

COMMISSION ON ELECTIONS, PETITIONER, VS. HON. LORENZO R. SILVA, JR., AS PRESIDING JUDGE, RTC, BRANCHES 2 AND 3, BALANGA, BATAAN, HON. BENJAMIN T. VIANZON, AS PRESIDING JUDGE, BR...*G.R. No. 129417. February 10, 1998*

Ponente: MENDOZA, J.

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This case presents for determination the extent of control which those designated by the Commission on Elections have in the prosecution of election offenses. The facts are not in dispute. Pursuant to its power under Art. IX-C, §2(6) of the Constitution, the COMELEC charged private respondents Erasto Tanciongco and Norma Castillo with violations of §27 of R.A. No. 6646, together with Zenon Uy, in twelve separate informations filed with the Regional Trial Court of Bataan. Tanciongco, who is provincial prosecutor of Bataan, was vice chairman, while Castillo, who is division superintendent of schools, was secretary of the Provincial Board of Canvassers of Bataan. Uy, who is assistant regional director of elections, was chairman of the board. In each information, the three were accused of having tampered, in conspiracy with one another, with the certificates of canvass by increasing the votes received by then senatorial candidate Juan Ponce Enrile in certain municipalities of Bataan in the May 8, 1995 elections.

The twelve cases were raffled to three branches of the court presided over by respondent judges, Honorable Lorenzo R. Silva Jr. (Branches 2 and 3) and Honorable Benjamin T. Vianzon (Branch 1).

On October 30, 1996, Tanciongco and Castillo filed a joint “Omnibus Motion for Examination of Evidence to Determine the Existence of Probable Cause; Suspension of Issuance of Warrant of Arrest; and Dismissal of the Cases.” Chief State Prosecutor Jovencito Zuño, who had been designated by the Commission on Elections to prosecute the cases, filed a comment joining in private respondents’ request. On the other hand, the complainant, Aquilino Q. Pimentel, Jr. expressed no objection to the dismissal of the cases against the two.[1]

In orders dated March 31 and April 7, 1997 respectively, Judges Silva and Vianzon summarily dismissed the cases against private respondents.[2]

The COMELEC sought to appeal the dismissal of the cases to the Court of Appeals by filing notices on April 18, 1997,[3] but the judges denied due course to its appeal. The sole basis for the denials was the fact that the prosecutor, whom the COMELEC had deputized to prosecute the cases, had earlier taken a contrary stand against the COMELEC.

Thus, in his order, dated May 16, 1997, denying due course to the Notice of Appeal of the COMELEC in Criminal Case Nos. 6439, 6441, 6443, 6445, 6646, 6647, and 6470, Judge Silva, Jr. stated:

A Notice of Appeal dated April 18, 1997, in the above-entitled cases was filed on April 23, 1997 by Jose P. Balbuena, Director IV, Law Department, Commission on Elections, from the Order of the Court dated March

31, 1997, insofar as it dismissed the above-entitled cases as regards the accused Erasto Tanciongco and Norma P. Castillo.

Chief State Prosecutor Jovencito Zuño who has been authorized by the Commission on Elections to prosecute the cases, was required to comment on the Notice of Appeal which does not bear his signature. In his comment dated May 9, 1997, the Chief State Prosecutor states that he cannot give his conformity to the Notice of Appeal filed by Jose P. Balbuena of the Comelec as it would not be consistent with his position that he would abide by whatever finding the court may come up with on the existence of probable cause as against the accused Erasto Tanciongco and Norma Castillo. Consequently, the notice of appeal filed by Jose P. Balbuena is unauthorized and without legal effect.

WHEREFORE, the Notice of Appeal dated April 13, 1997, filed by Jose P. Balbuena is denied due course.[4]

SO ORDERED.

Judge Vianzon took a similar course in Criminal Case Nos. 6438, 6440, 6442, 6444 and 6471. In his order of May 23, 1997, he stated:

Considering that Chief State Prosecutor Jovencito R. Zuño has filed his comment to the Notice of Appeal filed by Director Jose P. Balbuena of the COMELEC, manifesting his non-conformity with the same because of his previous commitment to abide by the ruling of this court on the Omnibus Motion filed by accused Tanciongco and Castillo and the Motion to Quash filed by accused Uy, and considering further that Chief State Prosecutor has been duly deputized by the COMELEC en banc to handle the prosecution of this case, the said Notice of Appeal is hereby DENIED.

SO ORDERED.[5]

Hence this petition for certiorari and mandamus seeking the nullification of the orders of the two judges, denying due course to the Notices of Appeal of the COMELEC.[6]

The issue is not just the right of the prosecution to appeal from the previous orders of dismissal. It is settled that the approval of a notice of appeal, in cases where no record on appeal is required by law, is a ministerial duty of the court to which the notice of appeal is addressed, provided that such appeal is timely filed.[7] Of course in criminal cases the prosecution cannot appeal if the accused would thereby be placed in double jeopardy, but here the cases were dismissed by the judges before the accused were arraigned and, therefore, jeopardy has not attached.

For while the right to appeal is statutory and is not constitutional, once it is granted by statute, its denial would be a violation of the due process clause of the Constitution.[8]

The ultimate question concerns the authority of the COMELEC prosecutor. More precisely, the question is, who has authority to decide whether or not to appeal from the orders of dismissal ¾ the COMELEC or its designated prosecutor? The trial courts held the view that the Chief State Prosecutor's decision not to appeal the dismissal of the cases, consistent with his earlier decision to leave the determination of the existence of probable cause to the trial courts, was binding on them.

We think this view to be mistaken. The authority to decide whether or not to appeal the dismissal belongs to the COMELEC. Art. IX-C, §2(6) of the Constitution expressly vests in it the power and function to "investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices." As this Court has held:

In effect the 1987 Constitution mandates the COMELEC not only to investigate but also to prosecute cases of violation of election laws. This means that the COMELEC is empowered to conduct preliminary investigations

in cases involving election offenses for the purpose of helping the Judge determine probable cause and for filing an information in court. This power is exclusive with COMELEC.[9]

Indeed, even before the present Constitution, the Omnibus Election Code (B.P. Blg. 881) and, before it, the 1971 Election Code (R.A. No. 6388) and the 1978 Election Code (P.D. No. 1296) already gave the COMELEC the exclusive power to conduct preliminary investigation of all election offenses and to prosecute them in court.[10] The purpose is to place in the hands of an independent prosecutor the investigation and prosecution of election offenses.[11]

Prosecutors designated by the COMELEC to prosecute the cases act as its deputies. They derive their authority from it and not from their offices.[12] Consequently, it was beyond the power of Chief State Prosecutor Zuño to oppose the appeal of the COMELEC. For that matter, it was beyond his power, as COMELEC-designated prosecutor, to leave to the trial courts the determination of whether there was probable cause for the filing of the cases and, if it found none, whether the cases should be dismissed. Those cases were filed by the COMELEC after appropriate preliminary investigation. If the Chief State Prosecutor thought there was no probable cause for proceeding against private respondents, he should have discussed the matter with the COMELEC and awaited its instruction. If he disagreed with the COMELEC's findings, he should have sought permission to withdraw from the cases. But he could not leave the determination of probable cause to the courts and agree in advance to the dismissal of the cases should the courts find no probable cause for proceeding with the trial of the accused. It was, therefore, grave abuse of discretion on the part of the respondent judges to rely on the manifestation of Chief State Prosecutor Zuño as basis for denying due course to the notices of appeal filed by the COMELEC.

Whether respondent judges also erred in dismissing the cases filed by the COMELEC ^¾ indeed, whether the trial courts at that stage were justified in inquiring into the existence of probable cause because of exceptional reasons[13] ^¾ must be determined in the appeal after it is allowed. Here we only hold that whether the orders of dismissal should be appealed is for the COMELEC to decide, not for Chief State Prosecutor Zuño whom it has merely deputized to represent it in court.

Private respondents have nothing to say on this question. Their sole contention is that the petition should be dismissed because , so it is argued, it should have been brought in the name of the People of the Philippines and have been filed by the Solicitor General.

This contention is without merit. This is not the first time the COMELEC has come to this Court in its own name in regard to an action taken against it in cases filed by it in the lower courts. In *Commission on Elections v. Court of Appeals*[14] the COMELEC's right to appeal from the decision of the Court of Appeals dismissing a criminal case filed by it was sustained. This Court said:

The COMELEC has sufficient interest in filing the petition [for certiorari] to set aside the decision of the Court of Appeals having sustained the demurrer to evidence in the criminal case against private respondent for violation of the Election Laws. This is so, for it is not only entrusted with the duty to enforce the said law but also to prosecute all election offenses.

Under the Constitution, the COMELEC has the power to "prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices" (Art. IX [C], Sec. 2[6]), and under the Omnibus Election Code, (BP Blg. 881), it may avail of the assistance of other prosecution arms of the government (Sec. 265). Thus, the COMELEC Rules of Procedure gave the Chief State, Provincial and City Prosecutors a continuing authority "as deputies" to prosecute offenses punishable under the Election laws (COMELEC Rules of Procedure, Part 12, Rule 34, Sec. 2).

We have allowed government agencies to handle their cases before appellate courts, to the exclusion of the

Solicitor General.[15]

In *Commission on Elections v. Romillo*[16] the right of the COMELEC to file a petition for certiorari and mandamus to question the dismissal of criminal cases which it had filed for violation of the Election Code was assumed. Although the petition was eventually dismissed, the ruling was based not on the lack of authority of the COMELEC to file the petition but on this Court's determination that the dismissal of the criminal cases by the trial court was correct, considering that the evidence was insufficient.

Indeed, under the Rules of Court, the proper party who can file a petition for certiorari, prohibition or mandamus is the person "aggrieved" by the action of a tribunal, board or official because such action was taken without or in excess of jurisdiction or with grave abuse of discretion or in willful neglect of duty.[17] In contrast to an appealed case which is brought in the name of the parties in the court of origin and for this reason retains its title below, the case, which is an original action, is brought by him.[18]

In this case, denied by the courts below the authority to prosecute the criminal actions because they recognized instead the Chief State Prosecutor as the representative of the People, the COMELEC had to bring this suit to seek vindication of its authority. Naturally, the petition has to be brought in its name as the "aggrieved" party. In *Assistant Provincial Fiscal of Bataan v. Dollete*,[19] this Court granted a petition for certiorari, which the fiscal had filed in his name, to annul an order of the trial court denying his right to make an independent examination of the witnesses for the prosecution for the purpose of satisfying himself of the sufficiency of the evidence.

Considering the authority of the COMELEC over the prosecution of election offenses, its decision to bring this instant petition for certiorari and mandamus is conclusive on the Solicitor General. It would simply be a matter of referring this case to the Solicitor General so that, if he agrees, he may take over the conduct of this case. Otherwise, the COMELEC could just continue handling this case as it has actually done.

Hence, the omission of the COMELEC to refer this petition to the Office of the Solicitor General for representation should be disregarded. To make the filing of this case depend on his decision would be to place him in the same position in which respondent judges placed Chief State Prosecutor Zuño. That would further negate the constitutional function of the COMELEC.

WHEREFORE, the petition is GRANTED. The orders dated May 16, 1997 and May 23, 1997 of respondent judges are hereby SET ASIDE as null and void and respondent judges are ORDERED to give due course to the appeals of petitioner from their respective orders in Criminal Case Nos. 6438, 6440, 6442, 6444 and 6471 (filed in Branch 1); Criminal Case Nos. 6439, 6441, 6443, 6445, 6446, and 6470 (filed in Branch 2); and Criminal Case No. 6447 (filed in Branch 3).

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Puno, Vitug, Kapunan, Francisco, Panganiban, Martinez, Quisumbing, and Purisima, JJ., concur.

[1] Rollo, pp. 79 and 81.

[2] Id., pp. 80 and 85.

[3] Id., pp. 86 and 88.

[4] Id., p. 91.

[5] Rollo, p. 92.

[6] The COMELEC alleges in its petition:

1. This is a petition for certiorari and mandamus under Rule 65 of the Revised Rules of Court, to declare as null and void the Orders issued by respondents Judge Lorenzo R. Silva, Jr., and Judge Benjamin T. Vianzon, of the Regional Trial Court, Branches 1, 2 and 3, Balanga, Bataan, namely:

(a) Order dated May 16, 1997, denying due course to the Notice of Appeal dated April 18, 1997, filed by petitioner from the Order dated March 31, 1997, in Crim. Cases Nos. 6439, 6441, 6446, 6443, 6445, 6470 and 6447, and

(b) Order dated May 23, 1997, denying due course to the Notice of Appeal dated April 18, 1997, filed by petitioner from the Order dated March 31, 1997, in Crim. Cases Nos. 6438, 6440, 6442, 6444 and 6471,

and to compel said respondent Judges to approve the notice of appeal filed by petitioner in the aforesaid cases.

[7] See 1997 Rules of Civil Procedure, Rule 41; Santos v. Court of Appeals, 253 SCRA 632 (1996).

[8] Estoya v. Abraham-Singson, 237 SCRA 1, 19 (1994).

[9] People v. Inting, 187 SCRA 788, 799 (1990).

[10] The Omnibus Election Code provides: "SEC. 265. Prosecution - The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted."

[11] Compare De Jesus v. People, 120 SCRA 760, 765-766 (1983): "The grant to the COMELEC of the power, among others, to enforce and administer all laws relative to the conduct of election and the concomittant authority to investigate and prosecute election offenses is not without compelling reason. The evident constitutional intendment in bestowing this power to the COMELEC is to insure the free, orderly and honest conduct of elections, failure of which would result in the frustration of the true will of the people and make a mere idle ceremony of the sacred right and duty of every qualified citizen to vote. To divest the COMELEC of the authority to investigate and prosecute offenses committed by public officials in relation to their office would thus seriously impair its effectiveness in achieving this clear constitutional mandate." Reiterated in Corpus v. Tanodbayan, 149 SCRA 281, 283 (1987).

[12] People v. Basilla, 179 SCRA 87 (1989); People v. Inting, 187 SCRA 788 (1990).

[13] Unless there are exceptional circumstances justifying inquiry, such as those enumerated by this Court in Brocka v. Enrile, 192 SCRA 183, 188-189 (1990), it is to be presumed that in filing cases in court, the prosecutor found probable cause. If a court inquires at all into the existence of probable cause, it is only for the purpose of determining whether a warrant of arrest should issue, but not whether the cases should be dismissed. (See Roberts, Jr. v. Court of Appeals, 254 SCRA 307, 349 (1996) (Narvasa, C.J., concurring); Webb v. De Leon, 247 SCRA 652 (1995)).

[14] 229 SCRA 501 (1994).

[15] Id., at 505.

[16] 158 SCRA 716 (1988).

[17] Rule 65, §§1-3.

[18] Rule 44, §1.

[19] 103 Phil. 914 (1958).

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