LIGAYA V. SANTOS, PETITIONER, VS. DOMINGO I. ORDA, JR., RESPONDENT.

G.R. No. 158236. September 01, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 72962 granting the petition for certiorari filed by Domingo I. Orda, Jr. and nullifying the Orders[2] of the Regional Trial Court of Parañaque City, Branch 258 dated July 5, 2002 and July 23, 2002 in People v. Ligaya V. Santos, et al., for murder, docketed as Criminal Cases Nos. 01-0921 and 01-0425.

The Antecedents

On January 17, 2001, Dale B. Orda, a college student and son of respondent, Assistant City Prosecutor of Manila Domingo Orda, Jr., was shot by a male person on a motorcycle at the corner of Ayala Boulevard and San Marcelino Street, Manila. Dale was then seated at the passenger's seat at the back of their car, while his father was at the wheel. Fortunately, Dale survived the shooting.[3]

At about 6:20 p.m. on April 2, 2001, another son of the respondent, Francis Orda, a twenty-year-old senior engineering student of the Mapua Institute of Technology, was shot to death at Saudi Arabia Street corner Sierra Leone Street, Better Living Subdivision, Barangay Don Bosco, Parañaque City. Gina Azarcon, a helper at the Bakers Brew Coffee Shop at the corner of Saudi Arabia and Somalia Streets, Barangay Don Bosco, gave a sworn statement to the police investigators on April 1, 2001, declaring that three male persons perpetrated the crime, two of whom shot the victim inside his car.[4]

On April 7, 2001, Azarcon gave a supplemental affidavit pointing to and identifying Rolly Tonion and Jhunrey Soriano as two of the assailants.[5] An Information was filed in the RTC of Parañaque City, docketed as Criminal Case No. 01-0425 on April 18, 2001, charging Rolly Tonion alias "Komang" and Jhunrey Soriano with murder for the killing of Francis Orda.[6]

The accused filed a petition for bail. The prosecution presented Gina Azarcon as its witness in opposition to the petition.

On June 7, 2001, Ernesto M. Regala and his son, Dennis C. Regala, a barangay tanod of Barangay 659, Arroceros, Ermita, Manila, executed separate affidavits before the Assistant City Prosecutor of Parañaque City. Ernesto narrated that at about 10:00 p.m. on April 1, 2001, he sent his son, Dennis, to deliver collections from the public toilet at Arroceros to Barangay Chairman Ligaya Santos. When Dennis had not yet arrived by 11:00 p.m., he decided to fetch his son. While they were in Santos' office, Dennis and Ernesto heard Santos saying, "Gusto ko malinis na trabaho at walang bulilyaso, baka makaligtas na naman si Orda." They saw Santos give a gun to Rolly Tonion, who was then with Edna Cortez, a certain Nognog, Ronnie Ybañez, and another male companion. Dennis then gave Ernesto's collection amounting to P400 to Santos. At 11:00 p.m. on April 2, 2001, Cortez told Ernesto

that the son of the assistant city prosecutor was ambushed at the Better Living Subdivision, and that the latter was fortunate because the bullet intended for him hit his son instead.[7] For his part, Dennis alleged that at 9:00 a.m. on April 3, 2001, Tonion asked him to return the gun to Santos for him, but that he refused to do so. On April 15, 2001, Santos asked him to monitor the activities of the respondent and his son at the store owned by the latter, located at the LRT Station at Arroceros.

The respondent executed an affidavit-complaint dated June 7, 2001 and filed the same in the Office of the City Prosecutor of Parañaque City, charging Santos, Cortez and Ybañez with murder for the death of his son Francis.[8] The case was docketed as I.S. No. 01-F-2052.

In her counter-affidavit, Santos denied the charge and claimed that the affidavits executed by Ernesto and Dennis were all lies. She averred that she was in their house in Cavite City on April 1, 2001 and returned to Manila only in the early morning of April 2, 2001. Her alibi was corroborated by the affidavits of Anthony Alejado, Marianito Fuentes, Normita Samonte, and Lilian Lemery. She also denied Dennis' claims that she asked him to monitor the activities of the respondent and his son on April 15, 2001. She alleged that the respondent filed the charge and other baseless charges against her to enable him to gain control over Plaza Lawton where his store was located.

Cortez also denied the charge. She claimed in her affidavit that Santos was not in her office on April 1, 2001, it being a Sunday. She alleged that the affidavits of Dennis and Ernesto were lies.

On July 31, 2001, the investigating prosecutor issued a Resolution finding probable cause against Santos and Cortez for murder.[9] An Information for murder was, thereafter, filed on August 29, 2001 against Santos and Cortez, docketed as Criminal Case No. 01-0921.[10]

On August 30, 2001, Azarcon executed an affidavit implicating Barangay Kagawad Christopher Castillo, his brother Girlie Castillo, and Robert Bunda for the killing of Francis. On the same day, the respondent executed an affidavit-complaint charging them for the same crime.[11] On September 7, 2001, the trial court issued an Order requiring the prosecutor to submit additional evidence against Cortez.[12] Sabino M. Frias, thereafter, executed an affidavit on September 18, 2001, implicating Santos, Cortez, the Castillo brothers, Bunda, and Pedro Jimenez, the driver of Santos, in the killing of Francis.[13]

Meanwhile, Santos, Cortez, and Ybañez filed a petition for review of the resolution of the prosecutor in I.S. No. 01-F-2052 in the Department of Justice (DOJ).[14] On their motion, the trial court suspended the proceedings against Santos and Cortez and the issuance of warrants for their arrest. However, on September 12, 2001, Azarcon executed an affidavit recanting her statement against the Castillo brothers and Bunda.[15]

In the meantime, during the hearing on October 23, 2001, the prosecution terminated the presentation of its testimonial evidence in Criminal Case No. 01-0425 on the accused Tonion and Soriano's petition for bail and offered its documentary evidence. The accused presented Azarcon as their first witness to prove their innocence of the crime charged.

On November 12, 2001, the public prosecutor issued a Resolution in I.S. No. 01-H-3410 finding probable cause for murder against the Castillo brothers and Bunda. On November 28, 2001, the public prosecutor filed a motion to amend information and to admit amended information against them as additional accused.[16] The accused, thereafter, filed a petition for review of the resolution of the public prosecutor before the DOJ on January 7, 2002.[17] They also filed a motion to suspend proceedings and the issuance of warrants of arrest in Criminal Cases Nos. 01-0425 and 01-0921 and a motion to admit newly discovered evidence, namely, Azarcon's affidavit of recantation.[18] The public prosecutor opposed the motion and filed a motion to admit second amended information with Pedro Jimenez as additional accused.[19] On February 5, 2002, the trial court issued an Order

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denying the motion of the accused Castillo brothers and Bunda and ordering the issuance of warrants for the arrest of Santos and Cortez.[20] The court then issued the said warrants based on its finding of probable cause against them[21] for lack of probable cause to recall the warrants of arrest, and to examine the witnesses. The court, however, denied the motion on the ground that it had not yet acquired jurisdiction over their persons and it had not yet received any resolution from the Secretary of Justice on their petition for review. On February 20, 2002, the trial court issued an Order denying the petition for bail by Tonion and Soriano,[22] ruling that the evidence of guilt was strong. In the meantime, Ernesto and Dennis recanted their affidavits.[23]

During the trial on April 23, 2002 in Criminal Case No. 01-0425, accused Tonion and Soriano presented Dennis as their witness.[24]

On April 26, 2002, the trial court issued an Order admitting the second amended Information against the Castillo brothers, Bunda, and Jimenez and ordering the issuance of warrants for their arrest.[25] On April 29, 2002, the said warrants were issued by the court.

On June 11, 2002, Secretary of Justice Hernando B. Perez issued a Joint Resolution reversing the assailed resolution of the public prosecutor and directing the latter to withdraw the Informations against Santos, Cortez, Bunda, the Castillo brothers, and Jimenez. The Secretary of Justice found Azarcon, Frias, Dennis, and Ernesto incredible witnesses because of their recantations, to wit:

> WHEREFORE, the petition is GRANTED and the assailed resolutions are hereby REVERSED AND SET ASIDE. The City Prosecutor of Parañaque City is hereby directed to cause the withdrawal of the criminal Informations for murder filed before the Regional Trial Court, Branch 258, Parañaque City, against respondents LIGAYA SANTOS, EDNA CORTEZ and RONNIE YBAÑEZ (I.S. No. 01-F-2052) and against respondents CHRISTOPHER and GIRLIE CASTILLO and ROBERT BUNDA (I.S. No. 01-H-3410) and to report to this Department the action taken within ten (10) days from receipt hereof.
>
> SO ORDERED.[26]

On June 27, 2002, the respondent filed a motion for reconsideration thereof. However, the public prosecutor filed a motion to withdraw the Informations in the two cases on June 20, 2002 in compliance with the joint resolution of the Secretary of Justice. On July 2, 2002, the respondent filed a comment/opposition to the motion to withdraw the Informations filed by the public prosecutor, contending:

I- THAT COMPLAINANT HEREBY ADOPTS ITS POSITION RAISED IN ITS MOTION FOR RECONSIDERATION FILED WITH THE DEPARTMENT OF JUSTICE (COPY ATTACHED AS ANNEX “A”). HENCE, THE DETERMINATION OF THE INSTANT MOTION IS STILL PREMATURE ESPECIALLY SO THAT ALL THE ACCUSED-MOVANTS ARE STILL AT LARGE, EVADING SERVICE OF ARREST WARRANT, IN WHICH CASE THEY ARE NOT ENTITLED TO ANY RELIEF;

II- THAT THE LATE (SIC) FINDINGS OF NO PROBABLE CAUSE FOR THE ACCUSED BY THE DEPARTMENT OF JUSTICE IS NOT BINDING;

III- THAT THE HONORABLE COURT HAS JUDICIOUSLY AND SOUNDLY ADJUDGED THE EXISTENCE OF PROBABLE CAUSE; and,

IV- THAT TO GIVE DUE COURSE TO THE INSTANT MOTION WOULD ONLY CREATE CHAOS AND

INJUSTICE.[27]

Pending resolution of the motion for reconsideration, the trial court issued an Order on July 5, 2002 granting the motion of the public prosecutor to withdraw the Informations in the interest of justice and equity.[28] The trial court ruled that such withdrawal would not prevent the refiling of the Informations against the accused who would not be able to invoke double jeopardy, considering that the court had not yet acquired jurisdiction over their persons. The private complainant filed a motion for reconsideration of the order which was not opposed by the public prosecutor. Nonetheless, on July 23, 2002, the trial court issued an Order denying the motion on the ground that it could not order the refiling of the Informations if the DOJ and the public prosecutor refused to do so.[29]

The respondent forthwith filed a petition for certiorari with the Court of Appeals (CA) assailing the orders of the trial court.

On March 19, 2003, the CA rendered a Decision granting the petition. The appellate court ruled that the trial court abused its discretion in granting the withdrawal of the Informations without making an independent evaluation on the merits of the case. Santos filed a motion for reconsideration of the decision and a supplement to the said motion, which was opposed by the respondent. On May 6, 2003, Santos and Cortez were arrested based on the warrants issued by the trial court. On May 22, 2003, the CA issued a resolution denying the said motion for reconsideration for lack of merit.

Santos filed a petition for review on certiorari with this Court contending as follows:

> A.)
>
> THE COURT OF APPEALS ERRED GRAVELY AND ACTED ARBITRARILY IN NULLIFYING THE ORDER OF THE TRIAL COURT GRANTING THE PROSECUTION'S MOTION TO WITHDRAW THE INFORMATIONS IN CRIMINAL CASES NOS. 01-0921 AND 01-0425 PURSUANT TO DOJ JOINT RESOLUTION DATED 11 JUNE 2002.
>
> B.)
>
> THE COURT OF APPEALS COMMITTED GRAVE ERROR IN DIRECTLY REINSTATING THE CRIMINAL COMPLAINTS, INCLUDING THE WARRANTS OF ARREST, WITHOUT AFFORDING THE TRIAL COURT THE OPPORTUNITY TO EXERCISE ITS JUDICIAL PREROGATIVE OF DETERMINING WHETHER TO PURSUE OR DISMISS THE COMPLAINTS PURSUANT TO ITS OWN EVALUATION OF THE CASE AND EVIDENCE IN LIGHT OF THE DOJ JOINT RESOLUTION FINDING LACK OF PROBABLE CAUSE.[30]

The threshold issue is whether or not the trial court committed grave abuse of its discretion amounting to excess or lack of jurisdiction in granting the public prosecutor's motion to withdraw the Informations and in lifting the warrant of arrest against the petitioner on the Secretary of Justice's finding that there was no probable cause for the filing of the said Informations.

The petitioner avers that the trial court did not abuse its judicial discretion when it granted the motion of the public prosecutor to withdraw the two Informations as ordered by the Secretary of Justice in his Joint Resolution on the finding that there was no probable cause against the accused therein to be charged with murder. The petitioner asserts that, by allowing the withdrawal of the Informations without an independent assessment of the merit of the evidence and without prejudice to the refiling thereof, the court did not thereby order the dismissal of the cases for insufficiency of evidence. The petitioner posits that, after all, the trial court had not yet acquired complete criminal jurisdiction to resolve the cases because it had not yet acquired jurisdiction over the persons of

all the accused. The petitioner argues that the CA erred in relying on the rulings of this Court in Crespo v. Mogul[31] and Perez v. Hagonoy Rural Bank, Inc.[32] because the said cases involve the withdrawal of the Informations and the dismissal of the cases for insufficiency of evidence. In contrast, the public prosecutor filed a motion merely to withdraw the Informations and not to dismiss the cases due to insufficiency of evidence.

In its comment on the petition, the Office of the Solicitor General (OSG) avers that the decision of the CA is in conformity with the rulings of this Court in Balgos, Jr. v. Sandiganbayan,[33] Dee v. Court of Appeals,[34] Roberts, Jr. v. Court of Appeals,[35] Ledesma v. Court of Appeals,[36] Jalandoni v. Drilon[37] and Solar Team Entertainment, Inc. v. How.[38] The OSG asserts that the rulings of this Court apply whether the motion filed by the public prosecutor was for the withdrawal of the Informations due to lack of probable cause or insufficiency of evidence. The OSG avers that the trial court had acquired jurisdiction over the persons of all the accused, either by their respective arrests or by the filing of pleadings before the court praying for affirmative reliefs.

In her reply to the comment of the OSG, the petitioner insisted that she did not submit herself to the jurisdiction of the trial court by filing her motion to quash the Informations for lack of probable cause and to examine the witnesses before the issuance of the warrant of arrest against her. As the trial court itself held, it had not yet acquired jurisdiction over her person.

In nullifying the assailed orders of the trial court, the appellate court ratiocinated as follows:

> To support these assigned errors, petitioner contends that the respondent Judge committed grave abuse of discretion when he granted the Motion to Withdraw Informations filed by his trial prosecutor based on the Joint Resolution of the Department of Justice and in denying petitioner's motion for reconsideration.
>
> We resolve to grant this petition considering that this contention is impressed with merit.
>
> The rule, therefore, in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court, he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court which has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation (Crespo v. Mogul, 151 SCRA 462).
>
> However, if the trial court has failed to make an independent finding of the merits of the case or make an independent evaluation or assessment of the merits of the case, but merely anchored the dismissal of the case on the revised position of the prosecution, the trial court has relinquished the discretion he was duty-bound to exercise because, in effect, it is the prosecution through the Department of Justice which decides what to do and that the trial court was reduced into a mere rubber stamp, in violation of the ruling in Crespo vs. Mogul (Martinez vs. Court of Appeals, 237 SCRA 576, 577), which is the situation obtaining in this case considering that the dismissal of the criminal cases against private respondents was based solely on [the] recommendation of the Secretary of Justice because the reliance of public respondent Judge was based solely on the prosecutor's averment that the Secretary of Justice had recommended the dismissal of the case against private respondent which is an abdication of the trial court's duty and jurisdiction to determine a prima facie case, in blatant violation of the court's pronouncement in Crespo vs. Mogul (Perez vs. Hagonoy Rural Bank, 327 SCRA 588).
>
> Moreover, public respondent having already issued the warrants of arrest on private respondents which, in effect, means that a probable cause exists in those criminal cases, it was an error to dismiss those cases without making an independent evaluation especially that the bases of the probable cause are the same evidence which

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> mere made the bases of the Joint Resolution dated June 11, 2002 of the Secretary of Justice.
>
> Consequently, the dismissal order dated July 5, 2002 having been issued upon an erroneous exercise of judicial discretion, the same must have to be set aside.[39]

We agree with the appellate court.

In Crespo v. Mogul,[40] the Court held that once a criminal complaint or information is filed in court, any disposition of the case or dismissal or acquittal or conviction of the accused rests within the exclusive jurisdiction, competence, and discretion of the trial court. The trial court is the best and sole judge on what to do with the case before it. A motion to dismiss the case filed by the public prosecutor should be addressed to the court who has the option to grant or deny the same. Contrary to the contention of the petitioner, the rule applies to a motion to withdraw the Information or to dismiss the case even before or after arraignment of the accused.[41] The only qualification is that the action of the court must not impair the substantial rights of the accused or the right of the People or the private complainant to due process of law.[42] When the trial court grants a motion of the public prosecutor to dismiss the case, or to quash the Information, or to withdraw the Information in compliance with the directive of the Secretary of Justice, or to deny the said motion, it does so not out of subservience to or defiance of the directive of the Secretary of Justice but in sound exercise of its judicial prerogative.[43]

In resolving a motion to dismiss the case or to withdraw the Information filed by the public prosecutor on his own initiative or pursuant to the directive of the Secretary of Justice, either for insufficiency of evidence in the possession of the prosecutor or for lack of probable cause, the trial court should not rely solely and merely on the findings of the public prosecutor or the Secretary of Justice that no crime was committed or that the evidence in the possession of the public prosecutor is insufficient to support a judgment of conviction of the accused. As the Court emphasized in Martinez v. Court of Appeals,[44] the trial court must make an independent evaluation or assessment of the merits of the case and the evidence on record of the prosecution:

> Secondly, the dismissal was based merely on the findings of the Acting Secretary of Justice that no libel was committed. The trial judge did not make an independent evaluation or assessment of the merits of the case. Reliance was placed solely on the conclusion of the prosecution that “there is no sufficient evidence against the said accused to ascertain the allegation in the information” and on the supposed lack of objection to the motion to dismiss, this last premise being, however, questionable, the prosecution having failed, as observed, to give private complainant a copy of the motion to dismiss.
>
> In other words, the grant of the motion to dismiss was based upon considerations other than the judge’s own personal individual conviction that there was no case against the accused. Whether to approve or disapprove the stand taken by the prosecution is not the exercise of discretion required in cases like this. The trial judge must himself be convinced that there was, indeed, no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge’s own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution’s word for its supposed insufficiency.
>
> As aptly observed by the Office of the Solicitor General, in failing to make an independent finding of the merits of the case and merely anchoring the dismissal on the revised position of the prosecution, the trial judge relinquished the discretion he was duty bound to exercise. In effect, it was the prosecution, through the Department of Justice which decided what to do and not the court which was reduced to a mere rubber stamp in violation of the ruling in Crespo v. Mogul.
>
> The dismissal order having been issued in violation of private complainant’s right to due process as well as upon an erroneous exercise of judicial discretion, the Court of Appeals did not err in setting aside said

> dismissal order and remanding the case to the trial court for arraignment of petitioner as accused therein and for further proceedings.

Indeed, it bears stressing that the trial court is not bound to adopt the resolution of the Secretary of Justice since it is mandated to independently evaluate or assess the merits of the case and it may either agree or disagree with the recommendation of the Secretary of Justice. Reliance alone on the resolution of the Secretary of Justice would be an abdication of the trial court's duty and jurisdiction to determine a prima facie case.[45]

The trial court may make an independent assessment of the merits of the case based on the affidavits and counter-affidavits, documents, or evidence appended to the Information; the records of the public prosecutor which the court may order the latter to produce before the court;[46] or any evidence already adduced before the court by the accused at the time the motion is filed by the public prosecutor.

In this case, the trial court failed to make an independent assessment of the merits of the cases and the evidence on record or in the possession of the public prosecutor. In granting the motion of the public prosecutor to withdraw the Informations, the trial court relied solely on the joint resolution of the Secretary of Justice, as gleaned from its assailed order:

> For resolution is the Motion to Withdraw Criminal Informations filed on June 21, 2002 by the Office of the City Prosecutor, this jurisdiction, to which a Comment/Opposition thereto was filed by private complainant Domingo I. Orda, Jr. on July 2, 2002.
>
> It appears that the motion is in compliance with the Joint Resolution of the Department of Justice (DOJ) promulgated on June 11, 2002 directing said Office to cause the withdrawal of the criminal informations for murder against the accused, Ligaya V. Santos, Edna Cortez, and Ronnie Ybañez, in Crim. Case No. 01-0921 (I.S. No. 01-F-2052) and against Christopher Castillo, Girlie Castillo, and Robert Bunda in Crim. Case No. 01-0425 (I.S. No. 01-H-3410), copy of which was received by this Court on June 19, 2002.
>
> The Court, after going over the Comment/Opposition filed by the private complainant, vis-à-vis the Joint Motion for Reconsideration of the Resolution of the DOJ, is of the firm belief and honest opinion and so holds that meanwhile that the Motion for Reconsideration of the private complainant is pending before the DOJ, justice and equity dictates that this Court has to give due course to the Motion to Withdraw the Criminal Informations, specially so that warrants for the arrest of all the accused have been issued. No injustice, prejudice, or damage will be suffered by the private complainant considering that if ever his Motion for Reconsideration will be granted by the DOJ, said criminal informations may be refiled and the principle of double jeopardy cannot be invoked by all the accused as the Court has not yet acquired jurisdiction over the persons. Upon the other hand, the warrants of arrest will serve as swords of damocles hanging over the heads of the accused if the Court will rule otherwise.[47]

In granting the public prosecutor's motion, the trial court abdicated its judicial power and acted as a mere surrogate of the Secretary of Justice.

Worse, as gleaned from the above order, the trial court knew that the Joint Resolution of the Secretary of Justice had not yet become final and executory because the respondent, the private complainant, had filed a timely motion for the reconsideration thereof which had not yet been resolved by the Secretary of Justice. It behooved the trial court to wait for the resolution of the Secretary of Justice on the motion for reconsideration of the respondent before resolving the motion of the public prosecutor to withdraw the Informations. In fine, the trial court acted with inordinate haste.

Had the trial court bothered to review its records before issuing its assailed order, it would have recalled that aside from the affidavits of Azarcon, Ernesto and Dennis, there was also the affidavit of Frias implicating the petitioner

and the other accused to the killing of Francis and that it even gave credence to the testimony and affidavit of Azarcon when it denied Tonion and Soriano's petition for bail. Moreover, the trial court found probable cause against the petitioner and issued a warrant for her arrest despite the pendency of her petition for review in the Department of Justice, only to make a complete volte face because of the Joint Resolution of the Secretary of Justice.

The bare fact that the trial court had issued warrants of arrest against Santos, Cortez, the Castillo brothers, and Bunda, who were the petitioners in the Department of Justice, did not warrant an outright grant of the public prosecutor's motion to withdraw the Informations. The court had already acquired jurisdiction over the cases when the Informations were filed; hence, it had jurisdiction to resolve the motion of the public prosecutor, one way or the other, on its merits. While it may be true that the accused could be incarcerated, as warrants of arrest had already been issued against them pending the resolution of the respondent's motion for reconsideration, the same does not justify ignoring the rules and running roughshod over the rights of the respondent. Justice and equity is not for the accused alone; the State and the private complainant are entitled thereto, as well. Moreover, the petitioner had submitted herself to the jurisdiction of the court when she filed her motion to examine the witnesses, and suspend the proceedings and the issuance of a warrant for her arrest.

The trial court committed another travesty when it denied the motion for reconsideration of its July 5, 2002 Order, on its ratiocination that –

> In today's hearing on the Motion for Reconsideration, considering that the Public Prosecutor informed the Court that their office will no longer file any opposition thereto, the said Motion for Reconsideration is denied considering that the filing and the withdrawal of an Information is purely an executive function and the Court cannot order the refiling if the Department of Justice or the Public Prosecutor's Office refuses to do so. ...[48]

This is so because the July 5, 2002 Order of the court had not yet become final and executory when the private complainant filed her motion for reconsideration of the said order.[49] Until and unless the July 5, 2002 Order shall have become final and executory, the Informations filed with the court were not yet considered withdrawn. On the other hand, if the trial court had granted the motion for reconsideration of the respondent and set aside its July 5, 2002 Order, there would no longer be a need to refile the Informations.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED DUE COURSE. The assailed Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Austria-Martinez, (Acting Chairman), Tinga, and Chico-Nazario, JJ., concur.
Puno J., (Chairman), on official leave.

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[1] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Bennie A. Adefuin-Dela Cruz and Mariano C. Del Castillo, concurring.

[2] Penned by Judge Raul E. De Leon.

[3] Rollo, p. 263.

[4] Id. at 11.

[5] Id. at 134.

[6] Id. at 136.

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[7] Id. at 140-142.

[8] Id. at 139.

[9] Id. at 174-176.

[10] Id. at 177.

[11] Id. at 179.

[12] Id. at 502.

[13] Id. at 195-197.

[14] Id. at 182-190.

[15] Id. at 193-194.

[16] Id. at 229.

[17] Id. at 233-245.

[18] Id. at 246-248.

[19] Id. at 249.

[20] Id. at 251-252.

[21] Id. at 253.

[22] Id. at 254-262.

[23] Id. at 267-270.

[24] Id. at 271-306.

[25] Id. at 307.

[26] Id. at 321.

[27] Id. at 340-341.

[28] Id. at 68-69.

[29] Id. at 70.

[30] Id. at 26.

[31] 151 SCRA 462 (1987).

[32] 327 SCRA 588 (2000).

[33] 176 SCRA 287 (1989).

[34] 238 SCRA 254 (1994).

[35] 254 SCRA 307 (1996).

[36] 278 SCRA 656 (1997).

[37] 327 SCRA 107 (2000).

[38] 338 SCRA 511 (2000).

[39] Rollo, pp. 62-63.

[40] Supra, note 31.

[41] Odin Security Agency, Inc. v. Sandiganbayan, 365 SCRA 351 (2001).

[42] Martinez v. Court of Appeals, 237 SCRA 575 (1994).

[43] Roberts, Jr. v. Court of Appeals, supra.

[44] Supra, note 42.

[45] Solar Team Entertainment, Inc. v. How, supra.

[46] Section 8, Rule 112 of the Revised Rules of Criminal Procedure.

[47] Rollo, pp. 68-69.

[48] Id. at 70.

[49] Section 13 of DOJ Circular No. 70 provides:

> SECTION 13. Motion for reconsideration. – The aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal, furnishing the adverse party and the Prosecution Office concerned with copies thereof and submitting proof of such service. No second or further motion for reconsideration shall be entertained.

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