

**SILVESTRE CAÑIZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES
AND HON. JAIME AGLORO, PRESIDING JUDGE, BRANCH XXIII,
COURT OF FIRST INSTANCE OF MANILA, RESPONDENTS.**

G.R. No. 53776. March 18, 1988

Ponente: FELICIANO, J.

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FELICIANO, J.:

The present Petition for Prohibition and Certiorari is directed at (1) the Order dated 27 November 1979 issued by Branch 23 of the then Court of First Instance of Manila in Criminal Case No. 46768, and (2) said court's Order of 20 March 1980 in the same case denying petitioner Silvestre Cañiza's Motion for Reconsideration.

The undisputed facts are as follows:

On 20 March 1974, an Information (docketed as Criminal Case No. 16879) was filed by the Assistant City Fiscal of Manila with Branch 23 of the then Court of First Instance of Manila for falsification of public documents allegedly committed on 5 November 1968 by petitioner Cañiza. On 24 May 1974, petitioner Cañiza filed a Motion to Quash contending that the allegations in the information did not constitute an offense. Petitioner Cañiza also contended that the information contained averments which, if true, would constitute a legal excuse or justification.

In an Order dated 27 November 1974, the trial court granted the Motion to Quash and dismissed the case against petitioner Cañiza. The Fiscal later filed an undated Motion for Reconsideration of this Order which was, however, denied on 3 April 1975.

On 13 June 1979, a second Information (docketed as Criminal Case No. 46768) was filed charging petitioner Cañiza with substantially the same offense as that charged under the previous information. On 29 June 1979, petitioner Cañiza again moved to quash the second Information on the grounds that (1) the offense charged therein had already prescribed, (2) quashal of the first Information had been on the merits, and (3) the allegations in the second Information did not constitute an offense.

On 27 November 1979, respondent judge issued an Order,[1] the dispositive portion of which reads:

"WHEREFORE, the motion to quash and the motion to confiscate bond are denied.

Set this case for the arraignment of the accused to January 9, 1980, at 8:30 a.m.

SO ORDERED."

Petitioner Cañiza's Motion for Reconsideration was likewise denied on 20 March 1980 by respondent judge who, in the same order, rescheduled the arraignment of the accused.[2]

In the Petition at bar filed with this Court on 8 May 1980, petitioner Cañiza raises three issues for consideration, namely: [a] whether or not the offense charged has already prescribed; [b] whether or not filing of the second

Information has placed the accused in jeopardy of punishment for the same offense a second time; and [c] whether or not the allegations in the second Information constitute an offense.

The Petition must fail.

Under Article 90, in relation with Article 172 of the Revised Penal Code, the crime of falsification of public document committed by a private individual -- the offense with which petitioner Cañiza is presently charged -- prescribes in ten (10) years. In this respect, Article 91 of the Revised Penal Code states further:

"Computation of prescription of offenses. -- The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago." (Underscoring supplied.)

In the light of the aforequoted provision, the Court notes that five (5) years, four (4) months and sixteen (16) days had elapsed between 5 November 1968 (date of commission of the alleged offense) and 20 March 1974 (date of filing of the first Information).[3] The Court notes further that four (4) years, two (2) months and twelve (12) days had elapsed between 3 April 1975 (date of denial by the trial court of the Fiscal's motion for reconsideration) and 13 June 1979 (date of filing of the second Information).[4] On this basis, a total of nine (9) years, six (6) months and twenty-eight (28) days of the ten-year prescriptive period had been consumed by the time the second Information was filed in court.

In support of his claim of prescription, however, petitioner Cañiza urges that the Fiscal's undated Motion for Reconsideration did not toll the running of the prescriptive period, which allegedly began to run again on 27 November 1974 when Criminal Case No. 16879 was ordered dismissed by the trial court.

We disagree. We have held in the past that filing of a motion for reconsideration -- except in cases where the accused would be placed thereby in double jeopardy -- continues the suspension of the running of the prescriptive period, and that prescription begins to run again only after court proceedings have been finally terminated, in the sense of being beyond reconsideration.[5] Even assuming (though merely *arguendo*) that the Fiscal's motion for reconsideration did not interrupt the running of the prescriptive period, prescription would, nevertheless, not yet have set in here. Thus: following petitioner Cañiza's argument, the period covering 27 November 1974 (date of quashal of the first Information) to 3 April 1975 (date of denial of the Fiscal's motion for reconsideration) would have to be included in the aforestated computation -- i.e., an additional four (4) months and seven (7) days. The resulting aggregate total of nine (9) years, eleven (11) months and five (5) days still clearly falls short of and within the ten-year limit for prescription.

Coming now to the second issue, Section 9 of Rule 117 of the Rules of Court[6] lists the following requisites in order that the defense of double jeopardy may be successfully invoked by an accused person:

- a valid Complaint or Information or other formal charge sufficient in form and substance to sustain a conviction;
- a Court of competent jurisdiction;
- that the accused had pleaded to the charge against him;
- that the accused had been convicted, or acquitted, or the case against him dismissed or otherwise terminated

without his express consent; and

- that the second offense charged is the same as the first, or an attempt to commit the same or a frustration thereof, or that the second offense necessarily includes or is necessarily included in the first offense charged.[7]

As previously mentioned, Criminal Case No. 16879 was ordered dismissed by the trial court with the express consent of the accused -- i.e., upon Motion to Quash filed by petitioner Cañiza. Generally, a dismissal under such circumstance will not bar another prosecution for the same offense; the defendant, in having the case against him dismissed, thereby waives his constitutional right against double jeopardy for the reason that he effectively prevents the trial court from proceeding to trial on the merits and rendering a judgment of conviction against him.[8]

Application of the aforestated doctrine of waiver, however, is subject to two (2) sine qua non conditions: first, dismissal must have been sought or induced by the defendant, either personally or through counsel; and second, such dismissal must not have been on the merits and must not necessarily amount to an acquittal.[9] In this respect, the record shows that petitioner Cañiza moved to quash the first Information (Criminal Case No. 16879) on grounds that the allegations made therein did not constitute an offense and/or that the first Information contained allegations which, if true, constituted a legal excuse or justification. These grounds, upon which the trial court anchored its 27 November 1974 Order of dismissal, are clearly directed at the sufficiency of said information to sustain the conviction of petitioner Cañiza and, hence, indicate the absence of the first requisite in double jeopardy. Furthermore, and more importantly, dismissal of a criminal action on this basis is not properly considered as amounting to an acquittal on the merits; from a legal standpoint, the defendant is deemed as not having been charged with the commission of any offense whatsoever under the deficient information.[10] Consequently, petitioner Cañiza's plea of second jeopardy cannot be sustained: he effectively waived his right to assert that plea when he moved to quash the first Information filed against him.

Finally, we agree with the view of the respondent judge that the second Information, as worded, is sufficient in form and substance to sustain a conviction for the crime alleged thereunder.[11] Petitioner Cañiza's contentions to the contrary are matters best raised and determined at the trial of the case.

WHEREFORE, the Petition for Prohibition and Certiorari is DISMISSED. The 8 December 1980 Resolution of this Court giving due course to the Petition is withdrawn and the disputed Orders dated 27 November 1979 and 20 March 1980 issued by respondent judge in Criminal Case No. 46768 are hereby AFFIRMED. This case is remanded to the court a quo for trial on the merits.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, pp. 34-37.

[2] Order, pp. 48-50, Rollo.

[3] One (1) extra day has been added, 1972 having been a leap year.

[4] One (1) extra day has been added, 1976 having been a leap year.

[5] See *People vs. De Peralta*, 76 SCRA 615 [1977]. See also Sec. 2, Rule 122 of the Rules of Court (now Sec. 2, Rule 122 of the 1985 Rules on Criminal Procedure).

[6] Now Sec. 7, Rule 117 of the 1985 Rules on Criminal Procedure.

[7] *Lu Hayco vs. Court of Appeals*, 138 SCRA 227 [1985]; and *People vs. Militante*, 117 SCRA 910 [1982].

[8] *People vs. Obsania*, 23 SCRA 1249 [1968].

[9] *Ibid.* See pp. 1273-1274.

[10] *People vs. Capistrano*, 109 Phil. 337 [1960]. See also *People vs. Court of First Instance of Quezon, Branch V*, 68 SCRA 305 [1975]; and *People vs. Obsania*, *supra*.

[11] The Information in Criminal Case No. 46768 reads in part:

"That on or about November 5, 1968, in the City of Manila, Philippines, the said accused, being then one of the accused in Criminal Case Nos. 404603 and 404604, together with his brothers and sisters Angel, Rafael, Virginia, Adelaida and Lourdes, all surnamed Cañiza, pending before the City Court of Manila, Branch VII, for Violations of Sections 441 and 491 of the Compilation of Ordinances of the City of Manila, being the owners of Yorktown Building located at No. 418-422 Rizal Avenue, this City and in his capacity as counsel for all the accused in said cases, did then and there willfully, unlawfully and feloniously prepare, forge and falsify and/or cause to be prepared, forged and falsified a motion for reinvestigation of the above-entitled cases, a public document duly signed by him and authorized [sic] by and entered in the Notarial Registry of one Luis Teodoro, a notary public for and in the City of Manila, as Document No. 192, Page 101, Book No. XII, Series of 1968, stating among other things, in said document that accused Silvestre, Virginia, Lourdes and Adelaida, all surnamed Cañiza are not the owners of Yorktown Building and that said building was ceded to Rafael Cañiza and Angel Cañiza by their mother, Aurora P. Cañiza, now deceased, in 1958, and therefore, should not be included as accused in the above-entitled cases, thus making untruthful statements in a narrated [sic] of facts and causing it to appear, as it did appear, that Silvestre, Virginia, Lourdes and Adelaida, all surnamed Cañiza, are not owners of the Yorktown Building when in truth and in fact as the said accused knew, said accused are co-owners of the said building; that once said document was forged and falsified in the manner above-setforth, said accused filed the same with the City Court of Manila, Branch VII, which eventually resulted to [sic] the acquittal of said accused his sisters Virginia, Lourdes and Adelaida, all surnamed Cañiza, in said Criminal Cases.

Contrary to law."

Even if it be assumed (*arguendo*, merely) that the trial court erred in dismissing the first Information (Criminal Case No. 16879) upon the grounds that its allegations did not constitute an offense or that it contained averments which, if true, did constitute a legal excuse or justification, petitioner's plea of double jeopardy would still have to be rejected. See in this connection *People v. Reyes*, 98 Phil. 646 [1956]; *People v. Amada Reyes, et al.*, 96 Phil. 827 [1955]; and *People v. Casiano*, 1 SCRA 478 [1961].

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