

**EDWARD T. MARCELO, DIONILO D. MARFIL, CELIA C. CABURNAY,
AND DANIEL T. PASCUAL, PETITIONERS, VS. THE COURT OF
APPEALS, THE PEOPLE OF THE PHILIPPINES, HON. PEDRO T.
SANTIAGO, IN ...**

G.R. No. 106695. August 04, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The issue in this case is whether a pre-arraignment dismissal of a criminal case by the trial court, which relied on the reversal by the Review Committee of the Office of the City Prosecutor of the investigating prosecutor's resolution to file the information, bars the filing of a new information for the same offense after the Secretary of Justice reversed the resolution of the review committee.

This case was originally assigned to the Third Division but was referred to the Court en banc in view of the novelty and importance of the issue.

The procedural antecedents of this case, as disclosed by the original records of Criminal Case No. Q-91-21285[1] and Criminal Case No. Q-92-28104, which we required to be transmitted to this Court, as well as that of the Court of Appeals in CA-G.R. SP No. 27681, are herein set forth.

In a complaint-affidavit sworn to on 18 March 1991 and filed with the Office of the City Prosecutor of Quezon City, Jose T. Marcelo charged the petitioners with falsification of public documents committed by forging the signature of Jose P. Marcelo, Sr. in six voting trust agreements (VTA's).[2] Submitted in support of the affidavit-complaint were the findings of the National Bureau of Investigation (NBI) and of the PC/PNP Crime Laboratory that the signature on the VTA's purporting to be that of Jose P. Marcelo, Sr. and the specimen or standard signature of the latter were not written by one and the same person. The VTA's[3] were purportedly executed in Quezon City and acknowledged before petitioner Dionilo Marfil, a notary public.

After conducting a preliminary investigation, Assistant City Prosecutor Domingo Israel found "more than sufficient evidence" of the forgery of the signature of Jose P. Marcelo, Sr., as "found and concluded by two (2) national police agencies, the NBI and PCCL," and recommended the filing of the case in court.[4]

On 30 May 1991, an information for falsification of public documents was filed with the Regional Trial Court (RTC) of Quezon City, docketed as Criminal Case No. Q-91-21285, and raffled to Branch 96[5] thereof (hereinafter Bersamin court).

On 6 June 1991, the petitioners filed with the Office of the City Prosecutor of Quezon City a Motion for Review seeking the deferment of the filing of the information -- or if one had been filed, the suspension of the criminal proceedings -- and the reversal of the Israel resolution.[6]

On 10 June 1991, warrants for the arrest of the petitioners were issued,[7] and all of them except Edward Marcelo

posted bail.[8] Marcelo surrendered to the court and posted bail on 29 July 1991.[9]

On 13 June 1991, the petitioners, in a Manifestation and Motion, informed the Bersamin court of the filing of their Motion for Review and prayed that further proceedings in the case be suspended until the resolution of the Motion for Review.[10]

On 14 June 1991, Assistant City Prosecutor Enrico Bringas, the prosecutor assigned to the case, filed a motion to defer the arraignment until the resolution of the Motion for Review,[11] which the Bersamin court granted in its Order of 10 July 1991. The Bersamin court, however, reset the arraignment to 28 August 1991.

Then, on 27 August 1991, the petitioners filed an urgent motion to defer the arraignment on 28 August 1991 until the resolution of their Motion for Review.[12] Acting thereon, and over the vigorous opposition of the private prosecutor, Judge Bersamin issued an order on 28 August 1991[13] resetting the arraignment to 8 October 1991 and directing the City Prosecutor of Quezon City “to conclude the pending review of the resolution of the filing Prosecutor Domingo Israel and to render a report of the results of the review on or before” 8 October 1991.

Believing that no resolution on the Motion for Review would be released before 8 October 1991 and considering that petitioner Marcelo was abroad, the petitioners filed on 3 October 1991 a motion for the cancellation of the arraignment on 8 October 1991 and for its resetting to “early November 1991.”[14]

There is no showing that this motion was acted upon. The records of Criminal Case No. Q-91-21285 were thereafter destroyed by a fire on 16 October 1991 but were subsequently reconstituted on 9 December 1991.[15]

On 15 November 1991, the Review Committee handed down a resolution,[16] approved by Acting City Prosecutor Lydia Navarro on 29 November 1991, recommending the reversal of the Israel resolution and the withdrawal of the information in Criminal Case No. Q-91-21285. Then on 5 December 1991, the petitioners filed a Manifestation and Motion informing the Bersamin court of the reversal and praying for the dismissal of the case.[17] This was followed on 10 December 1991 by the motion of Assistant City Prosecutor Conrado M. Jamolin which prayed for the withdrawal of the information in Criminal Case No. Q-91-21285 because of the resolution of the review committee.[18] The private prosecutor opposed this motion.[19]

In the meantime too, specifically on 10 December 1991, the private complainant filed with the Secretary of Justice an appeal from the 15 November 1991 resolution of the Review Committee.[20]

On 13 December 1991, Judge Bersamin, agreeing with the findings and conclusions of the Review Committee, issued an order,[21] the dispositive portion of which reads:

“ACCORDINGLY, the Motion to Dismiss of the accused and the Motion to Withdraw Information of the public prosecutor are hereby granted and this case is hereby dismissed without costs.”

On 27 January 1992, then Secretary of Justice Silvestre R. Bello III handed down a resolution granting the complainant’s appeal, reversing the 15 November 1991 Resolution of the Review Committee, and ordering the filing of a new information.[22]

The new information,[23] signed by Assistant City Prosecutor Ralph Lee, was filed on 5 February 1992 pursuant to the resolution of Secretary Bello, docketed as Criminal Case No. Q-92-28104, and then raffled to Branch 101 presided over by Judge Pedro Santiago (hereinafter Santiago court) of the RTC of Quezon City. The petitioners posted bail.[24] Thereafter, the following incidents took place in the said case:

1. On 3 March 1992, the petitioners filed a Motion to Quash the Information on the ground that the dismissal of Criminal Case No. Q-91-21285 was already final and that the appeal subsequently taken by the private prosecutor to and the resolution thereon by the Secretary of Justice are null and void and cannot be a valid basis for any

authority to file the new information or for the court to acquire jurisdiction over the case.[25]

2. On 20 March 1992, Judge Santiago issued an order denying the motion to quash on the principal ground that it was not based on any of the grounds enumerated in Section 3, Rule 117 of the Rules of Court.[26]

3. On 1 April 1992, the petitioners filed a motion to reconsider the 20 March 1992 Order alleging therein that their motion to quash was based on the ground that the officer who filed the information had no authority to do so and had acted pursuant to an order of the Secretary of Justice which is void for having been given without or in excess of jurisdiction under the doctrine laid down in *Crespo vs. Mogul*[27] that the Secretary of Justice cannot interfere with the trial court's disposition of a criminal case after it had taken cognizance thereof.[28]

4. On 2 April 1992, Judge Santiago denied the motion to reconsider and reset the arraignment to 7 April 1992.[29]

Thus, the petitioners filed with the Court of Appeals on 3 April 1992 a special civil action for certiorari to set aside the order of the Santiago court denying the motion to quash, which was docketed as CA-G.R. SP No. 27681. They alleged therein that the "respondent Judge evaded his positive legal duty when he disregarded the consistent rulings of the Honorable Supreme Court that once an information has already been filed in court, the court acquires complete jurisdiction over the case and the Secretary of Justice may no longer interfere with the court's disposition of the case." [30]

In its decision of 11 June 1992,[31] the Court of Appeals denied due course to the petition. It found it to be "devoid of merit" because

"certiorari and prohibition are not the correct remedies against an order denying a motion to quash. The defendant should instead, go to trial without prejudice on his part to present the special defenses he had invoked in his motion and, if after trial on the merits, an adverse decision is rendered to appeal therefrom in the manner authorized by law." [32]

In the meantime, however, the Santiago court, not having been enjoined by the Court of Appeals, continued with the proceedings in Criminal Case No. Q-92-28104. On 7 April 1992, it arraigned petitioners Caburnay, Pascual, and Marfil, entered a plea of not guilty for them, and reset the arraignment of petitioner Edward T. Marcelo, who was then abroad, to 28 April 1992.[33] On the latter date, Marcelo was arraigned and a plea of not guilty was entered for him.[34] Subsequently, the court received the testimonies of the following witnesses for the prosecution: Jose Marcelo, Jr., who testified on direct examination and cross-examination on 9 June 1992, 16 June 1992, and 14 July 1992; Emmanuel Guzman, who testified on 23 July 1992, 10 August 1992, and 20 August 1992; Aida Gaetos, who testified on 10 August 1992; and Francisco Cruz, Lita Wells, Evelyn M. Eugenio, and Helier Penaranda, who testified on 13 August 1992.

On 31 August 1992, the Court of Appeals denied the petitioners' motion to reconsider the decision of 11 June 1992.[35]

Hence, the instant petition which reiterates the grounds and the arguments raised before the Court of Appeals.

The petition is without merit.

The Court of Appeals correctly dismissed the petitioners' special civil action for certiorari not necessarily for the reason it relied upon, i.e., "certiorari and prohibition are not the correct remedies against an order denying a motion to quash," but because the Santiago court did not act without or in excess of jurisdiction or with grave abuse of discretion in denying the motion to quash. It is settled that if a court, in denying the motion to quash (or a motion to dismiss), acts without or in excess of jurisdiction or with grave abuse of discretion, certiorari or prohibition lies.[36]

The denial by the Santiago court of the motion to quash suffers from no fatal infirmity. The petitioners' contention that the prosecutor did not have the authority to file the information because he acted upon an order of the Secretary of Justice which is void in the light of *Crespo vs. Mogul*[37] is untenable. In the *Crespo* case, this Court ruled:

"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.

In order therefor[e] to avoid such a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court. The matter should be left entirely for the determination of the court." [38]

Nothing in the said ruling forecloses the power or authority of the Secretary of Justice to review resolutions of his subordinates in criminal cases. The Secretary of Justice is only enjoined to refrain as far as practicable from entertaining a petition for review or appeal from the action of the prosecutor once a complaint or information is filed in court. In any case, the grant of a motion to dismiss, which the prosecution may file after the Secretary of Justice reverses an appealed resolution, is subject to the discretion of the court.

Insofar as this case is concerned, the procedure on appeals from the resolution of the investigating prosecutor (which was duly approved by the Office of the City Prosecutor of Quezon City) as well as that from the resolution of the Review Committee was governed by Department Circular No. 7, dated 25 January 1990, of the Department of Justice. This was superseded by Department Order No. 223, dated 30 June 1993. Pursuant to Section 1 of Department Circular No. 7, only resolutions of the Chief State Prosecutor, the Regional State Prosecutor, and the Provincial or City Prosecutor dismissing a criminal complaint may be appealed to the Secretary of Justice, except as otherwise provided in Section 4 thereof. Under the latter, a resolution of the aforesaid prosecutors finding probable cause may be appealed only upon a showing of manifest error or grave abuse of discretion; however, even with such showing, the appeal shall not be entertained if the appellant had already been arraigned, and if the arraignment took place during the pendency of the appeal, the appeal shall be dismissed *motu proprio* by the Secretary of Justice.

In this case, the petitioners did not at once appeal to the Secretary of Justice from the resolution of Assistant Prosecutor Israel. Instead, they initially filed the Motion for Review.

From the foregoing antecedents, it is clear that the Bersamin court knew and took cognizance of the Motion for Review, deferred the arraignment of the accused until the resolution of the said motion, and even directed the Office of the City Prosecutor "to conclude the pending review ... and to render a report of the results of the review on or before" 8 October 1991. In thus recognizing and allowing the Motion for Review, the Bersamin court deferred to the authority of the prosecution arm of the government to resolve with finality the issue of whether or not the information should have been filed. The Review Committee's resolution was of course not final because under Department Circular No. 7 both the offended party and the petitioners could still appeal therefrom to the Secretary of Justice under Section 1 and Section 4 thereof. The Bersamin court knew or was expected to know,

since it had to take judicial notice of Department Circular No. 7, that the resolution of the Review Committee was not final. The offended party had, in fact, appealed from the said resolution to the Secretary of Justice on 10 December 1991.

Consequently, the 5 December 1991 Manifestation and Motion of the petitioners praying for the dismissal of the case and the 10 December 1991 motion of Assistant City Prosecutor Jamolin asking for the withdrawal of the information were prematurely filed, because as to the first, the period of the offended party to appeal from the resolution to the Secretary of Justice had not yet lapsed or even begun, there being no showing of the date the offended party received a copy thereof; and, as to the second, an appeal had in fact been filed on 10 December 1991. Prudence, if not wisdom or at the very least respect for the authority of the prosecution agency to which the Bersamin court deferred, dictated against a favorable action on the Review Committee's resolution until the denial of the appeal or the affirmance of the resolution by the Secretary of Justice. The Bersamin court acted then with precipitate or undue haste in issuing the 13 December 1991 Order granting the petitioners' motion to dismiss and Prosecutor Jamolin's motion to withdraw the information in Criminal Case No. Q-91-21285.

Accordingly, we rule that the trial court in a criminal case which takes cognizance of an accused's motion for review of the resolution of the investigating prosecutor or for reinvestigation and defers the arraignment until resolution of the said motion must act on the resolution reversing the investigating prosecutor's finding or on a motion to dismiss based thereon only upon proof that such resolution is already final in that no appeal was taken therefrom to the Department of Justice.

It may be observed that the granting of both motions is a serious contradiction in that upon withdrawal of the information, which is the logical consequence of the grant of the motion to withdraw, there no longer remained any case to dismiss. In fine, the withdrawal of the information rendered moot the motion to dismiss.

The withdrawal of the information in Criminal Case No. Q-91--21285, or even the dismissal of the said case as decreed by the Bersamin court, did not bar the filing of a new information as directed by the Secretary of Justice in his Resolution of 27 January 1992. No jeopardy had attached as a result of the earlier termination of Criminal Case No. Q-91-21285 because the petitioners therein had not been arraigned and had, in fact, asked for its dismissal for a cause other than that which would constitute double jeopardy. On the contrary, the filing of the new information in Criminal Case No. Q-92-28104 straightened the course of criminal justice which had earlier gone awry due to the precipitate action of the Bersamin court. Nor may it be said that the prosecutor who filed the information had no authority to do so.

The Santiago court, therefore, correctly denied the petitioners' motion to quash in Criminal Case No. Q-92-28104 and the Court of Appeals committed no reversible error in dismissing the petition in CA-G.R. SP No. 27681.

It must also be noted that the petitioners had already been arraigned in Criminal Case No. Q-92-28104 and had participated in the trial on the merits by attending the reception of the testimonies of the prosecution witnesses and even terminating the cross-examination of some of them.

Before we end, a few words are in order by way of comment on the emphasis placed by our brother, Mr. Justice Jose A.R. Melo, in his dissenting opinion, on the filing with the Office of the Provincial Fiscal of Rizal in July 1988 by Mrs. Lilia S. Wells, first cousin of Edward Marcelo and Jose Marcelo, Jr., of a criminal complaint for falsification of public documents involving the same VTA's against petitioners Marcelo and Marfil, the dismissal thereof on 29 March 1989 by the Rizal Provincial Prosecutor for insufficiency of evidence,[39] and the resolution of the Department of Justice of 27 August 1989 dismissing the petition for review of the dismissal. The clear suggestion is that the filing of the second criminal complaint with the Office of the City Prosecutor of Quezon City is persecutive and should not be countenanced by this Court.

Our reading of the petitioners' Position Paper in the criminal complaint filed against them by Jose Marcelo, Jr. with the City Prosecutor's Office of Quezon City (I.S. No. 91-3069)[40], the motion for review, the motion to quash the information in Criminal Case No. Q-92-28104, the petition in CA-G.R. SP No. 27681, and the petition in this case does not disclose any claim by the petitioners that they are the victims of a vexatious or persecutive action. In the first mentioned pleading, they simply stated that the "sole issue in this case [is] whether or not, on the basis of the evidence submitted by the parties, there is sufficient ground to engender a well founded belief that the crimes of Falsification of Public Documents and Use thereof have been committed and that Respondents are probably guilty thereof and should be held for trial." [41] The first complaint was filed by Mrs. Wells alone who was unable to present the findings of the questioned documents examiner of the NBI and of the PC/PNP Crime Laboratory on the alleged forgery of the signatures of Jose Marcelo, Sr. on the questioned VTA's. The latter and the specimen or standard signature of Jose Marcelo, Sr. were submitted to these agencies only in January and February 1991, respectively.[42] The second complaint was filed by Jose Marcelo, Jr. who, by then, had already obtained the findings of the said agencies.

WHEREFORE, the instant petition is DENIED. The challenged decision of the Court of Appeals in CA-G.R. SP No. 27681 is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Regalado, Bellosillo, and Mendoza, JJ., concur.
Bidin, Quiason, Puno, and Vitug JJ., joins JJ. Romero and Melo in their dissenting opinion.
Kapunan, join J. Romero in her dissenting opinion.

[1] The Original Records (OR) in Criminal Case No. Q-91-21285 were burned during the fire which occurred on 16 October 1991 at the Vargas Building, Kalayaan Street, Quezon City, but were later reconstituted.

[2] Id., 7-8.

[3] Id., 9-20.

[4] Id., 180-183.

[5] It was then presided by Hon. Judge Lucas P. Bersamin.

[6] OR, Criminal Case No. Q-91-21285, 189-207.

[7] Id., 208-211.

[8] Id., 212.

[9] Id., 270.

[10] Id., 212-213.

[11] Id., 235.

[12] OR, Criminal Case No. Q-91-21285, 271-273.

[13] Id., 274.

[14] Id., 277-279.

[15] Id., 304-305.

[16] Id., 315-317.

[17] OR, Criminal Case No. Q-91-21285, 311-313.

[18] Id., 307.

[19] Id., 318-323.

[20] Page 4, Comment of the public respondent; Rollo, 143.

[21] OR, Criminal Case No. Q-91-21285, 333-336.

[22] Id., Criminal Case No. 92-28104, 11-14.

[23] OR, Criminal Case No. Q-92-28104, 1-2.

[24] Id., 65-72.

[25] Id., 76-84.

[26] Id., 112-113.

[27] 151 SCRA 462 [1987].

[28] OR, Criminal Case No. Q-92-28104, 116-122.

[29] Id., 126.

[30] Id., CA-G.R. SP No. 27681, 1-26.

[31] Id., 176-181. Per Associate Justice Pacita Canizares-Nye, concurred in by Associate Justices Arturo B. Buena and Justo P. Torres.

[32] Id., 180; Rollo, 42.

[33] OR, Criminal Case No. Q-92-28104, 132.

[34] Id., 283.

[35] Id., CA-G.R. SP No. 27681, 205.

[36] Lopez vs. City Judge, 18 SCRA 616 [1966]; Tacas vs. Cariaso, 72 SCRA 527 [1976]; People vs. Ramos, 83 SCRA 1 [1978]; Newsweek, Inc. vs. Intermediate Appellate Court, 142 SCRA 171 [1986].

[37] 151 SCRA 462 [1987].

[38] Id. at 471-472. See also Sta. Rosa Mining Co. vs. Assistant Provincial Fiscal, 153 SCRA 367 [1987]; Marquez vs. Alejo, 154 SCRA 302 [1987]; Dungog vs. Court of Appeals, 159 SCRA 145 [1988]; Balgos vs. Sandiganbayan, 176 SCRA 287 [1989]; Velasquez vs. Undersecretary of Justice, 182 SCRA 388 [1990].

[39] Annex “C” of Petition.

[40] OR, Criminal Case No. Q-91-21285, 164-179.

[41] Id., 169.

[42] OR, Criminal Case No. Q-91-21285, 33-39.

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DISSENTING OPINION

MELO, J.:

I have to express dissent, regrettably, to the majority opinion penned by Mr. Justice Hilario G. Davide, Jr., and would rather concur wholeheartedly in the opinion penned by Mme. Justice Florida R. Pineda-Romero. The highest traditions of this Court are best expressed in those cases where, without deviating from time-tested procedures in the prosecution of criminal cases, its latitudinarian approach in the protection of civil rights is manifested.

I agree that a stereotyped, mechanical, and unvarying invocation of the doctrine that appeal, not certiorari or prohibition, is the correct remedy to the denial of a motion to quash ignores fundamental principles of fairness and justice. Rules of procedure are intended to safeguard the interests of justice. Whether or not the prosecution of a criminal case should proceed should not be determined purely on procedural points.

This Court in *Acebedo vs. Sarmiento* (36 SCRA 247 [1970]) stated that "the right to a speedy trial means one free from vexatious, capricious, and oppressive delays, its salutary objective being to assure that an innocent person may be free from the anxiety and expense of a court litigation ..." It is not alone the right of an accused to have his guilt determined by a court of justice within the shortest possible time compatible with the presentation and consideration of legitimate defenses. Equally important is not to be brought to court at all, to be spared the embarrassment, anxiety, and expense of court litigation in proper cases. We stated in *Acebedo* that the remedy for the non-observance of the above rule is habeas corpus where the accused is already incarcerated or by certiorari, prohibition, or mandamus for the final dismissal of the case. This is precisely what the decision is all about.

When a case like the instant petition, with all its attendant facts and circumstances, reaches us, it is not in the best traditions of the Supreme Court to automatically approach it in the impulsive and unvarying methodology of a criminal trial court and declare that the issues raised are matters of defense to be interposed only at the trial.

Indeed, not infrequently, this court has departed from the general rule and, taking cognizance of petitions for certiorari involving orders denying motions to quash on the ground that it would be unfair and unjust, and violative of the constitutional rights of an accused, to require him to undergo trial under an information which is legally flawed (*Yap vs. Inciso*, 105 Phil. 1307 [1959]; *Pineda vs. Bartolome*, 95 Phil. 930 [1954]; *Villa vs. Ibanez*, 88 Phil. 402 [1951]; *Mead vs. Angel*, 115 SCRA 256 [1982]), and so as to spare the courts from unnecessarily spending precious time and energy and to save the accused from the inconvenience, anxiety, and embarrassment, let alone the expenditure of effort and money in undergoing a trial for a case the proceedings in which could possibly be annulled for want of, or excess in, or with grave abuse of, jurisdiction (*Villa vs. Ibanez*, *supra*, and *Mead vs. Angel*, *supra*).

The inhibiting circumstances to the application of the doctrine that certiorari and prohibition will not lie against an order denying a motion to quash appear on record in this case as follows:

As stated, the criminal information for alleged falsification of public documents against petitioners involves the same charges which had been twice investigated, passed upon, and twice dismissed, for lack or insufficiency of evidence, and based on a positive finding of the genuineness and due execution by Jose Marcelo, Sr. of the Voting Trust Agreements in favor of Edward.

The First Case (I.S. No. 88-5729)

In July 1988, a criminal complaint against Edward and Marfil (I.S. No. 88-5729) for falsification of public documents and use thereof was filed by Mrs. Lilia S. Wells, a first cousin of both Jose, Jr. and Edward Marcelo. The documents alleged to have been falsified and involved were the six (6) Voting Trust Agreements executed by Jose P. Marcelo, Sr. in favor of Edward.

In a resolution dated March 29, 1989, Rizal Provincial Prosecutor Mauro M. Castro, dismissed for insufficiency of evidence I.S. No. 88-5729 (Annex "C", Petition). The Provincial Prosecutor found that Jose P. Marcelo, Sr. actually did sign the Voting Trust Agreements. The Resolution, in part, reads:

And so this Office does not find any prima facie case for falsification or use of falsified documents nor that respondents are probably guilty of the crimes charged. For, while complainant relies on her own perception of a difference between signatures, respondents have presented witnesses, not just two, but three at the very least, who stated under oath that they had personally seen the late Marcelo sign the questioned VTAs. In the absence of any evidence showing that these witnesses are biased to the extent of perjury their statements are entitled to full faith and credit. (Annex C, Petition; p. 51, Rollo; Underscoring supplied.)

Wells then filed a petition for review with the Department of Justice. In a resolution dated August 27, 1989 (Annex D, Petition; p. 53-55, Rollo), the Department dismissed the Wells petition on the following grounds.

... The fact that the late Marcelo had the intention to execute the VTAs, as he did actually sign the same in favor of his son, Edward, has been substantially proven. Edward at the time, was already entrusted with such responsible positions as Secretary, Director, Vice President, Vice-Chairman, etc. and his being "the favorite son", is acknowledged by complainant. In their respective affidavits, Daniel T. Pascual and Celia Caburnay, Director and Asst. Corporate Secretary, respectively, of several Marcelo corporations, who both signed as witnesses to the VTAs attest to the fact that the directors gave their consent to resolutions authorizing the late Marcelo to execute VTAs in favor of Edward. Danilo Ibay, Chief Executive Officer of Marcelo Investment and Management Corporation also attests to the same fact. Magdaleno Cortez and Wilfredo Ersando, both directors of the Marcelo Tire and Rubber Corporation likewise swore to the truth that on February 21, 1987, the board in a regular meeting, unanimously passed a resolution authorizing Jose P. Marcelo to execute a Voting Trust Agreement in favor of Edward. The letter of George T. Marcelo (Annex 1 of Supplemental Affidavit, Edward Marcelo) who is residing in Australia confirms that the voting trust given to Edward by their father is genuine, his father having discussed the matter with him. Atty. Clarisa Penalosa of the Far East Bank and Trust Company also confirms that the late Marcelo had inquired on how to preserve the companies' assets and in her reply, dated November 27, 1985, she delineated schemes, among them, the execution of VTAs.

x x x

x x x

x x x

Petitioner's (Well's) observation as to the difference between the contemporary and questioned signatures of the late Marcelo, the allegations of bias of respondent's witnesses and the issue as to the authenticity of the minutes of the board meetings showing the grant of authority to the late Marcelo to execute the VTAs, are nonetheless inconclusive to prove the alleged falsification. They are insufficient in the light of the positive testimonies of eyewitnesses to the actual signing of the VTAs by the late Marcelo and the uncontroverted proof of his prior intention to execute the same. (pp. 54-55, Rollo; Underscoring supplied.)

The Second Case (I.S. No. 91-3049)

Criminal Case No. Q-91-21285

RTC-Quezon City, Branch 96

After the Department of Justice dismissed the Wells complaint (I.S. No. 88-5729), Jose Marcelo filed a similar criminal complaint against Edward Marcelo, Marfil, Caburnay and Pascual involving the same voting trust agreements. This second complaint was docketed as I.S. No. 91-3049 of the Office of the City Prosecutor of Quezon City. We quote once again the narration by respondent Court of Appeals of the background facts, to wit:

On the basis of the investigating prosecutor's finding of a prima facie case (Annex "F", hereof), an Information for falsification against Edward, Marfil, Caburnay and Pascual was filed before the Regional Trial Court of Quezon City, Branch 96 (Annex "G" hereof). This criminal case was docketed as Criminal Case No. Q-91--21285.

Petitioners moved for a review of the prima facie finding of the investigating prosecutor (Annex "H" hereof). The review was conducted by the Review Division ("the Review Division") of the Office of the City Prosecutor of Quezon City. Meanwhile, the Regional Trial Court, Branch 96, upon motion of the prosecution and petitioners citing the pending Motion for Review, deferred the arraignment in Criminal Case No. Q-91-21285.

On 15 November 1991, the Review Division recommended that the Information in Criminal Case Q-91-21285 be withdrawn (Annex "I" hereof).

The prosecution then moved to withdraw the Information in Criminal Case No. Q-91-21285 (Annex "J" hereof). Petitioners, on the other hand, filed a Manifestation and Motion praying that Criminal Case No. Q-91-21285 be dismissed (Annex "K" hereof).

On 13 December 1991, the Regional Trial Court of Quezon City, Branch 96 dismissed Criminal Case No. Q-91-21285 (Annex "L" hereof). (Annex A, Petition, p. 39, Rollo.)

In dismissing the Information against petitioners in Criminal Case No. Q-91-21285, the Honorable Lucas P. Bersamin, Presiding Judge of Branch 96 of the Regional Trial Court of Quezon City, ruled:

The Court accords great respect to the findings of the Review Division which it finds to be based on substantial grounds and are highly persuasive. Therein, the Review Division squarely resolved the issue of whether or not the signatures of the late Jose Marcelo, Sr. in the six voting trust agreements (VTAs) were genuine. The Division reasonably concluded that there was no probable cause to hold the accused liable for falsification of the VTAs after agreeing with and adopting the conclusions of the Provincial Prosecutor of Rizal in a case involving the same documents. (I.S. No. 88-5279)

In particular, the Division noted that the late elder Marcelo had intended to execute the VTA's in favor of his son Edward who was at the time already holding responsible positions in their business aside from being "the favorite son"; that Daniel Pascual and Celia Caburnay, accused herein, who were then a director and an assistant corporate secretary, respectively, of several Marcelo corporations and whose signatures were found on the VTAs in their capacities as witnesses, attested to the fact that the directors of the corporation had given their consent to the resolution authorizing the late elder Marcelo to execute the VTA's in favor of Edward; that Danilo Ibay, Chief Executive Officer of Marcelo Investment and Management Corporation, attested to the same facts, that Magdalena Cortez and Wilfredo Irsendo, Directors of the Marcelo Tire and Rubber Corporation, likewise attested that on February 21, 1987, the Board of Directors had unanimously passed during a regular meeting a resolution authorizing the elder Marcelo to execute a VTA in favor of Edward; that even George Marcelo, now a resident of Australia, and brother of complainant and accused Edward Marcelo, had confirmed by letter the genuineness of the voting trust agreements executed by their father in favor of Edward. For the Court to close its eyes to these circumstances relied upon by the Division in rendering the resolution in question would be unwarranted and unreasonable in view of their persuasiveness.

Since the essence of the crime of falsification is malicious falsehood, the existence and concurrence of all the circumstances set forth in the questioned resolution absolutely exclude falsification.

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x x x

ACCORDINGLY, the Motion to Dismiss of the accused and the Motion to Withdraw Information of public prosecutor are hereby granted and this case is hereby dismissed without costs. (Annex Y, Petition, pp. 80-81, Rollo; Underscoring supplied.)

The Third Case (Crim. Case

No. Q-92-28104, RTC Quezon

City, Branch 101).

As further disclosed in the assailed decision of respondent Court of Appeals -?

Despite the Regional Trial court's dismissal of Criminal Case No. Q-91--21285, Jose Jr. appealed the resolution of the Review Division of the DOJ (Annex "M" hereof).

On 31 January 1992, the DOJ reversed the resolution of the Review Division and ordered the re-filing of an Information against petitioners (Annex "N").

An Information for falsification of public documents was filed before the Regional Trial Court of Quezon City, Branch 101, against petitioners docketed as Criminal Case No. Q-92-28104. (Annex A, Petition, p. 40, Rollo.)

Petitioners contend in their instant petition, as they did in their motion to quash (Annex H, Petition, pp. 82-91, Rollo) the Information in Criminal Case No. Q-92-28104, RTC Quezon City Branch 101 presided by Judge Pedro Santiago, and in their petition in CA-G.R. No. 27681 (Annex K, Petition, pp. 103-127, Rollo) that:

When the Regional Trial Court, Quezon City, Branch 96, through Honorable Judge Bersamin, took cognizance of the Resolution of the Review Division of the City Prosecutor of Quezon City and on the basis thereof dismissed Criminal Case No. Q-91-21285, it did so in the exercise of its discretion and within the limits of its jurisdiction. The Prosecution can no longer question the dismissal of Criminal Case No. Q-91-21285 because in its order, the Regional Trial Court, Quezon City Branch 96, made findings of fact and law that the evidence against the petitioners are insufficient to justify continuing with the criminal proceedings against them.

The appeal taken by Jose Jr. to the Secretary of Justice and the latter's review and reversal of the resolution of the Review Division of the Prosecutor's Office of Quezon City are, therefore, null and void. The Secretary of Justice cannot interfere with Honorable Judge Bersamin's relative to the disposition of Criminal Case No. Q-91-21285. By taking cognizance of the appeal and issuing the Resolution, the Secretary of Justice usurped the power and authority of the Regional Trial Court to determine whether to continue with, or dismiss, the case.

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... respondent Judge should have granted the motion to quash or the Court of Appeals should have reversed the denial thereof through the writ of certiorari. By refusing to do so, respondent Judge and the Court of Appeals violated said rulings. (pp. 23 & 25, Rollo.)

Earlier cases decided by this Court persuade me that premised on the peculiar contextual background of the case

at bench, the conclusions and opinion of Mme. Justice Romero are correct. In said cases (*Velasquez vs. Undersecretary of Justice*, 182 SCRA 388 [1990]; *Balgos Jr. vs. Sandiganbayan*, 176 SCRA 287 [1989]; *Dungog vs. Court of Appeals*, 159 SCRA 145 [1988]; *Sta. Mining vs. Zabala*, 153 SCRA 367 [1987]; *Marquez vs. Alejo*, 154 SCRA 302 [1987]), this Court laid down the rule that once an Information has already been filed in court, the court acquires complete jurisdiction over the case and the investigating fiscal or the Secretary of Justice should no longer entertain motions for reinvestigation.

I believe that the doctrine in *Crespo vs. Mogul* (151 SCRA 462 [1987]) should be followed in this case.

The Court ruled in *Crespo vs. Mogul* that:

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 recommendation of the fiscal should be submitted to the court for appropriate action. (p. 463, *Ibid*; underscoring supplied)

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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 ... (p. 463, *Ibid*; underscoring supplied)

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The rule therefore in this jurisdiction is that once a complaint or information is filed in court any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the 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 ... (p. 471, *Ibid*; underscoring supplied).

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In order therefore to avoid such a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in court. The matter should be left entirely for the determination of the court. (at p. 47; Underscoring supplied.)

It is not so much the observance of what to me are mere technicalities of procedure and not substantial justice which should be emphasized. It should be the compliance with the principles of fairness and justice underlying the *Crespo vs. Mogul* and other similar decisions that must concern us. Under the circumstances of this case, we should not be overly apprehensive about the exact time when the trial court acted on a case clearly within its

jurisdiction, whether or not petitioners should have withheld their motion to dismiss, whether or not the public prosecutor should have deferred his motion to withdraw the information while the period to appeal from the committee on review had not lapsed, whether or not express permission from the trial court for a reinvestigation is absolutely necessary or it may be impliedly waived if the court knowingly allows such a procedure to be followed and similar questions all revolving around technical rules of procedure. To me, whether or not *Crespo vs. Mogul* applies, the facts clearly show that to deny this petition would be to deny substantial justice. There is no new evidence in the records. The evidence twice dismissed by state prosecutors remains as inadequate as ever. The important point is not to allow the strong arm of the law to be used in an oppressive manner in such cases as the one before us.

I also respectfully submit that Judge Bersamin did not act hastily in dismissing the case and granting the prosecutor's motion to withdraw the information. I understand that the records of this case are around 400 pages. Judge Bersamin must have gone over the records. He had strong factual and legal grounds to conclude that the signature appearing in the questioned document is genuine.

The trial court had more than ample evidence to act as it did. I also submit with all due respect that even in a case before the Supreme Court, there may be instances when we should not only grant a motion to withdraw a petition but we may emphasize that the withdrawal be with prejudice on the ground that the petition has no merit and warrants dismissal. Indeed, it is not only the adjudicative function but also the more important role of emphasizing legal principles that leads us to decide cases which are technically moot and academic. In this respect Judge Bersamin did not really err.

In this case, whatever the Secretary of Justice says is only advisory and suggestive. The discretion to allow the withdrawal of the information and dismissal of the action is vested in the court. It is a discretion, a function of trial courts which we should honor and respect.

The Secretary of Justice thus, to my mind, exceeded his jurisdictional competence and acted with grave abuse of discretion when he ordered the re-filing of the same criminal information against petitioners involving the same voting trust agreements notwithstanding the fact that Judge Bersamin in the second case (I.S. No. 91-3049; Civil Case No. Q-91-21285, RTC Quezon City, Branch 96) had already ordered its dismissal, as it was actually dismissed on December 13, 1991.

Further, on August 27, 1989, the Department of Justice affirmed the dismissal of the criminal charges filed by Mrs. Wells against Edward, etc. in I.S. No. 88-5279 involving the same voting trust agreements. The flip-flopping of the Department of Justice in the light of its earlier resolution in the first case (Wells) leaves much to be desired.

The re-filing of the same Information for falsification of public documents docketed as Criminal Case No. Q-92-28104 in Branch 101 of the RTC, Quezon City was unwarranted reprobation and reversal of Judge Bersamin's order dismissing the Information in the second case, which the Secretary of Justice has no authority whatsoever to do. From the time Branch 96 of the Quezon City RTC acquired jurisdiction over the second case and, in the exercise of its jurisdiction, thereafter ordered the dismissal thereof for lack or insufficiency of evidence, the Secretary of Justice was divested of any authority to overturn such dismissal or to direct the re-filing of another information involving the same charges and the same voting trust agreements, in the absence, if it must be added, of new evidence. In *Peralta vs. CFI* (157 SCRA 476 [1988]), we held:

This Court finds no reason to reverse the action taken by the trial court. Once an information or complaint is filed in court, the matter of disposition of the case is left to the sound discretion of the court. When the trial court in the instant case granted the fiscal's motion to dismiss, it was within its prerogative to do so.

On the matter of propriety of appeals to Secretary of Justice for reinvestigation after the information or

complaint has been filed in court, the pronouncement made by this Court in the Crespo case is applicable. In that case, the Court, although not entirely disregarding the power of review of the Secretary of Justice over the action of fiscals, imposed a limit on the exercise of such power, thus:

In order therefor(e) to avoid such a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court; such a review of or appeal should no longer be entertained by the Secretary of Justice when the complaint or information had already been filed in court. The matter should be left entirely for determination of the court. (at p. 480)

In *Velasquez vs. Undersecretary of Justice* (182 SCRA 388 [1990]), we held:

The petition is meritorious. This case is governed by our decision in *Crespo vs. Mogul*, 151 SCRA 462, where we ruled that once the information is filed in court, the court acquires complete jurisdiction over it. A motion for reinvestigation should, after the court had acquired jurisdiction over the case, be addressed to the trial judge and to him alone. Neither the Secretary of Justice, the State Prosecutor, nor the Fiscal may interfere with the judge's disposition of the case, much less impose upon the court their opinion regarding the guilt or innocence of the accused, for the court is the sole judge of that ... (at p. 391.)

The re-filing, therefore, of the Information with Branch 101 of the Quezon City RTC against petitioners by the Quezon City Prosecutor upon orders of the Secretary of Justice long after Branch 96 of the same court ordered the dismissal of the Information in the second case involving the same documents, was flawed and suffered from jurisdictional infirmity. The Information is thus susceptible to quashal. Acts done with grave abuse of discretion or in excess of jurisdiction must be struck down. The Information must be quashed. The peculiar circumstances of this case require no less than the issuance of the privileged writ of certiorari and prohibition to prevent the unlawful and oppressive exercise of legal authority and to provide for a fair and orderly administration of justice (*Lopez vs. City Judge*, 18 SCRA 616 [1966]). Petitioners have no plain, speedy, and adequate remedy in the course of law. Appeal is neither a speedy nor an adequate remedy, given the factual milieu in the case.

To require petitioners to undergo the rigors of trial under an information which is tainted with jurisdictional infirmity, without prejudice to presenting the special defense they had invoked in their motion, and if after trial on the merits, an adverse decision is rendered, to appeal, therefrom, which course of action was laid down by Judge Santiago and affirmed by respondent Court of Appeals when it denied the petition in CA-G.R. No. 27681, would indeed be oppressive. Further, the trial court would be unnecessarily dragged into spending its precious time and energy, and petitioners exposed to the inconvenience, anxiety, and embarrassment, not to speak of the expenditure of time and money on a case which had been twice the subject of preliminary investigation, passed upon and twice dismissed for lack or insufficiency of evidence and absence of probable cause.

I, therefore, with the highest respect for the majority, must express my dissent and vote to give due course to the petition.

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SEPARATE OPINION

ROMERO, J.:

I vote to grant the petition.

The records show that the information for falsification of public document docketed as Criminal Case No. Q-92-28104 involves the same charges which had been twice investigated and dismissed. The first charge filed by

Mrs. Wells was dismissed by the Provincial Fiscal of Rizal and affirmed by the Department of Justice. On the other hand, the second charge filed by Jose T. Marcelo was the one where the Review Committee of Quezon City reversed the earlier recommendation finding probable cause. These dismissals were based on a positive finding of the genuineness and due execution by Jose T. Marcelo Sr. of the subject voting trust agreements in favor of Edward Marcelo.

The resolution of the Secretary of Justice directing the filing of the information for falsification of the VTAs was issued after it found merit in the appeal from the Review Committee's resolution. The Secretary of Justice may, upon petition by a proper party, reverse the resolution of the provincial or city fiscal concerned to file the corresponding information without conducting another preliminary investigation or dismiss or move for the dismissal of the complaint or information.[1] In this case, what is of consequence is the resolution of the Secretary of Justice which came after the lower court had already granted the motion to dismiss and the motion to withdraw information.

The rule regarding motions for reinvestigation once an information has already been filed in court is now settled.[2] In the case of *Crespo v. Mogul*, the Court held that:

"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.

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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." [3]

According to the records, before petitioners could be arraigned, they filed a petition for review before the Review Committee which reversed the finding of Prosecutor Israel. Thereafter, the prosecution filed a motion to withdraw and the defense, a motion to dismiss which were granted by Judge Bersamin. This is in accord with *Crespo* where we said that "[a]fter such reinvestigation the finding and recommendation of the fiscal should be submitted to the Court for appropriate action.[4] Later, the Secretary of Justice reversed the Review Committee. Even conceding the power of the Secretary of Justice to review the action of the prosecutors, the Court has already cautioned him

on the propriety of the appeals to him after an information or complaint has been filed in court in this manner:

"x x x the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court. The matter should be left entirely for the determination of the Court." [5]

It bears stressing that if the Court is encouraging the Secretary of Justice to refrain from entertaining petitions for review or appeal once an information or complaint has been filed, there is greater reason for him to do so in this case where the lower court has already exercised its discretion based on the results of the reinvestigation. If the Secretary of Justice may no longer interfere once the case is pending before the trial court, with more reason should he avoid another review or appeal after the court has dismissed the same. Thus, in this case, we hold that the Secretary of Justice acted with grave abuse of discretion or in excess of his jurisdiction when he reviewed the appeal and ordered the re-filing of the information against petitioners. The ultimate consequence of the Secretary of Justice's act of reviewing the findings of the Review Committee is the indirect reversal of the order of Judge Bersamin who is the "best and sole judge on what to do with the case before it." Such act of the Secretary of Justice is an unmitigated reprobation and reversal of Judge Bersamin's order over which the former has no authority whatsoever. Therefore, the information docketed as Q-92-28104 is susceptible to quashal.

[1] Rule 112, Sec. 4, last par., Rules on Criminal Procedure.

[2] Velasquez v. Undersecretary of Justice, G.R. No. 88442, February 15, 1990, 182 SCRA 388; Balgos, Sr. v. Sandiganbayan, G.R. No. 85590, August 10, 1989, 176 SCRA 287; Republic v. Sunga, L-38634, June 20, 1988, 162 SCRA 191; Almazar v. Cenzon, L-46188, May 28, 1988, 161 SCRA 545; Dungog v. Court of Appeals, G.R. Nos. 77850-51, March 25, 1988, 159 SCRA 145; Peralta v. Court of First Instance of La Union, Branch I, L-48011, January 29, 1988, 157 SCRA 476; Sta. Rosa Mining Company v. Zabala, L-44723, August 31, 1987, 153 SCRA 367; Marquez v. Alejo, L-40575, September 28, 1987, 154 SCRA 302; and Crespo v. Mogul, G.R. No. 53373, June 30, 1987, 151 SCRA 462.

[3] Crespo v. Mogul, supra at pp. 469-471.

[4] Ibid.

[5] Ibid, See also Almazan v. Cenzon and Peralta v. CFI of La Union, supra at 2.

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