

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. ZEIDA AURORA B. GARFIN, IN HER CAPACITY AS PRESIDING JUDGE OF RTC, BRANCH 19, OF THE CITY OF NAGA AND SERAFIN SABALLEGUE, RESPOND...

G.R. No. 153176. March 29, 2004

Ponente: PUNO, J.

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PUNO, J.:

For determination in this petition is a question in procedural law - - - whether an information filed by a state prosecutor without the prior written authority or approval of the city or provincial prosecutor or chief state prosecutor should be dismissed after the accused has entered his plea under the information.

Petitioner comes before us with a petition for certiorari and mandamus under Rule 65 of the Revised Rules of Court, seeking to declare as null and void the Orders issued by the Regional Trial Court of Naga City, Branch 19 dated February 26, 2002[1] and April 3, 2002[2] which dismissed for lack of jurisdiction the case of People vs. Serafin Saballegue, Criminal Case No. RTC 2001-0597, and denied petitioner's motion for reconsideration.

The antecedent facts are undisputed.

On June 22, 2001, private respondent was charged with violation of Section 22(a) in relation to Sections 19(b) and 28(e) of Republic Act No. 8282, otherwise known as the "Social Security Act," in an information which reads:

The undersigned State Prosecutor of the Office of the Regional State Prosecutor, Legazpi City, accuses SERAFIN SABALLEGUE, as proprietor of Saballegue Printing Press with business address at 16 San Mateo St., Peñafrancia Ave., Naga City for Violation of Section 22(a) in relation to Sections 19(b) and 28(e) of R.A. 8282 otherwise known as the Social Security Act of 1997, committed as follows:

That on or about February 1990 and up to the present, in the City of Naga, Philippines, within the functional jurisdiction of SSS Naga Branch and the territorial jurisdiction of this Honorable Court, the above named accused, while being the proprietor of Saballegue Printing Press, did then and there willfully, unlawfully, and criminally refuse and fail and continuously refuse and fail to remit the premiums due for his employee to the SSS in the amount of SIX THOUSAND FIVE HUNDRED THIRTY-THREE PESOS (P6,533.00), Philippine Currency, representing SSS and EC premiums for the period from January 1990 to December 1999 (n.i.), and the 3% penalty per month for late remittance in the amount of ELEVEN THOUSAND ONE HUNDRED FORTY-THREE PESOS and 28/100 (P11,143.28) computed as of 15 March 2000, despite lawful demands by letter in violation of the above-cited provisions of the law, to the damage and prejudice of the SSS and the public in general.

CONTRARY TO LAW.

Legazpi City for Naga City. 22 June 2001.

(sgd.) ROMULO SJ. TOLENTINO

State Prosecutor
Special Prosecutor on SSS Cases
in Region V[3]

The information contains a certification signed by State Prosecutor Romulo SJ. Tolentino which states:

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.[4]

The case was raffled to Branch 19 of the Regional Trial Court of Naga City presided by respondent judge Hon. Zeida Aurora B. Garfin. On September 24, 2001, accused Serafin Saballegue pleaded not guilty to the charge and the case was set for pre-trial.[5] Three days thereafter, the accused filed a motion to dismiss[6] on the ground that the information was filed without the prior written authority or approval of the city prosecutor as required under Section 4, Rule 112 of the Revised Rules of Court.[7]

The People, through State Prosecutor Tolentino, filed an opposition,[8] against which the accused filed a rejoinder.[9] The People filed a reply to the rejoinder[10] on December 21, 2001. A rejoinder to the reply[11] was filed by the accused on January 21, 2002.

After considering the arguments raised, the trial court granted the motion to dismiss in its first questioned Order dated February 26, 2002, to wit:

After considering the respective arguments raised by the parties, the Court believes and so resolves that the Information has not been filed in accordance with Section 4, par. 3 of Rule 112 of the 2000 Rules on Criminal Procedure, thus:

‘Rule 112, Section 4 x x x 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.’

Expresio unius est exclusio alterius.

The Information will readily show that it has not complied with this rule as it has not been approved by the City Prosecutor.

This Court holds that the defendant’s plea to the Information is not a waiver to file a motion to dismiss or to quash on the ground of lack of jurisdiction. By express provision of the rules and by a long line of decisions, questions of want of jurisdiction may be raised at any stage of the proceedings (People vs. Eduarte, 182 SCRA 750).

The Supreme Court in *Villa vs. Ibañez* (88 Phil 402) dwelt on lack of authority of the officer who filed the information and on jurisdiction at the same time, pertinent portions run as follows: The defendant had pleaded to the information before he filed a motion to quash, and it is contended that by his plea he waived all objections to the information. The contention is correct as far as formal objections to the pleadings are concerned. But by clear implication, if not by express provision of section 10 of Rule 113 of the Rules of Court, and by a long line of uniform decisions, questions of want of jurisdiction may be raised at any stage of the proceedings. Now, the objection to the respondent’s actuations goes to the very foundations of jurisdiction. It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused and the subject matter of the accusation. In consonance with this view, an infirmity of the nature noted in the information cannot be cured by silence, acquiescence, or even by express

consent.

Prosecutor Tolentino also contends that having been duly designated to assist the City Prosecutor in the investigation and prosecution of all SSS cases by the Regional State prosecutor as alter ego of the Secretary of Justice in Region V, then that authority may be given to other than the City Prosecutor. The Court finds this contention to be devoid of merit. The Regional State Prosecutor is not the alter ego of the Secretary of Justice but a mere subordinate official and if ever the former files cases, it is by virtue of a delegated authority by the Secretary of Justice. *Potestas delegada non potesta delegare* (sic) – what has been delegated cannot be redelegated.

In his opposition, the state prosecutor also attached a memorandum dated June 22, 2001 by Regional State Prosecutor Santiago M. Turingan addressed to Provincial Prosecutor and City Prosecutors of Region V directing them to inhibit and to append the following NOTATION after the certification in the Information for filing.

NOTATION: The herein City/Provincial Prosecutor is inhibiting from this case and the Special Prosecution Team on SSS Cases in Region V is authorized to dispose of the case without my approval in view of the request for inhibition of the SSS Regional Manager as granted by the Regional State Prosecutor.

A perusal of the Information, however, would readily show that nowhere in the Information has the City Prosecutor of Naga City appended the above-quoted notation/inhibition. At most, the authority of the special prosecutor is only for the conduct of preliminary investigations and the prosecution of cases after they are filed. The Court, however, believes that the filing of this Information must be in conformity with the Rules on Criminal Procedure, particularly Section 4 of Rule 112.

WHEREFORE, premises considered and for lack of jurisdiction, the Court hereby resolves to DISMISS this case without pronouncement as to cost.

SO ORDERED.[12]

A motion for reconsideration was filed by the People contending that as a special prosecutor designated by the regional state prosecutor to handle SSS cases within Region V, State Prosecutor Tolentino is authorized to file the information involving violations of the SSS law without need of prior approval from the city prosecutor. [13] Letters of commendation from Chief State Prosecutor Jovencito Zuño[14] and Secretary Hernando Perez[15] were offered as proof to show that State Prosecutor Tolentino's authority to file the information was recognized. In response, the defense pointed out in its opposition that the motion for reconsideration lacked a notice of hearing, hence it is pro forma or a mere scrap of paper. [16]

On April 3, 2002, respondent judge issued the second questioned Order which reads:

Acting upon the Motion for Reconsideration filed by State Prosecutor Romulo SJ. Tolentino, Special Prosecutor on SSS cases in Region V, and it appearing that the same has failed to comply with the requirement of notice prescribed in Sections 4 and 5, Rule 15 of the Rules of Court, the same is hereby DENIED for being a mere scrap of paper.

SO ORDERED.[17]

Hence, this petition by the People through Regional State Prosecutor Santiago Turingan and State Prosecutor Romulo SJ. Tolentino. Petitioner attributes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondent judge, viz:[18]

- RESPONDENT JUDGE DISMISSED THE INFORMATION WITHOUT THE REQUIRED SUPPORTING FACTUAL AND LEGAL BASES;

- RESPONDENT JUDGE DELIBERATELY AND CAPRICIOUSLY IGNORED THE PRESUMPTION OF REGULARITY IN FAVOR OF THE PROSECUTION WITHOUT THE REQUIRED SUFFICIENCY OF REBUTTAL EVIDENCE. THE WORD “MAY” IN SEC. 4, RULE 112 OF THE RULES OF COURT IS NOT MANDATORY;
- RESPONDENT JUDGE COMMITTED GRAVE ERROR IN DELIBERATELY IGNORING THE JUDICIALLY KNOWN INHIBITION OF THE CITY PROSECUTOR AND THE SETTLED JURISPRUDENCE ON THE MATTER;
- RESPONDENT JUDGE GRAVELY ABUSED HER DISCRETION IN INTERFERING WITH THE PURELY EXECUTIVE FUNCTION OF FILING AN INFORMATION BY RULING ON THE AUTHORITY OF THE FILING OFFICER TO FILE THE INFORMATION.

The Office of the Solicitor General (OSG) filed its comment[19] in compliance with this Court’s Resolution dated September 23, 2002.[20] It opines that the dismissal of the information is mandated under Section 4, Rule 112 of the Rules of Criminal Procedure.

Private respondent contends that:[21] 1) the instant petition was filed out of time; 2) the special State Prosecutor is only authorized to conduct preliminary investigation and prosecution of SSS cases and not to sign the information; and 3) the City Prosecutor did not expressly inhibit himself from handling SSS cases nor signing the information.

We shall first resolve the procedural issues. Respondent contends that the motion for reconsideration filed on April 1, 2002 is late because it was filed eighteen days after March 14, 2002, the date when petitioner received the first questioned order. Respondent has overlooked that the 15th day after March 14 is a Good Friday. Hence, petitioner’s last day to file the motion for reconsideration was on the next working day after Good Friday, April 1.[22]

Next, respondent argues that having been considered as a mere scrap of paper, the motion for reconsideration of the petitioner did not toll the running of the reglementary period. Respondent, however, erroneously assumes that the present case is an appeal by certiorari under Rule 45. As stated at the outset, this is an original petition for certiorari and mandamus under Rule 65.

Sec. 2, Rule 37 of the Rules of Court is clear. It provides that “(a) pro forma motion for new trial or reconsideration shall not toll the reglementary period of appeal.” (emphases supplied) Hence, the same provision has no application in the case at bar.

The reckoning date is the receipt of the second questioned Order and not the receipt of the first. Section 4, Rule 65, as amended by En Banc Resolution A.M. No. 00-2-03-SC, September 1, 2000, provides, viz:

Sec. 4. When and where petition filed.-- The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60)- day period shall be counted from notice of the denial of said motion.

x x x x x x x x

As shown by the records, petitioner received the first questioned order dated February 26, 2002 on March 14, 2002.[23] A motion for reconsideration was timely filed on April 1, 2002[24] which was dismissed for lack of notice of hearing in an Order dated April 3, 2002.[25] This second questioned order was received by petitioner on April 11, 2002.[26] A motion for extension of time to file a petition for review on certiorari was filed on April 18, 2002.[27] A motion for leave to file and admit the instant petition for certiorari and mandamus was filed on May 29, 2002.[28] Having been filed within the reglementary period, petitioner’s motion for leave to file the instant

petition was granted in this Court's Resolution dated July 15, 2002.[29]

We now come to the other issue: whether the prior written authority and approval of the city or provincial prosecutor or chief state prosecutor is necessary in filing the information at bar.

Petitioner takes the unbending view that the approval of the city or provincial prosecutor is no longer required. It is contended that the Regional State Prosecutor has already directed the city or provincial prosecutor to inhibit from handling SSS cases.[30] Petitioner cites the letter of Regional State Prosecutor Santiago M. Turingan to SSS Regional Director in Naga City dated June 6, 1997[31] and copies of Regional Orders No. 97-024-A[32] and 2001-033[33] dated July 14, 1997 and September 28, 2001, respectively, showing the designation of State Prosecutor Tolentino as special prosecutor for SSS cases in Region V. Petitioner relies on *Galvez, et al. v. Court of Appeals, et al.*[34] and *Sanchez v. Demetriou, et al.*[35] to prop up its contention that given the designation of State Prosecutor Tolentino, the city prosecutor need not participate in the filing and prosecution of the information in the case at bar.

We disagree. Under Presidential Decree No. 1275, the powers of a Regional State Prosecutor are as follows:

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: Provided, that where the Secretary of Justice finds insufficient grounds for the filing of charges, he may render a decision of dismissal thereof.
- 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. (emphases supplied)

The power of administrative supervision is limited to "the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them." [36] This is distinguished from the power of "supervision and control" which includes the 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; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and

programs.”[37]

The Regional State Prosecutor is clearly vested only with the power of administrative supervision. As administrative supervisor, he has no power to direct the city and provincial prosecutors to inhibit from handling certain cases. At most, he can request for their inhibition. Hence, the said directive of the regional state prosecutor to the city and provincial prosecutors is questionable to say the least.

Petitioner cannot lean on the cases of Galvez and Sanchez. In those cases, the special prosecutors were acting under the directive of the Secretary of Justice. They were appointed in accordance with law. Nowhere in P.D. No. 1275 is the regional state prosecutor granted the power to appoint a special prosecutor armed with the authority to file an information without the prior written authority or approval of the city or provincial prosecutor or chief state prosecutor. P.D. No. 1275 provides the manner by which special prosecutors are appointed, to wit:

Sec. 15. Special Counsels. - Whenever the exigencies of the service require the creation of positions of additional counsel to assist provincial and city fiscals in the discharge of their duties, positions of Special Counsels may be created by any province or city, subject to the approval of the Secretary of Justice, and with salaries chargeable against provincial or city funds. The Secretary of Justice shall appoint said Special Counsels, upon recommendation of the provincial or city fiscal and regional state prosecutors concerned, either on permanent or temporary basis.

Special Counsel shall be appointed from members of the bar and shall be allowed not more than the salary rate provided in this Decree for the lowest rank or grade of assistant fiscal in the province or city where assigned. (emphases supplied)

Under Department Order No. 318,[38] “Defining the authority, duties and responsibilities of regional state prosecutors,” then Acting Secretary of Justice Silvestre H. Bello III ordered the appointed regional state prosecutors (which included Regional State Prosecutor Turingan for Region V) to, among others, “(i)investigate and/or prosecute, upon the directive of the Secretary of Justice, specific criminal cases filed within the region.” (emphasis supplied)

In the case at bar, there is no pretense that a directive was issued by the Secretary of Justice to Regional State Prosecutor Turingan to investigate and/or prosecute SSS cases filed within his territorial jurisdiction. A bare reading of the alleged letter of commendation by then Secretary Hernando Perez would show that it does not amount to a directive or even a recognition of this authority. In fact, while the letter of Secretary Perez commends the efforts of Regional State Prosecutor Turingan in successfully prosecuting SSS cases, it also negates his authority to prosecute them. Secretary Perez called the Regional State Prosecutor’s attention to DOJ Circular No. 27, series of 2001, which states that all important cases of the SSS should be referred to the Office of the Government Corporate Counsel.[39] Thus, Regional State Prosecutor Turingan cannot be considered a special prosecutor within the meaning of the law.

Petitioner argues that the word “may” is permissive. Hence, there are cases when prior written approval is not required, and this is one such instance. This is too simplistic an interpretation. Whether the word “may” is mandatory or directory depends on the context of its use. We agree with the OSG that the use of the permissive word “may” should be read together with the other provisions in the same section of the Rule. The paragraph immediately preceding the quoted provision shows that the word “may” is mandatory. It states:

Sec. 4, Rule 112. – x x x

Within five (5) days from his resolution, he (investigating prosecutor) shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the

resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action. (emphasis supplied)

Having settled that the prior authority and approval of the city, provincial or chief state prosecutor should have been obtained, we shall now resolve the more important issue: whether the lack of prior written approval of the city, provincial or chief state prosecutor in the filing of an information is a defect in the information that is waived if not raised as an objection before arraignment.

We hold that it is not.

The provisions in the 2000 Revised Rules of Criminal Procedure that demand illumination are Sections 3 and 9 of Rule 117 in relation to paragraph 3, Section 4 of Rule 112, to wit:

Rule 117, Section 3. Grounds.—The accused may move to quash the complaint or information on any of the following grounds:

- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged;
- (c) That the court trying the case has no jurisdiction over the person of the accused;
- (d) That the officer who filed the information had no authority to do so;
- (e) That it does not conform substantially to the prescribed form;
- (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
- (g) That the criminal action or liability has been extinguished;
- (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
- (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

xxx xxx xxx

Section 9. Failure to move to quash or to allege any ground therefor.—The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule. (emphasis supplied)

Rule 112, Section 4, paragraph 3 provides, viz:

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. (emphasis supplied)

Private respondent and the OSG take the position that the lack of prior authority or approval by the city or provincial prosecutor or chief state prosecutor is an infirmity in the information that prevented the court from acquiring jurisdiction over the case. Since lack of jurisdiction is a defect that may be raised as an objection anytime even after arraignment, the respondent judge did not err in granting the motion to dismiss based on this ground. As basis, they cite the case of *Villa v. Ibañez, et al.*[40] where we held, viz:

The defendant had pleaded to an information before he filed a motion to quash, and it is contended that by his plea he waived all objections to the informations. The contention is correct as far as formal objections to the pleadings are concerned. But by clear implication, if not by express provision of section 10 of Rule 113 of the Rules of Court (now Section 9 of Rule 117), and by a long line of uniform decisions, questions of want of jurisdiction may be raised at any stage of the proceeding. Now, the objection to the respondent's actuations goes to the very foundation of the jurisdiction. It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused and the subject matter of the accusation. In consonance with this view, an infirmity in the information cannot be cured by silence, acquiescence, or even by express consent.[41] (emphasis supplied)

The case of Villa is authority for the principle that lack of authority on the part of the filing officer prevents the court from acquiring jurisdiction over the case. Jurisdiction over the subject matter is conferred by law while jurisdiction over the case is invested by the act of plaintiff and attaches upon the filing of the complaint or information.[42] Hence, while a court may have jurisdiction over the subject matter, like a violation of the SSS Law, it does not acquire jurisdiction over the case itself until its jurisdiction is invoked with the filing of the information.

In the United States, an information has been held as a jurisdictional requirement upon which a defendant stands trial. Thus, it has been ruled that in the absence of probable cause, the court lacks jurisdiction to try the criminal offense.[43] In our jurisdiction, we have similarly held that:

While the choice of the court where to bring an action, where there are two or more courts having concurrent jurisdiction thereon, is a matter of procedure and not jurisdiction, as suggested by appellant, the moment such choice has been exercised, the matter becomes jurisdictional. Such choice is deemed made when the proper complaint or information is filed with the court having jurisdiction over the crime, and said court acquires jurisdiction over the person of the defendant, from which time the right and power of the court to try the accused attaches. (citations omitted) It is not for the defendant to exercise that choice, which is lodged upon those who may validly file or subscribe to the complaint or information under sections 2 and 3 of Rule 106 of the Rules of Court. [44] (emphasis supplied)

A closer look at Villa would be useful in resolving the issue at hand. In that case, Atty. Abelardo Subido, Chief of the Division of Investigation in the Office of the Mayor of Manila, was appointed by the Secretary of Justice as special counsel to assist the City Fiscal of Manila in the cases involving city government officials or employees. Pursuant to his appointment, Atty. Subido filed an information against Pedro Villa for falsification of a payroll. Atty. Subido's authority to file the information was challenged on the ground that he was disqualified for appointment under Section 1686 of the Revised Administrative Code, as amended by Section 4 of Commonwealth Act No. 144, to wit:

SEC. 1686. Additional counsel to assist fiscal. — The Secretary of Justice may appoint any lawyer, being either a subordinate from his office or a competent person not in the public service, temporarily to assist a fiscal or prosecuting attorney in the discharge of his duties, and with the same authority therein as might be exercised by the Attorney General or Solicitor General.[45]

We held, viz:

Appointments by the Secretary of Justice in virtue of the foregoing provisions of the Revised Administrative Code, as amended, were upheld in *Lo Cham vs. Ocampo et al.*, 44 Official Gazette, 458, and *Go Cam et al., vs. Gatmaitan et al.*, (47 Official Gazette, 5092). But in those cases, the appointees were officials or employees in one or another of the bureaus or offices under the Department of Justice, and were rightly considered subordinates in the office of the Secretary of Justice within the meaning of section 1686, ante.

The case at bar does not come within the rationale of the above decisions. Attorney Subido is a regular officer

or employee in the Department of Interior, more particularly in the City Mayor's office. For this reason, he belongs to the class of persons disqualified for appointment to the post of special counsel.

That to be eligible as special counsel to aid a fiscal the appointee must be either an employee or officer in the Department of Justice is so manifest from a bare reading of section 1686 of the Revised Administrative Code as to preclude construction. And the limitation of the range of choice in the appointment or designation is not without reason.

The obvious reason is to have appointed only lawyers over whom the Secretary of Justice can exercise exclusive and absolute power of supervision. An appointee from a branch of the government outside the Department of Justice would owe obedience to, and be subject to orders by, mutually independent superiors having, possibly, antagonistic interests. Referring particularly to the case at hand for illustration, Attorney Subido could be recalled or his time and attention be required elsewhere by the Secretary of Interior or the City Mayor while he was discharging his duties as public prosecutor, and the Secretary of Justice would be helpless to stop such recall or interference. An eventuality or state of affairs so undesirable, not to say detrimental to the public service and specially the administration of justice, the Legislature wisely intended to avoid.

The application of the 1951 Villa ruling is not confined to instances where the person who filed the information is disqualified from being a special prosecutor under Section 1686 of the Revised Administrative Code, as amended, but has been extended to various cases where the information was filed by an unauthorized officer as in the case at bar. In *Cruz, Jr. v. Sandiganbayan, et al.*,^[46] the Court held that it is a fundamental principle that when on its face the information is null and void for lack of authority to file the same, it cannot be cured nor resurrected by amendment. In that case, the Presidential Commission on Good Government (PCGG) conducted an investigation and filed an information with the Sandiganbayan against petitioner Roman Cruz, Jr. charging him with graft and corruption. The petitioner sought to quash the information on the ground that the crime charged did not constitute a "Marcos crony related crime" over which the PCGG had authority to investigate and file an information. The Court found that the crime alleged in the information was not among those which PCGG was authorized to investigate under Executive Orders No. 1 and 14 of then President Corazon Aquino and ruled that the information was null and void. Of similar import is *Romualdez v. Sandiganbayan, et al.*^[47] where we ruled that the information having been filed by an unauthorized party (the PCGG), the information was fatally flawed. We noted that this defect is not a mere remediable defect of form, but a defect that could not be cured.

In *Cudia v. Court of Appeals, et al.*,^[48] we also reiterated the Villa ruling. The accused in that case was apprehended in Mabalacat, Pampanga for illegal possession of firearms and was brought to Angeles City where the headquarters of the arresting officers was located. The City Prosecutor of Angeles City filed an information in the Regional Trial Court of Angeles City. We invalidated the information filed by the City Prosecutor because he had no territorial jurisdiction, as the offense was committed in Mabalacat, Pampanga and his territorial jurisdiction was only in Angeles City. We held that an information, when required by law to be filed by a public prosecuting officer, cannot be filed by another.^[49] Otherwise, the court does not acquire jurisdiction.^[50] It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused and the subject matter thereof. The accused's plea to an information may be a waiver of all formal objections to the said information but not when there is want of jurisdiction. Questions relating to lack of jurisdiction may be raised at any stage of the proceeding. An infirmity in the information, such as lack of authority of the officer signing it, cannot be cured by silence, acquiescence, or even by express consent.^[51]

Despite modifications of the provisions on unauthorized filing of information contained in the 1940 Rules of Criminal Procedure under which Villa was decided, the 1951 Villa ruling continues to be the prevailing case law on the matter.^[52]

The 1940 Rules of Court provided in Rule 113, Section 10 that, if the defendant fails to move to quash the complaint or information before he pleads thereto, he shall be taken to have waived all objections which are grounds for a motion to quash except (1) “when the complaint or information does not charge an offense” or (2) “the court is without jurisdiction of the same.” (emphasis ours) Among the enumerated grounds for a motion to quash under Section 2 of the same Rule was “(t)hat the fiscal has no authority to file the information.” With only the above two exceptions provided by the 1940 Rules, the Court nevertheless made the Villa ruling that if the filing officer lacks authority to file the information, jurisdiction is not conferred on the court and this infirmity cannot be cured by silence or waiver, acquiescence, or even by express consent.

The 1940 Rules of Court was amended in 1964. With only minimal changes introduced, the 1964 Rules of Court contained provisions on unauthorized filing of information similar to the above provisions of the 1940 Rules.[53]

Then came the 1985 Rules of Criminal Procedure. Lack of authority of the officer who filed the information was also a ground for a motion to quash under these rules. The 1985 Rules also provided for waiver of the grounds for a motion to quash under Rule 117, Section 8, but enumerated the following exceptions to the waiver: (a) the facts charged do not constitute an offense; (b) the court trying the case has no jurisdiction over the offense charged or the person of the accused; (c) the criminal action or liability has been extinguished; and (d) the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged. Apparently, the want of jurisdiction under the 1985 Rules refers to jurisdiction over the offense and the person, and not over the case as in Villa where the court did not acquire jurisdiction over the case for lack of authority of the officer who filed the information. Still, despite the enumeration, the Court continued to apply the Villa ruling as shown in the afore-cited Cruz and Cudia cases.

The 1985 Rules was amended in 2000. The 2000 Revised Rules of Criminal Procedure also provide for lack of authority of the filing officer as among the grounds for a motion to quash and the waiver of these grounds. Similar to the 1985 Rules, the Revised Rules enumerate the exceptions from the waiver, namely: (a) that the facts charged do not constitute an offense; (b) that the court trying the case has no jurisdiction over the offense charged; (c) that the criminal action or liability has been extinguished; and (d) that the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. Under the regime of the 2000 Revised Rules, we reiterated the Villa ruling in the above-cited Romualdez case. With the enumeration of the four exceptions, which was almost a replica of the enumeration in the 1985 Rules, the 2000 Rules did not intend to abandon Villa. The Villa ruling subsisted alongside the enumerated exceptions under the 1985 Rules, and it remains to do so under the enumerated exceptions under the 2000 Rules. Neither the Rationale of the 2000 Revised Rules of Criminal Procedure nor the Minutes of the Meeting of the Committee on the Revision of the Rules of Court evinces any intent to abandon the doctrine enunciated in Villa.

In sum, we hold that, in the absence of a directive from the Secretary of Justice designating State Prosecutor Tolentino as Special Prosecutor for SSS cases or a prior written approval of the information by the provincial or city prosecutor, the information in Criminal Case No. RTC 2001-0597 was filed by an officer without authority to file the same. As this infirmity in the information constitutes a jurisdictional defect that cannot be cured, the respondent judge did not err in dismissing the case for lack of jurisdiction.

WHEREFORE, premises considered, the petition is DENIED. The respondent court’s orders dated February 26, 2002 and April 3, 2002 are AFFIRMED. Criminal Case No. RTC 2001-0597 is DISMISSED without prejudice to the filing of a new information by an authorized officer.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 42-44.

[2] Id. at 51.

[3] Id. at 52.

[4] Id. at 53.

[5] Original Records, p. 44.

[6] Id. at 46.

[7] Rule 112, Section 4, paragraph (3) provides 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.”

[8] Original Records, p. 49.

[9] Id. at 56.

[10] Id. at 61.

[11] Id. at 64.

[12] Supra note 1.

[13] Rollo, p. 45.

[14] Id. at 47.

[15] Id. at 48.

[16] Original Records, p. 78.

[17] Rollo, p. 51.

[18] Id. at 17.

[19] Id. at 126.

[20] Id. at 170.

[21] Id. at 465.

[22] Section 1, Rule 22, Revised Rules of Civil Procedure.

[23] Rollo, p. 45.

[24] Ibid.

[25] Supra note 2.

[26] Rollo, p. 11.

[27] Id. at 2.

[28] Id. at 75.

[29] Id. at 77.

[30] Id. at 62.

[31] Id. at 71.

[32] Id. at 72.

[33] Id. at 73.

[34] 237 SCRA 685 (1994).

[35] 227 SCRA 627 (1993).

[36] Sec. 38 (2), Chapter 7, Book IV, Executive Order No. 292 otherwise known as the “Administrative Code of 1987.”

[37] Id., sec. 38(1).

[38] Dated August 28, 1991.

[39] Rollo, p. 48.

[40] 88 Phil. 402 (1951).

[41] Id. at 405.

[42] C. D. Quiason, Philippine Courts and their Jurisdictions (1982), p. 89.

[43] Am Jur 2d Vol. 41, Sec. 19, p. 659 (1995).

[44] Alimajen v. Valera, 107 Phil. 244, 245 (1960).

[45] Under Republic Act No. 4007 (June 18, 1964), the Secretary may now appoint any lawyer in the government service provided that if the person is outside the jurisdiction of the Department of Justice, such appointment may only be made with the consent of the Department Head concerned.

[46] 194 SCRA 474 (1991).

[47] 385 SCRA 436 (2002).

[48] 284 SCRA 173 (1998).

[49] Id., citing 42 CJS Indictments and Informations S67.

[50] Id., citing 41 Am Jur 2d, Indictments and Informations S41.

[51] Id., citing Villa v. Ibanez, 88 Phil. 402 (1951).

[52] See Regalado, F., Remedial Law Compendium (2000), p. 408; Agpalo, R., Handbook on Criminal Procedure (2001), pp. 365-367; Pineda, E., The Revised Rules on Criminal Procedure (2003), p. 346.

[53] Rule 117 provides in relevant part, viz:

Sec. 2. Motion to quash - Grounds.- The defendant may move to quash the complaint or information on any of the

following grounds:

x x x x x x x x

(c) (t)hat the officer who has filed the information has no authority to do so; xxx”.

x x x x x x x x

Sec. 10. Failure to move to quash - Effect of -Exception. - If the defendant does not move to quash the complaint or information before he pleads thereto he shall be taken to have waived all objections which are grounds for a motion to quash except when the complaint or information does not charge an offense, or the court is without jurisdiction of the same. If, however, the defendant learns after he has pleaded or has moved to quash on some other ground tht the offense for which he has been pardoned, or of which he has been convicted or acquitted or been in jeopardy, the court may in its discretion entertain at any time before judgment a motion to quash on the ground of such pardon, conviction, acquittal or jeopardy.

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