

**EDILBERTO MUNSAYAC AND NENA MUNSAYAC, PETITIONERS, VS.
HON. GUILLERMO P. VILLASOR, PRESIDING JUDGE OF THE COURT
OF FIRST INSTANCE OF MANILA, BRANCH XV AND LEONOR P.
ENRIQUEZ, RE...**

G.R. Nos. L-44555-56. May 14, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

In this original action for certiorari, petitioners assail as having been issued with grave abuse of discretion amounting to lack of jurisdiction, the order of respondent judge in Criminal Cases Nos. 21928 and 21929, directing petitioners to answer the motion for restitution filed therein by the complainant after the cases were dismissed.

The facts leading to the issuance of the challenged order are as follows:

In an undated criminal information[1], Eduardo Asuncion alias Edwin Zaraus and/or Edna Madrigal, were charged with the crime of theft of jewelries worth P37,000.00. The case was docketed as Criminal Case No. 21928 and was raffled to Br. XV of the then CFI (now RTC) of Manila. In another information[2] dated June 27, 1975, the same accused was charged of similar offense this time for stealing away gold coins worth P2,000.00. The case was docketed as Criminal Case No. 21929 and was raffled to Br. XIX of the same court. In both cases, the complainant was herein private respondent. When the accused in Criminal Case No. 21928 was arraigned on July 11, 1975, he pleaded not guilty. Before the accused in Criminal Case 21929 could be arraigned the presiding judge of Branch XIX on August 4, 1975 ordered the consolidation of the case with Criminal Case No. 21928 because they arose from the same incident.

During the hearing scheduled on August 15, 1975, the prosecutor presented an affidavit of desistance executed by private respondent who affirmed the contents thereof before the court. In addition, she manifested her intention to file a separate civil action to recover the personalities subject of the crimes charged. This was stated in the order[3] of respondent judge dismissing the cases. On the same day, counsel for private respondent also filed a Reservation of Right to Demand Restitution under Authority of *People v. Alejano*, 54 Phil. 987.[4]

In this pleading, private respondent thru her counsel reserved her "right to demand in the above entitled cases, or in separate actions," the return of her personal properties, from Benjamin Munoz, herein petitioners, Lito Solitario and Credit House, Inc. Under date of December 29, 1975, counsel for private respondent filed in the above criminal cases, a Motion for Restitution of Movable Property and other Stolen Property[5]. The motion prayed, among others, for an order requiring:

"Respondents Edilberto Munsayac and Mrs. Nena Munsayac to return to the offended party the amounts of P500.00 and P5,000.00 with legal interest from June 27, 1975, until their full return, and to pay the offended party the sum of P18,000.00 with legal interest from June 27, 1975, until full payment." (p. 29, Rollo)

Petitioners opposed the motion[6]. They claimed that movant has no personality; the prayer for damages was beyond the jurisdiction of the court to allow; the grant of damages would be unconstitutional for lack of due process and that the motion converts a criminal action into a civil case. After the filing of private respondent's memorandum[7], respondent judge, on June 7, 1976, issued the challenged order[8] requiring petitioners to file their answers to the motion. Petitioners sought reconsideration but the same was unavailing[9]. And so this recourse.

Petitioners contend that respondent judge, in issuing the assailed order committed reversible error tantamount to grave abuse of discretion. They allege that since private respondent had reserved the right to file a separate civil action pursuant to Rule III of the Rules of Court, she has waived her interest in the cases and she cannot therein directly or indirectly participate except to testify as a witness for the State; that the dismissal of the cases before evidence was adduced and even before arraignment of the accused in Criminal Case No. 21929 erased not only the criminal liability of the accused but also the crime itself and so there is no civil liability to speak of or at least, the same was condoned by private respondent; that even assuming that civil liability existed, it can no longer be pursued in dismissed criminal cases and that to require them to answer a motion filed in non-existing cases is not sanctioned by the rules. According to them, private respondent should have filed a separate civil action by observing the requirements of Section 3, Rule 6 of the Rules of Court. They maintain that the case of *People v. Alejano*, supra, has no application to the cases at bar because in that case, there was a trial on the merits and in the end the accused was acquitted for the reason that although the offense was proven, his identity was not established. They also branded the order as a judgment rendered without due process of law.

The petition is meritorious.

The case of *People v. Alejano*, supra, finds no application to the cases at bar. It is important to note that Criminal Cases Nos. 21928 and 21929 were dismissed even before trial on the merits commenced unlike in the *Alejano* case and the cases[10] therein cited in support of the Court's ruling, where there was trial on the merits and judgment accordingly rendered. While there was a reservation for the filing of a separate civil action for recovery of the stolen properties, said reservation cannot be legally contemplated as a reservation made under Section 1 of Rule 111. The reservation made by private respondent was uncalled for because she had desisted in prosecuting her charges against the accused. The dismissal of the charges at her instance carried the dismissal of the civil aspects accompanying the filing of the criminal informations. It was palpable error for respondent to justify his assailed order by stating in his order denying the motion for reconsideration thereof that "the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action and it is the civil phase of the process that is being placed before the court." (p. 59, Rollo). Respondent judge ignored the fact that, basically the existence of the civil aspect of the criminal cases was dependent upon the continuation of the criminal cases. Without any judgment of conviction in the criminal cases, restitution cannot be ordered (*Chua Hai v. Kapunan, Jr., et al.*, 104 Phil. 110). In both cases, there was no trial on the merits. The order of dismissal was not rendered on the merits of the cases. Neither was the mere filing of the criminal informations proof that the crimes of theft were committed by the accused. Obviously, counsel for private respondent wanted to cut short the proceedings apparently because the accused had pointed to the persons to whom he sold the properties he carted away. His move, however, proved to be the reverse. Anyway, private respondent still has the right to recover the properties she lost by filing an entirely new civil action to that effect.

ACCORDINGLY, the writ prayed for is GRANTED. The challenged order is hereby REVERSED and SET ASIDE.

Costs against respondent.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Griño-Aquino, JJ., concur.
Gancayco, J., on leave.

[1] Page 13, Rollo.

[2] Page 15, Ibid.

[3] Page 17, Ibid.

[4] Page 18, Ibid.

[5] Page 19, Ibid.

[6] Page 31, Ibid.

[7] Page 39, Ibid.

[8] Page 55, Ibid.

[9] Page 59, Ibid.

[10] Valera v. Finnick, 9 Phil. 482; Del Rosario v. Lucera, 8 Phil. 535; Varela v. Matute, 9 Phil. 479; Reyes v. Ruiz, 27 Phil. 458; U.S. v. Soriano and Villalobos, 12 Phil 512; U.S. v. Sotelo, 28 Phil. 147.

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