

EMILLIE SISON-BARIAS, PETITIONER, VS. HON. MARINO E. RUBIA, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 24 OF THE REGIONAL TRIAL COURT OF BIÑAN CITY, LAGUNA, AND THE PEOPLE OF ...

Ponente: BUESER, J.

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BUESER, J.:

The case before Us is a Petition for Certiorari[1] (with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) under Rule 65 of the Rules of Court filed by petitioner Emillie Sison Barias (“petitioner Barias”) praying that: 1. Upon the filing of this petition and pending final resolution hereof, this Honorable Court grant petitioner’s prayer for a temporary restraining order and/or preliminary injunction, enjoining the public respondent Hon. Marino E. Rubia (“public respondent Judge Rubia”), private respondent, their agents, and/or all other persons acting under their instructions or on their behalf from taking any further action in Criminal Case No. 24372- B; and, 2. After due hearing, judgment be rendered: (a) reversing and setting aside the assailed Orders dated 10 December 2012[2] and 11 February 2013[3]; (b) directing public respondent Hon. Marino E. Rubia to inhibit from presiding over Criminal Case No. 24372-B; and, (c) ordering that the said case be re-raffled to another judge; or in the alternative, ordering the withdrawal of the Information dated 29 August 2012[4] for Estafa through Falsification of Public Document against petitioner and the dismissal of Criminal Case No. 24372-B.

The Antecedent Facts

On 29 August 2012 the Office of the City Prosecutor of Biñan City, Laguna issued a Resolution[5] finding probable cause against petitioner Barias for committing estafa through falsification of public document. This resolution reversed the Biñan City Prosecutor’s initial resolution dated 29 June 2012, dismissing the complaint against petitioner Barias.

Consequently, an Information dated 29 August 2012[6], charging petitioner for estafa through falsification of public document, was filed before the Regional Trial Court (RTC) of Biñan City, Laguna; that the same was raffled to RTC of Biñan City, Laguna, Branch 24, which is the sala of public respondent Judge Rubia.

It bears stressing that sometime in November 2010, petitioner Barias lodged an administrative complaint before the Office of the Court Administrator charging herein public respondent Judge Rubia of the court a quo for conduct unbecoming of a judge, partiality, gross ignorance of the law or procedure, incompetence, and gross misconduct and is now pending before the Supreme Court.

On 31 August 2012 public respondent Judge Rubia issued an Order[7] finding probable cause against petitioner Barias and directing the issuance of a warrant of arrest against her, which Warrant of Arrest[8] was issued the same day.

That, on 12 October 2012 petitioner Barias filed with the Office of the City Prosecutor a Motion for

Reconsideration[9] of the resolution dated 29 August 2012 finding probable cause against her; and, as alleged by petitioner Barias herein, it was only on 11 October 2012 that she received a copy of the Biñan City Prosecutor's Resolution dated 29 August 2012.

Private respondent Romelias Almeda-Barias ("private respondent Almeda-Barias") filed his Comment and Opposition[10] dated 31 October 2012, which was allegedly received by petitioner Barias only on 12 November 2012.

However, on 15 November 2012 the Biñan City Prosecutor's Office issued a Resolution[11] reversing its earlier resolution dated 29 August 2012 and dismissing the complaint against petitioner Barias, while recommending the withdrawal of the Information dated 29 August 2012.

Thereafter, the Biñan City Prosecutor's Office filed a Motion to Withdraw Information[12] against petitioner Barias dated 15 November 2012; this motion to withdraw information was filed prior to petitioner Barias' arraignment that was scheduled for hearing on 20 November 2012.

On 20 November 2012 petitioner Barias' counsel appeared in court to enter its appearance as counsel for the former, which was denied by public respondent Judge Rubia in an Order[13] dated the same day on the ground that "jurisdiction has not been acquired over the person of the accused."

On 27 November 2012 petitioner Barias filed a Manifestation[14] stating that she has posted a cash bond for her provisional liberty and that she supports the public prosecutor's motion to withdraw the information dated 15 November 2012 stating that the same is the proper action to take considering that there is no probable cause against her.

On the same day, public respondent Judge Rubia issued an Order[15] setting the arraignment of petitioner on 11 December 2012.

Then, petitioner Barias filed an Omnibus Motion (A.) for Inhibition and (B.) To Defer Ruling on the Prosecution's Motion to Withdraw[16] dated 3 December 2012 was set for hearing on 10 December 2012.

As alleged by petitioner Barias, in the morning of 10 December 2012 hearing on petitioner Barias' omnibus motion, public respondent Judge Rubia immediately resolved the former's omnibus motion in open court without requiring the prosecution to file a comment; that, in the afternoon of the same day, petitioner Barias filed an Urgent Motion to Defer Arraignment because she wished to file a Motion for Reconsideration of the order denying the omnibus motion, but has not received a copy of the written order until 17 December 2012.

On 11 December 2012 petitioner Barias was arraigned and did not enter any plea.[17] Pre-trial was then scheduled on 19 February 2013 at 8:30 a.m.

On 2 January 2013 petitioner Barias filed a Motion for Reconsideration[18] dated 28 December 2012 of the order denying the omnibus motion dated 10 December 2012 which was set for hearing on 8 January 2013.

During the hearing on 8 January 2013, public respondent Judge Rubia in an Order[19] gave the private and public prosecutor 15 days from receipt of his order to comment on the motion for reconsideration. The counsel for petitioner Barias was given an equal number of days within which to reply if necessary.

Accordingly, as alleged by petitioner Barias, on 6 February 2013 the former received the private prosecutor's Comment and Opposition[20] dated 28 January 2013; thus, petitioner Barias has until 21 February 2013 to file a reply to the private prosecutor's comment and opposition.

However, on 11 February 2013 public respondent Judge Rubia resolved in an Order petitioner Barias' motion for

reconsideration without the latter's reply, which was received by petitioner Barias on 19 February 2013.

Hence, this petition.

Issue

Whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent Judge Rubia in denying the Omnibus Motion (A.) for Inhibition and (B.) To Defer Ruling on the Prosecution's Motion to Withdraw dated 3 December 2012 and the consequent Motion for Reconsideration dated 28 December 2012 of the said Order.

The Ruling of the Court

After a careful perusal of the records of this case, We find the instant petition bereft of merit.

On the matter of inhibition of public respondent Judge Rubia, petitioner Barias alleged that "despite evidence and allegations of prejudgment, bias and prejudice and the fact that petitioner has already lost her faith and confidence in respondent Judge Rubia's ability to preside over the criminal case with the cold neutrality of an impartial judge, he has refused to inhibit from presiding over the case.[21]" However, petitioner Barias failed to show acts and conduct of public respondent Judge Rubia that are clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being bias or partial[22] calling for public respondent Judge Rubia to inhibit himself from presiding over a criminal case involving petitioner Barias who has a pending administrative case against him in the Supreme Court.

It is worth emphasizing that an administrative complaint, which is now pending before the Supreme Court, lodged by petitioner Barias against public respondent Judge Rubia for conduct unbecoming of a judge, partiality, gross ignorance of the law or procedure, incompetence, and gross misconduct is not a ground for the latter to voluntarily inhibit himself from trying the case involving petitioner Barias.

As ruled by the Supreme Court in a case citing *Rosello vs. Court of Appeals*,[23] "as to the issue of disqualification, this Court has ruled that to disqualify or not to disqualify is a matter of conscience and is addressed primarily to the sense of fairness and justice of the judge concerned. Thus, the mere filing of an administrative case against respondent judge is not a ground for disqualifying him from hearing the case, for if on every occasion the party apparently aggrieved would be allowed to either stop the proceedings in order to await the final decision on the desired disqualification, or demand the immediate inhibition of the Judge on the basis alone of his being so charged, many cases would have to be kept pending or perhaps there would not be enough judges to handle all the cases pending in all the courts." [24]

Moreover, in *Pimentel vs. Salanga*[25] the Supreme Court rationalized that "efforts to attain fair, just and impartial trial and decision, have a natural and alluring appeal. But, we are not licensed to indulge in unjustified assumptions, or make a speculative approach to this ideal. It ill behooves this Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him. x x x."

The allegation of petitioner Barias that public respondent Judge Rubia in the hearing dated 20 November 2012 has already shown bias and partiality and prejudgment[26] against the former is clearly unfounded and misplaced. A careful perusal of the Transcript of Stenographic Notes (TSN)[27] taken of the proceedings during the said hearing conducted would show that herein public respondent Rubia did not presume petitioner Barias guilty of the crime charged.

The hearing conducted on 20 November 2012 was centered on the motion to withdraw information filed by the public prosecutor and petitioner Barias' counsel manifested their support to the said motion. Since an information

charging petitioner Barias has already been filed and raffled before the sala of public respondent Judge Rubia, it bears stressing that preliminary investigation is already deemed complete and terminated and the court a quo has already been vested with jurisdiction over the case and it is now within the competence and sound discretion of the judge whether to grant or deny the motion to withdraw information.[28]

It is worth stressing that TSN is the concrete repository of what transpired and spoken during the hearing on 20 November 2012 and upon a meticulous reading of the same it is clear therefrom that public respondent Judge Rubia did not state that the order of trial and reception of evidence shall be reversed for the purpose of placing the burden on petitioner Barias to establish that she is not guilty as charged.

Furthermore, the Supreme Court stated in *Dimo Realty and Development, Inc. vs. Dimaculangan*,[29] “In a catena of cases, we held that 'bias and prejudice,' to be considered valid reasons for the voluntary inhibition of judges, must be proved with clear and convincing evidence. Bare allegations of partiality and prejudgment will not suffice. These cannot be presumed, especially if weighed against the sacred obligation of judges whose oaths of office require them to administer justice without respect to person and to do equal rights to the poor and the rich.”

Therefore, petitioner Barias' allegations of bias, prejudice, partiality and prejudgment against public respondent Judge Rubia without clear and convincing evidence to support the same remained to be mere assumption or speculation and cannot be made a ground for the latter's inhibition to preside over the proceedings of the criminal case involving petitioner Barias.

Anent charges of grave abuse of discretion on the part of public respondent Judge Rubia in denying the motion to withdraw the information because the (a) motion is “unprocedural” due to the ruling in *Crespo v. Mogul*, (b) the city prosecutor “reversed himself twice in the case, and (c) the “Court has already acquired jurisdiction over the subject of the case”, petitioner Barias alleged that public respondent Judge Rubia's reasons for denying the same are devoid of merit and are contrary to existing jurisprudence.[30]

We are not persuaded.

The denial by public respondent Judge Rubia of the motion to withdraw information is justified pursuant to the well-entrenched doctrine laid down in the case of *Crespo vs. Mogul*. [31]

The Supreme Court ruled in the above-mentioned case,

“The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court, The only qualification is that the action of the Court must not impair the substantial rights of the accused, or the right of the People to due process of law.

Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.

Further, the Supreme Court ruled that “the rule therefore in this jurisdiction is that once a complaint or

information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.”[32]

Indeed, the rule is clear that upon the institution of the criminal information, the preliminary investigation is already terminated and from then on it is already within the sound discretion and unbridled competence of the trial judge whether to grant or deny the motion to withdraw information, only on condition that the action of the court must not impair the substantial rights of the accused, or the right of the People to due process of law.

In the case at bench, there is no showing that public respondent Judge Rubia violated the rights of the accused as accorded her by the Constitution.

Moreover, since an information has already been filed before the court, the reversal of finding of probable cause by the public prosecutor does not of itself divest the court a quo of its jurisdiction over the case.

With the foregoing considerations, the withdrawal of the information should be left entirely to the sole determination and sound discretion of the court a quo.

Furthermore, petitioner's application for a writ of preliminary injunction or temporary restraining order to prohibit the court a quo from proceeding with the trial of the criminal charge against her until after the petition for certiorari has been resolved with finality, alleging that “there is a risk that public respondent Judge Rubia might issue a decision, orders, or rulings that may indubitably be in excess of its jurisdiction and eventually affect the life, liberty and property of petitioner,” we find the same to be devoid of merit.

The grounds relied upon by petitioner Barias in her application for a writ of preliminary injunction or temporary restraining order are mere conjectures or speculations not supported by any convincing evidence. There is nothing in the records that shows that the continuation of the proceedings before the sala of herein public respondent Judge Rubia will cause grave and irreparable injustice and injury to petitioner Barias.

Well-settled is the rule that in the grant of injunction or temporary restraining order, the same shall not be based on purely speculative grounds and that the possibility of irreparable damage without proof of actual existing right is not a ground for the issuance thereof.[33]

WHEREFORE, under the premises, the present petition for certiorari is DENIED for lack of merit.

SO ORDERED.

Zalameda[*] (Acting Chairperson) and Sempio Diy,[**] JJ., concur.

[*] vice J. Rebecca De Guia-Salvador, per Office Order No. 184-14-ABR dated May 5, 2014.

[**] vice J. Ramon R. Garcia, per Office Order No. 187-14-ABR dated May 6, 2014.

[1] Rollo, pp. 3-48.

[2] Id., pp. 52-55.

- [3] Id., pp. 56-57.
- [4] Id., pp. 60-61.
- [5] Id., pp.58-59.
- [6] Id., pp. 60-61.
- [7] Id., p. 62.
- [8] Id., p. 63.
- [9] Id., pp. 64-76.
- [10] Id., pp. 80-91.
- [11] Id., pp. 93-94.
- [12] Id., pp. 95-96.
- [13] Id., p. 37.
- [14] Id., p. 120.
- [15] Id., p. 123.
- [16] Id., pp. 124-137.
- [17] Id., p. 144.
- [18] Id., pp.145-160.
- [19] Id., p.161.
- [20] Id., pp.162-173.
- [21] Id., p. 4.
- [22] Gahol vs. Riodique, G.R. No.L-40415, 27 June 1975.
- [23] G.R. No. L-46274, 14 December 1988.
- [24] Flores vs. Court of Appeals, G.R. No. 97556, 29 July 1996.
- [25] G.R. No. L-27934, 18 September 1967.
- [26] Rollo, p. 9.
- [27] Id., pp. 98-119.
- [28] Crespo vs. Mogul, G.R. No. L-53373. 30 June 1987.
- [29] G.R. No. 130991, 11 March 2004.
- [30] Rollo, p. 34.
- [31] Supra note 28.
- [32] Supra.
- [33] Brizuela vs. Dingle, G.R. No. 175371, 30 April 2008.

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