

HONORATO GALVEZ AND GODOFREDO DIEGO, PETITIONERS, VS. COURT OF APPEALS (17TH DIVISION), FIRST ASST. PROVINCIAL PROSECUTOR, DENNIS M. VILLA-IGNACIO OF PASIG, RIZAL; THE PEOPLE OF...*G.R. No. 114046. October 24, 1994*

Ponente: REGALADO, J.

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Submitted for resolution in the present special civil action are: (1) the basic petition for certiorari and mandamus with a petition for habeas corpus, to review the resolution issued by respondent Court of Appeals, dated February 18, 1994, in CA-G.R. SP No. 33261;[1] (2) the Urgent Motion[2] and Supplemental Urgent Motion[3] for Immediate Action on Petition for Habeas Corpus; and (3) the Urgent Petition to Declare Judge Jaime N. Salazar, Jr. and First Assistant Provincial Prosecutor Dennis M. Villa-Ignacio for Contempt and to Annul Proceedings (with Immediate Prayer for another Cease and Desist Order).[4]

On November 12, 1993, petitioners Honorato Galvez, the incumbent Mayor of San Ildefonso, Bulacan, and one Godofredo Diego were charged in three separate informations with homicide and two counts of frustrated homicide for allegedly shooting to death Alvin Calma Vinculado and seriously wounding Levi Calma Vinculado and Miguel Reyes Vinculado, Jr. The cases were raffled to the sala of Judge Felipe N. Villajuan of the Regional Trial Court of Malolos, Bulacan, Branch 14, and docketed as Criminal Cases Nos. 3642-M-93 to 3644-M-93.[5] Both accused posted their respective cash bail bonds and were subsequently released from detention.

On November 15, 1993, Bulacan Provincial Prosecutor Liberato L. Reyes filed a Motion to Defer Arraignment and Subsequent Proceedings to enable him "to review the evidence on record and determine once more the proper crimes chargeable against the accused,"[6] which was granted by Judge Villajuan in an order dated November 16, 1993.[7] Thereafter, pursuant to Department Order No. 369 of the Department of Justice, respondent Prosecutor Dennis M. Villa-Ignacio was designated Acting Provincial Prosecutor of Bulacan and was instructed to conduct a re-investigation of the aforesaid criminal cases filed against herein petitioners.[8]

By virtue of a Manifestation with Ex-parte Motion dated November 23, 1993[9] filed by respondent prosecutor, the proceedings were again ordered suspended by Judge Villajuan until after the prosecution's request for change of venue shall have been resolved by the Supreme Court, and the preliminary investigation being conducted by the former shall have been terminated.[10] It appears that on December 2, 1993, private complainants, through their counsel, Atty. Silvestre R. Bello III, had filed with the Supreme Court a Petition for Change of Venue of Criminal Cases Nos. 3642-M-93 to 3644-M-93, purportedly to safeguard the lives of the victims and their witnesses, and to prevent a miscarriage of justice.[11]

On December 15, 1993, before petitioners could be arraigned in Criminal Cases Nos. 3642-M-93 to 3644-M-93, respondent prosecutor filed an Ex Parte Motion to Withdraw Informations in said cases.[12] This motion was granted by Judge Villajuan also on December 15, 1993 and the cases were considered withdrawn from the docket

of the court.[13] On the same day, Prosecutor Villa-Ignacio filed four new informations against herein petitioners for murder, two counts of frustrated murder, and violation of Presidential Decree No. 1866 for illegal possession of firearms[14] which were subsequently raffled to the sala of Judge Victoria Pornillos of Branch 10, Regional Trial Court of Malolos, Bulacan and were docketed therein as Criminal Cases Nos. 4004-M-93 to 4007-M-93. No bail having been recommended for the crime of murder, Judge Pornillos ordered the arrest of herein petitioners.[15] On December 23, 1993, said presiding judge issued an order setting the arraignment of the accused for December 27, 1993.[16]

On December 27, 1993, the scheduled arraignment before Judge Pornillos was reset due to the absence of respondent prosecutor. On even date, petitioners filed before Judge Villajuan a Motion for Reconsideration of his order of December 15, 1993 which granted the motion to withdraw the original informations.[17]

Thereafter, a Motion to Quash the new informations for lack of jurisdiction was filed by petitioners before Judge Pornillos on January 3, 1994.[18] At the court session set for the arraignment of petitioners on January 24, 1994, Judge Pornillos issued an order denying the motion to quash and, at the same time, directed that a plea of not guilty be entered for petitioners when the latter refused to enter their plea.[19]

In the meantime, and prior to the arraignment of herein petitioners before Judge Pornillos, an order was issued on January 20, 1994 by Judge Villajuan granting the motion for reconsideration filed by petitioners, ordering the reinstatement of Criminal Cases Nos. 3642-M-93 to 3644-M-93, and setting the arraignment of the accused therein for February 8, 1994.[20] On said date, however, the arraignment was suspended and, in the meanwhile, petitioners filed a petition for certiorari, prohibition and mandamus with respondent Court of Appeals, assailing the order dated January 24, 1994 issued by Judge Pornillos which denied petitioners' motion to quash filed in Criminal Cases Nos. 4004-M-93 and 4007-M-93. As earlier stated, respondent court dismissed the petition in its questioned resolution of February 18, 1994, hence this petition.

I. On the Main Petition

The main issue in this case involves a determination of the set of informations under which herein petitioners should be tried, that is, (a) the first set of informations for homicide and frustrated homicide in Criminal Cases Nos. 3642-M-93 to 3644-M-93, or (b) the subsequent informations for murder, frustrated murder, and illegal possession of firearms in Criminal Cases Nos. 4004-M-93 to 4007-M-93. Several corollary but equally important issues have likewise been addressed to us for resolution, to wit:

1. Whether the ex parte motion to withdraw the original informations is null and void on the ground that (a) there was no notice and hearing as required by Sections 4, 5 and 6, Rule 15 of the Rules of Court; and (b) the appropriate remedy which should have been adopted by the prosecution was to amend the informations by charging the proper offenses pursuant to Section 14 of Rule 110;
2. Whether the order granting the withdrawal of the original informations was immediately final and executory;
3. Whether Judge Pornillos was correct in denying the motion to quash and thereby acquired jurisdiction over the new informations considering that (a) the designated public prosecutor allegedly had no authority to file the second set of informations; and (b) the filing thereof constituted forum shopping; and
4. Whether the arraignment proceeding held on January 24, 1994 in Criminal Cases Nos. 4004-M-93 to 4007-M-93 was valid.

We shall discuss these issues seriatim.

1. It is petitioners' submission that the prosecution's failure to serve them a copy of the motion to withdraw the

original informations and to set said motion for hearing constitutes a violation of their right to be informed of the proceedings against them, as well as a violation of Sections 4, 5 and 6, Rule 15 of the Rules of Court. Hence, so they contend, the ex parte motion should be considered as a worthless scrap of paper and Judge Villajuan had no authority to act on it. Ergo, the order granting the same is null and void.

Petitioners advance the theory that respondent prosecutor should have amended the original informations instead of withdrawing the same and filing new ones. They postulate that the principle of nolle prosequi does not apply in this case since the withdrawal or dismissal of an information is addressed solely to the sound and judicious discretion of the court which has the option to grant or deny it and the prosecution cannot impose its opinion on the court. It is further stressed that in case there is a need to change the nature of the offense charged, that is, from homicide to murder, by adding the qualifying circumstance of treachery, the only legal and proper remedy is through the filing of the corresponding amended information; and that the withdrawal of an information is allowed only where the new information involves a different offense which does not include or is not included in the offense originally charged.

Normally, an accused would not object to the dismissal of an information against him because it is to his best interest not to oppose the same. Contrarily, if the accused should deem such conditional or provisional dismissal to be unjust and prejudicial to him, he could object to such dismissal and insist that the case be heard and decided on the merits.[21] However, considering that in the original cases before Branch 14 of the trial court petitioners had not yet been placed in jeopardy, and the ex parte motion to withdraw was filed and granted before they could be arraigned, there would be no imperative need for notice and hearing thereof. In actuality, the real grievance of herein accused is not the dismissal of the original three informations but the filing of four new informations, three of which charge graver offenses and the fourth, an additional offense. Had these new informations not been filed, there would obviously have been no cause for the instant petition. Accordingly, their complaint about the supposed procedural lapses involved in the motion to dismiss filed and granted in Criminal Cases Nos. 3642-M-93 to 3644-M-93 does not impress us as a candid presentation of their real position.

Petitioners' contention that the dismissal of the original informations and the consequent filing of the new ones substantially affected their right to bail is too strained and tenuous an argument. They would want to ignore the fact that had the original informations been amended so as to charge the capital offense of murder, they still stood to likewise be deprived of their right to bail once it was shown that the evidence of guilt is strong. Petitioners could not be better off with amended informations than with the subsequent ones. It really made no difference considering that where a capital offense is charged and the evidence of guilt is strong, bail becomes a matter of discretion under either an amended or a new information.

Contrary to petitioners' submission, the absence of notice and hearing does not divest a trial court of authority to pass on the merits of the motion. It has been held that -?

"The order of the court granting the motion to dismiss despite absence of a notice of hearing, or proof of service thereof, is merely an irregularity in the proceedings. It cannot deprive a competent court of jurisdiction over the case. The court still retains its authority to pass on the merits of the motion. The remedy of the aggrieved party in such cases is either to have the order set aside or the irregularity otherwise cured by the court which dismissed the complaint, or to appeal from the dismissal and not certiorari."[22]

Besides, when petitioners were given by Judge Villajuan the opportunity to file a motion for reconsideration, even assuming the alleged procedural infirmity in his issuance of the order of dismissal, the same was thereby deemed cured. This is especially so in this case since, on his order, the original informations were reinstated in Branch 14 of the trial court.

The rule is now well settled that once a complaint or information is filed in court any disposition of the case, whether as to its dismissal or the conviction or the acquittal of the accused, rests in the sound discretion of the court. Although the prosecutor retains the direction and control of the prosecution of criminal cases even when the case is already in court, he cannot impose his opinion upon the tribunal. For while it is true that the prosecutor has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court, once the case had already been brought therein any disposition the prosecutor may deem proper thereafter should be addressed to the court for its consideration and approval.[23] 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.

We reiterate once again the doctrine we enunciated and explained in *Crespo vs. Mogul, etc., et al.*: [24]

"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.

x x x

"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. 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 such an instance, before a re-investigation of the case may be conducted by the public prosecutor, the permission or consent of the court must be secured. And, if after such re-investigation the prosecution finds a cogent basis to withdraw the information or otherwise cause the dismissal of the case, such proposed course of action may be taken but shall likewise be addressed to the sound discretion of the court.[25]

It is not denied that in the present case, the court granted the motion of respondent prosecutor for the suspension of the proceedings until the re-investigation thereof shall have been terminated. Thereafter, the prosecutor arrived at a finding that petitioners should have been charged with murder, frustrated murder, and illegal possession of firearms. This prompted him to file an ex parte motion to withdraw the original informations for homicide and frustrated homicide. Although the motion did not state the reasons for the withdrawal of the informations, nevertheless the court in the exercise of its discretion granted the same, as a consequence of which a new set of informations was thereafter filed and raffled to another branch of the court. Petitioners now question the propriety of the procedure adopted by the prosecution, insisting that an amendment, not a new information, was required under the circumstances.

It must here be emphasized that respondent prosecutor sought, and was subsequently granted, permission by the court to dismiss the original informations. It cannot therefore be validly claimed that the prosecutor exceeded his authority in withdrawing those informations because the same bore the imprimatur of the court. The issue is thus focused on whether or not under the given situation the court acted correctly in dismissing the original informations rather than ordering the amendment thereof.

It has been observed that while the Rules of Court gives the accused the right to move for the quashal of the

information, it is silent with respect to the right of the prosecutor to ask for a dismissal or withdrawal thereof.[26] A perusal of the 1985 Rules on Criminal Procedure will show that there are only two provisions concerning the dismissal of an information other than on motion of the accused, namely, Section 14 of Rule 110 and Section 11 of Rule 119. But then, it may be contended that these rules speak of a dismissal by the court when there is a mistake in charging the proper offense, but make no mention of a dismissal made upon application of the prosecution. That is not necessarily so.

It is true that Section 11, Rule 119 is virtually a restatement of Section 14, Rule 110, providing as it does that:

"SEC. 11. When mistake has been made in charging the proper offense. - When it becomes manifest at any time before judgment, that a mistake has been made in charging the proper offense, and the accused cannot be convicted of the offense charged, or of any other offense necessarily included therein, the accused shall not be discharged, if there appears to be good cause to detain him. In such case, the court shall commit the accused to answer for the proper offense and dismiss the original case upon the filing of the proper information." (Emphasis supplied.)

Rule 119 is the rule specifically governing the trial stage where evidence is necessarily being presented, hence the trial court is now in a better position to conclude that manifestly the accused cannot be convicted of the offense charged or of one that it necessarily includes. It would primarily be the function of the court to *motu proprio* order the dismissal of the case and direct the filing of the appropriate information. We do not discount the possibility of either the prosecution or the defense initiating such dismissal and substitution at that stage, although, from a realistic point of view, that would be a rare situation. This provision, therefore, is more directly and principally directed to the trial court to invest it with the requisite authority to direct by itself the dismissal and refiling of the informations therein contemplated.

Rule 110, on the other hand, provides the procedural governance for the prosecution, of offenses. Section 14 thereof, quoted *infra*, provides in its second paragraph the procedure and requisites for the substitution of a defective information by the correct one. Although, just like Section 11 of Rule 119 the permissible stage for effecting that substitution is "at any time before judgment," unlike the latter situation it is sufficient that "it appears x x x that a mistake has been made in charging the proper offense, x x x." The situation under said Section 14 contemplates a longer time span, inclusive of the period from the filing of the information up to and before trial. Since no evidence has been presented at that stage, the error would appear or be discoverable from a review of the records of the preliminary investigation. Of course, that fact may be perceived by the trial judge himself but, again, realistically it will be the prosecutor who can initially determine the same. That is why such error need not be manifest or evident, nor is it required that such nuances as offenses includible in the offense charged be taken into account. It necessarily follows, therefore, that the prosecutor can and should institute remedial measures for the dismissal of the original information and the refiling of the correct one, otherwise he would be recreant to his duties.

It is interesting to note that in the American jurisdiction, such right is specifically recognized under Rule 48 (a) of the Federal Rules of Criminal Procedure which provides that the entry of a *nolle prosequi* by the Government is a permissible right, although requiring in all cases the approval of the court in the exercise of its judicial discretion.[27] As a matter of fact, the prosecuting attorney is given the broad power, sole authority and discretion to enter a *nolle prosequi* provided he does not act arbitrarily[28] and subject to the discretion of the court.

In several cases, we have also impliedly recognized the propriety of such a procedure particularly in those instances where the prosecution is allowed to dismiss or withdraw an information on the ground of insufficiency of evidence. We have even gone further by imposing upon the fiscal, as he was then called, the duty to move for the dismissal of the information if he is convinced that the evidence is insufficient to establish, at least *prima*

facie, the guilt of the accused.[29]

In this case now before us, what is involved is a dismissal effected at the instance of the prosecutor by reason of a mistake in charging the proper offense, in order that new informations can be filed. The problem that may be posited, and should now be resolved, is when the fiscal may be allowed to move to dismiss an information and when he should merely move to amend it.

Section 14 of Rule 110, which is invoked by petitioners, reads as follows:

"SEC. 14. Amendment. - The information or complaint may be amended, in substance or form, without leave of court, at any time before the accused pleads; and thereafter and during the trial as to all matters of form, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the accused.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Rule 119, Section 11, provided the accused would not be placed thereby in double jeopardy, and may also require the witnesses to give bail for their appearance at the trial."

The first paragraph provides the rule for amendment of the information or complaint, while the second paragraph refers to the substitution of the information or complaint. Under the second paragraph, the court can order the filing of another information to charge the proper offense, provided the accused would not be placed thereby in double jeopardy and that could only be true if the offense proved does not necessarily include or is not necessarily included in the offense charged in the original information.

It has been the rule that under the first paragraph of Section 14, Rule 110, the amendment of the information may also be made even if it may result in altering the nature of the charge so long as it can be done without prejudice to the rights of the accused. Hence, in the case of *Dimalibot vs. Salcedo*,^[30] the accused therein were originally charged with homicide and were released on bail. However, the then provincial fiscal, after a review of the affidavits of the witnesses for the prosecution, discovered that the killing complained of was perpetrated with the qualifying circumstances of treachery, taking advantage of superior strength, and employing means to weaken the defense of the victim. Consequently, an amended information for murder was filed against the accused who were ordered re-arrested without the amount of bail being fixed, the new charge being a capital offense.

The Court ruled therein that the amendment was proper, pursuant to Section 13, Rule 106 of the 1940 Rules of Court (now Section 14, Rule 110 of the 1985 Rules on Criminal Procedure), thus:

"Here these rules properly apply, since it is undisputed that the herein accused were not yet arraigned before the competent court when the complaint for homicide was amended so as to charge the crime of murder. Upon the authority of said rules, the amendment could therefore be made even as to substance in order that the proper charge may be made. The claim that such amendment can only refer to matters of specification affecting the elements constituting the crime is not correct, for there is nothing in the rule to show that the nature of the amendment should only be limited to matters of specification. The change may also be made even if it may result in altering the nature of the charge so long as it can be done without prejudice to the rights of the defendant."

Be that as it may, it is quite plausible under Section 14 of Rule 110 that, instead of an amendment, an information for homicide may also be dismissed before the accused pleads, to give way to the filing of a new information for murder. This may be deduced from the pronouncement of the Court in the aforecited case of *Dimalibot*, to wit:

"This clearly appears from the second part of Section 13 of Rule 106 which says that, if it appears before judgment that a mistake has been made in charging the proper offense, the court may dismiss the original

information and order the filing of a new one provided the defendant may not be placed in double jeopardy. If a new information may be ordered at any time before judgment no reason is seen why the court may not order the amendment of the information if its purpose is to make it conformable to the true nature of the crime committed. x x x."

In the subsequent case of Teehankee, Jr. vs. Madayag, et al.,^[31] however, Section 14 of Rule 110 was clarified to mean as follows:

"It may accordingly be posited that both amendment and substitution of the information may be made before or after the defendant pleads, but they differ in the following respects:

1. Amendment may involve either formal or substantial changes, while substitution necessarily involves a substantial change from the original charge;
2. Amendment before plea has been entered can be effected without leave of court, but substitution of information must be with leave of court as the original information has to be dismissed;
3. Where the amendment is only as to form, there is no need for another preliminary investigation and the retaking of the plea of the accused; in substitution of information, another preliminary investigation is entailed and the accused has to plead anew to the new information; and
4. An amended information refers to the same offense charged in the original information or to an offense which necessarily includes or is necessarily included in the original charge, hence substantial amendments to the information after the plea has been taken cannot be made over the objection of the accused, for if the original information would be withdrawn, the accused could invoke double jeopardy. On the other hand, substitution requires or presupposes that the new information involves a different offense which does not include or is not necessarily included in the original charge, hence the accused cannot claim double jeopardy.

"In determining, therefore, whether there should be an amendment under the first paragraph of Section 14, Rule 110, or a substitution of information under the second paragraph thereof, the rule is that where the second information involves the same offense, or an offense which necessarily includes or is necessarily included in the first information, an amendment of the information is sufficient; otherwise, where the new information charges an offense which is distinct and different from that initially charged, a substitution is in order."

In any event, we are inclined to uphold the propriety of the withdrawal of the original informations, there having been no grave abuse of discretion on the part of the court in granting the motion and, more importantly, in consideration of the fact that the motion to withdraw was filed and granted before herein petitioners were arraigned, hence before they were placed in jeopardy. Thus, even if a substitution was made at such stage, petitioners cannot validly claim double jeopardy, which is precisely the evil sought to be prevented under the rule on substitution, for the simple reason that no first jeopardy had as yet attached. Consequently, we hold that although the offenses charged under the three new informations necessarily include those charged under the original informations, the substitution of informations was not a fatal error. A contrary ruling, to paraphrase from our former pronouncements, would sacrifice substantial justice for formal nuances on the altar of procedural technicalities. Furthermore, petitioners' right to speedy trial was never violated since the new informations were filed immediately after the motion to withdraw the original informations was granted.

2. The controversy over the jurisdiction of Judge Pornillos to entertain and act upon the new informations for murder, frustrated murder and illegal possession of firearms, is grounded on three points of disagreement.

Firstly, it is argued that the new informations were prematurely filed considering that the order granting the withdrawal of the original informations had not yet become final and executory and that, as a matter of fact, the same was subsequently reconsidered and the case reinstated by Judge Villajuan. Therefore, so petitioners

postulate, Judge Pornillos could not acquire jurisdiction over the same offense involving the same incident and the same accused.

Secondly, petitioners contend that the dismissal of the original informations and the filing of new ones which were raffled to another branch of the court constituted forum shopping, and was tainted with malice considering the indecent haste with which the motion to withdraw the informations was filed, the order granting the same was issued, and the new informations were filed, all of which took place on the same day. Pursuant to the doctrinal ruling that the court first acquiring jurisdiction excludes the other courts, it is theorized that the cognizance of the case taken by Judge Villajuan barred Judge Pornillos from assuming jurisdiction thereover.

Finally, the designation of respondent Prosecutor Dennis Villa-Ignacio (who was then First Assistant Provincial Prosecutor of Pasig, Rizal) as Acting Provincial Prosecutor of Bulacan was arbitrary and without any justifiable reason. It follows, therefore, so petitioners vigorously argue, that in the absence of such authority, the informations should be considered null and void by reason of which Judge Pornillos did not acquire jurisdiction over the same.

On the other hand, respondents question the propriety of petitioners' filing of a petition for certiorari prohibition and mandamus in the Court of Appeals against the order of the lower court denying petitioners' motion to quash, claiming that the proper remedy was to proceed to trial on the merits and thereafter raise on appeal, as special defenses, the grounds invoked in the motion to quash.

It is a general rule that a nolle prosequi or dismissal entered before the accused is placed on trial and before he is called on to plead is not equivalent to an acquittal,[32] and does not bar a subsequent prosecution for the same offense.[33] It is not a final disposition of the case.[34] Rather, it partakes of the nature of a nonsuit or discontinuance in a civil suit and leaves the matter in the same condition in which it was before the commencement of the prosecution.[35]

A dismissal is different from an acquittal. An order of dismissal which is actually an acquittal is immediately final and cannot be reconsidered.[36] Furthermore, an acquittal is always based on the merits, that is, the defendant is acquitted because the evidence does not show that defendant's guilt is beyond reasonable doubt; but a dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissals terminate the proceedings, either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance.[37] For dismissal to be a bar under double jeopardy, it must have the effect of acquittal.

All these go to show, therefore, that the dismissal of Criminal Cases Nos. 3642-M-93 to 3644-M-93 did not amount to an acquittal of herein petitioners. Consequently, the same did not immediately become final, hence petitioners could still file a motion for the reconsideration thereof. Moreover, such dismissal does not constitute a proper basis for a claim of double jeopardy.[38] Since jeopardy had not yet attached, herein petitioners were not prejudiced by the filing of the new informations even though the order of dismissal in the prior case had not yet become final. Neither did it affect the jurisdiction of the court in the subsequent case.

In American legal practice, where a motion for an order of nolle prosequi is made, the only power to deny the motion would be based on failure of the district attorney to judiciously exercise his discretion.[39] In most cases, the motion will be readily granted and should not be refused unless the court has some knowledge that it is based on an improper reason or a corrupt motive. But such a motion to dismiss, will not also be approved unless the court is satisfied that the administration of justice requires that the prosecution be ended, or if there appears to be a clear violation of the law.[40] Whatever may be the reason therefor, a denial of the motion to withdraw should

not be construed as a denigration of the authority of the special prosecutor to control and direct the prosecution of the case[41], since the disposition of the case already rests in the sound discretion of the court.

This brings us to the question as to whether or not an order of dismissal may be subsequently set aside and the information reinstated. Again, in American jurisprudence, the authorities differ somewhat as to whether a nolle prosequi may be set aside and the cause reinstated.[42] Some cases hold that the nolle prosequi may be recalled and that the accused may be tried on the same information[43], but before it can be retraced, set aside, cancelled, or struck off, the permission or assent of the court must be had and obtained, and such cancellation or retraction must be duly entered. According to other authorities, however, the entry of an unconditional nolle prosequi, not on the ground that the information is insufficient on its face, is an end to the prosecution of that information, and such nolle prosequi cannot afterward be vacated and further proceedings had in that case.[44]

Still in some cases, it has been held that a nolle prosequi may be set aside by leave of court, so as to reinstate proceedings on the information, or unless it was entered by mistake.[45] In our jurisdiction, we follow the rule which allows an order of dismissal to be set aside by leave of court. In one case, it was held that in the absence of any statutory provision to the contrary, the court may, in the interest of justice, dismiss a criminal case provisionally, that is, without prejudice to reinstating it before the order becomes final or to the subsequent filing of a new information for the offense.[46]

The rule that in cases of concurrent jurisdiction the court first acquiring jurisdiction will retain it to the end to the exclusion of other tribunals, is not to be given unyielding effect in all cases and it does not apply where the jurisdiction of the first court has come to an end in any legal way, such as by nolle prosequi.[47] The rule on exclusions is intended to prevent confusion and conflicts in jurisdiction and to prevent a person from being twice tried for the same offense, but no accused has a vested right to be tried in any particular court of concurrent jurisdiction; and when one court of concurrent jurisdiction voluntarily relinquishes it by a nolle prosequi or dismissal of the case, there can be no legal or logical reason for preventing the other court from proceeding.[48] With much more reason will this rule apply where only branches of the same court, and not different courts, are involved in the jurisdictional conflict.

There was no forum shopping in the lower court with respect to the case involved. While the procedure adopted by the prosecution was somewhat cumbersome, it was not in bad faith and, accordingly, it did not affect the legality of the proceedings. There is no showing, and petitioners failed to prove otherwise, that the assignment by raffle of the new informations to another branch of the same court was intended to prejudice herein petitioners, or to place them under less favorable circumstances, or to find a court which would act favorably on the prosecution's case.

The authority of the special prosecutor appointed by the Secretary of Justice to sign and file informations has long been recognized in this jurisdiction and it has been held that such information cannot be quashed on that account. There is nothing so sacrosanct in the signing of complaints, holding of investigations, and conducting prosecutions that only an officer appointed by the President or one expressly empowered by law be permitted to assume these functions.[49] And any irregularity in the appointment does not necessarily invalidate the same if he may be considered a de facto officer.[50]

Of course, where the person who signed the information was disqualified from appointment to such position, the information is invalid and the court does not acquire jurisdiction to try the accused thereon.[51] Such is not, however, the situation obtaining in the case at bar. It will be noted that respondent prosecutor was designated by the Secretary of Justice to handle the re-investigation and prosecution of the case against petitioners pursuant to Department Order No. 369. Petitioners failed to show any irregularity in the issuance of said directive.

At any rate, the power of supervision and control vested in the Secretary of Justice under Presidential Decree No. 1275 had been broadened beyond the confines of the old law, that is, Section 1679 of the Revised Administrative Code, wherein the power of the Secretary was then limited only to certain instances. Pertinently, in *Aguinaldo, et al. vs. Domagas, et al.*,^[52] we said:

"The Court notes, however, that Department of Justice Order No. 85 was issued pursuant to, among others, P.D. No. 1275 issued on 11 April 1978 which provides:

'Section 1. Creation of the National Prosecution Service; Supervision and Control of the Secretary of Justice. -- There is hereby created and established a National Prosecution Service under the supervision and control of the Secretary of Justice, to be composed of the Prosecution Staff in the Office of the Secretary of Justice and such number of Regional State Prosecution Offices, and Provincial and City Fiscal's Offices as are hereinafter provided, which shall be primarily responsible for the investigation and prosecution of all cases involving violations of penal laws.

'The power of supervision and control vested in the Secretary of Justice includes the authority to act directly on any matter within the jurisdiction of the Prosecution Staff, the Regional State Prosecution Office or the Office of the Provincial or City Fiscal and to review, modify or revoke any decision or action of the Chief of said staff or office.'

"The power of supervision and control vested in the Secretary of Justice under P.D. No. 1275 had thus been broadened beyond the confines of the old law, i.e., Section 1679 of the Revised Administrative Code of 1917, where the power of the Secretary of Justice to designate acting fiscals or prosecutors to handle a particular case was limited to instances 'when a provincial fiscal shall be disqualified by personal interest to act in a particular case or when for any reason he shall be unable, or shall fail to discharge any of the duties of his position.' Indeed, the limitation upon which petitioners rely no longer subsisted under P.D. No. 1275.

"Having been duly designated in accordance with law, the panel of prosecutors had complete control of the investigation and prosecution of the case. x x x."

3. Petitioners similarly dispute the legality of their arraignment on January 24, 1994, when Judge Pornillos entered a plea of not guilty for them after they refused to plead, without furnishing them copies of the information with the list of witnesses, after merely reading the informations against them and asking whether they understood the same, which were allegedly in palpable violation of Section 1, Rule 116. Petitioners aver that they were requesting for the suspension of the arraignment as they wanted to have a final copy of the order of January 24, 1994 which was merely read in open court, and to take the necessary steps to question the same by way of a motion for reconsideration or an appeal.

In criminal cases, it is the duty of the accused, in addition to the other pleas authorized by law, to plead whether he is guilty or not of the crime charged. In that way and in that way only can an issue be created upon which the trial shall proceed.^[53] Section 1(c) of Rule 116 is quite explicit that where the accused refuses to plead, a plea of not guilty shall be entered for him. Hence, under such mandatory language, if the accused refuses to plead, the court must enter a plea of not guilty. The words are so plain and unambiguous that no construction is necessary. It actually calls for a literal application thereof. Any explanation or defense which petitioners would want to invoke can be properly raised during the trial, but they cannot refuse to enter their plea. Nonetheless, the alleged defect in their arraignment on January 24, 1994 is deemed to have been cured when they were again arraigned on February 18, 1994 with the assistance of counsel de oficio, and the information was read to them in the vernacular.

In conclusion, considering that Branch 10 of the same trial court handling Criminal Cases Nos. 4004-M-93 to 4007-M-93 legally acquired jurisdiction over the new informations which we have likewise declared valid,

petitioners may be prosecuted thereunder.

II. On the Petition for Habeas Corpus

This petition is predicated mainly on petitioners' asseveration that the court which issued the warrant for their arrest had no jurisdiction over the case, hence their detention should be deemed illegal.

We have earlier declared that Branch 10 of the trial court acquired jurisdiction over the new set of informations. Consequently, the warrant of arrest issued on the bases of said informations filed therein and the subsequent detention of herein petitioners pursuant thereto are valid. What instead has to be resolved is the corollary issue of whether the petition for habeas corpus was properly filed together with their present petition for certiorari and mandamus.

The writs of habeas corpus and certiorari may be ancillary to each other where necessary to give effect to the supervisory powers of the higher courts. A writ of habeas corpus reaches the body and the jurisdictional matters, but not the record. A writ of certiorari reaches the record but not the body. Hence, a writ of habeas corpus may be used with the writ of certiorari for the purpose of review.[54] However, habeas corpus does not lie where the petitioner has the remedy of appeal or certiorari because it will not be permitted to perform the functions of a writ of error or appeal for the purpose of reviewing mere errors or irregularities in the proceedings of a court having jurisdiction over the person and the subject matter.[55]

Neither can we grant the writ at this stage since a writ of habeas corpus is not intended as a substitute for the functions of the trial court. In the absence of exceptional circumstances, the orderly course of trial should be pursued and the usual remedies exhausted before the writ may be invoked. Habeas corpus is not ordinarily available in advance of trial to determine jurisdictional questions that may arise.[56] It has to be an exceptional case for the writ of habeas corpus to be available to an accused before trial.[57] In the absence of special circumstances requiring immediate action, a court will not grant the writ and discharge the prisoner in advance of a determination of his case in court.[58] In the case under consideration, petitioners have dismally failed to adduce any justification or exceptional circumstance which would warrant the grant of the writ, hence their petition therefor has to be denied.

In addition, a petition for habeas corpus is not the appropriate vehicle for asserting a right to bail or vindicating its denial. In the case of *Enrile vs. Salazar, etc., et al.*,[59] we held that:

"The criminal case before the respondent Judge was the normal venue for invoking the petitioner's right to have provisional liberty pending trial and judgment. The original jurisdiction to grant or deny bail rested with said respondent. The correct course was for petitioner to invoke that jurisdiction by filing a petition to be admitted to bail, claiming a right to bail per se by reason of the weakness of the evidence against him. Only after that remedy was denied by the trial court should the review jurisdiction of this Court have been invoked, and even then, not without first applying to the Court of Appeals if appropriate relief was also available there."

III. On the Motion to Cite for Contempt

The records show that on February 24, 1994, this Court issued a temporary restraining order, pursuant to its resolution in Administrative Matter No. 94-1-13-RTC which is a petition for change of venue filed by the Vinculados, requiring Judges Felipe N. Villajuan and Victoria Villalon-Pornillos to cease and desist from hearing the criminal cases involving herein petitioners which were pending before them.[60]

Subsequently, another resolution was issued in said cases, dated March 1, 1994, with the following directive:

"ACCORDINGLY, without prejudice to the final determination as to which of the two (2) sets of information will be upheld or prevail, the Executive Judge of the Regional Trial Court of Malolos, Bulacan is hereby

directed to transfer all the aforementioned criminal cases filed against Mayor Honorato Galvez, et al. now in the Regional Trial Court of Malolos, Bulacan, to the Executive Judge, Regional Trial Court of Quezon City for raffle as one (1) single case among its branches and for the branch concerned, after raffle, to proceed with all deliberate dispatch after the issues raised in CA-G.R. SP No. 33261 have been resolved with finality. "[61]

As a consequence, the seven informations which were docketed as Criminal Cases Nos. Q-94-55481 to Q-94-55487 were assigned to and are now pending trial on the merits before Branch 103 of the Regional Trial Court of Quezon City, presided over by Judge Jaime N. Salazar, Jr. Petitioners now assert that Judge Salazar and Prosecutor Villa-Ignacio proceeded with the trial of the cases despite the aforesated directives in the above cited resolutions. We find no merit in the motion to cite them for contempt.

The records reveal that there was a manifestation dated May 31, 1994[62] filed by the Solicitor General wherein the latter manifested his conformity to the agreement made between the prosecution and the defense before Judge Salazar, the pertinent part of which agreement is as follows:

"1. During the hearing on May 26, 1994, the prosecution, through Senior State Prosecutor Dennis Villa-Ignacio, the defense through Justice Alfredo Lazaro, and this Honorable Court agreed that the trial in these cases shall proceed on condition that: (a) the defense shall not be deemed to have waived any issue or objection it has raised before the Supreme Court in G.R. No. 114046; and (b) that the trial shall also be without prejudice to whatever decision and resolution the Supreme Court may render in the case before it."

Counsel for petitioners, retired Justice Alfredo Lazaro, takes issue with said agreement on the pretension that the same is not the true agreement of the parties, but he failed to state what they actually agreed upon. Withal, the resolutions of this Court in the petition for change of venue, as well as the cease and desist order issued therein, are clearly directed against the two aforementioned regional trial judges in Malolos, Bulacan. By no stretch of the imagination can we interpret the same to include Judge Jaime N. Salazar, Jr. of Quezon City.

For that matter, the issues involved in this petition for certiorari do not necessarily require a suspension of the proceedings before the present trial court considering that the main petition hinges only on a determination of which set of informations shall constitute the indictments against petitioners and for which charges they shall stand trial. Whichever set of informations prevails, the evidence of the prosecution and defense will more or less be the same and can be utilized for the charges therein. Hence, no cogent reason exists for the suspension of the proceedings before the court below.

As a final word, while it may well be that both sets of information validly exist for the nonce, to allow both of them to subsist will only serve to confuse and complicate the proceedings in the cases therein. Brushing aside procedural technicalities, therefore, it becomes exigent to now consider and declare the four informations for murder, frustrated murder and illegal possession of firearms as having amended and superseded the original three informations for homicide and frustrated homicide, there being no substantial rights of herein petitioners which may be affected thereby. Correspondingly, the three informations for homicide and frustrated homicide should be ordered withdrawn from the Quezon City trial court's docket.

WHEREFORE, judgment is hereby rendered DISMISSING the petition for certiorari and mandamus together with the petition for habeas corpus; DENYING, for lack of merit, the motion to cite respondent judge and prosecutor for contempt and to annul proceedings; and ORDERING the withdrawal and invalidation of the three informations for homicide and frustrated homicide against petitioners from the docket of Branch 103 of the Regional Trial Court of Quezon City.

SO ORDERED.

Narvasa, C.J., (Chairman), Puno, and Mendoza, JJ., concur.

[1] Associate Justice Alfredo L. Benipayo, ponente, with Associate Justices Ricardo P. Galvez and Corona Ibay-Somera, concurring; Annex B, Petition; Rollo, 90.

[2] Rollo, 276.

[3] *ibid.*, 314.

[4] *Ibid.*, 334.

[5] Annexes D, E, and F, Petition; Rollo, 107, 109, 111.

[6] Annex I, *id.*; *ibid.*, 115.

[7] Annex J, *id.*; *ibid.*, 116.

[8] Letter dated November 18, 1993; Annex N, *id.*; *ibid.*, 121.

[9] Annex O, *id.*; *ibid.*, 122.

[10] Annex R, *id.*; *ibid.*, 132.

[11] Annex C, *id.*; *ibid.*, 96.

[12] Annex T, *id.*; *ibid.*, 134.

[13] Annex Z, *id.*; *ibid.*, 146.

[14] Annexes U, V, W, and X, *id.*; *ibid.*, 135, 137, 140, and 143.

[15] Annex Y, *id.*; *ibid.*, 145.

[16] Annex AA, *id.*; *ibid.*, 147.

[17] Annex BB, *id.*; *ibid.*, 149.

[18] Annex FF, *id.*; *ibid.*, 189.

[19] Annex A, *id.*; *ibid.*, 71.

[20] Annex JJ, *id.*; *ibid.*, 232.

[21] Republic vs. Agoncillo, et al., G.R. No. L-27257, August 31, 1971, 40 SCRA 579.

[22] People, et al. vs. Vergara, etc., et al., G.R. Nos. 101557-58, April 28, 1993, 221 SCRA 560, 570-571.

[23] Dungog vs. Court of Appeals, et al., G.R. Nos. 77850-51, March 25, 1988, 159 SCRA 145.

[24] G.R. No. 53373, June 30, 1987, 151 SCRA 462, 470-471.

[25] Balgos, Jr., et al. vs. Sandiganbayan, et al., G.R. No. 85590, August 10, 1989, 176 SCRA 287.

[26] Francisco, Criminal Procedure, Second Edition, 70-71.

[27] U.S. vs. Shahanan, 168 F. Supp. 225.

- [28] 22A C.J.S. Criminal Law Sec. 457.
- [29] U.S. vs. Barredo, et al., 32 Phil. 444 (1915); People vs. Natoza, et al., 100 Phil. 533 (1956).
- [30] 107 Phil. 843 (1960).
- [31] G.R. No. 103102, March 6, 1992, 207 SCRA 134, 140.
- [32] Zoll vs. Allen, et al., 93 F. Supp. 95; See vs. Gosselin, et al., 48 A. 2d 560.
- [33] 22A C.J.S. Criminal Law Sec. 254.
- [34] Ibid., id., Sec. 456.
- [35] People vs. Watson, 68 N.E. 2d 265.
- [36] Lagunilla vs. Reyes, etc., et al., L-17377, April 29, 1961, 1 SCRA 1364; see also Bernardo, et al. vs. Court of Appeals, et al., G.R. No. 82483, September 26, 1990, 190 SCRA 63.
- [37] Paulin, et al. vs. Gimenez, etc., et al., G.R. No. 103323, January 21, 1993, 217 SCRA 386.
- [38] People vs. Molero, G.R. No. 67842, September 24, 1986, 144 SCRA 397.
- [39] U.S. vs. Brokaw, et al., 60 F. Supp. 100.
- [40] 22A C.J.S. Criminal Law Sec. 457.
- [41] Crystal vs. Sandiganbayan, et al., G.R. Nos. 83635-53, February 28, 1989, 170 SCRA 822.
- [42] 22A C.J.S. Criminal Law Sec. 463.
- [43] Commonwealth vs. Clavell, 137 A. 2d 846; Commonwealth vs. McLaughlin, 142 A. 213.
- [44] 22A C.J.S. Criminal Law Sec. 463.
- [45] Loc. cit.
- [46] People vs. Jabajab, 100 Phil. 307 (1956); People vs. Manlapas, et al., 116 Phil. 33 (1962).
- [47] State vs. Clayton, 111 S.E. 2d 299.
- [48] State vs. Van Ness, 117 ALR 415.
- [49] Go Cam, et al. vs. Gatmaitan, et al., 85 Phil. 802 (1950); Lo Cham vs. Ocampo, etc., et al., 77 Phil. 635 (1946).
- [50] People vs. Penesa, 81 Phil. 398 (1948).
- [51] See Villa vs. Ibañez, etc., et al., 88 Phil. 402 (1951).
- [52] G.R. No. 98452, En banc resolution, September 26, 1991.
- [53] United States vs. Kelly, 35 Phil. 419 (1916).
- [54] 39 Am. Jur. 2d Habeas Corpus Sec. 175.
- [55] Ibid., Sec. 12.
- [56] Ibid., Sec. 20.

[57] Ibid., Sec. 35.

[58] Ibid., Sec. 16.

[59] G.R. No. 92163, June 5, 1990, 186 SCRA 217, 231.

[60] Annex C, Petition; Rollo, 96.

[61] Annex C-1, id.; ibid., 101.

[62] Annex A-1, Petition to Cite for Contempt; Rollo, 345.

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