

## FIRST DIVISION

[ G.R. No. 138203, July 03, 2002 ]

**LILIA J. VICOY, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

This is a petition under Rule 45 on pure question of law assailing the February 9, 1998<sup>[1]</sup> and February 25, 1998<sup>[2]</sup> Orders of the Regional Trial Court of Bohol, Branch 3, in SP. Civil Case No. 5881, dismissing petitioner's special civil action for certiorari.

The present controversy stemmed from a judgment of conviction promulgated on August 24, 1995 by the Municipal Trial Court in Cities (MTCC) of Tagbilaran, Branch 2, in Criminal Case Nos. 5265 and 5307. The dispositive portion thereof reads:

WHEREFORE, Judgment is hereby rendered as follows:

1. In Criminal Case No. 5265, the Court finds and so holds the herein accused Lilia Vicoy y Jumagdao GUILTY beyond reasonable doubt for violation of City Ordinance No. 365-B for peddling fish outside the Agora Public Market, and accordingly sentences her to suffer the penalty of a fine of Fifty Pesos (P50.00) with subsidiary imprisonment in case of insolvency and to pay the costs;
2. In Criminal Case No. 5307, the Court finds and so holds the herein accused Lilia Vicoy y Jumagdao GUILTY beyond reasonable doubt of the crime of Resistance and Serious Disobedience To Agents Of A Person In Authority, and accordingly sentences her to suffer the penalty of three (3) months of arresto mayor and to pay a fine of two Hundred Pesos (P200.00) without subsidiary imprisonment in case of insolvency and to pay the costs.

SO ORDERED.<sup>[3]</sup>

On the same date, August 24, 1995, petitioner filed an application for probation.<sup>[4]</sup> On September 18, 1995, however, petitioner filed a motion to withdraw her application for probation and simultaneously filed a notice of appeal.<sup>[5]</sup>

In an Omnibus Order<sup>[6]</sup> dated September 22, 1995, the MTCC of Tagbilaran granted petitioner's withdrawal of her application for probation but denied her notice of appeal for having been filed out of time. Petitioner filed a motion for reconsideration of the denial of her appeal, however, the same was denied.

Hence, petitioner filed a special civil action for certiorari with the Regional Trial Court of Bohol, Branch 3, contending that the MTCC of Tagbilaran gravely abused its discretion in denying her the right to appeal. Named respondents therein were the Presiding Judge of MTCC of Tagbilaran, Branch 2, and the People of the Philippines, represented by the Philippine National Police of Tagbilaran City. The parties were ordered by the court to submit their memorandum within 10 days, after which, the case was submitted for judgment on the pleadings.<sup>[7]</sup>

Realizing that the People should be represented by the City Prosecutor's Office, the court issued an Order dated August 2, 1996, requiring the latter to enter its appearance. In the same order, petitioner was directed to furnish the City Prosecutor's Office with a copy of her memorandum and of the assailed judgment, thus:

From the reading of the petition that gave rise to this case, and of the memorandum of the petitioner, it is the considered opinion of this Court, and so holds, that the City Prosecutor of Tagbilaran be required to enter his appearance for the State in the light of the failure of respondent Judge Emma Enrico-Supremo to submit her reply to comment to the petition. Besides, the Court noticed that the People of the Philippines has been impleaded as one of the respondents.

PREMISES CONSIDERED, Atty. Dionisio A. Galido, counsel for the petitioner, is hereby directed to furnish the Office of the City Prosecutor of Tagbilaran copies of the questioned judgment and their memorandum, and for the City Prosecutor to submit within ten (10) days from receipt thereof, his memorandum or any pleading on the matter.<sup>[8]</sup>

On February 9, 1998,<sup>[9]</sup> the Regional Trial Court rendered the assailed Order dismissing petitioner's special civil action for certiorari for failure to comply with the aforequoted August 2, 1996 Order. A motion for reconsideration of the said order of dismissal was denied on February 25, 1999.<sup>[10]</sup>

Hence, the instant petition. The sole issue raised in this petition is whether or not the petition for certiorari was validly dismissed by the Regional Trial Court on the ground of petitioner's failure to comply with its Order dated August 2, 1996.

Section 3, Rule 17, of the Rules of Court, provides:

Section 3. Dismissal due to fault of plaintiff. - If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to **comply with these Rules or any order of the court**, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication on the merits, unless otherwise declared by the court. (Emphasis supplied)

In the case at bar, the trial court categorically directed petitioner, in its August 2, 1996 Order, to furnish the City Prosecutor's Office with a copy of her memorandum and of the assailed judgment. Petitioner's counsel did not comply, prompting the