

FIFTH DIVISION

[CA-G.R. SP NO. 121312, June 11, 2014]

ANTONIO Y. PINZON, PETITIONER, VS. HON. SANTIAGO M. ARENAS, IN HIS CAPACITY AS THE PRESIDING JUDGE OF REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 217, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

SORONGON, E.D., J.

This Petition for Certiorari, Prohibition and Mandamus under Rule 65 of the Rules of Court seeks to annul, reverse and set aside the *Order*^[1] dated November 5, 2009 of the Regional Trial Court of Quezon City, Branch 217 denying petitioner's motion to quash the fifty five (55) informations for Estafa filed against him, the *fallo* thereof states:

"Wherefore, Premises Considered, the Omnibus Motion of the Accused To Quash the criminal informations docketed as Criminal Cases Nos. Q-09-157791 to 846 is hereby denied for lack of merit.

But the Motion to Suspend the Criminal Proceedings By Reason of Prejudicial Question also filed by the accused is hereby granted after having found that the elements of prejudicial question are herein present.

Accordingly, the proceedings in the fifty five counts of criminal cases of estafa under Article 315, Paragraph 1(b) of the Revised Penal Code against the accused are hereby suspended until the termination of Civil Case No. SEC-MC06- 010 before Regional Trial Court Branch 211 at Mandaluyong City entitled: "Manuel S. Asencio, III versus Antonio Y. Pinzon."

SO ORDERED."

The undisputed facts are as follows:

Petitioner Antonio Y. Pinzon (petitioner) and his co-accused Ethel Pinzon were charged with fifty-five (55) counts of Estafa penalized under Article 315 par. 1(b) of the Revised Penal Code upon the complaint of Manuel S.C. Asencio III. On December 20, 2005, petitioner was duly arraigned. However, upon reinvestigation, the Office of the City Prosecutor (OCP) of Quezon City found no probable cause to indict petitioner for Estafa per Resolution dated March 8, 2006. Consequently, with the tacit conformity of petitioner and his co-accused the fifty-five (55) informations were accordingly withdrawn per Order of Judge Bayani V. Vargas dated August 29, 2006^[2]. The pertinent portion of the Order reads:

"WHEREFORE, with both accused giving their express conformity to the withdrawal of the Information, the same is hereby withdrawn.

The Office of the Clerk of Court, Quezon City is hereby ordered to release the cash bond posted by Ethel Pinzon for her provisional liberty under O.R. No. 0995963 dated July 8, 2005 in the amount of P16,000.00. likewise, finding the Motion to Lift Hold-Departure Order filed by accused Antonio Y. Pinzon, to be meritorious, the same is hereby granted. the hold departure order previously issued against Antonio Pinzon is hereby ordered cancelled (sic) and revoked.

SO ORDERED."^[3]

Private complainant Manuel S.C. Asencio III then filed a Petition for Review before the Department of Justice (DOJ) impugning the March 8, 2006 Resolution of the OCP. On January 15, 2009, the DOJ reversed the said resolution and found probable cause to indict petitioner for Estafa. Thus, the reinstatement of the previously withdrawn fifty-five (55) informations^[4]. Aggrieved, petitioner moved for a reconsideration of the DOJ's resolution claiming that the petition for review was filed out of time and lacks merit. Further, he filed a Motion to Suspend Proceedings dated February 10, 2009 before the OCP pending resolution of his Motion for Reconsideration before the DOJ.

But on March 18, 2009, pursuant to the DOJ's directive to reinstate the informations, the OCP refiled the fifty-five (55) informations against petitioner docketed as Criminal Case Nos. Q-09-157791 to 846, respectively, all raffled with the respondent court.

Undaunted, petitioner assailed the refiling of the informations via an Omnibus Urgent Motion (To Quash Information, To Suspend Issuance of Warrants of Arrest and/or Quash Warrants of Arrest and For Reduction of Bail) dated March 20, 2009, invoking Section 8, Rule 117 of the Revised Rules of Criminal Procedure and the case of *People v. Lacson*^[5].

By *Order*^[6] dated November 5, 2009, the respondent court denied petitioner's Omnibus Motion for want of merit. Petitioner's Motion for Reconsideration was likewise denied in the *Order*^[7] dated July 4, 2011 for being a rehash of the arguments already resolved in the assailed Order.

Hence, the resort to this petition alleging that:

THE LOWER COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHICH NECESSITATES THE ISSUANCE OF THE WRIT OF CERTIORARI, PROHIBITION AND MANDAMUS, IN THAT:

- I. THE LOWER COURT GRAVELY ABUSED ITS DISCRETION IN DENYING PETITIONER'S MOTION TO QUASH THE CRIMINAL INFORMATION DESPITE CLEAR AND UNMISTAKABLE LAPSE OF THE TWO-YEAR PERIOD FROM THE TIME OF ITS DISMISSAL UNTIL THE TIME OF RE-FILING IN VIOLATION OF SECTION 8, RULE 117 OF THE RULES OF CRIMINAL**

PROCEDURE, AS AMENDED AND ESTABLISHED JURISPRUDENCE.

- II. THE LOWER COURT GRAVELY ABUSED ITS DISCRETION IN REFUSING TO DISMISS THE CRIMINAL INFORMATIONS BY CITING REASONS NOT EVEN SANCTIONED BY LAW, THE RULES OF COURT AND ESTABLISHED JURISPRUDENCE.**
- III. THE LOWER COURT SERIOUS AND GRAVELY ERRED WHICH OUSTED ITS JURISDICTION IN RULING THAT SECTION 8, RULE 117 DOES NOT APPLY WHILE THE CASE IS PENDING WITH THE DEPARTMENT OF JUSTICE ON PETITION FOR REVIEW AND DESPITE THE CLEAR DISMISSAL AND WITHDRAWAL OF THE PREVIOUS CRIMINAL CHARGES BY THE REGIONAL TRIAL COURT OF QUEZON CITY BRANCH 219 ON 26 AUGUST 2008.**

Petitioner claims that the respondent court committed grave abuse of discretion in denying the Omnibus Motion notwithstanding that the filing of the fifty-five (55) informations was already barred by the two-year prescriptive period under Section 8, Rule 117 of the Revised Rules of Criminal Procedure.

There is no merit in the petition.

The records clearly disclose that the fifty-five (55) informations for estafa were ordered **withdrawn**^[8] by the respondent court conformably with the March 8, 2006 Resolution of the OCP finding no probable cause to indict the petitioner of the crimes charged. However, upon review by the DOJ of the March 8, 2006 Resolution, it found sufficient ground to indict herein petitioner of the crime of Estafa under Article 315 par. 1(b) of the Revised Penal Code. Hence, by order of the DOJ all the fifty-five (55) informations were refiled in court.

It is clear from the records that the dismissal of the case was not a termination on the merits. Instead, it is interpreted to mean as a "dismissal without prejudice" pending the resolution of the private respondent's review before the DOJ of the no probable cause finding of the OCP. Apparently, that was the reason why the respondent court asked the consent of the accused for the withdrawal of the informations. Clearly, there was a tacit agreement between the prosecution and the defense, as shown by the latter's express conformity to momentarily defer the proceedings while awaiting the result of the petition for review filed by the private complainant before the DOJ. Hence, the withdrawal of the informations is not a bar to the prosecution of the same offense or to the refile of the same informations. It therefore goes without saying that the action of the respondent court in granting the revival or refile of the informations is not tainted with grave abuse of discretion tantamount to lack of jurisdiction precisely because petitioner himself had categorically consented to the "dismissal" which stays provisionally. Thus, in *Pendatun vs. Aragon*^[9] the Supreme Court has this observation, viz:

"Thus, it seems, that even in a situation where provisional dismissal should really be final, when the accused consents to the dismissal precisely as provisional, then it stays provisional because his consent is equivalent to a waiver of his constitutional right."

In another case of *People vs. Hewald, et al.*,^[10] the Supreme Court likewise held that: