

BERNADETTE L. ADASA, PETITIONER, VS. CECILLE S. ABALOS, RESPONDENT.

G.R. NO. 168617. February 19, 2007

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-168617/>

CHICO-NAZARIO, J.:

This Petition for Review under Rule 45 of the Rules of Court, filed by petitioner Bernadette L. Adasa, seeks to nullify and set aside the 21 July 2004 Decision[1] and 10 June 2005 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 76396 which nullified the Resolutions of the Department of Justice (DOJ). The Resolutions of the DOJ reversed and set aside the Resolution of the Office of the City Prosecutor of Iligan City, which found on reinvestigation probable cause against petitioner, and directed the Office of the City Prosecutor of Iligan City to withdraw the information for Estafa against petitioner.

The instant case emanated from the two complaints-affidavits filed by respondent Cecille S. Abalos on 18 January 2001 before the Office of the City Prosecutor of Iligan City, against petitioner for Estafa.

Respondent alleged in the complaints-affidavits that petitioner, through deceit, received and encashed two checks issued in the name of respondent without respondent's knowledge and consent and that despite repeated demands by the latter, petitioner failed and refused to pay the proceeds of the checks.

On 23 March 2001, petitioner filed a counter-affidavit admitting that she received and encashed the two checks issued in favor of respondent.

In her Supplemental Affidavit filed on 29 March 2001, petitioner, however, recanted and alleged instead that it was a certain Bebie Correa who received the two checks which are the subject matter of the complaints and encashed the same; and that said Bebie Correa left the country after misappropriating the proceeds of the checks.

On 25 April 2001, a resolution was issued by the Office of the City Prosecutor of Iligan City finding probable cause against petitioner and ordering the filing of two separate Informations for Estafa Thru Falsification of Commercial Document by a Private Individual, under Article 315 in relation to Articles 171 and 172 of the Revised Penal Code, as amended.

Consequently, two separate criminal cases were filed against petitioner docketed as Criminal Cases No. 8781 and No. 8782, raffled to Branches 4 and 5, Regional Trial Court of Iligan City, respectively.

This instant petition pertains only to Criminal Case No. 8782.

On 8 June 2001, upon motion of the petitioner, the trial court in Criminal Case No. 8782 issued an order directing the Office of the City Prosecutor of Iligan City to conduct a reinvestigation.

After conducting the reinvestigation, the Office of the City Prosecutor of Iligan City issued a resolution dated 30 August 2001, affirming the finding of probable cause against petitioner.

Meanwhile, during her arraignment on 1 October 2001 in Criminal Case No. 8782, petitioner entered an unconditional plea of not guilty.[3]

Dissatisfied with the finding of the Office of the City Prosecutor of Iligan City, petitioner filed a Petition for Review before the DOJ on 15 October 2001.

In a Resolution dated 11 July 2002, the DOJ reversed and set aside the 30 August 2001 resolution of the Office of the City Prosecutor of Iligan City and directed the said office to withdraw the Information for Estafa against petitioner.

The said DOJ resolution prompted the Office of the City Prosecutor of Iligan City to file a “Motion to Withdraw Information” on 25 July 2002.

On 26 July 2002, respondent filed a motion for reconsideration of said resolution of the DOJ arguing that the DOJ should have dismissed outright the petition for review since Section 7 of DOJ Circular No. 70 mandates that when an accused has already been arraigned and the aggrieved party files a petition for review before the DOJ, the Secretary of Justice cannot, and should not take cognizance of the petition, or even give due course thereto, but instead deny it outright. Respondent claimed Section 12 thereof mentions arraignment as one of the grounds for the dismissal of the petition for review before the DOJ.

In a resolution dated 30 January 2003, the DOJ denied the Motion for Reconsideration opining that under Section 12, in relation to Section 7, of DOJ Circular No. 70, the Secretary of Justice is not precluded from entertaining any appeal taken to him even where the accused has already been arraigned in court. This is due to the permissive language “may” utilized in Section 12 whereby the Secretary has the discretion to entertain an appealed resolution notwithstanding the fact that the accused has been arraigned.

Meanwhile, on 27 February 2003, the trial court issued an order granting petitioner’s “Motion to Withdraw Information” and dismissing Criminal Case No. 8782. No action was taken by respondent or any party of the case from the said order of dismissal.

Aggrieved by the resolution of the DOJ, respondent filed a Petition for Certiorari before the Court of Appeals. Respondent raised the following issues before the appellate court:

- Whether or not the Department of Justice gravely abused its discretion in giving due course to petitioner’s petition for review despite its having been filed after the latter had already been arraigned;
- Whether or not there is probable cause that the crime of estafa has been committed and that petitioner is probably guilty thereof;
- . Whether or not the petition before the Court of Appeals has been rendered moot and academic by the order of the Regional Trial Court dismissing Criminal Case No. 8782.

The Court of Appeals in a Decision dated 21 July 2004 granted respondent’s petition and reversed the Resolutions of the DOJ dated 11 July 2002 and 30 January 2003.

In resolving the first issue, the Court of Appeals, relying heavily on Section 7 of DOJ Circular No. 70 which states “[i]f an information has been filed in court pursuant to the appealed resolution, the petition shall not be given due course if the accused had already been arraigned,” ruled that since petitioner was arraigned before she filed the petition for review with the DOJ, it was imperative for the DOJ to dismiss such petition. It added that when petitioner pleaded to the charge, she was deemed to have waived her right to reinvestigation and right to question any irregularity that surrounds it.

Anent the second issue, the Court of Appeals declared that the existence of probable cause or the lack of it, cannot be dealt with by it since factual issues are not proper subjects of a Petition for Certiorari.

In disposing of the last issue, the Court of Appeals held that the order of the trial court dismissing the subject criminal case pursuant to the assailed resolutions of the DOJ did not render the petition moot and academic. It said that since the trial court's order relied solely on the resolutions of the DOJ, said order is void as it violated the rule which enjoins the trial court to assess the evidence presented before it in a motion to dismiss and not to rely solely on the prosecutor's averment that the Secretary of Justice had recommended the dismissal of the case.

Dissatisfied by the Court of Appeals' ruling, petitioner filed a Motion for Reconsideration setting forth the following grounds:

- that the over-all language of Sections 7 and 12 of Department Circular No. 70 is permissive and directory such that the Secretary of Justice may entertain an appeal despite the fact that the accused had been arraigned;
- that the contemporaneous construction by the Secretary of Justice should be given great weight and respect;
- that Section 7 of the Circular applies only to resolutions rendered pursuant to a preliminary investigation, not on a reinvestigation;
- that the trial court's order of dismissal of the criminal case has rendered the instant petition moot and academic;
- that her arraignment was null and void it being conducted despite her protestations; and
- that despite her being arraigned, the supposed waiver of her right to preliminary investigation has been nullified or recalled by virtue of the trial court's order of reinvestigation.[4]

The Court of Appeals stood firm by its decision. This time, however, it tried to construe Section 7 side by side with Section 12 of DOJ Circular No. 70 and attempted to reconcile these two provisions. According to the appellate court, the phrase "shall not" in paragraph two, first sentence of Section 7 of subject circular, to wit:

If an information has been filed in court pursuant to the appealed resolution, the petition shall not be given due course if the accused had already been arraigned. x x x. (Emphasis supplied.)

employed in the circular denotes a positive prohibition. Applying the principle in statutory construction - that when a statute or provision contains words of positive prohibition, such as "shall not," "cannot," or "ought not" or which is couched in negative terms importing that the act shall not be done otherwise than designated, that statute or provision is mandatory, thus rendering the provision mandatory - it opined that the subject provision simply means that the Secretary of Justice has no other course of action but to deny or dismiss a petition before him when arraignment of an accused had already taken place prior to the filing of the petition for review.

On the other hand, reading Section 12 of the same circular which reads:

The Secretary may reverse, affirm or modify the appealed resolution. He may, motu proprio or upon motion, dismiss the petition for review on any of the following grounds:

x x x x

(e) That the accused had already been arraigned when the appeal was taken; x x x.

the Court of Appeals opined that the permissive word "may" in Section 12 would seem to imply that the Secretary of Justice has discretion to entertain an appeal notwithstanding the fact that the accused has been arraigned. This provision should not be treated separately, but should be read in relation to Section 7. The two provisions, taken together, simply meant that when an accused was already arraigned when the aggrieved party

files a petition for review, the Secretary of Justice cannot, and should not take cognizance of the petition, or even give due course thereto, but instead dismiss or deny it outright. The appellate court added that the word “may” in Section 12 should be read as “shall” or “must” since such construction is absolutely necessary to give effect to the apparent intention of the rule as gathered from the context.

As to the contemporaneous construction of the Secretary of Justice, the Court of Appeals stated that the same should not be given weight since it was erroneous.

Anent petitioner’s argument that Section 7 of the questioned circular applies only to original resolutions that brought about the filing of the corresponding informations in court, but not to resolutions rendered pursuant to a motion for reinvestigation, the appellate court simply brushed aside such contention as having no basis in the circular questioned.

It also rejected petitioner’s protestation that her arraignment was forced upon her since she failed to present any evidence to substantiate the same.

It is petitioner’s contention that despite her being arraigned, the supposed waiver of her right to preliminary investigation has been nullified by virtue of the trial court’s order of reinvestigation. On this score, the Court of Appeals rebuffed such argument stating that there was no “supposed waiver of preliminary investigation” to speak of for the reason that petitioner had actually undergone preliminary investigation.

Petitioner remained unconvinced with the explanations of the Court of Appeals.

Hence, the instant petition.

Again, petitioner contends that the DOJ can give due course to an appeal or petition for review despite its having been filed after the accused had already been arraigned. It asserts that the fact of arraignment of an accused before the filing of an appeal or petition for review before the DOJ “is not at all relevant” as the DOJ can still take cognizance of the appeal or Petition for Review before it. In support of this contention, petitioner set her sights on the ruling of this Court in *Crespo v. Mogul*,^[5] to wit:

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as to 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 who 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. (Emphasis supplied.)

To bolster her position, petitioner cites *Roberts v. Court of Appeals*,^[6] which stated:

There is nothing in *Crespo vs. Mogul* which bars the DOJ from taking cognizance of an appeal, by way of a petition for review, by an accused in a criminal case from an unfavorable ruling of the investigating prosecutor. It merely advised the DOJ to, “as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court. x x x. (Emphasis supplied.)

Petitioner likewise invokes *Marcelo v. Court of Appeals*^[7] where this Court declared:

Nothing in the said ruling forecloses the power or authority of the Secretary of Justice to review resolutions of his subordinates in criminal cases. The Secretary of Justice is only enjoined to refrain as far as practicable from

entertaining a petition for review or appeal from the action of the prosecutor once a complaint or information is filed in court. In any case, the grant of a motion to dismiss, which the prosecution may file after the Secretary of Justice reverses an appealed resolution, is subject to the discretion of the court.

The Court is unconvinced.

A cursory reading of *Crespo v. Mogul* reveals that the ruling therein does not concern the issue of an appeal or petition for review before the DOJ after arraignment. Verily, the pronouncement therein has to do with the filing of a motion to dismiss and the court's discretion to deny or grant the same. As correctly pointed out by respondent, the emphasized portion in the *Crespo* ruling is a parcel of the entire paragraph which relates to the duty and jurisdiction of the trial court to determine for itself whether or not to dismiss a case before it, and which states that such duty comes into play regardless of whether such motion is filed before or after arraignment and upon whose instructions. The allusion to the Secretary of Justice as reviewing the records of investigation and giving instructions for the filing of a motion to dismiss in the cited ruling does not take into consideration of whether the appeal or petition before the Secretary of Justice was filed after arraignment. Significantly, in the *Crespo* case, the accused had not yet been arraigned when the appeal or petition for review was filed before the DOJ. Undoubtedly, petitioner's reliance on the said case is misplaced.

Also unavailing is petitioner's invocation of the cases of *Roberts v. Court of Appeals* and *Marcelo v. Court of Appeals*. As in *Crespo v. Mogul*, neither *Roberts v. Court of Appeals* nor *Marcelo v. Court of Appeals* took into account of whether the appeal or petition before the Secretary of Justice was filed after arraignment. Just like in the *Crespo* case, the accused in both *Roberts v. Court of Appeals* and *Marcelo v. Court of Appeals* had not yet been arraigned when the appeal or petition for review was filed before the DOJ.

Moreover, petitioner asserts that the Court of Appeals' interpretation of the provisions of DOJ Circular No. 70 violated three basic rules in statutory construction. First, the rule that the provision that appears last in the order of position in the rule or regulation must prevail. Second, the rule that the contemporaneous construction of a statute or regulation by the officers who enforce it should be given weight. Third, petitioner lifted a portion from Agpalo's *Statutory Construction*[8] where the word "shall" had been construed as a permissive, and not a mandatory language.

The all too-familiar rule in statutory construction, in this case, an administrative rule[9] of procedure, is that when a statute or rule is clear and unambiguous, interpretation need not be resorted to.[10] Since Section 7 of the subject circular clearly and categorically directs the DOJ to dismiss outright an appeal or a petition for review filed after arraignment, no resort to interpretation is necessary.

Petitioner's reliance to the statutory principle that "the last in order of position in the rule or regulation must prevail" is not applicable. In addition to the fact that Section 7 of DOJ Circular No. 70 needs no construction, the cited principle cannot apply because, as correctly observed by the Court of Appeals, there is no irreconcilable conflict between Section 7 and Section 12 of DOJ Circular No. 70. Section 7 of the circular provides:

SECTION 7. Action on the petition. – The Secretary of Justice may dismiss the petition outright if he finds the same to be patently without merit or manifestly intended for delay, or when the issues raised therein are too unsubstantial to require consideration. If an information has been filed in court pursuant to the appealed resolution, the petition shall not be given due course if the accused had already been arraigned. Any arraignment made after the filing of the petition shall not bar the Secretary of Justice from exercising his power of review. (*Italics supplied.*)

On the other hand, Section 12 of the same circular states:

SECTION 12. Disposition of the Appeal. – The Secretary may reverse, affirm or modify the appealed

resolution. He may, *motu proprio* or upon motion, dismiss the petition for review on any of the following grounds:

- (a) That the petition was filed beyond the period prescribed in Section 3 hereof;
- (b) That the procedure or any of the requirements herein provided has not been complied with;
- (c) That there is no showing of any reversible error;
- (d) That the appealed resolution is interlocutory in nature, except when it suspends the proceedings based on the alleged existence of a prejudicial question;
- (e) That the accused had already been arraigned when the appeal was taken;
- (f) That the offense has already prescribed; and
- (g) That other legal or factual grounds exist to warrant a dismissal. (Emphases supplied.)

It is noteworthy that the principle cited by petitioner reveals that, to find application, the same presupposes that “one part of the statute cannot be reconciled or harmonized with another part without nullifying one in favor of the other.” In the instant case, however, Section 7 is neither contradictory nor irreconcilable with Section 12. As can be seen above, Section 7 pertains to the action on the petition that the DOJ must take, while Section 12 enumerates the options the DOJ has with regard to the disposition of a petition for review or of an appeal.

As aptly observed by respondent, Section 7 specifically applies to a situation on what the DOJ must do when confronted with an appeal or a petition for review that is either clearly without merit, manifestly intended to delay, or filed after an accused has already been arraigned, i.e., he may dismiss it outright if it is patently without merit or manifestly intended to delay, or, if it was filed after the accused has already been arraigned, the Secretary shall not give it due course.

Section 12 applies generally to the disposition of an appeal. Under said section, the DOJ may take any of four actions when disposing an appeal, namely:

- reverse the appealed resolution;
- modify the appealed resolution;
- affirm the appealed resolution;
- dismiss the appeal altogether, depending on the circumstances and incidents attendant thereto.

As to the dismissal of a petition for review or an appeal, the grounds are provided for in Section 12 and, consequently, the DOJ must evaluate the pertinent circumstances and the facts of the case in order to determine which ground or grounds shall apply.

Thus, when an accused has already been arraigned, the DOJ must not give the appeal or petition for review due course and must dismiss the same. This is bolstered by the fact that arraignment of the accused prior to the filing of the appeal or petition for review is set forth as one of the grounds for its dismissal. Therefore, in such instance, the DOJ, noting that the arraignment of an accused prior to the filing of an appeal or petition for review is a ground for dismissal under Section 12, must go back to Section 7 and act upon as mandated therein. In other words, the DOJ must not give due course to, and must necessarily dismiss, the appeal.

Likewise, petitioner’s reliance on the principle of contemporary construction, i.e., the DOJ is not precluded from entertaining appeals where the accused had already been arraigned, because it exercises discretionary power, and

because it promulgated itself the circular in question, is unpersuasive. As aptly ratiocinated by the Court of Appeals:

True indeed is the principle that a contemporaneous interpretation or construction by the officers charged with the enforcement of the rules and regulations it promulgated is entitled to great weight by the court in the latter's construction of such rules and regulations. That does not, however, make such a construction necessarily controlling or binding. For equally settled is the rule that courts may disregard contemporaneous construction in instances where the law or rule construed possesses no ambiguity, where the construction is clearly erroneous, where strong reason to the contrary exists, and where the court has previously given the statute a different interpretation.

If through misapprehension of law or a rule an executive or administrative officer called upon to implement it has erroneously applied or executed it, the error may be corrected when the true construction is ascertained. If a contemporaneous construction is found to be erroneous, the same must be declared null and void. Such principle should be as it is applied in the case at bar.[11]

Petitioner's posture on a supposed exception to the mandatory import of the word "shall" is misplaced. It is petitioner's view that the language of Section 12 is permissive and therefore the mandate in Section 7 has been transformed into a matter within the discretion of the DOJ. To support this stance, petitioner cites a portion of Agpalo's Statutory Construction which reads:

For instance, the word "shall" in Section 2 of Republic Act 304 which states that "banks or other financial institutions owned or controlled by the Government shall, subject to availability of funds xxx, accept at a discount at not more than two per centum for ten years such (backpay) certificate" implies not a mandatory, but a discretionary, meaning because of the phrase "subject to availability of funds." Similarly, the word "shall" in the provision to the effect that a corporation violating the corporation law "shall, upon such violation being proved, be dissolved by quo warranto proceedings" has been construed as "may." [12]

After a judicious scrutiny of the cited passage, it becomes apparent that the same is not applicable to the provision in question. In the cited passage, the word "shall" departed from its mandatory import connotation because it was connected to certain provisos/conditions: "subject to the availability of funds" and "upon such violation being proved." No such proviso/condition, however, can be found in Section 7 of the subject circular. Hence, the word "shall" retains its mandatory import.

At this juncture, the Court of Appeals' disquisition in this matter is enlightening:

Indeed, if the intent of Department Circular No. 70 were to give the Secretary of Justice a discretionary power to dismiss or to entertain a petition for review despite its being outrightly dismissible, such as when the accused has already been arraigned, or where the crime the accused is being charged with has already prescribed, or there is no reversible error that has been committed, or that there are legal or factual grounds warranting dismissal, the result would not only be incongruous but also irrational and even unjust. For then, the action of the Secretary of Justice of giving due course to the petition would serve no purpose and would only allow a great waste of time. Moreover, to give the second sentence of Section 12 in relation to its paragraph (e) a directory application would not only subvert the avowed objectives of the Circular, that is, for the expeditious and efficient administration of justice, but would also render its other mandatory provisions - Sections 3, 5, 6 and 7, nugatory.[13]

In her steadfast effort to champion her case, petitioner contends that the issue as to whether the DOJ rightfully entertained the instant case, despite the arraignment of the accused prior to its filing, has been rendered moot and academic with the order of dismissal by the trial court dated 27 February 2003. Such contention deserves scant consideration.

It must be stressed that the trial court dismissed the case precisely because of the Resolutions of the DOJ after it had, in grave abuse of its discretion, took cognizance of the petition for review filed by petitioner. Having been rendered in grave abuse of its discretion, the Resolutions of the DOJ are void. As the order of dismissal of the trial court was made pursuant to the void Resolutions of the DOJ, said order was likewise void. The rule in this jurisdiction is that a void judgment is a complete nullity and without legal effect, and that all proceedings or actions founded thereon are themselves regarded as invalid and ineffective for any purpose.[14] That respondent did not file a motion for reconsideration or appeal from the dismissal order of the trial court is of no moment. Since the dismissal was void, there was nothing for respondent to oppose.

Petitioner further asserts that Section 7 of DOJ Circular No. 70 applies only to appeals from original resolution of the City Prosecutor and does not apply in the instant case where an appeal is interposed by petitioner from the Resolution of the City Prosecutor denying her motion for reinvestigation. This claim is baseless.

A reading of Section 7 discloses that there is no qualification given by the same provision to limit its application to appeals from original resolutions and not to resolutions on reinvestigation. Hence, the rule stating that “when the law does not distinguish, we must not distinguish”[15] finds application in this regard.

Petitioner asserts that her arraignment was null and void as the same was improvidently conducted. Again, this contention is without merit. Records reveal that petitioner’s arraignment was without any restriction, condition or reservation.[16] In fact she was assisted by her counsels Atty. Arthur Abudiente and Atty. Maglinao when she pleaded to the charge.[17]

Moreover, the settled rule is that when an accused pleads to the charge, he is deemed to have waived the right to preliminary investigation and the right to question any irregularity that surrounds it.[18] This precept is also applicable in cases of reinvestigation as well as in cases of review of such reinvestigation. In this case, when petitioner unconditionally pleaded to the charge, she effectively waived the reinvestigation of the case by the prosecutor as well as the right to appeal the result thereof to the DOJ Secretary. Thus, with the arraignment of the petitioner, the DOJ Secretary can no longer entertain the appeal or petition for review because petitioner had already waived or abandoned the same.

Lastly, while there is authority[19] permitting the Court to make its own determination of probable cause, such, however, cannot be made applicable in the instant case. As earlier stated, the arraignment of petitioner constitutes a waiver of her right to preliminary investigation or reinvestigation. Such waiver is tantamount to a finding of probable cause. For this reason, there is no need for the Court to determine the existence or non-existence of probable cause.

Besides, under Rule 45 of the Rules of Court, only questions of law may be raised in, and be subject of, a petition for review on certiorari since this Court is not a trier of facts. This being the case, this Court cannot review the evidence adduced by the parties before the prosecutor on the issue of the absence or presence of probable cause.[20]

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated 21 July 2004 and its Resolution dated 10 June 2005 in CA-G.R. SP No. 76396 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, J., (Chairperson), see separate opinion, concurring.

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

Nachura, J., on leave.

- [1] Penned by Associate Justice Edgardo A. Camello with Associate Justices Estela Perlas M. Bernabe and Arturo G. Tayag, concurring. Rollo, pp. 40-48.
- [2] Id. at 49-67.
- [3] Records, pp. 64-65.
- [4] Id. at 50.
- [5] G.R. No. L-53373, 30 June 1987, 151 SCRA 462, 471.
- [6] G.R. No. 113930, 5 March 1996, 254 SCRA 307, 330-332.
- [7] G.R. No. 106695, 4 August 1994, 235 SCRA 39, 48-49.
- [8] Agpalo, Statutory Construction (1990), pp. 240-241, citing *Diokno v. Rehabilitation Finance Corporation*, 91 Phil. 608, 611 (1952) and *Government v. El Hogar Filipino*, 50 Phil. 399 (1927).
- [9] When an administrative agency promulgates rules and regulations, it “makes” a new law with the force and effect of a valid law. (*Victorias Milling Co., Inc. v. Social Security Commission*, 114 Phil. 555, 558 [1962].)
- [10] *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, G.R. No. 74851, 9 December 1999, 320 SCRA 279, 289.
- [11] Rollo, p. 58.
- [12] *Supra* note 5.
- [13] Rollo, p. 57.
- [14] *Gorion v. Regional Trial Court of Cebu, Branch 17*, G.R. No. 102131, 31 August 1992, 213 SCRA 138, 147.
- [15] *Philippine Free Press, Inc. v. Court of Appeals*, G.R. No. 132864, 24 October 2005, 473 SCRA 639, 662.
- [16] Records, pp. 64-65.
- [17] Id.
- [18] *Kuizon v. Desierto*, G.R. Nos. 140619-24, 9 March 2000, 354 SCRA 158, 176-177; *Gonzales v. Court of Appeals*, 343 Phil. 297, 304-305 (1997); *People v. Baluran*, 143 Phil. 36, 44 (1981).
- [19] *Ark Travel Express, Inc. v. Abrogar*, G.R. No. 137010, 29 August 2003, 410 SCRA 148, 159.
- [20] *Chan v. Court of Appeals*, G.R. No. 159922, 28 April 2005, 457 SCRA 502, 512.

SEPARATE OPINION

YNARES-SANTIAGO, J.:

The ponencia unqualifiedly holds that once the accused is arraigned, the Secretary of Justice (Secretary) is precluded from giving due course to the appeal or petition of the accused. It thus declared that the resolution of the Secretary favorably acting on said appeal or petition, and directing the prosecutor to move for the withdrawal of the Information, is void, hence, the order of the trial court granting the same is also void.

I agree that the order of the trial court dismissing the case is void, but for a different reason which shall be discussed hereunder.

It is a cardinal principle that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. The institution of a criminal action depends upon his sound discretion. He may or may not file the complaint or information according to whether the evidence in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt.[1] The right to prosecute vests the prosecutor with a wide range of discretion, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors.[2] However, while it is true that the fiscal has the quasi judicial discretion to determine whether or not a criminal case should be filed or not, once the case had already been brought to court, whatever disposition the fiscal may deem proper should be addressed to the court.[3]

To avoid a clash between the views of the court and the prosecution on the matter of whether the case should be dismissed or should proceed with the trial, the Rules adopted measures directing one or the other to take or defer action as the circumstances may warrant. Thus, under Section 11 (c), Rule 116 of the Rules of Court, the trial court is mandated to suspend the arraignment where there is a pending petition for review with the Department of Justice (DOJ), or the Office of the President (OP). This is obviously intended to give the Secretary the time to review and make a recommendation to the trial court, through the office of the prosecutor, on the proper disposition of the Information filed against the accused. Also, DOJ Circular No. 70 precludes the Secretary from entertaining petitions filed after the accused had already been arraigned, in deference to the trial court's authority as the best and sole judge of the case filed before it.

It should be noted, however, that the foregoing measures are not iron clad rules that completely prevent the executive and judicial branches of the government from performing their sworn duties. Section 11 (c), Rule 116, which directs the trial court to suspend the arraignment where there is a pending petition with the DOJ or the OP, is qualified by the proviso stating that the period of suspension shall not exceed 60 days counted from the filing of the petition with the reviewing office.[4] After said period, the trial court may proceed with the arraignment and trial of the case. In like manner, the Secretary, under DOJ Circular No. 70, may continue reviewing the case where the accused is arraigned after the filing of the petition with the DOJ. Thus:

SECTION 7. xxx

If an information has been filed in court pursuant to the appealed resolution, the petition shall not be given due course if the accused had already been arraigned. Any arraignment made after the filing of the petition shall not bar the Secretary of Justice from exercising his power of review. (Emphasis added)

This only shows that the "hands" off policy of the DOJ when the accused had already entered a plea is not really sacrosanct. Where the circumstances warrant, both bodies may proceed with their respective and simultaneous determination of the issues filed before them. In any case, the conclusions of the Secretary, like the propriety of a motion to dismiss, which the prosecution may file after the Secretary reverses an appealed resolution, is only recommendatory in nature and is subject to the sound discretion of the court.[5] More importantly, it should be reiterated that the rationale for the adoption of the rules is to keep the prosecution and the court confined to their respective roles and to avoid conflict on the disposition of the Information. In cases therefore where no such possibility of divergence of opinion exist, as when the court defers to the prosecution the determination of whether the accused should be held for trial or not, the prosecution and the Secretary, should not shirk from their responsibility of resolving the issue presented before them.

In the instant case, the trial court granted the accused's motion for reinvestigation. As held in *Soberano v. People*,^[6] the court is therefore deemed to have deferred to the authority of the prosecutorial arm of the Government. It does not matter whether the reinvestigation was granted after or before arraignment because a motion for reinvestigation filed after arraignment is one of the jurisprudentially recognized remedy of the accused.^[7] The only and foremost qualification of such motion is that, whatever disposition the fiscal may

recommend, should be addressed for the consideration of the Court.[8] Since the prosecution sought prior approval for a reinvestigation which was favorably granted by the trial court, the conflict of opinion sought to be avoided by the rules is not extant, hence, there is no cogent reason to stubbornly adhere to the literal interpretation of DOJ Circular No. 70. The application of the law should be consistent with the purpose of and reason for the law. *Ratione cessat lex, et cessat lex*. When the reason for the law ceases, the law ceases. It is not the letter alone but the spirit of the law also that gives it life.[9]

The case of *Solar Team Entertainment, Inc. v. How*,[10] cited in the Reply to the Comment on the ponencia, cannot be relied upon as authority to unqualifiedly deprive the Secretary of the power to review the findings of the prosecutor in the instant case. The highlighted excerpt of said decision reads: "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 ... if accused/appellant has already been arraigned." [11] However, Solar does not contemplate of a situation where it was in fact the trial court which directed a reinvestigation and voluntarily deferred to the authority of the prosecution. This circumstance is vital to the proper interpretation of the questioned provision. Hence, the absence thereof in the Solar case renders the doctrine therein inapplicable to the present controversy.

Contrary to the holding of the ponencia, the *Crespo v. Mogul* doctrine finds application here. The pertinent ratio decidendi therein, provides:

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 who 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.[12]

The fact that no arraignment was involved in *Crespo* does not make the landmark doctrine therein inapplicable in this case. The very essence of *Crespo* is the full autonomy and discretion bestowed on the trial court with respect to the disposition of the case. This is precisely what is being applied in the instant case with respect to the power of the court to determine the best course of action to take. Granting a motion for reinvestigation is one of such actions which the trial court may choose. Such grant is the step that would set into motion a possible appeal to and recommendation of the Secretary on the dismissal of the case before the trial court. Indeed, once the prosecutor is directed to conduct a reinvestigation, the Secretary cannot be deprived of the power of review. Decisions or resolutions of prosecutors are subject to appeal to the Secretary who, under the Revised Administrative Code, exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, nullify, reverse or modify their rulings.[13]

The foregoing, notwithstanding, the ponencia remains firm on the strict application of the proscription on the review by the Secretary of petitions once the accused is arraigned. This stance is anchored on the premise that the arraignment of the accused amounts to a waiver of the right to a preliminary investigation and the right to question any irregularity in the conduct thereof. In effect, the ponencia forecloses the remedy of reinvestigation after arraignment. If the accused can no longer question the preliminary investigation conducted by the fiscal, what's the use of granting a reinvestigation? Verily, while a reinvestigation is not specifically provided in the rules, the same is a recognized remedy in our jurisprudence. In *People v. Calpito*, [14] and *Tan v. Sandiganbayan*, [15] the trial court and the Sandiganbayan, respectively, allowed a reinvestigation even after

arraignment. In another case,[16] a Judge was declared as not negligent in granting a reinvestigation after arraignment of the accused. Furthermore, while the court is called upon to exercise caution and restraint in granting a reinvestigation after arraignment, the ponencia did not make any statement as to whether the grant of a reinvestigation in the instant case is tainted with grave abuse of discretion.

So also, I believe that it is more appropriate to rule that the nullity of the trial court's order dismissing the case is grounded on the court's total lack of independent assessment of the motion to dismiss filed by the prosecution and not because said order relied upon a void resolution of the Secretary.[17] Regardless of whether the recommendation of the Secretary is valid or not, it is the absence of the judge's own evaluation of the issue posed before him/her that makes an order void. It is the duty of the trial judge to make an independent assessment and finding of the evidence, it not being sufficient for the valid exercise of judicial discretion to merely accept the prosecutor's word for its sufficiency or insufficiency. Without such finding, the order of the court denying or granting the motion to dismiss is void.[18] In *Ledesma v. Court of Appeals*,[19] we invalidated the order of the trial court denying the prosecutor's motion to dismiss as it completely ignored the recommendations of the Secretary and simply invoked the *Crespo v. Mogul* doctrine on the court's full authority in the disposition of the case. In contrast, in *Martinez v. Court of Appeals*,[20] the order of the trial court was declared not valid because the dismissal of the criminal action was, like the present case,[21] an "erroneous exercise of judicial discretion" relying hook, line, and sinker on the resolution of the Secretary, without making its own independent determination of the merits of the said resolution.

As correctly held in the ponencia, though the order of the trial court dismissing the case was not elevated to this Court, the same can be declared void in the present redress from the resolution of the Secretary because the order of the trial court dismissing the case, having been rendered with grave abuse of discretion and without jurisdiction, is a total nullity. Moreover, to make a piece meal determination of the issues involved by ruling only on the validity or invalidity of the Secretary's resolution directing the withdrawal of the information, without addressing the order of the trial court dismissing the case pursuant to said resolution, is to further delay the proceedings and encourage multiplicity of suits.

Finally, the disposition of this case should not end by merely declaring the trial court's order void. In the cases of *Mosquera v. Panganiban*,[22] and *Perez v. Hagonoy Rural Bank, Inc.*,[23] the Court not only declared the order of the trial court invalid but also directed the trial court to resolve the case on the merits, make its own determination of probable cause and to state therein clearly the reason or reasons after due consideration of the evidence of the parties.

[1] *Crespo v. Mogul*, G.R. No. L-53373, June 30, 1987, 151 SCRA 462, 467.

[2] *Soberano v. People*, G.R. No. 154629, October 5, 2005, 472 SCRA 125, 140.

[3] *Crespo v. Mogul*, *supra* at 470.

[4] SEC. 11. Suspension of arraignment. - Upon motion by the proper party, the arraignment shall be suspended in the following cases:

x x x x

(c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; provided, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office. (Emphasis supplied)

[5] See *Dimatulac v. Villon*, G.R. No. 127107, October 12, 1998, 297 SCRA 679, 710.

[6] *Supra* note 2.

[7] Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 5, Iligan City, A.M. No. 02-10-628, October 1, 2004, 440 SCRA 1, 15.

[8] *Soberano v. People*, *supra*.

[9] *Executive Secretary v. Southwing Heavy Industries, Inc.*, G.R. Nos. 164171, 164172, and 168741, February 20, 2006, 482 SCRA 673, 700.

[10] G.R. No. 140863, August 22, 2000, 338 SCRA 511.

[11] *Id.* at 521.

[12] *Supra* note 1 at 471.

[13] *Ledesma v. Court of Appeals*, G.R. No. 113216, September 5, 1997, 278 SCRA 656, 676.

[14] G.R. No. 123298, November 27, 2003, 416 SCRA 491.

[15] 354 Phil. 463(1998).

[16] Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 5, Iligan City, *supra* note 7.

[17] Pertinent portion of the ponencia, states:

It must be stressed that the trial court dismissed the case precisely because of the Resolutions of the DOJ after it had, in grave abuse of discretion, took cognizance of the petition for review filed by petitioner. Having been rendered in grave abuse of discretion, the Resolutions of the DOJ are void. As the order of dismissal of the trial court was made pursuant to the void Resolutions of the DOJ, said order was likewise void. The rule in this jurisdiction is that a void judgment is a complete nullity and without legal effect, and that all proceedings or actions founded thereon are themselves regarded as invalid and ineffective for any purpose.

[18] *Ark Travel Express, Inc. v. Abrogar*, G.R. No. 137010, August 29, 2003, 410 SCRA 148, 158; *Herrera*, *Remedial Law*, Vol. IV, 2001 edition, p. 249, citing *Ledesma v. Court of Appeals*, *supra*.

[19] *Supra* note 13.

[20] G.R. No. 112387, October 13, 1994, 237 SCRA 575.

[21] The trial court merely quoted the motion to dismiss and the manifestation of the prosecutor and perfunctorily proceeded with the dispositive portion of the order.

[22] G.R. No. 121180, July 5, 1996, 258 SCRA 473.

[23] 384 Phil. 322 (2000).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.