

EN BANC

[G.R. No. 129417, February 10, 1998]

COMMISSION ON ELECTIONS, PETITIONER, VS. HON. LORENZO R. SILVA, JR., AS PRESIDING JUDGE, RTC, BRANCHES 2 AND 3, BALANGA, BATAAN, HON. BENJAMIN T. VIANZON, AS PRESIDING JUDGE, BRANCH 1, OF THE SAME COURT, ERASTO TANCIONGCO, AND NORMA CASTILLO, RESPONDENTS.

DECISION

MENDOZA, J.:

This case presents for determination the extent of control which those designated by the Commission on Elections have in the prosecution of election offenses. The facts are not in dispute. Pursuant to its power under Art. IX-C, §2(6) of the Constitution, the COMELEC charged private respondents Erasto Tanciongco and Norma Castillo with violations of §27 of R.A. No. 6646, together with Zenon Uy, in twelve separate informations filed with the Regional Trial Court of Bataan. Tanciongco, who is provincial prosecutor of Bataan, was vice chairman, while Castillo, who is division superintendent of schools, was secretary of the Provincial Board of Canvassers of Bataan. Uy, who is assistant regional director of elections, was chairman of the board. In each information, the three were accused of having tampered, in conspiracy with one another, with the certificates of canvass by increasing the votes received by then senatorial candidate Juan Ponce Enrile in certain municipalities of Bataan in the May 8, 1995 elections.

The twelve cases were raffled to three branches of the court presided over by respondent judges, Honorable Lorenzo R. Silva Jr. (Branches 2 and 3) and Honorable Benjamin T. Vianzon (Branch 1).

On October 30, 1996, Tanciongco and Castillo filed a joint "Omnibus Motion for Examination of Evidence to Determine the Existence of Probable Cause; Suspension of Issuance of Warrant of Arrest; and Dismissal of the Cases." Chief State Prosecutor Jovencito Zuño, who had been designated by the Commission on Elections to prosecute the cases, filed a comment joining in private respondents' request. On the other hand, the complainant, Aquilino Q. Pimentel, Jr. expressed no objection to the dismissal of the cases against the two.^[1]

In orders dated March 31 and April 7, 1997 respectively, Judges Silva and Vianzon summarily dismissed the cases against private respondents.^[2]

The COMELEC sought to appeal the dismissal of the cases to the Court of Appeals by filing notices on April 18, 1997,^[3] but the judges denied due course to its appeal. The sole basis for the denials was the fact that the prosecutor, whom the COMELEC had deputized to prosecute the cases, had earlier taken a contrary stand against the COMELEC.

Thus, in his order, dated May 16, 1997, denying due course to the Notice of Appeal of the COMELEC in Criminal Case Nos. 6439, 6441, 6443, 6445, 6646, 6647, and 6470, Judge Silva, Jr. stated:

A Notice of Appeal dated April 18, 1997, in the above-entitled cases was filed on April 23, 1997 by Jose P. Balbuena, Director IV, Law Department, Commission on Elections, from the Order of the Court dated March 31, 1997, insofar as it dismissed the above-entitled cases as regards the accused Erasto Tanciongco and Norma P. Castillo.

Chief State Prosecutor Jovencito Zuño who has been authorized by the Commission on Elections to prosecute the cases, was required to comment on the Notice of Appeal which does not bear his signature. In his comment dated May 9, 1997, the Chief State Prosecutor states that he cannot give his conformity to the Notice of Appeal filed by Jose P. Balbuena of the Comelec as it would not be consistent with his position that he would abide by whatever finding the court may come up with on the existence of probable cause as against the accused Erasto Tanciongco and Norma Castillo. Consequently, the notice of appeal filed by Jose P. Balbuena is unauthorized and without legal effect.

WHEREFORE, the Notice of Appeal dated April 13, 1997, filed by Jose P. Balbuena is denied due course.^[4]

SO ORDERED.

Judge Vianzon took a similar course in Criminal Case Nos. 6438, 6440, 6442, 6444 and 6471. In his order of May 23, 1997, he stated:

Considering that Chief State Prosecutor Jovencito R. Zuño has filed his comment to the Notice of Appeal filed by Director Jose P. Balbuena of the COMELEC, manifesting his non-conformity with the same because of his previous commitment to abide by the ruling of this court on the Omnibus Motion filed by accused Tanciongco and Castillo and the Motion to Quash filed by accused Uy, and considering further that Chief State Prosecutor has been duly deputized by the COMELEC en banc to handle the prosecution of this case, the said Notice of Appeal is hereby DENIED.

SO ORDERED.^[5]

Hence this petition for certiorari and mandamus seeking the nullification of the orders of the two judges, denying due course to the Notices of Appeal of the COMELEC.^[6]

The issue is not just the right of the prosecution to appeal from the previous orders of dismissal. It is settled that the approval of a notice of appeal, in cases where no record on appeal is required by law, is a ministerial duty of the court to which the notice of appeal is addressed, provided that such appeal is timely filed.^[7] Of course in criminal cases the prosecution cannot appeal if the accused would thereby be placed in double jeopardy, but here the cases were dismissed by the judges before the accused were arraigned and, therefore, jeopardy has not attached.

For while the right to appeal is statutory and is not constitutional, once it is granted by statute, its denial would be a violation of the due process clause of the Constitution.^[8]

The ultimate question concerns the authority of the COMELEC prosecutor. More precisely, the question is, who has authority to decide whether or not to appeal from the orders of dismissal $\frac{3}{4}$ the COMELEC or its designated prosecutor? The trial courts held the view that the Chief State Prosecutor's decision not to appeal the dismissal of the cases, consistent with his earlier decision to leave the determination of the existence of probable cause to the trial courts, was binding on them.

We think this view to be mistaken. The authority to decide whether or not to appeal the dismissal belongs to the COMELEC. Art. IX-C, §2(6) of the Constitution expressly vests in it the power and function to "investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices." As this Court has held:

In effect the 1987 Constitution mandates the COMELEC not only to investigate but also to prosecute cases of violation of election laws. This means that the COMELEC is empowered to conduct preliminary investigations in cases involving election offenses for the purpose of helping the Judge determine probable cause and for filing an information in court. This power is exclusive with COMELEC.^[9]

Indeed, even before the present Constitution, the Omnibus Election Code (B.P. Blg. 881) and, before it, the 1971 Election Code (R.A. No. 6388) and the 1978 Election Code (P.D. No. 1296) already gave the COMELEC the exclusive power to conduct preliminary investigation of all election offenses and to prosecute them in court.^[10] The purpose is to place in the hands of an independent prosecutor the investigation and prosecution of election offenses.^[11]

Prosecutors designated by the COMELEC to prosecute the cases act as its deputies. They derive their authority from it and not from their offices.^[12] Consequently, it was beyond the power of Chief State Prosecutor Zuño to oppose the appeal of the COMELEC. For that matter, it was beyond his power, as COMELEC-designated prosecutor, to leave to the trial courts the determination of whether there was probable cause for the filing of the cases and, if it found none, whether the cases should be dismissed. Those cases were filed by the COMELEC after appropriate preliminary investigation. If the Chief State Prosecutor thought there was no probable cause for proceeding against private respondents, he should have discussed the matter with the COMELEC and awaited its instruction. If he disagreed with the COMELEC's findings, he should have sought permission to withdraw from the cases. But he could not leave the determination of probable cause to the courts and agree in advance to the dismissal of the cases should the courts find no probable cause for proceeding with the trial of the accused. It was, therefore, grave abuse of discretion on the part of the respondent judges to rely on the manifestation of Chief State Prosecutor Zuño as basis for denying due course to the notices of appeal filed by the COMELEC.

Whether respondent judges also erred in dismissing the cases filed by the COMELEC $\frac{3}{4}$ indeed, whether the trial courts at that stage were justified in inquiring into the existence of probable cause because of exceptional reasons^[13] $\frac{3}{4}$ must be determined in the appeal after it is allowed. Here we only hold that whether the orders of dismissal should be appealed is for the COMELEC to decide, not for Chief State Prosecutor Zuño whom it has merely deputized to represent it in court.

Private respondents have nothing to say on this question. Their sole contention is that the petition should be dismissed because , so it is argued, it should have been brought