STATE PROSECUTOR AND SPECIAL PROSECUTOR ON SSS CASES IN REGION V, ROMULO SJ. TOLENTINO, AND REGIONAL STATE PROSECUTOR SANTIAGO M. TURINGAN, AS ALTER EGO OF THE ECRETARY OF JUSTI...

G.R. No. 150606. June 07, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for certiorari and mandamus alleging that respondent Judge Pablo M. Paqueo, Jr., Regional Trial Court (RTC) of Naga City, Branch 23, acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Orders dated August 24, 2001 and October 15, 2001. The Order dated August 24, 2001 granted the Motion to Quash of private respondent Benedict Dy Tecklo, thus dismissing the Information filed by petitioner State Prosecutor Romulo SJ. Tolentino. The Order dated October 15, 2001 denied State Prosecutor Tolentino's Objection and Motion dated September 5, 2001.

The facts are:

On June 22, 2001, petitioner State Prosecutor Romulo SJ. Tolentino filed an Information charging private respondent Benedict Dy Tecklo, the owner/proprietor of Qualistronic Builders, of violation of Sec. 22 (a) in relation to Sec. 28 (e) of Republic Act No. 8282[1] for failing to remit the premiums due for his employee to the Social Security System despite demand.

The Information contains a certification by State Prosecutor Tolentino, thus:

> CERTIFICATION
>
> I HEREBY CERTIFY THAT THE REQUIRED INVESTIGATION IN THIS CASE HAS BEEN CONDUCTED BY THE UNDERSIGNED SPECIAL PROSECUTOR IN ACCORDANCE WITH LAW AND UNDER OATH AS OFFICER OF THE COURT, THAT THERE IS REASONABLE GROUND TO BELIEVE THAT THE OFFENSE HAS BEEN COMMITTED, THAT THE ACCUSED IS PROBABLY GUILTY THEREOF AND THAT THE FILING OF THE INFORMATION IS WITH THE PRIOR AUTHORITY AND APPROVAL OF THE REGIONAL STATE PROSECUTOR.[2]

The case was raffled to the RTC of Naga City, Branch 23, presided by respondent Judge Pablo M. Paqueo, Jr. It was set for arraignment on August 7, 2001. On said date, counsel for private respondent moved for the deferment of the arraignment and requested time to file a motion to quash the Information, which request was granted by the court.

On August 10, 2001, private respondent filed a Motion to Quash, thus:

> Accused, through counsel, most respectfully moves to quash the Information x x x upon the sole ground that State Prosecutor Romulo SJ Tolentino, not being the City Prosecutor nor the Provincial Prosecutor, has no legal personality nor is he legally clothed with the authority to commence prosecution by the filing of the

> Information and thus prosecute the case.[3]

On August 16, 2001, State Prosecutor Tolentino filed an Opposition to Motion to Quash[4] on the following grounds:

> (1) He (State Prosecutor Tolentino) is authorized to investigate, file the necessary Information and prosecute SSS cases since he was designated as Special Prosecutor for SSS cases by Regional State Prosecutor Santiago M. Turingan by virtue of Regional Order No. 97-024A dated July 14, 1997;
>
> (2) In a letter[5] dated October 24, 2000, Chief State Prosecutor Jovencito Zuño confirmed such authority and that Informations to be filed in court by prosecutors-designate do not need the approval of the Regional State Prosecutor or Provincial or City Prosecutor;
>
> (3) Under the Administrative Code of 1987, the Regional State Prosecutor, as alter ego of the Secretary of Justice, is vested with authority to designate Special Prosecutors; and
>
> (4) The City Prosecutor has been inhibited by the private complainant from investigating SSS Cases as it is the Panel of Prosecutors that is now acting as City Prosecutor over all city cases involving violations of the Social Security Act. As acting Prosecutor, the panel outranks the City Prosecutor.

On August 24, 2001, the RTC issued an Order quashing the Information and dismissing the case, thus:

> For resolution is a motion to quash filed by x x x counsel for the accused, with an opposition to the same filed by State Prosecutor Romulo SJ. Tolentino, the prosecutor who filed the information.
>
> The motion is based on the lack of legal personality of State Prosecutor Tolentino, [not being] legally clothed with the authority to commence prosecution by the filing of the information and, thus, prosecute the case.
>
> One of the grounds provided by the rules to quash an Information is paragraph (c), of Sec. 3 of Rule 117.
> "(c) that the officer who filed the information had no authority to do so."

A glance on the face of the information would glaringly show that it was filed by State Prosecutor Romulo Tolentino, without the approval of the City Prosecutor of Naga City, the situs of the crime, a blatant violation of the third paragraph of Sec. 4 of Rule 112 of the Revised Rules on Criminal Procedure.

An information filed by a qualified and authorized officer is required for the jurisdiction of the court over the case (Villa v. Ibañez, et al., 88 Phil. 402).

A justification put up by State Prosecutor Tolentino is a Regional Order No. 07-024-A subject of which is the Designation of Personnel issued by the Regional State Prosecutor which in effect designated him as the special prosecutor to handle the investigation of all SSS cases filed before the Offices of the City Prosecutor of the Cities of Naga, Iriga and Legaspi and the Offices of the Provincial Prosecutor of the different provinces in the Bicol Region, except the provinces of Catanduanes and Masbate, and if evidence warrants to file the necessary information and prosecute the same in the court of [appropriate] jurisdiction.

The designation of State Prosecutor Tolentino to investigate, file this information if the evidence warrants, and to prosecute SSS cases in court does not exempt him from complying with the provision of the third paragraph of [Sec. 4 of] Rule 112 of the Revised Rules on Criminal Procedure, that no complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the Provincial or City Prosecutor or Chief State Prosecutor or the Ombudsman or his deputy. The designation given to Prosecutor Tolentino came from the Regional Chief State Prosecutor [who] is not one of those mentioned exclusively by the Rules to approve in writing the filing or the dismissal of an information.

Also, as ruled by this court in a similar case which was dismissed, the second attached document supporting the

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opposition to the motion, is but an opinion of the Chief State prosecutor which has no force and effect to set aside the mandatory requirement of the Rules in the filing of an information in court.

WHEREFORE, in view of all the foregoing, the motion is granted, The information is hereby ordered quashed and dismissed.[6]

Petitioner State Prosecutor Tolentino filed an Objection and Motion praying that the Order dated August 24, 2001 be set aside and that the case entitled People v. Tecklo be scheduled for arraignment without unnecessary delay.

In an Order dated October 15, 2001, respondent Judge denied Tolentino's Objection and Motion, thus:

> For consideration is an Objection and Motion filed by State Prosecutor Romulo SJ. Tolentino, praying that the Order of this court dated August 24, 2001 be set aside and the case be scheduled for arraignment.
>
> Acting on said motion upon receipt thereof, the court gave the defense a period of fifteen (15) days from receipt of the order dated September 18, 2001 to file its comment and/or opposition; however, the period lapsed with the court never receiving any comment and/or opposition from the defense.
>
> The records show that the issue raised in the pleadings from both parties is whether Prosecutor Tolentino, in filing the information, can just ignore the provision of the third paragraph of Sec. 4 of Rule 112 of the Revised Rules on [C]riminal [P]rocedure.
>
> It is the stand of this court, when it ruled and so holds that Prosecutor Tolentino may conduct exclusive investigation and prosecute all violations of the provisions of the SSS Laws within the Bicol Region, but in the filing of the information in court, he must comply with [x x x] the above-cited provision of the rules on criminal procedure, that is, to have the provincial or city prosecutor at the situs of the offense approve in writing said information. It was further ruled by this court that failure to secure said written authority of the provincial or city prosecutor would touch on the jurisdiction of this court.
>
> With the foregoing, this court cannot find any legal basis to disturb its ruling of August 24, 2001. The instant objection and motion is therefore denied.
>
> SO ORDERED.[7]

Petitioners, thereafter, filed this petition praying for the nullification of the Orders dated August 24, 2001 and October 15, 2001.

The main issue in this case is whether or not petitioner State Prosecutor Tolentino is duly authorized to file the subject Information without the approval of the City Prosecutor?

In their Memorandum,[8] petitioners allege that State Prosecutor Tolentino was duly authorized to file the Information based on the following:

> - Petitioner Regional State Prosecutor Santiago M. Turingan, per Regional Order dated July 14, 1997, authorized State Prosecutor Tolentino to file the necessary Information for violations of Republic Act No. 8282 in the Bicol Region, except Masbate and Catanduanes, and to prosecute the same in courts of competent jurisdiction. This was in response to the request of the SSS, Region V for the designation of a Special Prosecutor to handle the prosecution of said criminal cases with the Office of the City Prosecutor and Office of the Provincial Prosecutor of the cities of Naga, Legaspi and Iriga and all provinces of the Bicol Region.
>
> - Per ruling of the Chief State Prosecutor in his letter dated October 24, 2000, ". . . the information to be filed in court by prosecutors-designate do not need the approval of the Regional State Prosecutor or the Provincial or City Prosecutor." An administrative opinion interpreting existing rules issued by agencies directly involved in the implementation of the rules should be respected and upheld.

Respondent judge quashed the Information based on Sec. 3 (d), Rule 117 of the Revised Rules of Criminal Procedure in relation to the third paragraph of Sec. 4, Rule 112 of the Revised Rules of Criminal Procedure, thus:

> Rule 112. Sec 4. Resolution of investigating prosecutor and its review.– x x x
>
> No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.[9]
>
> Rule 117. Sec. 3. Grounds.– The accused may move to quash the complaint or information on any of the following grounds:
>
> x x x
>
> (d) That the officer who filed the information had no authority to do so.

Notably, changes in the third paragraph of Sec. 4, Rule 112 were introduced in the Revised Rules of Criminal Procedure, which took effect on December 1, 2000. It is noted that the letter dated October 24, 2000 of Chief State Prosecutor Jovencito R. Zuño, upon which State Prosecutor Tolentino relies to support his authority to file the subject Information without the approval of the City Prosecutor, was issued before the changes in the third paragraph of Sec. 4, Rule 112 were introduced in the Revised Rules of Criminal Procedure.

While the old 1985 Rules of Criminal Procedure, as amended, stated that "[no] complaint or information may be filed or dismissed by an investigating fiscal without the prior written authority or approval of the provincial or city fiscal of chief state prosecutor," the 2000 Revised Rules of Criminal Procedure states that "[n]o complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy." Since the provision is couched in negative terms importing that the act shall not be done otherwise than designated, it is mandatory.[10]

An examination of the functions[11] of the Regional State Prosecutor under Sec. 8 of Presidential Decree No. 1275[12] showed that they do not include that of approving the Information filed or dismissed by the investigating prosecutor.

It is a rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others, expressio unius est exclusio alterius.

Since the Regional State Prosecutor is not included among the law officers authorized to approve the filing or dismissal of the Information of the investigating prosecutor, the Information filed by petitioner State Prosecutor Tolentino did not comply with the requirement of Sec. 4, Rule 112 of the Revised Rules of Criminal Procedure. Consequently, the non-compliance was a ground to quash the Information under Sec. 3 (d), Rule 117 of the Revised Rules of Criminal Procedure.

Petitioners also contend that the accused must move to quash at any time before entering his plea and the trial court is barred from granting further time to the accused to do so; and that there is no evidence in support of the motion to quash.

Rule 117 of the Revised Rules of Criminal Procedure on the Motion to Quash provides:

> SECTION 1. Time to move to quash.–At any time before entering his plea, the accused may move to quash the complaint or information.
>
> SEC. 2. Form and contents.– The motion to quash shall be in writing, signed by the accused or his counsel and

> shall distinctly specify its factual and legal grounds. The court shall consider no grounds other than those stated in the motion, except lack of jurisdiction over the offense charged.

The Court finds that there is substantial compliance by private respondent with the rule above quoted, as it was satisfactorily explained in his Memorandum[13] that his counsel orally moved to quash the Information before the arraignment on August 7, 2001. In an Order issued on the same date, respondent Judge required private respondent's counsel to file a motion to quash within five days from the issuance of the Order. Accordingly, the motion was filed on August 10, 2001.

Moreover, there was no need to submit any evidence to support the ground for quashing the Information, since it was apparent and within judicial notice that petitioner State Prosecutor Tolentino was not the City Prosecutor or the Provincial Prosecutor.

As regards the allegation of willful miscitation of the ground for quashing the Information, the Court finds that respondent Judge failed to cite in his Order the correct paragraph under Rule 117 of the Rules of Court where the ground relied upon for quashing the Information is enumerated. What is important, however, is that he correctly cited the ground for quashing the Information.

Certiorari implies an indifferent disregard of the law, arbitrariness and caprice, an omission to weigh pertinent considerations, a decision arrived at without rational deliberation.[14]

In this petition for certiorari, the Court finds that respondent judge did not gravely abuse his discretion in dismissing the Information filed by petitioner State Prosecutor Romulo SJ. Tolentino for failure to comply with the third paragraph of Sec. 4, Rule 112 of the Revised Rules of Criminal Procedure.

The Rules of Court governs the pleading, practice and procedure in all courts of the Philippines. For the orderly administration of justice, the provisions contained therein should be followed by all litigants, but especially by the prosecution arm of the Government.

WHEREFORE, the petition for certiorari and mandamus is DISMISSED for lack of merit.

No costs.

SO ORDERED.
Puno, C.J., (Chairperson), on official leave.
Sandoval-Gutierrez, (Acting Chairperson), Corona, and Garcia, JJ., concur.

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[1] The Social Security Act of 1997.

[2] Rollo, p. 50. Emphasis supplied.

[3] Id. at 51.

[4] Id. at 52.

[5] Id. at 62.

[6] Id. at 40-41.

[7] Id. at 47-48.

[8] Id. at 203.

[9] Emphasis supplied.

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[10] Brehm, et al. v. Republic of the Philippines, 118 Phil. 1005 (1963).

[11] SEC. 8. The Regional State Prosecution Office; Functions of Regional State Prosecutor.– The Regional State Prosecutor shall, under the control of the Secretary of Justice, have the following functions:

> a) Implement policies, plans, programs, memoranda, orders, circulars and rules and regulations of the Department of Justice relative to the investigation and prosecution of criminal cases in his region.
>
> b) Exercise immediate administrative supervision over all provincial and city fiscals and other prosecuting officers of provinces and cities comprised within his region.
>
> c) Prosecute any case arising within the region.
>
> d) With respect to his regional office and the offices of the provincial and city fiscals within his region, he shall:
>
> 1) Appoint such member of subordinate officers and employees as may be necessary; and approve transfers of subordinate personnel within the jurisdiction of the regional office.
>
> 2) Investigate administrative complaints against fiscals and other prosecuting officers within his region and submit his recommendation thereon to the Secretary of Justice who shall, after review thereof, submit the appropriate recommendation to the Office of the President x x x.
>
> 3) Investigate administrative complaints against subordinate personnel of the region and submit his recommendations thereon to the Secretary of Justice who shall have the authority to render decision thereon.
>
> 4) Approve requests for sick, vacation and maternity leaves of absence with or without pay, for a period not exceeding one year x x x.
>
> 5) Prepare the budget for the region for approval of the Secretary of Justice and administer the same.
>
> 6) Negotiate and conclude for services or for furnishing supplies, materials and equipment for amounts not exceeding P50,000.00 for each quarter.
>
> e) Coordinate with regional offices of other departments, with bureaus/agencies under the Department of Justice, and with local governments and police units in the region.

[12] "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE AND THE OFFICES OF THE PROVINCIAL AND CITY FISCALS, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE."

[13] Rollo, p. 259.

[14] Aratuc v. Commission on Elections, Nos. L-49705-09, February 8, 1979, 88 SCRA 251, 271.

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