

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE COURT OF APPEALS, CHIEF INSPECTOR JOSE T. PRING, RESPONDENTS.

G.R. No. 108000. June 17, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

On October 23, 1992, herein public respondent Court of Appeals in CA-G.R. No. 28933, entitled "Chief Inspector Jose T. Pring v. Honorable Apolinario B. Santos as Judge of RTC of Pasig, Metro Manila, Branch 67 and People of the Philippines, et al.," annulled and set aside the Order of the lower court granting the prosecution's motion to discharge accused Nonilo Arile to turn state witness. Subject decision of October 23, 1992 held that:

"x x x x x x x x x x"

In the case at bar, prior to the discharge of accused Nonilo Arile on September 8, 1992, there was no hearing by the court on the motion to discharge. Records of the proceedings of the trial court on September 4, 1992, as reflected in the order of the same date, merely show that the motion to discharge was deemed submitted for resolution, without any hearing thereon. x x x."

The People of the Philippines, thru the instant petition now assails the abovestated Decision, claiming that respondent appellate court committed grave abuse of discretion in annulling and setting aside the discharge of accused Nonilo Arile from the information in order to allow him to testify as state witness in the hearing for admission to bail of private respondent Jose Pring and the trial in Criminal Case No. 94159 before the lower court.

Criminal Case No. 94159 is entitled "People of the Philippines v. Nonilo Arile, Jaime Serrano, Edmund Divinagracia, Jose Pring, Timoteo Zarcas, Reynaldo Fernandez, Danilo Fernandez, Eddie Chang, Jose Sy and John Does." In said case, private respondent herein, Jose Pring was among those charged with violation of Article 267 (Kidnapping for Ransom) of the Revised Penal Code, in an information filed on August 21, 1992 with the lower court.

Subsequent to the filing of the information, private respondent Jose Pring submitted his petition for bail, its hearing scheduled on August 31, 1992 and September 2, 1992 at 2:00 P.M.

On August 28, 1992, the prosecution filed a motion to discharge accused Nonilo Arile to be a state witness, with notice of hearing on September 4, 1992 at 8:30 A.M.

Another motion for issuance of bail, with notice of hearing on September 4, 1992 at 8:30 A.M. was filed on August 31, 1992 by private respondent Jose Pring thru his counsel.

On the scheduled hearing of the petition for bail on August 31, 1992, private respondent Jose Pring failed to appear although his lawyers did. Upon joint motion by the prosecution and defense, the arraignment, pre-trial conference and hearing on the petition for bail were re-set at 2:00 P.M. of September 4, 1992.

On September 1, 1992, the prosecution filed an opposition to the petition for bail and asked to defer the hearing thereof until the resolution of the trial court of the motion to discharge accused Nonilo Arile, whose testimony is allegedly necessary to establish that the evidence of guilt against private respondent Jose Pring is strong.

On September 4, 1992, counsels of private respondent Jose Pring filed his opposition to the motion to discharge accused Nonilo Arile. At 2:00 P.M. of the same day, Criminal Case No. 94159 was called for arraignment, pre-trial and petition for bail, but only accused Nonilo Arile appeared. Thus, the trial court issued the following order:

"WHEREFORE, in view of the absence of the other accused, let the arraignment and pre-trial conference be reset on September 10, 11, 17, 18, 24 and 25, 1992, all at 2:00 o'clock in the afternoon. The motion to discharge accused Nonilo Arile to be state witness is hereby considered submitted for resolution.

x x x x x x x x."

Having submitted for resolution the motion to discharge, thru the Order of September 4, 1992, the trial court on September 8, 1992 issued an Order granting said motion. In discharging accused Nonilo Arile to be a state witness, the trial court ratiocinated:

"Upon a careful examination of the Sworn Statement made by the accused Nonilo Arile and the other evidence of the prosecution including other Sworn Statements of Jaime Serrano, accused Edmund Divinagracia, witness Rogelio A. Morales (driver of the kidnapped victim) Chin Yi Tsou (father of the victim), this Court is satisfied that the averment of the Government in its Motion to Discharge Accused Arile are borne out and fully supported by the facts and relevant evidence."

The court, thus, found that the conditions for discharge as required under Sec. 9, Rule 119 of the 1985 Revised Rules on Criminal Procedure have been satisfied.

Private respondent Jose Pring assailed the Order of discharge, filing a special civil action for Certiorari and Prohibition with the Court of Appeals.

In the hearing conducted by the appellate court on September 22, 1992, counsels of private respondent Jose Pring emphatically stressed the trial court's failure to comply with the required hearing in support of the discharge as mandated in Section 9, Rule 119 of the 1985 Rules on Criminal Procedure, as amended.

On October 23, 1992, the Court of Appeals rendered the questioned Decision ruling that "before effecting the discharge the court should require the prosecution to present evidence and the sworn statement of the proposed witness at a hearing in support of the discharge." Finding that the lower court immediately resolved the motion to discharge without a hearing thereon, the Court of Appeals annulled and set aside the Order of discharge dated September 8, 1992.

Hence, the filing of the present petition by the prosecution. Comment by private respondent Jose Pring was filed on February 1, 1993. Prior to said comment, the lower court issued an Order of January 21, 1993, which among others considered the petition for bail of private respondent Pring submitted for resolution with or without the opposition filed by the prosecution. This prompted the prosecution to file with this Court an Urgent Motion For the Immediate Issuance of a Temporary Restraining Order and Resolution of the Petition. The prosecution, in praying for the issuance of a temporary restraining order, sought to enjoin the trial court from hearing private respondent Jose Pring's motion for bail, pending resolution before this Court, of the petition on whether the annulment of the Order of discharge by the appellate court is proper. The state, argued the prosecution, shall have no leg to stand on in opposing the release on bail of private respondent Jose Pring, without the testimony of accused Arile, that will show the evidence of guilt against private respondent Jose Pring is strong.

Thus, on March 30, 1993, the temporary restraining order was issued by this Court En Banc, ordering Judge Apolinario Santos to cease and desist from resolving or granting the motion for bail of private respondent Pring in Criminal Case No. 94159 until the present petition is resolved.

The petition raises a single issue: can the trial court without conducting a hearing pursuant to Section 9, Rule 119 of the 1985 Rules on Criminal Procedure, as amended, resolve the prosecution's Motion to Discharge Nonilo Arile where the records show that the latter's sworn statement together with the prosecution's other evidence were already in the possession of the court and had been challenged by private respondent in his Opposition to Discharge Nonilo Arile and in his Petition For Bail?

Favoring an affirmative ruling thereon is the State, represented by the Solicitor General arguing that evidence of the prosecution consisting of (a) sworn statement of proposed witness Nonilo Arile; (b) resolution of the investigating prosecutors; (c) affidavits of Rogelio Morales, driver of the kidnapped Chinese children; (d) affidavits of accused Jaime Serrano and Edmund Divinagracia have all been submitted before the trial court to form part of the records of the case and thus, made available for the scrutiny of private respondent Jose Pring who controverted in detail the statements of proposed witness Nonilo Arile, both in his Opposition to the Motion To Discharge and Petition For Bail. It is the Solicitor General's theory that this submission of evidence to prove that the conditions for discharge as required by law exist, amounts to the presentation thereof in open court and the opportunity to rebut the same, well afforded to private respondent Jose Pring assuredly satisfies due process requirement contemplated by law in mandating a hearing. Under these circumstances, concludes counsel for the State, at no instance was there ever a violation of said provision of law; rather, the requirement of holding an actual hearing in support of the discharge was substantially complied with.

Strongly opposed to such proposition is private respondent Jose Pring, advocating strict adherence to the letter of the law. In his Comment, he emphatically stressed that Nonilo Arile's exclusion from the information is not valid, since it is based on an Order of Discharge, the issuance of which is fatally flawed for failure of the trial court to conduct a hearing in support of his discharge.

To further obtain the dismissal of the petition, private respondent contends that the State's filing of a petition for certiorari under Rule 65 is improper, where upon analysis of the single issue raised in the petition, the only inquiry it presents before this Court is one of law. Under our laws on procedure, claims private respondent, a decision of the Court of Appeals involving a pure question of law may be elevated to the Supreme Court only by a petition for review on certiorari under Rule 45 and not under Rule 65.

The elevation of this case to the Supreme Court thru a special civil action for certiorari is deemed legally permissible. Settled is the rule that:

"Certiorari may be availed of where an appeal would be slow, inadequate, insufficient, and will not promptly relieve a party from the injurious effects of the judgment complained of, or in order to avoid further litigation." [1]

In *Jaca v. Davao Lumber Company* [2] cited in *Lansang, Jr. v. Court of Appeals*, [3] it was held that:

"The availability of the ordinary course of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of certiorari where the appeal is not an adequate remedy or equally beneficial, speedy and sufficient. It is the inadequacy – not the mere absence of all other legal remedies and the danger of failure of justice without the writ, that must usually determine the propriety of certiorari."

In the case at bar, the decision of the Court of Appeals setting aside the Order of Discharge of accused Nonilo Arile effectively crippled the prosecution's bid to oppose private respondent's application for bail. It was the

intention of the prosecution, had not the Order of Discharge been annulled, to utilize the testimony of Nonilo Arile to show that evidence of guilt against private respondent Jose Pring is strong. But since the prosecution has been warned by the trial court that it will soon decide the petition for bail of private respondent Jose Pring, with or without the intended opposition to be filed by the prosecution, the latter was left without choice and was thus compelled under justified circumstances to file a special civil action for certiorari to annul the judgment of the Court of Appeals, such action filed being an extraordinary and speedy remedy. The prosecution, which is in immediate need of the reinstatement of the Order of Discharge resorted to this remedy not as a substitute for appeal but as the proper remedy that can with dispatch address its predicament.

On the basis of the foregoing, there is no procedural impediment barring this Court from entertaining the instant petition and resolving the issue before us.

Prior to the 1985 Rules on Criminal Procedure, as amended, Section 9, Rule 119 provided that:

"SEC. 9. Discharge of one of several defendants to be witness for the prosecution. – When two or more persons are charged with the commission of a certain offense, the competent court, at any time before they have entered upon their defense, may direct one or more of them to be discharged with the latter's consent that he or they may be witnesses for the government when in the judgment of the court:

- (a) There is absolute necessity for the testimony of the defendant whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said defendant;
- (c) The testimony of said defendant can be substantially corroborated in its material points;
- (d) Said defendant does not appear to be the most guilty;
- (e) Said defendant has not at any time been convicted of any offense involving moral turpitude."

On the other hand, Section 9, Rule 119 of the 1985 Rules on Criminal Procedure, as amended, now provides that:

"SEC. 9. Discharge of accused to be state witness. – When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty;
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence."

The present rule thus amends the old rule by categorically requiring a hearing where the prosecution shall present the sworn statement of the proposed witness and its other evidence for the purpose of proving to the satisfaction of the court that the conditions for discharge as above-enumerated exist. The rationale behind this amendment is

to avoid a repetition of the case of *Flores v. Sandiganbayan*[4] where the Supreme Court set aside the Order of Discharge of the Sandiganbayan because said court merely relied on the information furnished by the fiscal in forming its conclusion of whether the conditions for discharge have been met.[5] The Supreme Court in *Flores* (supra) said that since it is the Court's exclusive responsibility to discharge an accused from the information, it must see to it that:

"x x x the requisites prescribed by the rules exist, particularly the requisite that there is absolute necessity for the testimony of the defendant whose discharge is requested. Under this requisite, the fiscal must show that there is absolute necessity for the testimony of the defendant whose discharge he seeks, in order to be a witness for the prosecution. This requirement is aimed to curtail miscarriage of justice, before too common, through the abuse of the power to ask for the discharge of one or more defendants. Absolute necessity of the testimony of the defendant, whose discharge is requested must now be shown if the discharge is to be allowed, and the power to determine the necessity is lodged upon the court. x x x."

Thus, the term "hearing in support of the discharge" as contemplated by said law refers to a proceeding, separate from the trial itself, where the prosecution presents its evidence proving the existence of the conditions for discharge and the sworn statement of the proposed witness. Necessarily, it does not foreclose; rather, it affords an opportunity for the defense to enter its opposition against the motion to discharge. All of this is intended to aid the court in fulfilling its mandated duty of determining the propriety or impropriety of the sought-after discharge. In requiring therefore, a "hearing in support of the discharge," the essential objective of the law is for the court to receive or possess evidence for or against the discharge which will serve as tangible and concrete basis, independent of the fiscal's or prosecution's persuasions, in granting or denying the motion for discharge.

Hence, in resolving the issue in this petition, the proper question we should address is: Was there a failure to observe the spirit and intent of Sec. 9, Rule 119 in the case at bar? We rule in the negative. The prosecution has submitted the sworn statement of accused Nonilo Arile and its evidence showing that the conditions for discharge have been met. Neither can it be denied that the defense was able to oppose the motion to discharge Nonilo Arile. With both litigants able to present their side, the lack of actual hearing was not fatal enough to undermine the court's ability to determine whether the conditions prescribed under Section 9, Rule 119 were satisfied. Having received evidence for and against the discharge, the Court avoided a repetition of the case of *Flores v. Sandiganbayan* (Supra).

Nor was there a violation of due process as private respondent Jose Pring insists. As held in the case of *Juanita Yap Say and William Lim v. Intermediate Appellate Court, et al.*[6]

" x x x 'To be heard' does not only mean verbal arguments in court. Where a party was given the opportunity to be heard, either through oral arguments or pleadings, there can be no denial of procedural due process. 'Due process is not semper et ubique judicial process.'"

We reiterate: private respondent Jose Pring has filed his opposition to the motion to discharge Nonilo Arile and even discussed the material points of the latter's testimony in his petition for bail. His assertion then that there was a denial of due process for failure to conduct a hearing in support of the discharge is unfounded and not substantiated after a perusal of the records of the case.

WHEREFORE, the petition is hereby GRANTED and the decision of the Court of Appeals in CA G.R. No. 28933 rendered on October 23, 1992 is SET ASIDE. Accordingly, the Order of Discharge of Nonilo Arile issued by the trial court in Criminal Case No. 94159 on September 8, 1992 is thus REINSTATED. The temporary restraining order of March 30, 1993 issued by the Court En Banc is hereby LIFTED.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Bidin, Griño-Aquino, Regalado, Davide, Jr., Nocon, Bellosillo, Melo, and Quiason, JJ., concur.

Padilla, J., on leave.

[1] Presco v. Court of Appeals, G.R. No. 82215, December 10, 1990, 192 SCRA 232 citing De la Cruz v. IAC, G.R. No. 63612, January 31, 1985, 134 SCRA 417; Balagtas Realty Corp. v. Romillo, G.R. Nos. L-48376-85, July 16, 1984, 130 SCRA 415; Lobete v. Sundiam, G.R. No. L-38278, June 28, 1983, 123 SCRA 95; Velasco v. Segundo, G.R. No. 58187, September 30, 1982, 117 SCRA 573.

[2] No. L-25771, March 29, 1982, 113 SCRA 107, 129.

[3] G.R. No. 76028, April 6, 1990, 184 SCRA 230, 235.

[4] G.R. No. L-63677, August 12, 1983, 124 SCRA 109.

[5] Pamaran, Manuel R., "The 1985 Rules on Criminal Procedure Annotated," 1991 ed., pp. 400-401.

[6] G.R. No. L-73451, March 28, 1988, 159 SCRA 325.

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