

AIDA F. PENDATUN, PETITIONER AND APPELLANT, VS. HON. CRISANTO ARAGON AND PEOPLE OF THE PHILIPPINES, RESPONDENTS AND APPELLEES.

G.R. No. L-5469. September 25, 1953

Ponente: TUASON, J.

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TUASON, J.:

Criminal cases Nos. IV-42616 and IV-42617 of the Municipal Court of Manila for physical injuries and slander respectively against Aida F. Pendatun were "provisionally" dismissed on motion of the private attorney for the complaining witness on account of the latter being ill. At the bottom of the motion, counsel for defendant (defendant had never appeared in person and had always been represented by counsel) wrote the words "no objection" and signed his name below it. The Assistant City Fiscal did the same.

A motion later having been made to reinstate the said cases, defendant objected on the ground of twice in jeopardy, but was overruled. Application for prohibition was thereupon filed with the Court of First Instance of Manila to prevent the respondent judge, Hon. Crisanto Aragon, from placing the defendant on trial. Judge Ibañez denied the petition.

This is an appeal from that decision directly raising the question whether counsel's notation on the motion to dismiss constituted an express consent within the meaning of section 9 of Rule 113, which provides that when a criminal case is dismissed or otherwise is terminated without the express consent of the defendant after the latter has pleaded to the charge, such dismissal shall be a bar to another prosecution for the offense charged.

The words "no objection" written on the motion to dismiss directly conveyed, as undoubtedly they were intended to convey, the idea of full accordance with the proposed dismissal. It was not the same as acquiescence manifested by signs, actions, facts, inaction or silence. It was the same as saying "I agree" although it was not as emphatic as the latter expression. Having manifested "no objection" to the motion for the express purpose of obtaining a ruling of the court upon such motion, counsel could not have meant other than that he was in agreement with the dismissal, and there is no question that was what the court and the prosecution understood him to mean; otherwise, trial could have been postponed instead of the case being temporarily dismissed, there being good grounds for continuance.

Upon the foregoing considerations, the decision of the trial court is affirmed, with costs against the appellant.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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