

ATTY. BENJAMIN S. ABALOS, SR., PETITIONER, VS. HON. EUGENIO G. DELA CRUZ, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 117, PASAY CITY, HON. LEILA M. DE LIMA, IN HER CAPACITY A...

Ponente: BARRIOS, M. M., J.

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BARRIOS, M. M., J.:

This petition for certiorari under Rule 65 of the 1997 Revised Rules of Court seeks to nullify the Order dated 24 May 2012 of the Regional Trial Court of Pasay City, Branch 117 giving due course to the Motion to Discharge from the Information accused Lilian Suan-Radam to be utilized as a state witness that was filed by the Department of Justice as well as the proceedings and other actions taken thereon. Also assailed is the Order dated 10 July 2012 denying petitioner's Motion for Reconsideration.

The Antecedents

On 15 February 2011, eleven (11) Informations for electoral sabotage was filed against Atty. Lilian S. Radam and were previously raffled to the Regional Trial Court, Branch 114, Pasay City.

Thereafter, on 16 January 2012, the Commission on Elections (“COMELEC”) filed a Motion with Leave of Court to Withdraw the aforesaid Informations against Atty. Radam, and this was granted by the trial court.

On 18 January 2012, COMELEC promulgated En Banc Resolution No. 9333 giving authority to the Secretary of Justice to designate not more than six (6) DOJ Prosecutors to assist in the prosecution of said cases. Resultantly, Justice Secretary Leila M. De Lima designated Assistant State Prosecutor Mari Elvira B. Herrera, Assistant City Prosecutor Orlando G. Mariano, Associate Prosecution Attorney Gerard E. Gaerlan and Associate Prosecution Attorney Mark Roland S. Estepa to assist in the prosecution of the cases covered by Resolution No. 9333.

Thenceforth, on 25 January 2012, eleven (11) Informations for Electoral Sabotage were filed against herein petitioner Atty. Benjamin S. Abalos, Sr. and Atty. Lilian S. Radam. The case was then raffled to the Regional Trial Court, Branch 117, Pasay City presided by public respondent judge.

Later, on 14 February 2012, petitioner Abalos filed a petition for bail.

Pending resolution of the aforementioned bail petition, COMELEC promulgated Resolution No. 9403 dated 17 April 2012 enjoining the filing of any Motion to Discharge during the bail hearing. However, despite the aforesaid COMELEC resolution, the Department of Justice (DOJ) prosecutors filed in open court a Motion to Discharge from Information accused Atty. Lilian S. Radam, pursuant to Republic Act No. 6981 known as The Witness Protection, Security and Benefit Act.

Petitioner Abalos filed an opposition to the motion to discharge on the ground that said move by the DOJ is without the concurrence of the COMELEC and is, in fact, repugnant to COMELEC Resolution No. 9403, and should not be given due course by the trial court. Needless to state, with respect to election offense, it is the COMELEC which acts as prosecutor.

However, in the Order dated 24 May 2012, public respondent judge resolved not to outrightly dismiss the Motion filed by the DOJ and instead, required accused Radam to testify as witness to demonstrate compliance with Section 17 of Rule 119 relating to discharge as a state witness. Petitioner moved for reconsideration, but the same was denied.

Hence, this petition premised on the following grounds:

I.

RESPONDENT JUDGE EUGENIO G. DELA CRUZ ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GIVING DUE COURSE TO THE DOJ'S MOTION TO DISCHARGE DESPITE THE RESOLUTION OF THE COMELEC, THE PUBLIC PROSECUTOR, NOT TO FILE ANY MOTION TO DISCHARGE IN FAVOR OF RADAM AND THE DOJ PROSECUTORS' ADMISSION THAT THEY ARE UNDER THE DIRECT CONTROL AND SUPERVISION OF THE COMELEC IN PROSECUTING THIS CASE.

II.

RESPONDENT JUDGE EUGENIO G. DELA CRUZ ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING A RELIEF THAT WAS NOT PRAYED FOR IN THE DOJ'S MOTION TO DISCHARGE.

III.

SECTION 43 OF REPUBLIC ACT NO. 9369 IS UNCONSTITUTIONAL BECAUSE ARTICLE IX-C, SECTION 2 (6) OF THE 1987 CONSTITUTION DOES NOT GIVE A BLANKET AUTHORITY TO MAKE THE PROSECUTION OF ALL ELECTION OFFENSES CONCURRENT WITH OTHER GOVERNMENT BODIES.

The Court's Ruling

After considering the contrasting arguments, the ultimate question that presents before Us is whether it is proper to require accused Atty. Radam to give her actual testimony before the trial court in the hearing of the motion to discharge even before she is admitted as a state witness.

The law on the matter is Section 17, Rule 119 of the Revised Rules of Court. It pertinently provides:

Section 17. Discharge of accused to be state witness. – When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty; and
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence.

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From the foregoing, it seems apparent that the precondition for the release of a state witness is that the prosecution has already presented its available witnesses and evidence, but the trial prosecutor is apprehensive that the evidence may not be sufficient to convict; hence, the need for the testimony of a co-conspirator. It is also evidently clear that the actual testimony of the accused sought to be discharged on matters that will be testified on need not be priorly given before the trial court as a condition to the discharge as a state witness. What it simply needed is the presentation of the sworn statement of the accused concerned, and in addition, such evidence as are necessary to determine if the conditions exist for the discharge, such as want of other direct evidence, the fact that subject is not the most guilty and has not been previously convicted of an offense involving moral turpitude, so that the object of the law will be attained, i.e., to prevent unnecessary or arbitrary exclusion from the criminal complaint of persons guilty of the crime charged.

In this case, it is Our view that accused Atty. Radam should not, as yet, be considered allowed to testify on matters that will effectively incriminate her before she is legally discharged as a state witness. Her testimony will constitute an admission of her guilt and which, incidentally, under Rule 130, Section 30 of the Rules of Court,[1] is still inadmissible as evidence against a co-conspirator until the conspiracy is established by other evidence other than said declaration.

At the trial, the prosecution must still present sufficient evidence to establish the existence of conspiracy; hence, the testimony of accused Atty. Lilia S. Radam should be presented at the trial proper after the trial court orders her discharge.

Anent the constitutionality of Section 43 of Republic Act No. 9369 particularly on the issue of whether the Comelec has the exclusive power to investigate and prosecute cases of violations of election laws, the Supreme Court has already upheld the constitutionality of the aforecited provision. In the recent case of Jose Miguel T. Arroyo vs. Department of Justice, et al.,[2]it was held:

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This is not the first time that the Court is confronted with the issue of whether the Comelec has the exclusive power to investigate and prosecute cases of violations of election laws. In *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*,³⁸ the constitutionality of Section 4339 of RA 9369⁴⁰ had already been raised by petitioners therein and addressed by the Court. While recognizing the Comelec's exclusive power to investigate and prosecute cases under *Batas Pambansa Bilang 881* or the *Omnibus Election Code*, the Court pointed out that the framers of the 1987 Constitution did not have such intention. This exclusivity is thus a legislative enactment that can very well be amended by Section 43 of RA 9369. Therefore, under the present law, the Comelec and other prosecuting arms of the government, such as the DOJ, now exercise concurrent jurisdiction in the investigation and prosecution of election offenses.

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WHEREFORE, on the foregoing premises, the petition is **PARTIALLY GRANTED**.

Public respondent judge is directed to resolve the Motion to Discharge filed by the Department of Justice on the basis of the extent evidence of the prosecution, the sworn statement of Atty. Lilia S. Radam, the proof of conspiracy and other evidence that may be presented by the prosecution to establish the conditions under Section 17 of Rule 119 of the Revised Rules of Court, and without requiring the prior actual testimony of the aforementioned.

Relative to the petition to prohibit the COMELEC from intervening in the prosecution of election offenses, the same is **DENIED**.

SO ORDERED.

Villon[*] (Acting Chairperson) and Pizarro, JJ., concur.

[*] Vice PJ Andres B. Reyes, Jr., as per Raffle dated 17 February 2014.

[1] Rules of Court, Rule 130, Section 30, provides: Admission by conspirator. – The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

[2] G.R. Nos. 199082, 199085 and 199118, 23 July 2013 citing Barangay Association for National Advancement and Transparency (BANAT) Party-List vs. Commission on Elections, G.R. No. 177508, August 7, 2009, 595 SCRA 477.

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