

SOLAR TEAM ENTERTAINMENT, INC. AND PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. HON. ROLANDO HOW, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT BRANCH 257 OF PAR...

G.R. No. 140863. August 22, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

The question raised in this instant petition for certiorari and mandamus is whether or not the trial court can indefinitely suspend the arraignment of the accused until the petition for review with the Secretary of Justice (SOJ) has been resolved.

The facts of this case are not disputed.

On May 28, 1999, the City Prosecutor of Parañaque filed an Information[1] for estafa against Ma. Fe Barreiro (private respondent) based on the complaint[2] filed by Solar Team Entertainment, Inc. (petitioner). The case was docketed as Criminal Case No. 99-536 entitled “People of the Philippines vs. Ma. Fe F. Barreiro” before the Regional Trial Court of Parañaque City, Branch 257, presided by public respondent Judge Rolando G. How.

Before the scheduled arraignment of private respondent on August 5, 1999 could take place, respondent court issued an Order[3] dated June 29, 1999, resetting the arraignment of private respondent on September 2, 1999 on the ground that private respondent had “filed an appeal with the Department of Justice (DOJ)”.[4] Private respondent manifested in the same Order that she would submit a certification from the DOJ granting due course to her appeal on or before the second scheduled arraignment.[5] On September 24, 1999, respondent court issued an Order[6] denying petitioner’s motion for reconsideration of the order that previously reset the arraignment of private respondent. Said order further rescheduled the arraignment of private respondent to November 18, 1999.

On November 10, 1999, private respondent filed another “Motion to Defer Arraignment”.[7] On November 15, 1999, before the scheduled date of the arraignment of private respondent and before the date set for the hearing of private respondent’s “Motion to Defer Arraignment”, respondent court issued an Order[8] further deferring the arraignment of private respondent “until such time that the appeal with the said office (SOJ) is resolved”.[9] Petitioner’s motion for reconsideration of the order was denied by respondent court on November 22, 1999.[10]

Petitioner bewails the fact that six months have elapsed since private respondent appeared or submitted herself to the jurisdiction of respondent court and up to now she still has to be arraigned.[11] Respondent court allegedly violated due process when it issued the assailed order before petitioner received a copy of the “Motion to Defer Arraignment” of private respondent and before the hearing for the same motion could be conducted.[12] Petitioner points out that despite the order of respondent court dated September 26, 1999 which stated that the arraignment of private respondent on November 18, 1999 is “intransferable”, respondent court, in utter disregard of its own order, issued the now assailed order indefinitely suspending the arraignment of private respondent.[13]

Petitioner is convinced that the twin orders further delaying the arraignment of private respondent and denying the motion for reconsideration of petitioner violate Section 7, of the Speedy Trial Act of 1998 (RA 8493) and Section 12, Rule 116 of the Revised Rules on Criminal Procedure.

Petitioner further submits that this instant petition raises “a pure question of law of first impression”[14] since “it involves the application and interpretation of a law of very recent vintage, namely Republic Act No. 8493, otherwise known as the Speedy Trial Act of 1998”.[15] Petitioner mainly relies on Section 7 of said law that states that:

“Section 7. Time Limit Between Filing of Information and Arraignment and Between Arraignment and Trial. – The arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. xxx”

By issuing the assailed order, respondent court allegedly committed grave abuse of discretion amounting to lack/excess of jurisdiction.[16] Hence, this petition for certiorari and mandamus to nullify and set aside the order of respondent court dated November 15, 1999.

Petitioner limits the issues to the following:

I.

RESPONDENT COURT ERRED IN REFUSING TO ARRAIGN THE PRIVATE RESPONDENT DESPITE THE LAPSE OF THE TIME LIMIT OF THIRTY (30) DAYS MANDATORILY IMPOSED BY SECTION 7, OF REPUBLIC ACT NO. 8493, OTHERWISE KNOWN AS “THE SPEEDY TRIAL ACT OF 1998”; AND

II.

RESPONDENT COURT ERRED IN DEFYING SECTION 12, RULE 116, OF THE REVISED RULES ON CRIMINAL PROCEDURE.[17]

The instant petition is devoid of merit.

The power of the Secretary of Justice to review resolutions of his subordinates even after the information has already been filed in court is well settled. In *Marcelo vs. Court of Appeals*,[18] reiterated in *Roberts vs. Court of Appeals*,[19] we clarified that nothing in *Crespo vs. Mogul*[20] forecloses the power or authority of the Secretary of Justice to review resolutions of his subordinates in criminal cases despite an information already having been filed in court.[21]

The nature of the Justice Secretary’s power of control over prosecutors was explained in *Ledesma vs. Court of Appeals* [22] in this wise:

“Decisions or resolutions of prosecutors are subject to appeal to the secretary of justice who, under the Revised Administrative Code,[23] exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, nullify, reverse or modify their rulings.

Section 39, Chapter 8, Book IV in relation to Section[s] 5, 8, and 9, Chapter 2, Title III of the Code gives the secretary of justice supervision and control over the Office of the Chief Prosecutor and the Provincial and City Prosecution Offices. The scope of his power of supervision and control is delineated in Section 38, paragraph 1, Chapter 7, Book IV of the Code:

‘(1) Supervision and Control. – Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the

commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; x x x x.

Supplementing the aforequoted provisions are Section 3 of R.A. 3783 and Section 37 of Act 4007, which read:

‘Section 3. x x x x

The Chief State Prosecutor, the Assistant Chief State Prosecutors, the Senior State Prosecutors, and the State Prosecutors shall x x x perform such other duties as may be assigned to them by the Secretary of Justice in the interest of public service.’

x x x x x x x x

Section 37. The provisions of the existing law to the contrary notwithstanding, whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify, or revoke any decision or action of said chief of bureau, office, division or service.”

‘Supervision’ and ‘control’ of a department head over his subordinates have been defined in administrative law as follows:

‘In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform such duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.’

Review as an act of supervision and control by the justice secretary over the fiscals and prosecutors finds basis in the doctrine of exhaustion of administrative remedies which holds that mistakes, abuses or negligence committed in the initial steps of an administrative activity or by an administrative agency should be corrected by higher administrative authorities, and not directly by courts. As a rule, only after administrative remedies are exhausted may judicial recourse be allowed.”[24]

Procedurally speaking, after the filing of the information, the court is in complete control of the case and any disposition therein is subject to its sound discretion.[25] The decision to suspend arraignment to await the resolution of an appeal with the Secretary of Justice is an exercise of such discretion. Consistent with our ruling in Marcelo,[26] we have since then held in a number of cases that a court can defer to the authority of the prosecution arm to resolve, once and for all, the issue of whether or not sufficient ground existed to file the information.[27] This is in line with our general pronouncement in Crespo[28] that courts cannot interfere with the prosecutor’s discretion over criminal prosecution.[29] Thus, public respondent did not act with grave abuse of discretion when it suspended the arraignment of private respondent to await the resolution of her petition for review with the Secretary of Justice.

In several cases, we have emphatically cautioned judges to refrain from arraigning the accused precipitately to avoid a miscarriage of justice.[30] In Dimatulac vs. Villon,[31] the judge in that case hastily arraigned the accused despite the pending appeal of the accused with the DOJ and notwithstanding the existence of circumstances indicating the probability of miscarriage of justice. Said judge was reminded that he should have heeded our statement in Marcelo[32] “that prudence, if not wisdom, or at least respect for the authority of the prosecution agency, dictated that he (respondent judge therein) should have waited for the resolution of the appeal then pending with the DOJ.”[33]

It bears stressing that the court is however not bound to adopt the resolution of the Secretary of Justice since the court is mandated to independently evaluate or assess the merits of the case, and may either agree or disagree with the recommendation of the Secretary of Justice.[34] Reliance alone on the resolution of the Secretary of Justice would be an abdication of the trial court's duty and jurisdiction to determine prima facie case.[35]

Petitioner insists that in view of the passage of the Speedy Trial Act of 1998, the review authority of the Secretary of Justice after an information has been already filed in court may possibly transgress the right of a party to a speedy disposition of his case, in light of the mandatory tenor of the Speedy Trial Act of 1998 requiring that the accused must be arraigned within thirty (30) days from the filing of an information against him. Petitioner then impresses upon this Court that there is a need to reconcile the review authority of the Secretary of Justice and the Speedy Trial Act of 1998, and submits that "the Secretary of Justice must review the appeal and rule thereon within a period of thirty (30) days from the date the information was filed or from the date the accused appeared in court (surrendered or arrested)"[36] if only to give meaning to the Speedy Trial Act.

We are not persuaded. The authority of the Secretary of Justice to review resolutions of his subordinates even after an information has already been filed in court does not present an irreconcilable conflict with the thirty-day period prescribed by Section 7 of the Speedy Trial Act.

Contrary to the urgings of petitioner, Section 7 of the Speedy Trial Act of 1998 prescribing the thirty-day period for the arraignment of the accused is not absolute. In fact, Section 10 of the same law enumerates periods of delay that shall be excluded in computing the time within which trial must commence. The pertinent portion thereof provides that:

"SEC. 10. Exclusions. - The following periods of delay shall be excluded in computing the time within which trial must commence:

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"(f) Any period of delay resulting from a continuance granted by any justice or judge motu proprio or on motion of the accused or his/her counsel or at the request of the public prosecutor, if the justice or judge granted such continuance on the basis of his/her findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this subparagraph shall be excludable under this section unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the accused in a speedy trial."

Accordingly, the view espoused by petitioner that the thirty-day period prescribed by Section 7 of the Speedy Trial Act must be strictly observed so as not to violate its right to a speedy trial finds no support in the law itself. The exceptions provided in the Speedy Trial Act of 1998 reflect the fundamentally recognized principle that the concept of "speedy trial" is "a relative term and must necessarily be a flexible concept." [37] In fact, in implementing the Speedy Trial Act of 1998, this Court issued SC Circular No. 38-98, Section 2 of which provides that:

"Section 2. Time Limit for Arraignment and Pre-trial. - The arraignment, and the pre-trial if the accused pleads not guilty to the crime charged, shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The period of the pendency of a motion to quash, or for a bill of particulars, or other causes justifying suspension of arraignment shall be excluded." (Emphasis ours)

As stated earlier, prudence and wisdom dictate that the court should hold in abeyance the proceedings while the Secretary of Justice resolves the petition for review questioning the resolution of the prosecutor. The delay in such

a case is justified because the determination of whether the delay is unreasonable, thus amounting to a transgression of the right to a speedy trial, cannot be simply reduced to a mathematical process. Hence, the length of delay is not the lone criterion to be considered, several factors must be taken into account in determining whether or not the constitutional right to a speedy trial has been violated. The factors to consider and balance are the duration of the delay, reason thereof, assertion of the right or failure to assert it and the prejudice caused by such delay.[38]

The importance of the review authority of the Secretary of Justice cannot be overemphasized; as earlier pointed out, it is based on the doctrine of exhaustion of administrative remedies that holds that “mistakes, abuses or negligence committed in the initial steps of an administrative activity or by an administrative agency should be corrected by higher administrative authorities, and not directly by courts.”[39]

We are not unmindful of the principle that while the right to a speedy trial secures rights to the defendant, it does not preclude the rights of public justice.[40] However, in this case, petitioner as private complainant in the criminal case, cannot deprive private respondent, accused therein, of her right to avail of a remedy afforded to an accused in a criminal case. The immediate arraignment of private respondent would have then proscribed her right as accused to appeal the resolution of the prosecutor to the Secretary of Justice since Section 4 of DOJ Order No. 223 of June 30, 1993 forestalls an appeal to the Secretary of Justice if the accused/appellant has already been arraigned.[41] Hence, in this case, the order suspending the arraignment of private respondent merely allowed private respondent to exhaust the administrative remedies available to her as accused in the criminal case before the court could proceed to a full-blown trial. Conversely, in case the resolution is for the dismissal of the information, the offended party in the criminal case, herein petitioner, can appeal the adverse resolution to the Secretary of Justice.[42] In *Marcelo vs. Court of Appeals*, this Court aptly pointed out that:

“the trial court in a criminal case which takes cognizance of an accused’s motion for review of the resolution of the investigating prosecutor or for reinvestigation and defers the arraignment until resolution of the said motion must act on the resolution reversing the investigating prosecutor’s finding or on a motion to dismiss based thereon only upon proof that such resolution is already final in that no appeal was taken therefrom to the Department of Justice.”[43] (Emphasis ours)

The fact that public respondent issued the assailed order suspending the arraignment of private respondent before the “Motion to Defer Arraignment” of private respondent could be heard is not tantamount to grave abuse of discretion. It was well within the power of public respondent to grant the continuance since Section 10 (f) of the Speedy Trial Act of 1998 clearly confers this authority.

Public respondent substantially complied with the requirement of Section 10 (f) of the Speedy Trial Act when it stated its reasons for the deferment and eventual suspension of the arraignment of private respondent in its orders dated September 24, 1999[44] and November 22, 1999[45]. In said orders, public respondent reasoned that the suspension of the arraignment of private respondent was to give the opportunity to the accused to exhaust the procedural remedies available,[46] to allow the Secretary of Justice to review the resolution of the City Prosecutor[47] so as not to deprive the former of his power to review the action of the latter by a precipitate trial of the case,[48] and based on the discretionary power of the trial judge to grant or deny the motion to suspend the arraignment of the accused pending determination of her petition for review at the Department of Justice.[49] Despite the absence of a law or regulation prescribing the period within which the Secretary of Justice must dispose of an appeal, the presumption still holds true that in the regular performance of his functions, the Secretary of Justice will decide the appeal in the soonest possible time. Recently, the Department of Justice issued Memorandum Order No. 12 dated July 3, 2000 mandating that the period for the disposition of appeals/petitions for review shall be 75 days.[50] In view of this memorandum, the indefinite suspension of proceedings in the trial

court because of a pending petition for review with the Secretary of Justice is now unlikely to happen.

Section 16 of Rule 110 of the Rules of Court does entitle the offended party to intervene in the criminal case if he has not waived the civil action or expressly reserved his right to institute it separately from the criminal action. However, the prosecution of the criminal case through the private prosecutor is still under the direction and control of the public prosecutor^[51] and such intervention must be with the permission of the public prosecutor.^[52] In this case, based on the power of control and supervision of the Secretary of Justice over public prosecutors, the pendency of the appeal of private respondent with the Secretary of Justice should have impelled the public prosecutor to move for the suspension of the arraignment of private respondent. Considering that private respondent had already informed the court of her appeal with the Secretary of Justice and had moved for the suspension of her arraignment, the public prosecutor should have desisted from opposing the abeyance of further proceedings.

Lastly, petitioner's argument that the suspension of the arraignment in this case was in violation of Section 12, Rule 116 of the Revised Rules on Criminal Procedure is likewise not tenable. Section 12, Rule 116 of the Revised Rules on Criminal Procedure provides that:

“Section 12. Suspension of Arraignment. – The arraignment shall be suspended, if at the time thereof:

(a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the case against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose.

(b) The court finds the existence of a valid prejudicial question.”

There is nothing in the above-quoted provision that expressly or impliedly mandates that the suspension of arraignment shall be limited to the cases enumerated therein. Moreover, jurisprudence has clearly established that the suspension of arraignment is not strictly limited to the two situations contemplated in said provision.^[53] In fine, no grave abuse of discretion attended the issuance of the assailed order suspending the arraignment of private respondent until her petition for review with the Secretary of Justice is resolved.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

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

[1] ANNEX “G”; Rollo, p. 53.

[2] ANNEX “C-1”; Rollo, p. 24.

[3] ANNEX “K”; Rollo, p.71.

[4] Ibid.

[5] Ibid.

[6] ANNEX “P”; Rollo, p. 84.

[7] ANNEX “Q”; Rollo, p. 86.

[8] ANNEX “A”; Rollo, p. 21.

[9] Ibid.

[10] ANNEX “B”; Rollo, p. 22.

[11] Rollo, p. 14.

[12] Ibid.

[13] Ibid.

[14] Ibid., p. 3.

[15] Ibid.

[16] Ibid., p.9.

[17] Ibid., p. 10.

[18] 235 SCRA 39 (1994).

[19] 254 SCRA 307 (1996).

[20] 151 SCRA 462 (1987).

[21] Dimatulac vs. Villon, 297 SCRA 679 (1998), pp. 709-710.

[22] 278 SCRA 656 (1997)

[23] The 1987 Revised Administrative Code, Executive Order No. 292.

[24] Ledesma vs. Court of Appeals, supra note 22, pp. 676-678.

[25] Dimatulac vs. Villon, supra note 21, p. 712.

[26] Supra note 18.

[27] Venus vs. Desierto, 298 SCRA 196 (1998); and Dimatulac vs. Villon, supra note 21.

[28] Supra note 20.

[29] Venus vs. Desierto, supra note 27, p. 214.

[30] See Bonifacio vs. Tolentino, 139 SCRA 307 (1985) and Dimatulac vs. Villon, supra note 21.

[31] Supra note 21.

[32] Supra note 18.

[33] Dimatulac vs. Villon, supra note 21, p. 712.

[34] Venus vs. Desierto, supra note 27, p. 220.

[35] Perez vs. Hagonoy Rural Bank, Inc., G.R. No. 126210, March 9, 2000.

[36] Rollo, p. 12.

[37] JOAQUIN G. BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY, Vol. 1, (1987), p. 421.

[38] Dansal vs. Fernandez, G.R. No. 126814, March 2, 2000.

[39] Dimatulac vs. Villon, supra note 21, pp. 707-708.

[40] BERNAS, supra note 37, p. 388.

[41] Department of Justice Order No. 223 (June 30 1993), 1993 Revised Rules on Appeals from Resolutions in Preliminary Investigation/Reinvestigations

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“Sec. 4. Non-Appealable Cases: Exceptions. – No appeal may be taken from a resolution of the Chief State Prosecutor finding probable cause except upon showing of manifest error or grave abuse of discretion. Notwithstanding the showing of manifest error or grave abuse of discretion, no appeal shall be entertained where the appellant had already been arraigned. If the appellant is arraigned during the pendency of the appeal, said appellant said appeal shall be dismissed motu proprio by the Secretary of Justice.

An appeal/motion for reinvestigation from a resolution finding probable cause, however, shall not hold the filing of the information in court.”

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[42] Dimatulac vs. Villon, supra note 21, p. 709.

[43] Supra note 18, p. 50.

[44] Supra note 6.

[45] Supra note 10.

[46] Supra note 6, p. 85.

[47] Ibid.

[48] Supra note 10, p. 22.

[49] Ibid.

[50] Memorandum Circular No. 12 also prescribes that the period for the disposition of Motions for Reconsideration on Denial of Due Course and Motions for Reconsideration on Extended Resolutions shall be ten (10) days and fifteen (15) days, respectively.

[51] Cabral vs. Puno, 70 SCRA 606 (1976), p. 610.

[52] FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM, VOL. II, 7TH REV. ED., p. 236.

[53] See Bonifacio vs. Tolentino, supra note 30 and Dimatulac vs. Villon, supra note 21.

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