

HILARIO P. SORIANO, PETITIONER, VS. HON. MA. THERESA V. MENDOZA-ARCEGA, AS PRESIDING JUDGE OF BRANCH 17 OF THE REGIONAL TRIAL COURT OF MALOLOS, BULACAN, AND THE PEOPLE OF THE PH...

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari and Prohibition under Rule 65 of the Rules of Court seeking to annul and set aside the Orders dated September 22, 2005[1] and November 25, 2005[2] of the Regional Trial Court, Third Judicial Region, Branch 17, Malolos City in Crim. Cases Nos. 237 and 238-M-01, entitled “People of the Philippines, versus Hilario P. Soriano and Rosalinda Ilagan, Accused,” which read in their entirety as:

Order dated September 22, 2005:

“This pertains to the prosecution's a) 'Motion to Expunge (Manifestation dated August 10, 2005)' and b) 'Motion' (to Expunge the Ex Parte Manifestation dated August 3, 2005), to which accused Hilario Soriano, by himself, filed a 'Comment' dated August 22, 2005, and c) 'Motion to Expunge (Comment dated August 22, 2005),' and to the defense's i) 'Omnibus Motion' and ii) 'Motion to Approve Withdrawal of Appearance,' to which the prosecution submitted its respective 'Oppositions cum URGENT MOTION TO EXPUNGE,' and iii) 'Entry of Appearance' of Atty. Peter Paul S. Romero as counsel for the accused.

Denying all the prosecution's motions to expunge the papers and motions filed by the accused, but rebuking the allegations of the defense contrary to what the record reflects, the Court instead resolves to straighten out the antipathetic manifestations that smack of personal bickerings between the adverse parties.

Anent the 'Ex-Parte manifestation' of accused Hilario Soriano dated August 3, 2005, the reason found by the Court for the resetting of the hearing on July 19, 2005 was the absence of the State Prosecutor and the defense counsel (See Order of July 19, 2005).

Meanwhile, it is apparent that the motions, comments and manifestations of the accused all boil down to a single entreaty, i.e. a reasonable time to secure the services of a new attorney, competent enough to defend their cause against the 'overwhelming panel of prosecutors' consisting of the State Prosecutor, lawyers of the Bangko Sentral ng Pilipinas (BSP) and the Philippine Deposit Insurance Corporation (PDIC) and the esteemed Atty. Hector Corpus of the M.M. Lazaro and Associates.

The Court finds the present controversy settled and closed. The entry of appearance of Atty. Peter Paul S. Romero of Chato & Vinzons-Chato, as the new defense counsel, is hereby NOTED.

The 'Motion to Approve Withdrawal of Appearance' filed by Hilario Soriano is now moot and academic, better yet a mere surplusage, as the Court has already taken note of the respective notices of withdrawal of Atty. Sedfrey A. Ordoñez and Atty. Lamberto A. Gonzales, Jr. on August 11, 2005. (See Order of August 11, 2005).

As regards the 'Motion to Cancel Hearing Date' scheduled on September 22, 2005 incorporated in the 'Entry of Appearance' of the new defense counsel, the Court is inclined to DENY the same. As pointed out by the

Private Prosecutor, Atty. Romero's motion to cancel today's hearing failed to attach proof of his alleged conflict of schedule. More so, his law firm could have sent another lawyer to represent its client.

As prayed for by the prosecution, the re-direct examination of accused Hilario P. Soriano has been waived. Let the presentation of another defense witnesses proceed on October 11 and 20, November 17, December 1 and 13, 2005 all at 8:30 o'clock in the morning, as previously scheduled.

SO ORDERED.”

Order dated November 25, 2005:

“This refers to the defense's Urgent Omnibus Motion (a) for Partial Reconsideration of the Order Dated 22 September 2005; (b) to Discharge Accused Soriano From the Information in Criminal Case No. 238-M-2001; and (c) to Suspend Proceedings; and the prosecution's Urgent Motion To Expunge (The So-Called Request for Subpoena ad Testificandum).

As to the first motion, the supplementing papers that purport to explain the lawyer's conflict of schedule cannot be regarded by the Court to cure the congenital infirmities, in fact, suffered by the motion from which the assailed Order spawned. The directive that considers the redirect examination of Hilario P. Soriano as waived is hereby affirmed.

As regards the second motion, both parties are directed to simultaneously file their respective position papers tackling the issue at hand within fifteen (15) days from receipt of this Order. Thereafter, the incident shall be deemed submitted for resolution.

With respect to the suspension of proceedings being sought for, the defense counsel is hereby required to submit a statement of the case in G.R. No. 162336 pending before the Supreme Court, attaching thereto certified true copies of the Court's Resolution, within fifteen (15) days from receipt of this Order.

Meanwhile, acting on the motion filed by the prosecution, the defense is given five (5) days from receipt of this Order within which to file their comment/opposition thereto. This issue shall thereafter be determined.

Pending resolution of the foregoing incidents, the defense is instructed to be ready with another witnesses to be presented on December 1, 2005 at 8:30 o'clock in the morning. Other trial dates are December 13, 2005, January 24, February 16 and 28, 2006 at 8:30 o'clock in the morning, as agreed upon by all the counsel last October 20, 2005.

SO ORDERED.”

The facts are:

Petitioner Hilario P. Soriano (Soriano for brevity) was charged with Estafa through falsification of commercial documents docketed as Crim. Case No. 237-M-2001 and for Violation of Section 38 of R.A. No. 337 docketed as Crim. Case No. 238-M-2001. Said cases were originally raffled to Branch 79 of the RTC, Malolos, Bulacan. By agreement of the parties, the cases were consolidated and heard jointly. Petitioner Soriano pleaded not guilty to the charges. Attorneys Sedfrey Ordoñez and Lamberto Gonzales, Jr. were his original counsels.

During the trial but before the prosecution could rest its case, the cases were re-raffled to Branch 17, RTC, Malolos. After the documentary evidence for the prosecution were admitted, the defense began presenting its evidence. Petitioner Soriano testified and was cross-examined exhaustively.

After the conclusion of the prosecution's cross-examination, petitioner's counsel, Atty. Sedfrey Ordoñez, expressly requested to conduct a redirect examination of petitioner Soriano in the next scheduled hearing. However, before the scheduled date of hearing, petitioner Soriano's counsels filed their respective notice of

Withdrawal of Appearance.

Petitioner Soriano filed an Ex-Parte Manifestation requesting for sixty (60) days from the lower court's approval of the withdrawal of appearance of his counsels to secure the services of a new counsel. Meanwhile, the hearing for his redirect examination was scheduled on September 22, 2005.

On September 15, 2005, the law firm of Chato & Vinzons-Chato entered its appearance on behalf of petitioner Soriano. In the said entry of appearance, said counsel also sought for the cancellation of the September 22, 2005 hearing because of the need to study the case further and that Atty. Peter Paul S. Romero, the lawyer who will be handling the case, had a prior commitment to appear for another case^[3] before the Municipal Trial Courts in Cities (MTCC) of Antipolo, Branch 1.

Notwithstanding the motion to cancel the September 22, 2005 hearing, petitioner Soriano still appeared in the said hearing and manifested that he had just recently engaged the services of a new counsel and that the handling lawyer had a conflict of schedule. However, the private prosecutor verbally moved that the redirect examination of petitioner Soriano be deemed waived.

On September 22, 2005, public respondent judge issued the assailed order granting the prosecution's motion and petitioner Soriano's redirect examination was declared to have been waived.

Petitioner Soriano moved for partial reconsideration^[4] of the aforementioned order. However, said motion was denied in the assailed order dated November 25, 2005. Hence, this petition for certiorari setting forth this lone issue for resolution, to wit:

“Whether or not the respondent judge's ruling that the petitioner's redirect examination is deemed waived is tantamount to a denial of his right to testify on his behalf; and corollarily, whether or not such ruling is tantamount to grave abuse of discretion amounting to lack or excess of jurisdiction which may be corrected through the instant petition.”^[5]

The petition is devoid of merit.

Petitioner Soriano argues that he was deprived of his substantive right when his redirect examination was considered waived by the lower court.

Petitioner Soriano's argument does not impress this Court.

To begin with, petitioner Soriano had already testified on his behalf. During his direct examination, he was given the chance to be heard and defend himself after which he was cross-examined by the defense. He was granted by the lower court the chance to conduct a redirect examination, however, he blew away that chance through his own act of delaying the proceedings by resorting to postponements. This fact was stressed by the lower court in its order dated August 11, 2005 when it stated that “any intent to unduly delay the prosecution of these cases by the accused will not be countenanced.”^[6]

Petitioner Soriano's dilatory tactics to frustrate the proceedings by abusing the legal remedies backfired on him. Granting *arguendo* that his original counsels withdrew their appearance, petitioner Soriano was given ample time to look for another counsel, which he did when he engaged the services of the law office of Chato & Vinzons-Chato. Petitioner Soriano's contention that Atty. Peter Paul Romero, the lawyer assigned to handle his case, had a previous engagement and was committed to appear in another case previously scheduled is of no moment. Petitioner engaged the services of Chato & Vinzons-Chato law firm. The law firm could have sent another lawyer to take the place of Atty. Romero. Further, as held by the lower court, Atty. Romero's motion to cancel the hearing date failed to attach proof of his alleged conflict of schedule.^[7] Besides, petitioner Soriano

should not assume that his motion for postponement should be granted.[8] Thus, petitioner Soriano cannot feign that his substantive right under the Constitution was violated for it is this same constitution which mandates for the speedy disposition of cases.[9] In the same vein, Section 2, Rule 30 of the Rules of Court explicitly states that postponements must not be for a longer period of one (1) month and should not be more than three (3) months.

As pointed by private respondent Bangko Sentral ng Pilipinas, petitioner Soriano had succeeded in postponing the hearing/trial of the cases from June 23, 2005 when his cross-examination was terminated, and/or August 11, 2005 when the lower court noted the notices of withdrawal of petitioner Soriano's counsels and reset the trial to September 22, 2005.

In *Bautista vs. CA*,[10] it was held that an order declaring a party to have waived the right to present evidence for performing dilatory actions upholds the court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party. It went further to state that where one party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process for the grant of a motion for continuance or postponement is not a matter of right but addressed to the sound discretion of the court.

The assailed orders cannot be the subject of a petition for certiorari for being interlocutory orders. They do not dispose of the case completely, but leave something more to be adjudicated upon.

Certiorari lies only if it is clearly and convincingly shown that the public respondent acted with grave abuse of discretion tantamount to lack or excess of jurisdiction in issuing the assailed orders.

In *Angara vs. Fedman Development Corporation*[11] the Supreme Court held that:

“It (certiorari) is not a general utility tool in the legal workshop. It offers only a limited form of review. Its principal function is to keep an inferior tribunal within its jurisdiction. It can be invoked only for an error of jurisdiction, that is, one where the act complained of, was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack of or in excess of jurisdiction.”

Similarly, in *Microsoft Corporation vs. Best Deal Computer Center Corporation*[12] the Supreme Court elucidates in this wise:

“A special civil action for certiorari will prosper only if grave abuse of discretion is manifested. For an abuse to be grave the power must be exercised in an ordinary or despotic manner by reason of passion or personal hostility. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law. There is grave abuse of discretion when respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.”

Grave abuse of discretion is wanting in this case. In denying the motion to cancel hearing, public respondent did not act with grave abuse of discretion but merely exercised his sound discretion. Finally, it is not the end of the day for petitioner Soriano since he was given the chance to present other witnesses and evidence on his behalf.

WHEREFORE, premises considered, the assailed orders dated September 22, 2005 and November 25, 2005 of the RTC, Branch 17, Malolos City in Crim. Cases Nos. 237 and 238-M-01 are hereby AFFIRMED.

SO ORDERED.

Tijam and Tayag, JJ., concur.

[1] Rollo, pp. 15-16

[2] Rollo, pp. 17-18

[3] Entry of Appearance, pp. 20-22

[4] Rollo, pp. 23-30

[5] Rollo, p. 7

[6] Rollo, pp. 54-88; p. 16 of Respondent Bangko Sentral ng Pilipinas' Comment

[7] Order, September 22, 2005

[8] Ramos vs. Dajoyag, 378 SCRA 229

[9] Section 15 (1), Article VIII of the Constitution

[10] 430 SCRA 353

[11] 440 SCRA 467

[12] 389 SCRA 615

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