

ARNOLD VEGAFRIA, PETITIONER, VS. JUDGE CATALINO CASTAÑEDA, JR., PRESIDING JUDGE, BR. 17, RTC, MANILA, RONILO A. AZARRAGA, ASST. CITY PROSECUTOR OF MANILA, AND CARLOS V. DE GUZMA...

G.R. No. 106522. October 23, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

The legal consequence of the provisional dismissal of a criminal case, based on an Affidavit of Desistance executed by the complaining witness, is the crux of this petition for certiorari and prohibition.

On 27 May 1991, an Information charging petitioner Arnold Vegafria with violation of B.P. 22 was filed before the Regional Trial Court of Manila, docketed as Crim. Case No. 91-95052,[1] and subsequently raffled to Branch 17 presided by respondent Judge Catalino Castaneda, Jr.

On 4 December 1991, on the basis of an Affidavit of Desistance executed by private respondent Carlos V. De Guzman, the complaining witness, stating inter alia that he misapprehended the facts surrounding the issuance of the subject check, preceded by a Memorandum of Agreement signed by him and accused-petitioner, respondent Judge issued an order provisionally dismissing the criminal case.[2]

More than six (6) months later, or on 17 June 1992, private respondent De Guzman moved to revive the criminal action alleging that “only recently, upon re-examination of the records, it appears that there was in fact no error in accounting and that the accused has not fully paid the amount due on the dishonored check contrary to what was earlier thought”.[3] Quite obviously, petitioner did not satisfy the terms of his undertaking.

Meanwhile, pending resolution of the incident, petitioner filed an “Urgent Motion for Permission to Depart for the United States.”

On 4 August 1992, respondent Judge granted the motion of private respondent for the reinstatement of Crim. Case No. 91-95052, and on 6 August 1992 denied his urgent motion for leave to go abroad for the reason that his case was already revived. Hence, this petition.

Petitioner principally argues that the provisional dismissal of his case operated as an acquittal on the merits since its basis was the Affidavit of Desistance executed by private respondent. Therein, the latter admitted that he misapprehended the facts surrounding the issuance of the check; that there was an error in accounting, and that he was no longer interested in pursuing the case. These unequivocal declarations, petitioner contends, made it impossible for the prosecution to prove his guilt beyond reasonable doubt, hence, the motion for the provisional dismissal of the case was inevitable.

We do not agree. The order of respondent Judge issued 4 December 1991 stresses in no uncertain terms that the dismissal of the case was provisional, i.e., the case could be revived at some future date. Thus -

“Lastly, the accused also took the witness stand and declared that he was agreeable to the provisional dismissal of this criminal case. The Court then informed the accused of the nature of a provisional dismissal, i.e., that such dismissal could mean a possible revival of this criminal action against him. Despite this explanation, the accused insisted on his conformity to the provisional dismissal of the same” (underscoring ours).[4]

If petitioner believed that the case against him should be dismissed with prejudice he should not have agreed to a provisional dismissal. He should have pressed for a dismissal with prejudice, or invoked his constitutional right to a speedy trial so that the court would have no alternative but to require the prosecution to present its evidence, otherwise, the case would be dismissed with prejudice. But, instead of assuming this stance, petitioner even took the witness stand and expressly agreed to the provisional dismissal of the case. In fact, as reflected in the order in question, the court explicitly informed him of the nature of a provisional dismissal, which could mean a possible revival of the case against him. Since the case was dismissed provisionally with his conformity, petitioner as accused therein cannot thereafter invoke double jeopardy upon revival of the case.[5]

Moreover, the Affidavit of Desistance on which was based the provisional dismissal of the case was not the product of precipitate move but the direct consequence of the Memorandum of Agreement of the parties. Significantly, it may be noted that the Affidavit of Desistance was executed on 4 December 1991, while the Memorandum of Agreement was submitted two (2) days earlier. By the very terms of the Memorandum of Agreement, it appears that private respondent was induced to provisionally withdraw his complaint because petitioner represented that he would liquidate all his obligations with the former through the covenants set forth therein not later than 30 May 1992.[6] Petitioner apparently failed to settle his obligations on the due date. Thus, the reinstatement of the criminal complaint against him. Definitely, it is unfair for petitioner to renege on his commitment which was the *raison d'etre* for the provisional dismissal of his case.

WHEREFORE, there being no abuse of discretion, much less grave, committed by respondent Judge in issuing his questioned Orders of 4 August 1992 and 6 August 1992, which We here AFFIRM, the instant petition is DISMISSED for utter lack of merit.

SO ORDERED.

Padilla, Griño-Aquino, and Medialdea, JJ., concur.
Cruz, J., (Chairman), on leave.

[1] Petition, Annex “D”.

[2] *Ibid.*, Annex “G”.

[3] *Ibid.*, Annex “H”.

[4] Rollo, p. 40.

[5] See *Que v. Cosico*, G.R. No. 81861, 8 September 1989; 177 SCRA 410.

[6] *Ibid.*, p. 49.

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