otherwise known as the "Social Security Act," in an information which reads:

The undersigned State Prosecutor of the Office of the Regional State Prosecutor, Legazpi City, accuses SERAFIN SABALLEGUE, as proprietor of Saballegue Printing Press with business address at 16 San Mateo St., Peñafrancia Ave., Naga City for Violation of Section 22(a) in relation to Sections 19(b) and 28(e) of R.A. 8282 otherwise known as the Social Security Act of 1997, committed as follows:

That on or about February 1990 and up to the present, in the City of Naga, Philippines, within the functional jurisdiction of SSS Naga Branch and the territorial jurisdiction of this Honorable Court, the above named accused, while being the proprietor of Saballegue Printing Press, did then and there willfully, unlawfully, and criminally refuse and fail and continuously refuse and fail to remit the premiums due for his employee to the SSS in the amount of SIX THOUSAND FIVE HUNDRED THIRTY-THREE PESOS (P6,533.00), Philippine Currency, representing SSS and EC premiums for the period from January 1990 to December 1999 (n.i.), and the 3% penalty per month for late remittance in the amount of ELEVEN

THOUSAND ONE HUNDRED FORTY-THREE PESOS and 28/100 (P11,143.28) computed as of 15 March 2000, despite lawful demands by letter in violation of the above-cited provisions of the law, to the damage and prejudice of the SSS and the public in general.

CONTRARY TO LAW.

Legazpi City for Naga City. 22 June 2001.

(sgd.) ROMULO
SJ. TOLENTINO
State Prosecutor
Special Prosecutor
on SSS Cases
in Region V^[3]

The information contains a certification signed by State Prosecutor Romulo SJ. Tolentino which states:

I hereby certify that the required investigation in this case has been conducted by the undersigned Special Prosecutor in accordance with law and under oath as officer of the court, that there is reasonable ground to believe that the offense has been committed, that the accused is probably guilty thereof and that the filing of the information is with the prior authority and approval of the Regional State Prosecutor.^[4]

The case was raffled to Branch 19 of the Regional Trial Court of Naga City presided by respondent judge Hon. Zeida Aurora B. Garfin. On September 24, 2001, accused Serafin Saballegue pleaded not guilty to the charge and the case was set for pre-trial.^[5] Three days thereafter, the accused filed a motion to dismiss^[6] on the ground that the information was filed without the prior written authority or approval of the city prosecutor as required under Section 4, Rule 112 of the Revised Rules of Court.^[7]

The People, through State Prosecutor Tolentino, filed an opposition,^[8] against which the accused filed a rejoinder.^[9] The People filed a reply to the rejoinder^[10] on December 21, 2001. A rejoinder to the reply^[11] was filed by the accused on January 21, 2002.

After considering the arguments raised, the trial court granted the motion to dismiss in its first questioned Order dated February 26, 2002, to wit:

After considering the respective arguments raised by the parties, the Court believes and so resolves that the Information has not been filed in accordance with Section 4, par. 3 of Rule 112 of the 2000 Rules on Criminal Procedure, thus:

'Rule 112, Section 4 x x x x x x

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman

or his deputy.'

Expresio unius est exclusio alterius.

The Information will readily show that it has not complied with this rule as it has not been approved by the City Prosecutor.

This Court holds that the defendant's plea to the Information is not a waiver to file a motion to dismiss or to quash on the ground of lack of jurisdiction. By express provision of the rules and by a long line of decisions, questions of want of jurisdiction may be raised at any stage of the proceedings (People vs. Eduarte, 182 SCRA 750).

The Supreme Court in Villa vs. Ibañez (88 Phil 402) dwelt on lack of authority of the officer who filed the information and on jurisdiction at the same time, pertinent portions run as follows:

The defendant had pleaded to the information before he filed a motion to quash, and it is contended that by his plea he waived all objections to the information. The contention is correct as far as formal objections to the pleadings are concerned. But by clear implication, if not by express provision of section 10 of Rule 113 of the Rules of Court, and by a long line of uniform decisions, questions of want of jurisdiction may be raised at any stage of the proceedings. Now, the objection to the respondent's actuations goes to the very foundations of jurisdiction. It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused and the subject matter of the accusation. In consonance with this view, an infirmity of the nature noted in the information cannot be cured by silence, acquiescence, or even by express consent.

Prosecutor Tolentino also contends that having been duly designated to assist the City Prosecutor in the investigation and prosecution of all SSS cases by the Regional State prosecutor as alter ego of the Secretary of Justice in Region V, then that authority may be given to other than the City Prosecutor. The Court finds this contention to be devoid of merit. The Regional State Prosecutor is not the alter ego of the Secretary of Justice but a mere subordinate official and if ever the former files cases, it is by virtue of a delegated authority by the Secretary of Justice. *Potestas delegada non potesta delegare (sic)* – what has been delegated cannot be redelegated.

In his opposition, the state prosecutor also attached a memorandum dated June 22, 2001 by Regional State Prosecutor Santiago M. Turingan addressed to Provincial Prosecutor and City Prosecutors of Region V directing them to inhibit and to append the following NOTATION after the certification in the Information for filing.

NOTATION: The herein City/Provincial Prosecutor is inhibiting from this case and the Special Prosecution Team on SSS Cases in Region V is authorized to dispose of the case without my

approval in view of the request for inhibition of the SSS Regional Manager as granted by the Regional State Prosecutor.

A perusal of the Information, however, would readily show that nowhere in the Information has the City Prosecutor of Naga City appended the above-quoted notation/inhibition. At most, the authority of the special prosecutor is only for the conduct of preliminary investigations and the prosecution of cases after they are filed. The Court, however, believes that the filing of this Information must be in conformity with the Rules on Criminal Procedure, particularly Section 4 of Rule 112.

WHEREFORE, premises considered and for lack of jurisdiction, the Court hereby resolves to DISMISS this case without pronouncement as to cost.

SO ORDERED.^[12]

A motion for reconsideration was filed by the People contending that as a special prosecutor designated by the regional state prosecutor to handle SSS cases within Region V, State Prosecutor Tolentino is authorized to file the information involving violations of the SSS law without need of prior approval from the city prosecutor.

^[13] Letters of commendation from Chief State Prosecutor Jovencito Zuño^[14] and Secretary Hernando Perez^[15] were offered as proof to show that State Prosecutor Tolentino's authority to file the information was recognized. In response, the defense pointed out in its opposition that the motion for reconsideration lacked a notice of hearing, hence it is pro forma or a mere scrap of paper. ^[16]

On April 3, 2002, respondent judge issued the second questioned Order which reads:

Acting upon the Motion for Reconsideration filed by State Prosecutor Romulo SJ. Tolentino, Special Prosecutor on SSS cases in Region V, and it appearing that the same has failed to comply with the requirement of notice prescribed in Sections 4 and 5, Rule 15 of the Rules of Court, the same is hereby DENIED for being a mere scrap of paper.

SO ORDERED.^[17]

Hence, this petition by the People through Regional State Prosecutor Santiago Turingan and State Prosecutor Romulo SJ. Tolentino. Petitioner attributes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondent judge, viz:^[18]

1. RESPONDENT JUDGE DISMISSED THE INFORMATION WITHOUT THE REQUIRED SUPPORTING FACTUAL AND LEGAL BASES;
2. RESPONDENT JUDGE DELIBERATELY AND CAPRICIOUSLY IGNORED THE PRESUMPTION OF REGULARITY IN FAVOR OF THE PROSECUTION WITHOUT THE REQUIRED SUFFICIENCY OF REBUTTAL EVIDENCE. THE WORD "MAY" IN SEC. 4, RULE 112 OF THE RULES OF COURT IS NOT MANDATORY;

3. RESPONDENT JUDGE COMMITTED GRAVE ERROR IN DELIBERATELY IGNORING THE JUDICIALLY KNOWN INHIBITION OF THE CITY PROSECUTOR AND THE SETTLED JURISPRUDENCE ON THE MATTER;
4. RESPONDENT JUDGE GRAVELY ABUSED HER DISCRETION IN INTERFERING WITH THE PURELY EXECUTIVE FUNCTION OF FILING AN INFORMATION BY RULING ON THE AUTHORITY OF THE FILING OFFICER TO FILE THE INFORMATION.

The Office of the Solicitor General (OSG) filed its comment^[19] in compliance with this Court's Resolution dated September 23, 2002.^[20] It opines that the dismissal of the information is mandated under Section 4, Rule 112 of the Rules of Criminal Procedure.

Private respondent contends that:^[21] 1) the instant petition was filed out of time; 2) the special State Prosecutor is only authorized to conduct preliminary investigation and prosecution of SSS cases and not to sign the information; and 3) the City Prosecutor did not expressly inhibit himself from handling SSS cases nor signing the information.

We shall first resolve the procedural issues. Respondent contends that the motion for reconsideration filed on April 1, 2002 is late because it was filed eighteen days after March 14, 2002, the date when petitioner received the first questioned order. Respondent has overlooked that the 15th day after March 14 is a Good Friday. Hence, petitioner's last day to file the motion for reconsideration was on the next working day after Good Friday, April 1.^[22]

Next, respondent argues that having been considered as a mere scrap of paper, the motion for reconsideration of the petitioner did not toll the running of the reglementary period. Respondent, however, erroneously assumes that the present case is an appeal by certiorari under Rule 45. As stated at the outset, this is an original petition for certiorari and mandamus under Rule 65.

Sec. 2, Rule 37 of the Rules of Court is clear. It provides that "(a) pro forma motion for new trial or **reconsideration** shall not toll the reglementary period **of appeal.**" (*emphases supplied*) Hence, the same provision has no application in the case at bar.

The reckoning date is the receipt of the second questioned Order and not the receipt of the first. Section 4, Rule 65, as amended by *En Banc* Resolution A.M. No. 00-2-03-SC, September 1, 2000, provides, *viz*:

Sec. 4. When and where petition filed.-- The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60)- day period shall be counted from notice of the denial of said motion.

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