

ARIEL M. LOS BAÑOS, ON BEHALF OF P/SUPT. VICTOR AREVALO, SPO2 MARCIAL OLYMPIA, SPO1 ROCKY MERCENE AND PO1 RAUL ADLAWAN, AND IN HIS PERSONAL CAPACITY, PETITIONER, VS. JOEL R. PED...

G.R. No. 173588. April 22, 2009

Ponente: BRION, J.

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BRION, J.:

We review in this petition for review on certiorari[1] the September 19, 2005 decision[2] and the July 6, 2006 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 80223. The petition seeks to revive the case against respondent Joel R. Pedro (Pedro) for election gun ban violation after the CA declared the case permanently dismissed pursuant to Section 8, Rule 117 of the Rules of Court.

THE ANTECEDENTS

Pedro was charged in court for carrying a loaded firearm without the required written authorization from the Commission on Elections (Comelec) a day before the May 14, 2001 national and local elections. The Information reads:

That on or about the 13[th] day of May 2001 at about 4:00 o'clock in the afternoon, in [S]itio Bantauyan, [B]arangay Bantad, Municipality of Boac, Province of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously carry a Revolver Cal. 357, Magnum Ruger 100 loaded with six (6) ammunitions, with Serial No. 173-56836 outside his residence during the election period, without authorization in writing from the Commission on Election[s].

CONTRARY TO LAW.[4]

The accusation was based on Batas Pambansa Bilang 881 or the Omnibus Election Code (Code) after the Marinduque Philippine National Police (PNP) caught Pedro illegally carrying his firearm at a checkpoint at Boac, Marinduque. The Boac checkpoint team was composed of Police Senior Inspector Victor V. Arevalo, SPO2 Marshal Olympia, SPO1 Rocky Mercene, and PO1 Raul Adlawan. The team stopped a silver-gray Toyota Hi-Ace with plate number WHT-371 on the national highway, coming from the Boac town proper. When Pedro (who was seated at the rear portion) opened the window, Arevalo saw a gun carry case beside him. Pedro could not show any COMELEC authority to carry a firearm when the checkpoint team asked for one, but he opened the case when asked to do so. The checkpoint team saw the following when the case was opened: 1) one Revolver 357 Magnum Ruger GP100, serial number 173-56836, loaded with six ammunitions; 2) one ammunition box containing 100 bullets; 3) two pieces speed loader with six ammunitions each; and 4) one set ear protector. Pedro was with three other men. The checkpoint team brought all of them to the Boac police station for investigation.

The Boac election officer filed a criminal complaint against Pedro for violating the election gun ban, i.e., for carrying a firearm outside of his residence or place of business without any authority from the Comelec. After an

inquest, the Marinduque provincial prosecutor filed the above Information against Pedro with the Marinduque Regional Trial Court (RTC) for violation of the Code's Article XXII, Section 261 (q),^[5] in relation to Section 264.^[6]

Pedro filed a Motion for Preliminary Investigation, which the RTC granted.^[7] The preliminary investigation, however, did not materialize. Instead, Pedro filed with the RTC a Motion to Quash, arguing that the Information "contains averments which, if true, would constitute a legal excuse or justification^[8] and/or that the facts charged do not constitute an offense."^[9] Pedro attached to his motion a Comelec Certification dated September 24, 2001 that he was "exempted" from the gun ban. The provincial prosecutor opposed the motion.

The RTC quashed the Information and ordered the police and the prosecutors to return the seized articles to Pedro.^[10]

The petitioner, private prosecutor Ariel Los Baños (Los Baños), representing the checkpoint team, moved to reopen the case, as Pedro's Comelec Certification was a "falsification," and the prosecution was "deprived of due process" when the judge quashed the information without a hearing. Attached to Los Baños' motion were two Comelec certifications stating that: (1) Pedro was not exempted from the firearm ban; and (2) the signatures in the Comelec Certification of September 24, 2001 were forged.

The RTC reopened the case for further proceedings, as Pedro did not object to Los Baños' motion.^[11] Pedro moved for the reconsideration of the RTC's order primarily based on Section 8 of Rule 117,^[12] arguing that the dismissal had become permanent. He likewise cited the public prosecutor's lack of express approval of the motion to reopen the case.

The public prosecutor, however, manifested his express conformity with the motion to reopen the case. The trial court, for its part, rejected the position that Section 8, Rule 117 applies, and explained that this provision refers to situations where both the prosecution and the accused mutually consented to the dismissal of the case, or where the prosecution or the offended party failed to object to the dismissal of the case, and not to a situation where the information was quashed upon motion of the accused and over the objection of the prosecution. The RTC, thus, set Pedro's arraignment date.

Pedro filed with the CA a petition for certiorari and prohibition to nullify the RTC's mandated reopening.^[13] He argued that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that the dismissal contemplated under Section 8, Rule 117 refers to situations where either the prosecution and the accused mutually consented to, or where the prosecution alone moved for, the provisional dismissal of the case; in rejecting his argument that the prescriptive periods under Article 90 of the Revised Penal Code^[14] or Act No. 3326^[15] find no application to his case as the filing of the Information against him stopped the running of the prescriptive periods so that the prescription mandated by these laws became irrelevant; and, in setting the case for arraignment and pre-trial conference, despite being barred under Section 8 of Rule 117.

THE COURT OF APPEALS DECISION

The CA initially denied Pedro's petition. For accuracy, we quote the material portions of its ruling:

The petition lacks merit.

The trial court erred in ruling that Section 8, Rule 117 does not apply to provisional dismissals on motion of the accused. The Rule merely provides that a case shall not be provisionally dismissed, except with the express consent of the accused and with notice to the offended party. Nothing in the said rule proscribes its application to dismissal on motion of the accused.

Nevertheless, we find no basis for issuing the extraordinary writs of certiorari and prohibition, as there is no showing that the error was tainted with grave abuse of discretion. Grave abuse of discretion implies capricious and whimsical exercise of judgment amounting to lack of jurisdiction. The grave abuse of discretion must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law.

Before the petitioner may invoke the time-bar in Section 8, he must establish the following:

- the prosecution, with the express conformity of the accused or the accused moves for a provisional (sin perjuicio) dismissal of the case; or both the prosecution and the accused move for a provisional dismissal of the case;
- the offended party is notified of the motion for a provisional dismissal of the case;
- the court issues an order granting the motion and dismissing the case provisionally;
- the public prosecutor is served, with a copy of the order of provisional dismissal of the case.

Although the second paragraph of Section 8 states that the order of dismissal shall become permanent one year after the issuance thereof, without the case having been revived, such provision should be construed to mean that the dismissal shall become permanent one year after service of the order of dismissal on the public prosecutor, as the public prosecutor cannot be expected to comply with the timeliness requirement unless he is served with a copy of the order of dismissal.

In the instant case, the records are bereft of proof as to when the public prosecutor was served the order of dismissal dated 22 November 2001. Absent such proof, we cannot declare that the State is barred from reviving the case.

WHEREFORE, the petition is DENIED.

In his motion for reconsideration, Pedro manifested the exact date and time of the Marinduque provincial prosecutor's receipt of the quashal order to be "2:35 p.m., December 10, 2001," and argued that based on this date, the provisional dismissal of the case became "permanent" on December 10, 2002. Based on this information, the CA reversed itself, ruling as follows:

On 9 September 2005, we ruled that Section 8, Rule 117 is applicable to a dismissal on motion of the accused. However, we did not issue the writs of certiorari and prohibition, because it was shown that the trial court committed grave abuse of discretion in ordering the reopening of the case. Moreover, we stated that we cannot rule on the issue of whether or not the State is barred from reopening the case because it was not shown when the public prosecutor was served the order of dismissal.

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The arguments raised in the respondents' motion for modification were duly passed upon in arriving at the decision dated 9 September 2005, and no new matters were raised which would warrant a reconsideration thereof.

On the other hand, the petitioner was able to prove that the motion to reopen the case was filed after the lapse of more than one year from the time the public prosecutor was served the notice of dismissal. Therefore, the state is barred from reopening the case.

WHEREFORE, petitioner Joel Pedro's motion for partial reconsideration is hereby GRANTED, and respondent Ariel Los Banos' motion for modification of judgment is, accordingly, DENIED.

To summarize this ruling, the appellate court, while initially saying that there was an error of law but no grave abuse of discretion that would call for the issuance of a writ, reversed itself on motion for reconsideration; it then

ruled that the RTC committed grave abuse of discretion because it failed to apply Section 8, Rule 17 and the time-bar under this provision.

THE PETITION

Los Baños prays in his petition that the case be remanded to the RTC for arraignment and trial, or that a new charge sheet be filed against Pedro, or that the old information be re-filed with the RTC. He contends that under Section 6 of Rule 117, an order sustaining a motion to quash does not bar another prosecution for the same offense, unless the motion was based on the grounds specified in Section 3(g)[16] and (i)[17] of Rule 117. Los Baños argues that the dismissal under Section 8 of Rule 117 covers only situations where both the prosecution and the accused either mutually consented or agreed to, or where the prosecution alone moved for the provisional dismissal of the case; it can also apply to instances of failure on the part of the prosecution or the offended party to object, after having been forewarned or cautioned that its case will be dismissed. It does not apply where the information was quashed. He adds that although the trial court granted the motion to quash, it did not categorically dismiss the case, either provisionally or permanently, as the judge simply ordered the return of the confiscated arms and ammunition to Pedro. The order was "open-ended," and did not have the effect of provisionally dismissing the case under Section 8 of Rule 117.

Los Baños also contends that the CA gravely erred when: (1) it ruled in effect that the Order dated November 22, 2001 granting the motion to quash is considered a provisional dismissal, which became permanent one year from the prosecutor's receipt of the order; the order to quash the Information was based on Section 3 of Rule 117, not on Section 8 of this Rule; (2) it granted Pedro's motion for reconsideration and denied Los Baños' motion for modification of judgment, when Section 6 of Rule 117 clearly provides that an order granting a motion to quash is not a bar to another prosecution for the same offense.

He notes that the grounds Pedro relied upon in his motion to quash are not subsections (g) or (i) of Rule 117, but its subsections (a) - that the facts charged do not constitute an offense, and (h) - that it contains averments which if true would constitute a legal justification. Pedro's cited grounds are not the exceptions that would bar another prosecution for the same offense.[18] The dismissal of a criminal case upon the express application of the accused (under subsections [a] and [h]) is not a bar to another prosecution for the same offense, because his application is a waiver of his constitutional prerogative against double jeopardy.

In response to all these, respondent Pedro insists and fully relies on the application of Section 8 of Rule 117 to support his position that the RTC should not have granted Los Banos' motion to reopen the case.

THE ISSUES

The issue is ultimately reduced to whether Section 8, Rule 117 is applicable to the case, as the CA found. If it applies, then the CA ruling effectively lays the matter to rest. If it does not, then the revised RTC decision reopening the case should prevail.

OUR RULING

We find the petition meritorious and hold that the case should be remanded to the trial court for arraignment and trial.

Quashal v. Provisional Dismissal

a. Motion to Quash

A motion to quash is the mode by which an accused assails, before entering his plea, the validity of the criminal complaint or the criminal information filed against him for insufficiency on its face in point of law, or for defect apparent on the face of the Information.[19] The motion, as a rule, hypothetically admits the truth of the facts spelled out in the complaint or information. The rules governing a motion to quash are found under Rule 117 of the Revised Rules of Court. Section 3 of this Rule enumerates the grounds for the quashal of a complaint or information, as follows:

- (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.

b. Provisional Dismissal

On the other hand, Section 8, Rule 117 that is at the center of the dispute states that:

SEC.8. Provisional dismissal. -- A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

A case is provisionally dismissed if the following requirements concur:

- 1) the prosecution with the express conformity of the accused, or the accused, moves for a provisional dismissal (*sin perjuicio*) of his case; or both the prosecution and the accused move for its provisional dismissal;
- 2) the offended party is notified of the motion for a provisional dismissal of the case;
- 3) the court issues an order granting the motion and dismissing the case provisionally; and
- 4) the public prosecutor is served with a copy of the order of provisional dismissal of the case.[20]

In *People v. Lacson*,[21] we ruled that there are *sine quanon* requirements in the application of the time-bar rule stated in the second paragraph of Section 8 of Rule 117. We also ruled that the time-bar under the foregoing provision is a special procedural limitation qualifying the right of the State to prosecute, making the time-bar an essence of the given right or as an inherent part thereof, so that the lapse of the time-bar operates to extinguish the right of the State to prosecute the accused.

c. Their Comparison

An examination of the whole Rule tells us that a dismissal based on a motion to quash and a provisional dismissal are far different from one another as concepts, in their features, and legal consequences. While the provision on provisional dismissal is found within Rule 117 (entitled Motion to Quash), it does not follow that a motion to quash results in a provisional dismissal to which Section 8, Rule 117 applies.

A first notable feature of Section 8, Rule 117 is that it does not exactly state what a provisional dismissal is. The modifier "provisional" directly suggests that the dismissals which Section 8 essentially refers to are those that are temporary in character (i.e., to dismissals that are without prejudice to the re-filing of the case), and not the dismissals that are permanent (i.e., those that bar the re-filing of the case). Based on the law, rules, and jurisprudence, permanent dismissals are those barred by the principle of double jeopardy,[22] by the previous extinction of criminal liability,[23] by the rule on speedy trial,[24] and the dismissals after plea without the express consent of the accused.[25] Section 8, by its own terms, cannot cover these dismissals because they are not provisional.

A second feature is that Section 8 does not state the grounds that lead to a provisional dismissal. This is in marked contrast with a motion to quash whose grounds are specified under Section 3. The delimitation of the grounds available in a motion to quash suggests that a motion to quash is a class in itself, with specific and closely-defined characteristics under the Rules of Court. A necessary consequence is that where the grounds cited are those listed under Section 3, then the appropriate remedy is to file a motion to quash, not any other remedy. Conversely, where a ground does not appear under Section 3, then a motion to quash is not a proper remedy. A motion for provisional dismissal may then apply if the conditions required by Section 8 obtain.

A third feature, closely related to the second, focuses on the consequences of a meritorious motion to quash. This feature also answers the question of whether the quashal of an information can be treated as a provisional dismissal. Sections 4, 5, 6, and 7 of Rule 117 unmistakably provide for the consequences of a meritorious motion to quash. Section 4 speaks of an amendment of the complaint or information, if the motion to quash relates to a defect curable by amendment. Section 5 dwells on the effect of sustaining the motion to quash - the complaint or information may be re-filed, except for the instances mentioned under Section 6. The latter section, on the other hand, specifies the limit of the re-filing that Section 5 allows - it cannot be done where the dismissal is based on extinction of criminal liability or double jeopardy. Section 7 defines double jeopardy and complements the ground provided under Section 3(i) and the exception stated in Section 6.

Rather than going into specifics, Section 8 simply states when a provisional dismissal can be made, i.e., when the accused expressly consents and the offended party is given notice. The consent of the accused to a dismissal relates directly to what Section 3(i) and Section 7 provide, i.e., the conditions for dismissals that lead to double jeopardy. This immediately suggests that a dismissal under Section 8 - i.e., one with the express consent of the accused - is not intended to lead to double jeopardy as provided under Section 7, but nevertheless creates a bar to further prosecution under the special terms of Section 8.

This feature must be read with Section 6 which provides for the effects of sustaining a motion to quash - the dismissal is not a bar to another prosecution for the same offense - unless the basis for the dismissal is the extinction of criminal liability and double jeopardy. These unique terms, read in relation with Sections 3(i) and 7 and compared with the consequences of Section 8, carry unavoidable implications that cannot but lead to distinctions between a quashal and a provisional dismissal under Section 8. They stress in no uncertain terms that, save only for what has been provided under Sections 4 and 5, the governing rule when a motion to quash is meritorious are the terms of Section 6. The failure of the Rules to state under Section 6 that a Section 8 provisional dismissal is a bar to further prosecution shows that the framers did not intend a dismissal based on a motion to quash and a provisional dismissal to be confused with one another; Section 8 operates in a world of its

own separate from motion to quash, and merely provides a time-bar that uniquely applies to dismissals other than those grounded on Section 3. Conversely, when a dismissal is pursuant to a motion to quash under Section 3, Section 8 and its time-bar does not apply.

Other than the above, we note also the following differences stressing that a motion to quash and its resulting dismissal is a unique class that should not be confused with other dismissals:

First, a motion to quash is invariably filed by the accused to question the efficacy of the complaint or information filed against him or her (Sections 1 and 2, Rule 117); in contrast, a case may be provisionally dismissed at the instance of either the prosecution or the accused, or both, subject to the conditions enumerated under Section 8, Rule 117.[26]

Second, the form and content of a motion to quash are as stated under Section 2 of Rule 117; these requirements do not apply to a provisional dismissal.

Third, a motion to quash assails the validity of the criminal complaint or the criminal information for defects or defenses apparent on face of the information; a provisional dismissal may be grounded on reasons other than the defects found in the information.

Fourth, a motion to quash is allowed before the arraignment (Section 1, Rule 117); there may be a provisional dismissal of the case even when the trial proper of the case is already underway provided that the required consents are present.[27]

Fifth, a provisional dismissal is, by its own terms, impermanent until the time-bar applies, at which time it becomes a permanent dismissal. In contrast, an information that is quashed stays quashed until revived; the grant of a motion to quash does not per se carry any connotation of impermanence, and becomes so only as provided by law or by the Rules. In re-filing the case, what is important is the question of whether the action can still be brought, i.e., whether the prescription of action or of the offense has set in. In a provisional dismissal, there can be no re-filing after the time-bar, and prescription is not an immediate consideration.

To recapitulate, quashal and provisional dismissal are different concepts whose respective rules refer to different situations that should not be confused with one another. If the problem relates to an intrinsic or extrinsic deficiency of the complaint or information, as shown on its face, the remedy is a motion to quash under the terms of Section 3, Rule 117. All other reasons for seeking the dismissal of the complaint or information, before arraignment and under the circumstances outlined in Section 8, fall under provisional dismissal.

Thus, we conclude that Section 8, Rule 117 does not apply to the reopening of the case that the RTC ordered and which the CA reversed; the reversal of the CA's order is legally proper.

Pedro's Motion to Quash

The merits of the grant of the motion to quash that the RTC initially ordered is not a matter that has been ruled upon in the subsequent proceedings in the courts below, including the CA. We feel obliged to refer back to this ruling, however, to determine the exact terms of the remand of the case to the RTC that we shall order.

The grounds Pedro cited in his motion to quash are that the Information contains averments which, if true, would constitute a legal excuse or justification [Section 3(h), Rule 117], and that the facts charged do not constitute an offense [Section 3(a), Rule 117]. We find from our examination of the records that the Information duly charged a specific offense and provides the details on how the offense was committed.[28] Thus, the cited Section 3(a) ground has no merit. On the other hand, we do not see on the face or from the averments of the Information any legal excuse or justification. The cited basis, in fact, for Pedro's motion to quash was a Comelec Certification

(dated September 24, 2001, issued by Director Jose P. Balbuena, Sr. of the Law Department, Committee on Firearms and Security Personnel of the Comelec, granting him an exemption from the ban and a permit to carry firearms during the election period)[29] that Pedro attached to his motion to quash. This COMELEC Certification is a matter aliunde that is not an appropriate motion to raise in, and cannot support, a motion to quash grounded on legal excuse or justification found on the face of the Information. Significantly, no hearing was ever called to allow the prosecution to contest the genuineness of the COMELEC certification.[30]

Thus, the RTC grossly erred in its initial ruling that a quashal of the Information was in order. Pedro, on the other hand, also misappreciated the true nature, function, and utility of a motion to quash. As a consequence, a valid Information still stands, on the basis of which Pedro should now be arraigned and stand trial.

One final observation: the Information was not rendered defective by the fact that Pedro was charged of violating Section 261(q) of the Code, instead of Section 32 of R.A. No. 7166, which amended Section 261(q); these two sections aim to penalize among others, the carrying of firearms (or other deadly weapons) in public places during the election period without the authority of the Comelec. The established rule is that the character of the crime is not determined by the caption or preamble of the information or from the specification of the provision of law alleged to have been violated; the crime committed is determined by the recital of the ultimate facts and circumstances in the complaint or information[31] Further, in *Abenes v. Court of Appeals*,[32] we specifically recognized that the amendment under Section 32 of R.A. No. 7166 does not affect the prosecution of the accused who was charged under Section 261(q) of the Code.

WHEREFORE, we hereby GRANT the petition and accordingly declare the assailed September 19, 2005 decision and the July 6, 2006 resolution of the Court of Appeals in CA-G.R. SP No. 80223 respectively MODIFIED and REVERSED. The case is remanded to the Regional Trial Court of Boac, Marinduque for the arraignment and trial of respondent Joel R. Pedro, after reflecting in the Information the amendment introduced on Section 261(q) of the Code by Section 32 of Republic Act No. 7166.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, and Bersamin, JJ., concur.

[1] Under Rule 45 of the rules of Court

[2] Penned by Associate Justice Santiago J. Ranada (retired), with Associate Justice Marina L. Buzon (retired) and Associate Justice Mario L. Guarina III; rollo, pp. 32-38.

[3] *Id.*, pp. 60-63.

[4] *Id.*, pp. 65-66.

[5] SEC. 261. Prohibited Acts. - The following shall be guilty of an election offense:

x x x

(q) Carrying firearms outside residence or place of business. - Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission [on Elections]: Provided, That a motor vehicle, water or air craft shall not be considered residence or place of business or extension thereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to

persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

This section was subsequently amended under Republic Act (R.A.) No. 7166, the Synchronized Election Law of 1991, to read:

SEC. 32. Who May Bear Firearms. - During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearm licenses shall be suspended during the election period. (Emphasis supplied)

[6] Section 264 of the Code states that "[a]ny person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years."

[7] Through Judge Rodolfo Dimaano of RTC Branch 94, Boac, Marinduque.

[8] RULES OF COURT, Rule 117, Section 3(a).

[9] Id., Section 3(h).

[10] Through Judge Alejandro Arenas.

[11] Order dated March 13, 2003, issued by Judge Rodolfo B. Dimaano.

[12] SEC. 8. Provisional dismissal. -- A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

[13] Docketed as CA-G.R. SP No. 80223, and titled as Joel R. Pedro v. Hon. Rodolfo B. Dimaano, Executive/Acting Presiding Judge of the Regional Trial Court of Marinduque, Branch 38, et al.

[14] ART. 90. Prescription of crimes. - Crimes punishable by death, reclusion perpetua or reclusion temporal shall prescribe in twenty years.

Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, which shall prescribe in five years. xxx

[15] An Act to Establish Periods of Prescription for Violations Penalized By Special Laws and Municipal Ordinances, and to Provide When Prescription Shall Begin to Run.

Section 2 thereof states: Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. The prescription shall be interrupted when proceedings are instituted against the guilty person and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

[16] (g) That the criminal action or liability has been extinguished.

[17] (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.

[18] Rollo, p. 14.

[19] *Serapio v. Sandiganbayan*, G.R. No. 148468, January 28, 2003, 396 SCRA 443, 474.

[20] *People v. Lacson*, G.R. No. 149453, April 1, 2003 400 SCRA 267, 292-293.

[21] *People v. Lacson*, G.R. No. 149453, April 1, 2003 400 SCRA 293.

[22] *People v. Laguio*, G.R. No. 128587, March 16, 2007, 518 SCRA 393, 402-403; *People v. Hon. Hernandez*, G.R. Nos. 154218 & 154372, August 28, 2006, 499 SCRA 688,706-707; *Philippine Savings Bank v. Spouses Bermoy*, G.R. No. 151912, September 26, 2005, 471 SCRA 94,107-108; *Sanvicente v. People*, G.R. No. 132081, November 26, 2002, 392 SCRA 610,616-617; *Metropolitan Bank & Trust Co. v. Hon. Veridiano*, G.R. No. 118251, June 29, 200, 360 SCRA 359, 366; *People v. Velasco*, G.R. No. 127444, September 13, 2000, 340 SCRA 207, 242; *Palu-ay v. Court of Appeals*, G.R. No. 112995, July 30, 1998, 293 SCRA 358, 365.

[23] *Romualdez v. Ombudsman*, G.R. Nos. 165510-33, July 28, 2006, 497 SCRA 89, 114; *People v. Pacificador*, G.R. No. 139405, March 13, 2001, 354 SCRA 310, 319-320; *Garcia v. Court of Appeals*, G.R. No. 119063, January 27, 1997, 266 SCRA 678, 694; *Cabral v. Puno*, L-41692, April 30, 1976, 70 SCRA 606, 609.

[24] *People v. Hon. Hernandez*, supra note 22, p. 706; *Angchangco Jr. v. Ombudsman*, G.R. No. 122728, February 13, 1997, 268 SCRA 301; *Guerrero v. Court of Appeals*, G.R. No. 107211, June 28, 1996, 257 SCRA 703, 713-714; *People v. Leviste*, G.R. No. 104386, March 28, 1996, 255 SCRA 238, 248-249; *People v. Tampal*, G.R. No. 102485, May 22, 1995, 244 SCRA 202; *Gonzales v. Sandiganbayan*, G.R. No. 94750, July 16, 1991, 199 SCRA 298, 308; *Tatad vs. Sandiganbayan*, G.R. No. L-72335-39, 21 March 1988, 159 SCRA 70, 83.

[25] *People v. Espinosa*, G.R. Nos. 153714-20, August 15, 2003, 409 SCRA 256, 266.

[26] In *People v. Togle*, (105 Phil 126, 127, [1959]), the defense moved for the provisional dismissal of the case because of the inability of the prosecution to present important witnesses. In *Baesa v. Provincial Fiscal of Camarines Sur* (G.R. No. L-30363, January 30, 1971, 37 SCRA 437), the provisional dismissal was made by the accused via motion. Further, in *People v. Oliva* (G.R. No. 106826, January 18, 2001, 349 SCRA 435, 438) and *People v. Hinaut* (105 Phil. 303 [1959]), the case was provisionally dismissed by the prosecution with the consent of the accused; in the later case, the accused manifested his consent by writing "with conformity" in the motion.

[27] *People v. Ramos*, G.R. No. 135204, April 14, 2004 427 SCRA 299, 301; *People v. Hinaut*, supra note 26, p. 304; *People v. Togle*, supra note 26, p. 127

[28] Rollo, pp. 65-66; for convenience, the body of the Information reads:

That on or about the 13[th] day of May 2001 at about 4:00 o'clock in the afternoon, in [S]itio Bantauyan, [B]arangay Bantad, Municipality of Boac, Province of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, wilfully, unlawfully and feloniously carry a Revolver Cal. 357, Magnum Ruger 100 loaded with six (6) ammunitions, with Serial No. 173-56836 outside his residence during the election period without authorization in writing from the Commission on Election[s].

CONTRARY TO LAW.

[29] *Id.*, p. 85.

[30] In a long line of cases, we have ruled that a motion to quash on the ground that the allegations of the information do not constitute the offense charged, should be resolved on the basis alone of these allegations whose truth and veracity are hypothetically admitted. By way of exception, we held in *People v. Navarro* (G.R. No. L-1 & L-2, December 4, 1945; 75 Phil. 516, 518-519) that additional facts not alleged in the information, but

admitted or not denied by the prosecution, may be invoked in support of the motion to quash. In *People v. De la Rosa* (98 SCRA 190, 196-197 [1980]) we adopted a pragmatic approach and allowed additional facts brought out through the presentation of evidence by the parties to be considered in the determination of a motion to quash grounded on the theory that the facts charged do not constitute an offense. We held:

Indeed, where in the hearing on a motion to quash predicated on the ground that the allegations of the information do not charge an offense, facts have been brought out by evidence presented by both parties which destroy the prima facie truth accorded to the allegations of the information on the hypothetical admission thereof, as is implicit in the nature of the ground of the motion to quash, it would be pure technicality for the court to close its eyes to said facts and still give due course to the prosecution of the case already shown to be weak even to support possible conviction, and hold the accused to what would clearly appear to be a merely vexatious and expensive trial, on her part, and a wasteful expense of precious time on the part of the court, as well as of the prosecution.

The combined application of these rules tells us where the information is allegedly defective because the facts charged do not constitute an offense or that the averments of the Information contain a legal excuse or justification, the motion will be resolved, as a rule, solely on the basis of the facts alleged in the information which are all hypothetically admitted. These facts are to be tested against the essential elements of the offense. Matters aliunde, as a rule, cannot be considered,^[30] except under the circumstances contemplated in *Navarro* and *De la Rosa* and as permitted by Rule 117. The jurisprudential exceptions refer to the facts brought out through the evidence adduced by the opposing parties during the hearing of the motion to quash and those admitted or otherwise not denied by the prosecution.

[31] *Olivarez v. Court of Appeals*, G.R. No. 163866, July 29, 2005, 465 SCRA 465, 482, *Reyes v. Camilon*, G.R. No. 46198, 20 December 1990, 192 SCRA 445, 453 citing *People v. Mendoza*, 175 SCRA 743, 752.

[32] G.R. No. 156320, February 14, 2007, 550 SCRA 690, 706.

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