

BENITO L. SANTOS, PETITIONER, VS. JUDGE FRANCISCO G. MENDIOLA, VICTOR P. PAGULAYAN AND JANETTE M. PAGULAYAN, RESPONDENTS.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Whether the amendment of information is tainted with grave abuse of discretion is the main issue in this petition for certiorari assailing the May 29, 2014 Order of the Regional Trial Court.

The facts are undisputed.

On September 12, 2013, accused Benito Santos was arraigned and pleaded “not guilty” to the charge of estafa under Article 315, par. 2(a) of the Revised Penal Code in relation to P.D. No. 1689.[1] His co-accused Paul Asuncion, PO2 Edward Celeste and PO2 Oliver Lim were all at large while Ma. Theresa Santos was already serving sentence for life imprisonment.

After pre-trial,[2] the Regional Trial Court motu proprio issued an Order dated May 29, 2014 directing the amendment of the information based on the resolution of the public prosecutor finding probable cause, thus:

On examination of the records of this case, an apparent conflict exists between the Information, which states that the crime committed is estafa, and the prosecution's Resolution, approved by the City Prosecutor, which states that the crime is syndicated estafa – undeniably, the accused here are five.

Thus, accused Benito Santos is directed to file his comment within five days from receipt of this Order to show why no warrant should issue for his arrest.

The Office of the City Prosecutor is also directed to amend the Information based on its Resolution.

SO ORDERED.[3] (Emphases Ours.)

Aggrieved, Santos moved for reconsideration[4] arguing that the amendment would upgrade the offense from simple estafa to syndicated estafa which cannot be done after arraignment. Nonetheless, the RTC denied the motion on the ground that there was only a formal amendment.[5] Hence, this petition for certiorari[6] with prayer for the issuance of a temporary restraining order raising the sole error that:

THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN IT ORDERED MOTU PROPIO THE CHANGE OF THE CHARGE FROM SIMPLE ESTAFA TO SYNDICATED ESTAFA.
xxx.[7]

On September 11, 2014,[8] this Court held in abeyance the action on the prayer for injunctive relief pending submission of the comment from the private respondents. However, no comment was filed, hence, the petition is now submitted for decision.

At the outset, it bears emphasis that the RTC ordered the amendment because of the apparent discrepancy as to the designation of the crime in the information and in the resolution of the fiscal finding probable cause. However,

when the information is carefully and thoroughly read, such conflict is revealed to be more illusory than real. First, the caption mentioned "FOR: ESTAFA (ART. 315 PAR. 2(a) of RPC in rel. to P.D. 1689)". Notably, the cited presidential decree increased the penalty for certain forms of swindling and other frauds which constitute economic sabotage when committed by a syndicate consisting of five or more persons.[9] Thus, it is immaterial and purposeless to specify the technical name or characterization of the crime as syndicated estafa, much less order the amendment of the information to reflect such change. Second, the real nature of the crime charged is determined by the actual recital of facts in the information and not from the caption nor from the designation of the provision of law alleged to have been violated.[10] Here, the body of the information sufficiently and satisfactorily apprised the accused of the acts and elements constituting the offense of syndicated estafa[11] for which he must be tried.

At any rate, the amendment is only a matter of form and did not alter or modify the crime charged. It did not in any way prejudice the rights and possible defenses of the accused.[12] As the RTC correctly pointed out, the amendment is "without change in the recital of facts constituting the offense charged or in the determination of the jurisdiction of the court." The idea that the charge would be upgraded from simple estafa to syndicated estafa came only from the accused. We reiterate, however, that there is no contradiction between the information and the resolution of the public prosecutor. The amendment to the crime charged would then be merely a superfluity and a meaningless surplusage.

Given these circumstances, it cannot be said that the RTC acted with grave abuse of discretion which refers to the arbitrary, capricious, whimsical, or despotic exercise of judgment.[13] At most, the RTC committed only a harmless error when it ordered the amendment brought by the confusion arising from the apparent conflict in the designation of the offense. Relevantly, an error of judgment is not correctible through the original special civil action of certiorari.[14]

FOR THESE REASONS, the petition is DISMISSED and the prayer for the injunctive relief is DENIED.

SO ORDERED.

Reyes, Jr., J.C., (Chairperson) and Inting, JJ., concur.

[1] Rollo, pp. 25-26.

[2] Id., pp. 27-28.

[3] Id., p. 22.

[4] Id., pp. 34-39.

[5] Id., pp. 23-24.

[6] Id., pp. 3-18.

[7] Id., p. 8.

[8] Id., pp. 44-45.

[9] See Section 1, P.D. No. 1689.

[10] See *People of the Philippines v. Escosio*, G.R. No. 101742, March 25, 1993. 220 SCRA 475; *Pilapil v. Sandiganbayan*, G.R. No. 101978. April 7, 1993.

[11] See *Galvez v. Court of Appeals*, G.R. No. 187919, February 20, 2013. The elements of syndicated estafa are: (a) estafa or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code is committed; (b) the estafa or swindling is committed by a syndicate of five or more persons; and (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "samahang nayan(s)," or farmers' associations or of funds solicited by corporations/associations from the general public.

[12] See *Draculan v. Donato*, 140 SCRA 425 (1985); *Teehankee v. Madayag*, 207 SCRA 134 (1992); *People v. Montenegro*, 159 SCRA 236 (1988); and *Almeda v. Villaluz*, 66 SCRA 38 (1975).

[13] *Senate Blue Ribbon Committee v. Majaducon*, G.R. No. 136760, July 29, 2003, 407 SCRA 356.

[14] See *Jamer v. National Labor Relations Commission*, 278 SCRA 632 (1997).

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