

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE
LEONARDO L. SERRANO, MUNICIPAL JUDGE OF PROSPERIDAD,
AGUSAN DEL SUR, AND FEDERICO P. LEGASPE, RESPONDENTS.**

G.R. No. L-44712. October 28, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition for certiorari and prohibition under Rule 65 of the Rules of Court, with prayer for a writ of preliminary injunction, to set aside the 24 September 1976 Order of respondent Judge issued in Criminal Case No. 1127 of the Municipal Court of Prosperidad, Agusan del Sur, denying the prosecution's motion to disqualify him from trying said case and to abate all further proceedings therein.

The petition is signed by then Provincial Fiscal Antonio Embang Apale of Agusan del Sur and Attorneys Vicente Galicia and Dollfuss Go, private prosecutors in Criminal Case No. 1127.

The factual and procedural antecedents of this case are as follows:

On 14 May 1976, a criminal complaint for grave coercion against Federico Legaspe (hereinafter referred to as Legaspe), then Administrative Officer of Agusan del Sur Provincial Hospital, was filed with the Municipal Court of Prosperidad, Agusan del Sur by one T/Sgt. Teodoro S. Magturtur, of the Philippine Constabulary, upon complaint of Dra. Paz A. Busa, Chief of said hospital, and other hospital personnel. The case was docketed as Criminal Case No. 1127.[1] The court took cognizance of the case in the exercise of its concurrent original jurisdiction over the offense charged.

On 10 June 1976, two (2) criminal complaints for separate acts of estafa through falsification of public documents involving Time Book and Payroll No. 251 and No. 457 of the Agusan del Sur Provincial Hospital were filed with the same court against Dra. Busa by Emilio P. Alinas, Sub-Station Commander of the Integrated National Police of Prosperidad, Agusan del Sur, upon complaint of Legaspe and other hospital personnel. The cases were docketed as Criminal Cases Nos. 1134 and 1135, respectively.[2]

Subsequently, on 1 July 1976, another criminal complaint, for estafa through falsification of a public document involving a daily time record, was filed with the above court against Legaspe by Sub-Station Commander Alinas, upon complaint of Dra. Busa. It is alleged therein that although Legaspe was absent on 25-26 September, he maliciously concealed and suppressed such absence by not indicating it in his daily time record, thereby enabling him to collect his salary for the full month of September. The case was docketed as Criminal Case No. 1148.[3]

The three (3) complaints for estafa were filed before respondent judge for preliminary investigation.

After conducting preliminary examinations in Criminal Cases Nos. 1134, 1135 and 1148, and while Criminal Case No. 1127 was still pending trial, respondent judge issued on 19 August 1976 a Resolution[4] in the four (4) cases wherein he:

(1) Claims that Criminal Case No. 1127 is "mentioned here for information of its pendency;"

(2) Prefaces his findings with the following opening paragraph:

"It is deducible from the filing of the above-entitled cases who are the principal protagonists (sic); obviously, these are charges and countercharges, an indication of an (sic) intramural wranglings among the hospital personnel and staff;"

(3) Rules that the acts of respondent Busa, in respect to the questioned payrolls in Criminal Cases Nos. 1134 and 1135, "are properly chargeable under the provisions of Section 3 (e) and (g) of Rep. Act. No. 3019, as amended, otherwise known as the Anti-Graft and Practices Act (sic), instead of Estafa thru Falsification of Public Documents," and indorses said cases to the Provincial Fiscal, or to the State Prosecutor who might be designated for the purpose, for further investigation or for whatever action he might take thereon; and

(4) Dismisses Criminal Case No. 1148, for the following reasons:

"Considering that this is a charge for falsification of a public document, e.g., Daily Time Record (C.S. Form 48), which is grave in nature, the officials of the hospital ought to have followed the Civil Service rules and regulations, that is, to let him explain his absence as respondent might be able to justify it and should he be unable to explain, his unjustified absence; (sic) if any, is chargeable to 'absence without leave' and 'without pay,' and it is incumbent upon the Chief of hospital to see that this is done.

'Aside from being drastic, the court cannot help but entertain the idea, in relation with the other case just mentioned (Crim. Case No. 1127), that this case is a superfluity as much as a harassment.'

For reasons advanced herein this case is ordered dismissed."

On 17 September 1976, Dra. Busa, through her counsel, Attys. Vicente Galicia and Dollfuss R. Go, filed a Motion for Clarification and/or Reconsideration of the Resolutions[5] based on the following grounds:

(1) The resolution contains baseless, unjustified and uncalled for statements casting aspersions on the integrity of counsel;

(2) Neither the Rules of Court nor the Judiciary Act, or even jurisprudence, justifies the making of a joint resolution in these unrelated cases; and

(3) The dismissal of Criminal Case No. 1148 is not justified whatsoever, either in law or in fact.

On 20 September 1976, Atty. Galicia, as private prosecutor, filed in Criminal Case No. 1127 a Motion for Disqualification[6] praying that respondent Judge inhibit himself in said case to dispel doubts as to his capacity to render a just decision therein. In support hereof, movant pointed out that in the aforesaid Resolution of 19 August 1976, Criminal Case No. 1127 was included in the caption and positively linked with respondent Judge's findings, particularly in Criminal Case No. 1148, although the latter is not inter-related with the subject matter of the former. Moreover, in said Resolution, respondent Judge "has unknowingly revealed that he has already formed his mind as to the outcome of" Criminal Case No. 1127 when he categorically stated:

"Aside from being drastic, the court cannot help but entertain the idea, in relation with the other case just mentioned (Crim. Case No. 1127) that this case is a superfluity as much as a harassment."

The motion for disqualification was heard during the trial of Criminal Case No. 1127 on 24 July 1976. Respondent Judge sustained the opposition of counsel for private respondent and denied said motion in open court.[7] Upon the movants' request, the order of denial was reduced into writing that same day. The written Order[8] denied the motion for disqualification "for not being meritorious."

Unable to accept the ruling of respondent Judge, the prosecution filed the instant petition on 5 October 1976, submitting therein the following grounds to justify issuance of the writs of certiorari and prohibition:

- (1) The statement of the respondent judge that Criminal Case No. 1127, like Criminal Case No. 1148, "is a superfluity as much as a harassment" casts doubt in the mind of the prosecution that they will be meted a fair and impartial judgment.
- (2) Although "partiality and prejudgment" is not among those enumerated as grounds for disqualification in Section 1, Rule 137 of the Rules of Court, the same could fall under "just and valid reasons other than those mentioned above" as provided in the last paragraph of said section.
- (3) While it is true that Section 2, Rule 137 of the Rules of Court provides that no appeal or stay of the proceedings shall be allowed whatever is the ruling of the judge on his competency, said restriction does not apply in criminal cases where the motion for disqualification was filed by the prosecution and the same was denied, the reason being, in the event of acquittal, the prosecution has no remedy available as double jeopardy will set in.
- (4) Under Section 17 of the Judiciary Act, the Supreme Court has concurrent jurisdiction with the Regional Trial Courts to issue writs of certiorari and prohibition against inferior courts. As the judge of then Court of First Instance of Agusan del Sur was on leave and his substitute, the judge of then Court of First Instance of Surigao del Sur, reported only on the first and third weeks of every month on Mondays and Tuesdays, there was serious doubt as to any immediate action on this kind of petition.
- (5) Petitioner did not file a motion for reconsideration anymore in view of the fact that the grounds that would be raised therein were already stated in the motion for disqualification and the issues were discussed lengthily in the oral arguments. Moreover, a motion for reconsideration may be dispensed with in this case due to the urgency of the writs and because the question raised is purely one of law.[9]

On 6 October 1976, We issued a Temporary Restraining Order enjoining respondent Judge from further proceeding with Criminal Case No. 1127, and ordered respondents to file their respective comments to the petition.[10] Respondent Judge filed his Comment on 28 October 1976[11] wherein, on the main issue of disqualification on the ground of partiality and prejudgment of Criminal Case No. 1127 by reason of its inclusion in the questioned 19 August 1976 Resolution, he argued that while it is true that Criminal Case No. 1127 was mentioned in his discussion of Criminal Case No. 1148, "the expression or phrase 'superfluity as much as harassment' thereunder does not refer to Criminal Case No. 1127 but rather to Criminal Case No. 1148 which is the topic under discussion." [12]

Then on 17 February 1977, respondent Judge filed by mail a Motion to Dissolve the Restraining Order,[13] dated 16 February 1977, alleging therein that complainants in Criminal Case No. 1127 executed an affidavit of desistance on the basis of which the Station Commander of Prosperidad, Agusan del Sur filed a motion to dismiss said case and praying that he be allowed to act on said motion to dismiss. We required the petitioner to comment on the motion.[14]

On 15 April 1977, private respondent filed by mail a Compliance to the Resolution of 6 October 1976 wherein, for reasons therein stated, he requested that he be allowed to adopt the answer of respondent Judge as his own.[15] We required private respondent's counsel to comply with the 6 October 1976 Resolution.[16]

In its Comment[17] filed on 20 May 1977 in compliance with the Resolution of 7 March 1977, petitioner, through the Office of the Solicitor General, interposed a vigorous opposition to the motion to dissolve the restraining order on the following rounds:

- (1) The motion to dismiss Criminal Case No. 1127 was filed by police officer Agustin Dancalan without

authority. The Provincial Fiscal, Antonio Embang Apale, had already intervened in the case, having filed the petition for certiorari and prohibition. In *People vs. Bariales* (L-39962, 3 March 1977), the Supreme Court held that while under Section 2, Rule 110 of the Rules of Court, police, constabulary and other peace or law enforcement officers and private prosecutors may prosecute criminal cases in municipal and city courts which do not have their own fiscals, such authority, however, ceases upon intervention of the provincial fiscal or their assistants or upon the elevation of the case to the Court of First Instance (now RTC).

(2) In any case, respondent judge has actually prejudged Criminal Case No. 1127 and further proceedings therein conducted by him will only prejudice the interest of the State.

(3) The authenticity of the motion to dismiss as well as the joint affidavit of desistance by the two complainants is "not indubitable."

On 28 June 1977, private respondent filed a Compliance, dated 25 June 1977,[18] wherein he reiterated his request to be relieved from filing an answer (comment) to the instant petition and instead be allowed to adopt the answer (comment) of respondent Judge as his own. Acting thereon, We decided to consider private respondent's compliance as comment to this petition and required petitioner to file a reply thereto,[19] which the latter complied with on 15 March 1978.[20]

In Our Resolution of 15 March 1978,[21] We denied respondent Judges's motion to dissolve the restraining order.

On 10 May 1978, We resolved to consider respondents' Comment as Answer to the petition and to consider the case submitted for decision.[22]

The petition is impressed with merit.

Disqualification of judges is governed by Rule 137 of the Rules of Court. Section 1 thereof reads:

"SECTION 1. Disqualification of judges. - No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just and valid reasons other than those mentioned above."

The first paragraph refers to mandatory disqualification and necessarily excludes the exercise of discretion. The second paragraph refers to permissive disqualification and leaves the matter of disqualification to the sound discretion of the judge.

It may be true that none of the grounds for mandatory disqualification appear to exist in the instant case. Petitioner, however, claims that respondent Judge's "partiality and prejudgment would fall under 'just and valid reasons' under the second paragraph of the aforesaid Section 1 of Rule 137." Since respondent Judge denied the motion to disqualify on that ground, the issue that necessarily crops up for Our determination is whether or not a judge against whom none of the specific grounds for mandatory inhibition exists and who refuses to voluntarily inhibit himself may, nevertheless, be disqualified from sitting in or acting on a case. The issue is not one of first impression. A number of cases have firmly established the affirmative view of this Court on the ground of due process. In *Gutierrez vs. Santos, etc., et al.*,[23] this Court held:

"Petitioner invoking the provisions of section 1, Rule 126 of the Rules of Court, argues that the case of the respondent judge does not fall under any one of the grounds for the disqualification of judicial officers stated

therein. Assuming arguendo that a literal interpretation of the legal provision relied upon justifies petitioner's contention to a certain degree, it should not be forgotten that, in construing and applying said legal provision, we cannot disregard its true intention nor the real ground for the disqualification of a judge or judicial officer, which is the impossibility of rendering an impartial judgment upon the matter before him. It has been said, in fact, that due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge (30 Am. Jur. p. 767). Moreover, second only to the duty of rendering a just decision, is the duty of doing it in a manner that will not arouse any suspicion as to its fairness and the integrity of the Judge. Consequently, we take it to be the true intention of the law -- stated in general terms -- that no judge shall preside in a case in which he is not wholly free, disinterested, impartial and independent (30 Am. Jr. Supra) because -?

'x x x However upright the judge, and however free from the slightest inclination but to do justice, there is peril of his unconscious bias or prejudice, or lest any former opinion formed ex parte may still linger to affect unconsciously his present judgment, or lest he may be moved or swayed unconsciously by his knowledge of the facts which may not be revealed or stated at the trial, or cannot under the rules of evidence. No effort of the will can shut out memory; there is no art of forgetting. We cannot be certain that the human mind will deliberate and determine unaffected by that which it knows, but which it should forget in that process.' x x x (Ann. Cas. 1917A, p. 1235)."

In *Luque vs. Kayanan*,^[24] where "Petitioner and the respondent judge are really at loggerheads with each other; hostility runs deep," this Court, despite the absence of any grounds for disqualification, prohibited him from sitting in a case, holding:

"All suitors, we must say, are entitled to nothing short of the cold neutrality of an independent, wholly-free, disinterested and impartial tribunal. It has been said that 'next in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge.' Let it not be said that the administration of justice in this country suffers from too many human imperfections. To our mind, respondent judge should inhibit himself since it has become apparent that his further continuance in Case 4871 would not be in the best interest of justice, which he is bound to serve.

x x x

In the circumstances presented, we are constrained to state that respondent's taking cognizance of said case does not square with our sense of justice. It is to be stressed once again that parties have a right to have their cases tried fairly by an impartial tribunal."

In *Paredes, et al. vs. Gopengco, et al.*,^[25] this Court stated:

"While technically the law firm headed by former Senator Quintin Paredes was not the counsel of record in the malicious mischief case, and petitioner judge thus ruled that he was not disqualified by reason of relationship of counsel, it is nevertheless admitted that said law firm was the counsel of petitioner Villegas during the preliminary investigation in the fiscal's office, but withdrew from the case when it was assigned by raffle to the branch prescribed (sic) by petitioner judge. On the other hand, respondents assert that said law firm 'is the retained and continuing private counsel and/or lawyers' of petitioner Villegas x x x. Without in any way casting any reflection on the fairness and integrity of petitioner judge, but considering the circumstances of the case and that the City Court of Manila has several other branches to whom the case may be reassigned by raffle, it is the Court's view that it is in the best interests of justice if petitioner judge should inhibit himself from proceeding with the hearing of the case."

In *Mateo, et al. vs. Villaluz, et al.*,^[26] We ruled:

"x x x There is thus respectable authority for the view that with the possibility of a trial being tainted by

partiality, this Court can step in to assure respect for the demands of due process.

'4. Petitioners can assert then, and rightly so, that we have the power to set aside the order denying the motion for disqualification. While the discretion in the first instance belongs to respondent Judge, its exercise is subject to our corrective authority. Certainly, there can be no question as to its being considered abused if it can be shown that to refuse inhibition is to cast doubts as to a court's impartiality.'"

In *Castillo, et al. vs. Juan*,[27] where this Court disqualified a judge from further hearing the cases, We held:

"1. In every litigation, perhaps much more so in criminal cases, the manner and attitude of a trial judge are crucial to everyone concerned, the offended party, no less than the accused. It is not for him to indulge or even to give the appearance of catering to the at-times human failing of yielding to first impressions. He is to refrain from reaching hasty conclusions or prejudging matters. It would be deplorable if he lays himself open to the suspicion of reacting to feelings rather than to facts, of being imprisoned in the net of his own sympathies and predilections. It must be obvious to the parties as well as the public that he follows the traditional mode of adjudication requiring that he hear both sides with patience and understanding to keep the risk of reaching an unjust decision at a minimum. It is not necessary that he should possess marked proficiency in law, but it is essential that he is to hold the balance true. What is equally important is that he should avoid any conduct that casts doubt on his impartiality. What has been said is not merely a matter of judicial ethics. It is impressed with constitutional significance. As set forth in *Mateo Jr. v. Villaluz*,[28] 'It is now beyond dispute that due process cannot be satisfied in the absence of that degree of objectivity on the part of a judge sufficient to reassure litigants of his being fair and being just. Thereby there is the legitimate expectation that the decision arrived at would be the application of the law to the facts as found by a judge who does not play favorites. For him, the parties stand on equal footing. x x x'."

In *Martinez vs. Gironella*,[29] where this Court granted the petition for prohibition, We declared:

"As to the second issue: A Judge has the duty not only to render a just and impartial decision, but also render it in such a manner as to be free from any suspicion as to its fairness and impartiality, and also as to the judge's integrity. While we grant respondent's capacity to render a just and impartial decision, his statement in the decision acquitting Arnold Bayongan to the effect that the 'crime was committed by Cresencio Martinez' renders it impossible for respondent to be free from the suspicion that in deciding petitioner's case, respondent will be biased and prejudiced. We therefore hold that under these circumstances petitioner has the right to have his case decided by another Judge."

In the recent case of *Fecundo vs. Berjamen, et al.*,[30] this Court ruled:

"x x x A spotless dispensation of justice requires not only that the decision rendered be intrinsically fair but that the judge rendering it must, at all times, maintain the appearance of fairness and impartiality. His language, both written and spoken, must be guarded and measured, lest the best of intentions be misconstrued.

To erase any doubt whatsoever as to the judge's bias and/or prejudice against petitioner in Election Case No. M-944, the Court believes it prudent and better to serve the ends of justice to transfer the said case to Branch 21, Mambusao, Capiz, presided over by the newly appointed Judge thereof, Julius L. Abella."

In the instant case, We do not hesitate to decide that the actuations of the respondent Judge legitimately and justly engendered suspicions and doubts as to his fairness and ability to decide Criminal Case No. 1127 with the cold neutrality of an impartial judge. He has demonstrated bias and partiality in favor of the accused in said case, private respondent Federico Legaspe, as eloquently demonstrated by the following facts:

1. Although Criminal Case No. 1127 was before him for trial on the merits and he had already started receiving evidence therein, and despite absence of any incident which could justify its consideration with Criminal Cases Nos. 1134, 1135 and 1148, he *motu proprio* included it in both the caption and body of his Resolution of 19

August 1976. Its inclusion has absolutely no legal, factual and procedural basis since the other three (3) cases were before him solely for preliminary investigation and the Resolution was for said cases. His claim that Criminal Case No. 1127 "is mentioned" in the resolution "for information of its pendency" is a clever ploy to hide his real purpose of linking it with the other cases and to thereafter justify his dismissal of Criminal Case No. 1148 on the ground that:

"Aside from being drastic, the court cannot help entertain the idea, in relation with the other case just mentioned (Criminal Case No. 1127), that this case is a superfluity as much as a harassment."

In short, he has concluded that Legaspe is a victim of harassment and that Criminal Case No. 1148 should not have been filed at all in view of Criminal Case No. 1127; hence, according to him, the former is a "superfluity." Yet, respondent Judge is fully aware of the fact that the offended parties in Criminal Case No. 1127 are not the offended parties in Criminal Case No. 1148. Moreover, the former is for Grave Coercion while the latter is for Estafa thru Falsification of Public Documents. His ratiocination that the words harassment and superfluity refer to Criminal Case No. 1148 and not Criminal Case No. 1127 is a lame excuse which does not detract from the fact that insofar as he is concerned, Legaspe is a victim of harassment.

2. He dismissed Criminal Case No. 1148 solely on the ground that:

"Considering that this is a charge of falsification of a public document, e.g., Daily Time Record (C.S. Form 48), which is grave in nature, the officials of the hospital ought to have followed the civil service rules and regulations, that is, to let him explain his absence as respondent might be able to explain, his unjustified absence; (sic) if any, is chargeable to 'absence without leave' and 'without pay,' and it is incumbent upon the Chief of hospital to see that this is done."

We are not aware any provision in the Civil Service Decree (P.D. No. 807) or of any Civil Service rule or regulation which requires that before a criminal action for falsification of a daily time record may be instituted, the respondent should first be made to explain his unjustified absence. Interestingly, the Resolution of the respondent Judge does not even state that Legaspe offered evidence to prove that he was not absent on the questioned dates or that the entries in his daily time record are true and correct. Upon the other hand, evidence was presented by the complainant that Legaspe was in fact absent on 25-26 September 1975.

3. Despite the pendency of this case, respondent Judge had the temerity to file a Motion To Dissolve the Restraining Order, issued by this Court on 6 October 1976, on the ground that the offended parties in Criminal Case No. 1127 had executed an affidavit of desistance and the Station Commander of Prosperidad, Agusan del Sur had filed the corresponding motion to dismiss the case. Respondent Judge knows, or ought to know; that as stated in the opposition of the Solicitor General adverted to above, the Station Commander had no authority to file the motion to dismiss since the Office of the Provincial Fiscal already intervened in the case;^[31] moreover, the affidavit of desistance of complaining witnesses merely stated that after a careful, thorough and deliberate consideration of all the facts and circumstances that led to the filing of said case, they have come to a reasonable conclusion that there is no reason to pursue said case against Legaspe. They did not state that they have no case against Legaspe. Besides, under the circumstances, it should have been the accused therein, private respondent Legaspe, who should have taken the initiative of filing the motion. In short, respondent Judge took the cudgels for said accused. It is then palpably clear that the former was in a hurry to dismiss Criminal Case No. 1127.

What this Court stated thirty-two (32) years ago in *Pimentel vs. Salanga*^[32] bears repeating here to remind judges of the norm and standard they must adopt and pursue when their capacity "to try and decide cases fairly and judicially" comes to the fore:

"A judge may not be legally prohibited from sitting in litigation. But when suggestion is made of record that he

might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstance reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decisions to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice."

While We are exacting on the conduct of judges confronted with motions for their disqualification, We cannot, however, tolerate acts of litigants who, for any conceivable reason, seek to disqualify a judge for their own purpose, under a plea of bias, hostility, prejudice or prejudgment. We have earlier ruled that this Court does not approve of the tactic of some litigants of filing baseless motion for disqualification of the judge as means of delaying the case and/or of forum-shopping for a more friendly judge.[33] Neither is the mere filing of an administrative case against a judge 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." [34]

Mere suspicion that a judge is partial to the accused is not enough. There should be evidence to prove the charge.[35]

We also agree with petitioner's contention that the rule laid down in Section 2 of Rule 137 of the Rules of Court[36] that no appeal shall stay or shall be allowed from a determination by the judge of his competency after a motion to disqualify him has been filed until after final judgment in the case does not apply in criminal cases where such motion is filed by the prosecution or the offended party. The reason for this is so obvious. As We held in *Paredes vs. Gopengco*[37] "where the prosecution or offended party seeks the disqualification of the trial judge on one of the grounds expressly provided therefor, and the trial judge decides in favor of his own competency, proceeds to try the case and renders a verdict of acquittal, they (sic) evidently would have no right to appeal in such an event. Neither would they have any plain, speedy or adequate remedy in the ordinary course of law to have a trial judge's adverse ruling on the motion to disqualify him reviewed on appeal together with the judgment on the merits, as envisaged in the Rule, since no appeal from the judgment of acquittal could possibly be taken by the prosecution by virtue of the double jeopardy provision of the Constitution."

WHEREFORE, IN THE LIGHT OF THE FOREGOING, the instant Petition is hereby GRANTED. Respondent Judge is hereby DISQUALIFIED to try, hear and decide Criminal Case No. 1127 and his Order of 24 September 1976 in said case is SET ASIDE and DECLARED VOID.

The Temporary Restraining Order issued on 6 October 1976 is MADE PERMANENT.

No pronouncement as to costs.

IT IS SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Bidin, and Romero, JJ., concur.

- [1] Annex "A" of Petition; Rollo, 13-14.
- [2] Annexes "B" and "B-1" of Petition; Id., 28-31.
- [3] Annex "C" of Petition; Rollo, 32-33.
- [4] Annex "D" of Petition; Id., 34-42.
- [5] Annex "E" of Petition; Rollo, 43-58.
- [6] Annex "F" of Petition; Rollo, 59-62.
- [7] Id., 6.
- [8] Id., 63.
- [9] Rollo, 7-10.
- [10] Id., 66.
- [11] Id., 72-79.
- [12] Id., 78; underscoring supplied.
- [13] Id., 86-89.
- [14] Resolution of 7 March 1977; Rollo, 92.
- [15] Id., 99-100.
- [16] Resolution of 17 May 1977; Id., 110.
- [17] Id., 112-118.
- [18] Resolution of 3 August 1977; Rollo, 121.
- [19] Id., 123.
- [20] Id., 156-169.
- [21] Id., 155.
- [22] Id., 174.

[23] 2 SCRA 249.

[24] 29 SCRA 165.

[25] 29 SCRA 688.

[26] 50 SCRA 19.

[27] 62 SCRA 124.

[28] Citing Mateo vs. Villaluz, 50 SCRA 18.

[29] 65 SCRA 245.

[30] 180 SCRA 235.

[31] Section 5, Rule 110, Rules of Court.

[32] 21 SCRA 160.

[33] Licas vs. Garduque, Adm. Matter No. MTJ-89-276, 13 February 1990.

[34] Aparicio vs. Andal, 175 SCRA 569.

[35] Beltran vs. Garcia, 41 SCRA 175.

[36] Said Section 2 provides:

"Section 2. Objection that judge disqualified, how made and effect. – If it be claimed that an official is disqualified from sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in the case."

[37] Supra., footnote no. 25. See also Geotina vs. Gonzalez, 41 SCRA 66.

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