

## SECOND DIVISION

[ CA-G.R. SP NO. 129912, June 06, 2014 ]

**RODOLFO MURCIA Y GONZALES AND MARIO GONZALES Y SALON, PETITIONERS, VS. HON. PRIMO G. SIO, JR., IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF CABANATUAN CITY, NUEVA ECIJA, BRANCH 23, PEOPLE OF THE PHILIPPINES AND CHRISTOPHER M. ALVIAR, RESPONDENTS.**

### DECISION

**SALAZAR-FERNANDO, J.:**

Before this Court is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Orders dated October 23, 2012<sup>[2]</sup> and March 4, 2013<sup>[3]</sup> of the Regional Trial Court (RTC), Third Judicial Region, Branch 23, Cabanatuan City, in Criminal Case No. 19897 for Theft entitled "The People of the Philippines, *Plaintiff*, vs. Rodolfo Murcia, Mario Gonzales and Jun-jun Tengco, *Accused*.", the dispositive portions of which read:

Order dated October 23, 2012:

"In view thereof(,) the Motion to Quash dated July 26, 2012 is **DENIED**.

**SO ORDERED.**<sup>[4]</sup>"

Order dated March 4, 2013:

"**WHEREFORE**, in view thereof, the Motion for Reconsideration (on the Order dated October 23, 2012) dated November 18, 2012 is **DENIED**.

**SO ORDERED.**<sup>[5]</sup>"

The facts are:

Petitioners Rodolfo Murcia and Mario Gonzales together with Jun-jun Tengco, who is still at large, were charged before the Regional Trial Court, Branch 23, Cabanatuan City, for the crime of Theft committed as follows:

"On or about May 27, 2007, around 8:30 in the evening, in Plaridel, Llanera, Nueva Ecija, within this Honorable Court's jurisdiction, conniving together, with intent to gain and having found lost 250 pieces (of) ducks worth Php37,500.00 belonging to Christopher Alviar, willfully failed to deliver the ducks to the local authorities or to the owner, to the damage of Christopher Alviar."<sup>[6]</sup>

As a remedy, petitioners moved to quash<sup>[7]</sup> the Information contending that the facts failed to constitute an offense. They alleged that as per Certification<sup>[8]</sup> dated

November 7, 2007, issued by the Philippine National Police, Nueva Ecija, Llanera Police Station, the ownership of private complainant Christopher M. Alviar over the lost ducks was not established, as it was Eugenio P. Azur who entered into an amicable settlement with the petitioners, and not private complainant.<sup>[9]</sup> They also claimed that the criminal case should be dismissed on the ground that private complainant was not authorized to file the case and that the same has already been settled amicably.<sup>[10]</sup>

On October 23, 2012, the lower court issued the assailed Order and denied petitioners' motion.<sup>[11]</sup> Aggrieved, they filed a Motion for Reconsideration<sup>[12]</sup>, but it was likewise denied.<sup>[13]</sup>

Hence, this petition raising this lone issue:<sup>[14]</sup>

WHETHER OR NOT PUBLIC RESPONDENT HAS ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION WHEN IT DENIED PETITIONERS' MOTION TO QUASH INFORMATION DATED JULY 26, 2012 AND MOTION FOR RECONSIDERATION DATED NOVEMBER 18, 2012.

The petition is without merit.

It is axiomatic that a special civil action for certiorari is not the proper remedy to assail the denial of a motion to quash an Information.<sup>[15]</sup> The rationale behind this doctrine is that an order denying such motion is only interlocutory and, therefore, not appealable, nor can it be the subject of a petition for certiorari.<sup>[16]</sup> Jurisprudence is teeming with discussions on the proper remedy in such cases, instructing that the proper procedure is for the accused to enter a plea, continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law.<sup>[17]</sup> In this case, it is clearly a procedural error for the petitioners to avail of the present petition. Instead, they should have gone to trial and reiterated the special defenses they advanced in their Motion to Quash Information and filed an appeal in case an adverse decision is rendered.<sup>[18]</sup> Succinctly, unless there are exceptional circumstances that would warrant an immediate filing of a petition for certiorari to assail an interlocutory order like a denial of a motion to quash information, resort thereto is considered an improper remedy.<sup>[19]</sup>

Nonetheless, even assuming that this remedy is allowed, the petition would still be denied absent a showing that the lower court committed grave abuse of discretion in the issuance of its assailed Orders. Petitioners anchor their argument on this issue, claiming that the lower court was wrong in denying their Motion to Quash Information on the ground that the facts charged do not constitute an offense. However, after a review of the records, this Court finds no arbitrariness in the action of the lower court.

Jurisprudence states that when a motion to quash invokes the ground that the facts charged do not constitute an offense, the sufficiency of the information hinges on the question of whether the facts alleged, if hypothetically admitted, meet the essential elements of the offense defined in the law.<sup>[20]</sup> Stated differently, the determinative test in appreciating a motion to quash under this rule is the sufficiency of the averments in the information, that is, whether the facts alleged, if

hypothetically admitted, would establish the essential elements of the offense as defined by law without considering matters *aliunde*.<sup>[21]</sup> It is fundamental that the information must state every single fact necessary to constitute the offense charged, otherwise, a motion to quash on the ground that the information charges no offense may be properly sustained.<sup>[22]</sup> In this case, petitioners were accused of the crime of Theft under Article 308 of the Revised Penal Code (RPC for brevity) committed as follows:

"Art. 308. *Who are liable for theft.* - xxx Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner; xxx"

They were charged accordingly in the Amended Information, to wit:

"xxx On or about May 27, 2007, around 8:30 in the evening, in Plaridel, Llanera, Nueva Ecija, within this Honorable Court's jurisdiction, conniving together, with intent to gain and having found lost 250 pieces ducks worth Php37,500.00 belonging to Christopher Alviar, willfully failed to deliver the ducks to the local authorities or to the owner, to the damage of Christopher Alviar. xxx"<sup>[23]</sup>

The foregoing details averred readily show the sufficiency of the Amended Information in charging petitioners for the specific offense charged. This same observation was made by the lower court in its assailed Order, to wit:

"xxx A thorough examination of the Amended Information dated February 23, 2012 will show that the elements of the crime charged were sufficiently stated therein. The facts as presented in the Information establish the elements of the crime as defined by Article 308 of the Revised Penal Code.<sup>[24]</sup> xxx"

Consistently, petitioners' arguments that the ownership of private complainant was not proven or that the criminal case has been settled are insufficient to support their motion since these are matters of defense which are best addressed during trial. The case of *Librado M. Cabrera, et al. vs. The Honorable Sandiganbayan, et al.*,<sup>[25]</sup> states that the information is deemed sufficient when it presents only the relevant facts constituting the crime charged, excluding the reason therefor which could be proved during the trial. This compliments the rule that evidence *aliunde* or matters extrinsic of the information are not to be considered in the determination of the sufficiency thereof.<sup>[26]</sup> In *Hilario P. Soriano and Rosalinda Ilagan vs. People of the Philippines, et al.*,<sup>[27]</sup> the Honorable Supreme Court explains thus:

"xxx The fundamental test in considering a motion to quash anchored on Section 3 (a), Rule 117 of the 1985 Rules on Criminal Procedure, is the sufficiency of the averments in the information; that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law. The trial court may not consider a situation contrary to that set forth in the criminal complaint or information. Facts that constitute the defense of the petitioners against the charge under the information must be proved by them during trial. Such facts or circumstances do not constitute proper grounds for a