

**DONATO PANGILINAN, PETITIONER, VS. THE COURT OF APPEALS,
JUDGE MAURICIO M. RIVERA, PRESIDING JUDGE OF RTC BRANCH
73, ANTIPOLO, RIZAL, AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

G.R. No. 129319. January 30, 2002

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

On September 23, 1993, twelve (12) Informations for violations of Section 9,[1] in relation to Section 39,[2] of Presidential Decree No. 957[3] were filed against Donato Pangilinan, now petitioner, before the Regional Trial Court (Branch 73), Antipolo, Rizal, presided by Judge Mauricio M. Rivera, respondent herein. The 12 Informations,[4] docketed as Criminal Cases Nos. 93-10039 to 93-10050, contain similar averments except for the names of private complainants, to wit:

“That on or about the 15[th] day of August 1993, in the Municipality of Antipolo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused constructed forty-six (46) dwelling units in Barangay Mayamot, Antipolo, Rizal of which (names of complainants omitted) acquired and occupied one (1) unit with the assurance and guarantee of said accused that said unit was built in accordance with Pag-ibig Standards for building works but once said complainant moved in and occupied his unit, it turned out that this unit is obviously defective and that despite the ruling rendered by the Housing and Land Use Regulatory Board in HLRB Case No. REM-082283-1687 to cause necessary repairs therein, said corporation, thru its President, willfully, unlawfully and feloniously did not comply with said ruling to the damage and prejudice of the herein complainant.

Contrary to law.”

Upon arraignment, petitioner pleaded “not guilty” to the charges. During the first scheduled hearing, or on January 4, 1994, the private prosecutor asked for postponement on the ground that he was awaiting the filing of seven (7) additional Informations against petitioner. This motion was granted.[5]

On March 14, 1994, the 7 additional Informations[6] were filed, docketed as Criminal Cases Nos. 94-10919 to 94-10925. These have similar allegations as those of the first 12 Informations except as to the names of the complainants and as to the docket number of HLRB Case which is “REM-082282-1687.”

Subsequently, on March 25, 1994, the private prosecutor filed an Ex-Parte Omnibus Motion,[7] praying inter alia that: (a) the 7 new Informations be consolidated with the first 12 Informations, and (b) all these 19 Informations be amended to reflect the correct time frame within which the offenses charged were committed, which is 1981 (instead of “on or about the 15[th] day of August 1993”), the actual date the housing units were constructed.

Contending that the proposed amendment changing the date of the commission of the offenses is substantial in nature, petitioner opposed[8] the motion insofar as the first 12 Informations are concerned as he has already entered his plea, hence not allowed under Section 14, Rule 110 of the Revised Rules on Criminal Procedure.

Finding the amendment to be merely formal, the trial court, in an Order dated September 9, 1994, granted the omnibus motion. However, the lower court inadvertently committed a mistake by ordering the insertion in the Informations of the phrase “on or about the 15[th] day of August, 1993” in place of “in the vicinity of the year 1981”. This error, however, was rectified in the Order dated November 9, 1994.[9]

Aggrieved, petitioner filed a motion for reconsideration of the Orders dated September 9, 1994 and November 9, 1994 but was denied in the Order dated December 5 1994.[10]

During the scheduled arraignment pertaining to the new 7 Informations on December 8, 1994, petitioner asked for deferment and manifested his intention of filing a petition for certiorari to assail the Orders of September 9, 1994, November 9, 1994 and December 5, 1994.

True enough, on December 19, 1994, petitioner filed with the Court of Appeals a petition[11] for certiorari and prohibition with application for a temporary restraining order and a writ of preliminary injunction against Judge Mauricio M. Rivera and the People of the Philippines. Petitioner reiterated that insofar as the first 12 Informations are concerned, the trial court could not anymore, after his plea, order the change of the alleged dates of the commission of the offenses charged, this being a substantial amendment. Petitioner further asserted that the phrase “in the vicinity of 1981” is insufficient and defective allegation since he would not know the nature and cause of the accusations and would thereby unduly expose him to surprises during trial. This petition, however, was dismissed by the Court of Appeals “for failure of the petitioner to attach certified true copies of the assailed orders.[12] Petitioner’s motion for reconsideration was also denied by the Court of Appeals.

Eventually petitioner filed the instant petition with this Court, assailing the dismissal of his suit by the Court of Appeals. This Court, in a Resolution dated March 27, 1996, granted the said petition and ordered the Appellate Court to resolve his petition for certiorari and prohibition on the merits.

In its Decision of October 21, 1996, the Court of Appeals, dismissed the petition, holding that the lower court did not gravely abuse its discretion when it allowed the amendment of the 19 Informations. It affirmed the trial court’s ruling that the amendment sought by the prosecution does not involve a matter of substance but merely of form.

Upon denial of his motion for reconsideration in a Resolution dated May 13, 1997, petitioner now comes to this Court via the special civil action for certiorari and prohibition,[13] alleging grave abuse of discretion on the part of the respondent Court of Appeals and respondent Judge Mauricio M. Rivera.

The petition is devoid of merit.

Prefatorily, we note the procedural error committed by petitioner in filing the instant petition under Rule 65 of the 1997 Rules of Civil Procedure, as amended. This is the same remedy he resorted to before the Court of Appeals. It must be noted that in this Court’s Resolution dated March 27, 1996, we directed the Court of Appeals to resolve on the merits the said special civil action as it was dismissed on technical grounds. Verily, the now assailed Decision dated October 21, 1996 of the Court of Appeals is a final disposition on the merits. Hence, the proper remedy available to petitioner is a petition for review under Rule 45, not a special civil action under Rule 65.[14]

Nonetheless, inasmuch as public respondents did not question the propriety of the instant petition, and considering further that this involves criminal cases, this Court has treated this action as one for review under Rule 45 in order to accord substantial justice to all parties concerned.

In the main, petitioner maintains that the questioned amendment to the 19 Informations is substantial, not merely formal. The amended phrase “in the vicinity of 1981” is vague for being indefinite. This would prejudice his

rights since “he would not know the nature and cause of the accusations against him and would thereby be unduly exposed to surprises during the trial.[15] Thus, insofar as the 12 Informations are concerned, the trial court, after his plea, could no longer order their amendments by changing the dates of the commissions of the offenses.

We are not persuaded.

The deleted phrase “on or about August 15, 1993” in all the 19 original Informations clearly refers to the date of the “construct(ion) of forty-six (46) dwelling units” which were later found to be defective, thereby causing “damage and prejudice” to the complainants. Consequently, petitioner, who constructed the units, was charged for violating Section 9, in relation to Section 39, of P.D. 957. Obviously, it is impossible to finish the construction of all the 46 units in one (1) day, or “on or about August 15, 1993”. It was but proper to amend the date in the original Informations to “in the vicinity of 1981,” considering that the housing units were completed in 1981 as shown in the documentary proofs of completion presented by the prosecution in its motion for the amendment of the 19 Informations.[16] This fact, was never disputed by petitioner as noted by both the trial court and the Court of Appeals.[17]

Verily, the amended date in the 19 Informations is not at all material to the offenses charged because the basis thereof is not the date of the construction but the defective construction of the 46 dwelling units. We could not conceive how such innocuous amendment may prejudice the rights of petitioner since it would not alter the nature of the offense charged. In fact, the subject amendment is permissible under Section 14, Rule 110 of the Revised Rules of Criminal Procedure, which provides:

“SEC. 14. Amendment or substitution. - A complaint or information may be amended, in form or substance, without leave of court, at any time before the accused enters his plea. After the plea and during trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

“x x x.” (Emphasis ours)

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are AFFIRMED. Costs against petitioner.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Carpio, JJ., concur.

[1] SEC. 9. Revocation of registration certificate and license to sell. - The Authority may, motu proprio, or upon verified complaint filed by a buyer of a subdivision lot or condominium unit, revoke the registration of any subdivision project or condominium project and the license to sell any subdivision lot or condominium unit in said project by issuing an order to this effect, with his findings in respect thereto, if upon examination into the affairs of the owner or dealer during a hearing as provided for in Section 14 hereof, it shall appear there is satisfactory evidence that the said owner or dealer:

- a) Is insolvent; or
- b) Has violated any of the provisions of this Decree or any applicable rule or regulation of the Authority, or any undertaking of his/its performance bond; or
- c) Has been or is engaged or is about to engage in fraudulent transactions; or
- d) Has made any misrepresentation in any prospectus, brochure, circular or other literature about the subdivision project or condominium project that has been distributed to prospective buyers; or
- e) Is of bad business repute; or

f) Does not conduct his business in accordance with law or sound business principles.

Where the owner or dealer is a partnership or corporation or an unincorporated association, it shall be sufficient cause for cancellation of its registration certificate and its license to sell, If any member of such partnership or any officer or director of such corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual dealer, broker or salesman as provided in Section 11 thereof.

[2] SEC. 39. Penalties. — Any person who shall violate any of the provision of this Decree and/or any rule or regulation that may be issued pursuant to this Decree shall, upon conviction, be punished by a fine of no more than twenty thousand (P20,000.00) pesos and/or imprisonment of not more than ten years: Provided, That in the case of a corporations, partnership, cooperatives, or associations, the President, Manager or Administrator or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto.

[3] Entitled “REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATION THEREOF.”

[4] Annexes “A” to “A-11” of petition, Rollo, pp. 28-51.

[5] Rollo, p. 3.

[6] Annexes “C” to “C-6” of Petition, Rollo, pp. 53-65.

[7] Annex “D,” *ibid.*, pp. 67-69.

[8] Annex “E” of Petition, *ibid.*, pp. 70-73.

[9] Annex “H,” *ibid.*, p. 77.

[10] Annex “J,” *ibid.*, p. 86.

[11] Annex “K,” *ibid.*, pp. 87-105.

[12] Rollo, p. 158.

[13] Under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[14] National Irrigation Administration (NIA) v. Court of Appeals, 318 SCRA 255 (1999).

[15] Petition, Rollo, p. 11.

[16] Rollo, p. 68..

[17] See assailed Decision, Rollo, p. 123.

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