

**RAMON JOHN EDWARD A. PALACIOS, PETITIONER, VS. HON. PEDRO B. CORALES, IN HIS CAPACITY AS THE PRESIDING JUDGE OF RTC BRANCH 118 OF PASAY CITY, PEOPLE OF THE PHILIPPINES, AND MARK...**

Ponente: ELBINIAS, J.

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**ELBINIAS, J.:**

Before Us is a Petition for Certiorari[1] (“Petition” for brevity) filed by petitioner Ramon John Edward A. Palacios (“petitioner” for brevity) under Rule 65 of the Rules of Court. The Petition assails the Order[2] of the Regional Trial Court (“respondent court” for brevity) Branch 118, Pasay City in Criminal Case No. R-PSY-10-02539-CR for “Frustrated Murder”, which Order[3] granted Private Prosecutor Marito R. Fernandez's “motion for amendment of the Information in Criminal Case No. R-PSY-10-02539-CR”,[4] and which denied petitioner's “motion for cancellation of the arraignment”[5].

A reading of the Petition[6] however, showed that petitioner availed of the wrong remedy of a Petition for Certiorari under Rule 65 of the Rules of Court. This is because respondent court's assailed Order,[7] which denied petitioner's “Motion for Cancellation of the Arraignment”[8] and “Motion to Quash Amended Information”,[9] was merely interlocutory. Petitioner's grounds to assail the Order[10] should therefore be made not in a Petition for Certiorari under Rule 65, but in an appeal after trial on the merits. This was as heralded by the Supreme Court in *Judy Anne L. Santos vs People of the Philippines and Bureau of Internal Revenue* (G.R. No. 173176, 26 August 2008), as follows:

“There is no dispute that a court order denying a motion to quash is interlocutory. The denial of the motion to quash means that the criminal information remains pending with the court, which must proceed with the trial to determine whether the accused is guilty of the crime charged therein. Equally settled is the rule that an order denying a motion to quash, being interlocutory, is not immediately appealable, nor can it be the subject of a petition for certiorari. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial.” (emphasis supplied)

Besides, even if a Petition for Certiorari under Rule 65 of the Rules of Court could be considered as petitioner's proper remedy to assail respondent court's assailed Order[11] of December 6, 2010, the Petition[12] at bench was still dismissible for petitioner's failure to earlier file the required Motion for Reconsideration of respondent court's Order[13] below. This is because the filing of a Motion for Reconsideration is a condition precedent before the filing of a Petition for Certiorari under Rule 65 of the Rules of Court. That the consequence for petitioner's failure to file the required Motion for Reconsideration is fatal had already been declared by the Supreme Court in *Lepanto Consolidated Mining Company vs. The Lepanto Capataz Union*, G.R. No. 157086, February 18, 2013, which is that:

“xxx the Court has consistently stressed the importance of the seasonable filing of a motion for reconsideration prior to filing the certiorari petition. In *SMC Quarry 2 Workers Union-February Six Movement (FSM) Local Chapter No. 1564 v. Titan Megabags Industrial Corporation*<sup>25</sup> and *Manila Pearl Corporation v. Manila Pearl*

Independent Workers Union, the Court has even warned that a failure to file the motion for reconsideration would be fatal to the cause of the petitioner. Due to its extraordinary nature as a remedy, certiorari is to be availed of only when there is no appeal, or any plain, speedy or adequate remedy in the ordinary course of law.” (Emphasis supplied)

The only cognizable exceptions from the requirement of filing a Motion for Reconsideration are those that were declared by the Supreme Court in *St. Mary of the Woods School, Inc. and Marcial P. Soriano vs. Office of the Registry of Deeds of Makati city and Hilario P. Soriano*, G.R. No. 174290, January 20, 2009, to wit:

“.... A Motion for Reconsideration of the order or resolution is a condition precedent for the filing of a Petition for Certiorari challenging the issuance of the same.

The general rule that the filing of a Motion for Reconsideration before resort to certiorari will lie is intended to afford the public respondent an opportunity to correct any factual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case. This rule, however, is subject to certain recognized exceptions, to wit: (1) where the order or a resolution, is a patent nullity, as where the court a quo has no jurisdiction; (2) where the questions raised in the certiorari proceeding have been duly raised and passed upon in the lower court; (3) where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (4) where, under the circumstances, a Motion for Reconsideration would be useless; (5) where petitioner was deprived of due process and there is extreme urgency for relief; (6) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (7) where the proceedings in the lower court are a nullity for lack of due process; (8) where the proceedings were ex parte or were such that the petitioner had no opportunity to object; and (9) where the issue raised is one purely of law or where public interest is involved.” (Emphasis supplied)

Here, petitioner averred that his Petition[14] was exempted from filing a Motion for Reconsideration of respondent court's assailed Order[15] on ground that the issue he was raising was one which involved purely questions of law.[16] Petitioner alleged the following:

“xxx Petitioner has no other plain, speedy and adequate remedy in the ordinary course of law while appeal is not an appropriate remedy as the assailed Order did not finally dispose of the case a quo.

xxx While there is no motion for reconsideration filed with respect to the assailed Order, it is submitted that the filing thereof may be dispensed with because the issues raised herein are purely questions of law and have been duly raised before and passed upon by the trial court presided over by the honorable public respondent.”[17] (Emphasis supplied)

However, a perusal of the Petition[18] at bench revealed that the issues raised by petitioner in his Petition[19] involved both questions of facts and of law.[20] Petitioner's arguments were as follows:

“xxx an Information cannot be filed by a prosecutor without the prior written authority or approval of the provincial prosecutor, the city prosecutor, the chief state prosecutor, or the Ombudsman or his deputy.

xxx

6.5 The undisputed facts in the case a quo are no different. To recall, an Information had been filed with the prior written authority and approval of the City Prosecutor. When the private prosecutor orally moved in open court for the amendment of the material factual allegations in said Information, only the trial prosecutor concurred. Then and there, the honorable public respondent granted the oral motion and, after the amendment was made, immediately admitted the Amended Information. Thus, it is crystal clear that the Amended Information in the case a quo was filed without the prior written authority or approval of the City Prosecutor.

6.6 With the above facts, Section 4 of Rule 112 of the 2000 Revised Rules of Criminal Procedure and the

aforementioned rulings of the Supreme Court xxx are squarely applicable. This means that the honorable public respondent clearly acted without or in excess of jurisdiction and/or committed grave abuse of discretion when he allowed the amendment of the so-called original Information against herein petitioner and admitted the Amended Information even without the prior written authority and approval of the City Prosecutor.

6.7 In addition thereto, let it be pointed that Section 3(d) of Rule 117 of the 2000 Revised Rules of Criminal Procedure specifically provides that the filing of an Information by an officer who had no authority to do so is a ground for a motion to quash. xxx.

xxx

6.9 With the undisputed fact as aforesaid that the Amended Information in the instant case was filed without the prior written authority or approval of the City Prosecutor, Section 3(d) of Rule 117 in relation to Section 4 of Rule 112, both of the 2000 Revised Rules of Criminal Procedure, and the afore-quoted ruling of the Supreme Court xxx are squarely applicable. This means that the honorable public respondent clearly acted without or in excess of jurisdiction and/or committed grave abuse of discretion when he denied the oral motion to quash the Amended Information based on the ground that it was filed by an officer who had no authority to do so.

xxx

6.11. All the foregoing considered, it is clear that the honorable public respondent also acted without or in excess of jurisdiction and/or committed grave abuse of discretion amounting to lack or excess of jurisdiction when he decided to proceed further with the case a quo against the petitioner by setting the dates for the subsequent proceedings thereof. Thus, he should be ordered to desist from conducting further proceedings based on what has been established above as an invalid Amended Information.”[21]

Given that among the issues raised by petitioner was whether or not the Information[22] against petitioner was filed with the prior written authority or approval of the City Prosecutor,[23] then the Petition[24] raised a question of fact. The resolution of such issue required the review of the evidence presented by the parties, and of the circumstances surrounding the case in order to determine the truth or falsity of petitioner's allegations.[25]

That a case involves questions of facts when the doubt refers to the truth of the facts alleged by the parties, as was the situation here, is pursuant to the following declaration of the Supreme Court in *The Heirs of Nicolas S. Cabigas, et. al. vs. Melba L. Limbaco, Linda L. Logarta, et. al.*, G.R. No. 175291, July 27, 2011, as follows:

“There is a question of law when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted, and the doubt concerns the correct application of law and jurisprudence on the matter. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts.” (Emphasis supplied)

Consequently, the Petition[26] at bench was not exempted from the general rule that a prior Motion for Reconsideration had to be filed.

Thus, no choice is given but to dispose this matter accordingly as stated below.

IN VIEW OF ALL THESE, the Petition is DISMISSED.

**SO ORDERED.**

Dicdican (Chairman) and Paredes, JJ., concur.

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[1] Rollo, pp. 3-17.

- [2] Rollo, pp. 21-24.
- [3] Rollo, pp. 21-24.
- [4] Rollo, p. 21 & p. 22.
- [5] Rollo, p. 22.
- [6] Rollo, pp. 3-17.
- [7] Rollo, pp. 21-24.
- [8] Rollo, p. 22. Verbally made in open court.
- [9] Rollo, p. 10 & p. 14. Verbally made in open court.
- [10] Rollo, pp. 21-24.
- [11] Rollo, pp. 21-24.
- [12] Rollo, pp. 3-17.
- [13] Rollo, pp. 21-24.
- [14] Rollo, pp. 3-17.
- [15] Rollo, pp. 21-24.
- [16] Rollo, p. 5.
- [17] Rollo, p. 5.
- [18] Rollo, pp. 3-17.
- [19] Rollo, pp. 3-17.
- [20] Consolidated Broadcasting System, Inc., vs. Danny Oberio, et al, G.R. No. 168424, June 8, 2007
- [21] Rollo, pp. 11-15.
- [22] Rollo, 36.
- [23] Rollo, pp. 10-15.
- [24] Rollo, pp. 3-17.
- [25] Fe Abella y Perpetua vs. People of the Philippines, G.R. No. 198400, October 7, 2013
- [26] Rollo, pp. 3-17.

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