PABLO MARGAREJO, MARTIN PAGADUAN, BERNARD ZAMBALES, VICTOR DULAP, AND LOLITO ALMOITE, PETITIONER, VS. HON. ADELARDO ESCOSES, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 51, RTC...

G.R. Nos. 137250-51. September 13, 2001

Ponente: BUENA, J.

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BUENA, J.:

This is a Petition for Certiorari under Rule 65 seeking to annul, on the ground of grave abuse of discretion, the following:

> 1) The Order dated September 30, 1998, issued by Judge Adelardo S. Escoses, Branch 51, Regional Trial Court of Puerto Princesa City, in (a) CRIMINAL CASE NO. 14353 for Violation of Presidential Decree No. 1866, as amended; and in (b) CRIMINAL CASE NO. 14354 for Violation of COMELEC Resolution No. 3045 in relation to section 261 of the Omnibus Election Code; denying the petitioner's motions to quash the informations in the above cases;[1] and
>
> 2) The Resolution dated November 20, 1998, issued by respondent judge, denying petitioner's motion for reconsideration of the said order.[2]
>
> The antecedents, as found by the Solicitor General, read:
>
> "1. At about four o'clock in the morning of May 12, 1998, Police Superintendent Feliciano C. Dimayuga, Sr., the Chief of Police of Puerto Princesa City, together with his Deputy Chief of Police, Police Chief Inspector Miguel B. Oceo, and four other policemen, namely, Police Senior Inspector Leopoldo M. Pacaldo, PO3 Jose B. Eleazar, PO3 Joselito R. Golifardo, and PO3 Edwin A. Barona, who were manning a COMELEC checkpoint at Barangay Sta. Lourdes at Puerto Princesa City, were able to intercept two vehicles, specifically, a Tamaraw FX vehicle, with Plate Number SDT-389 and driven by petitioner Martin Pagaduan, and a Toyota Hi-Lux Vehicle which did not have a plate number and was driven by retired Colonel Romualdo Ragel of Barangay Tinguiban, Puerto Princesa City.
>
> "2. Several firearms, with live ammunition, were seen and found in plain view inside the Toyota Hi-Lux Vehicle. Also seen in plain view were several firearms, with live ammunition, carried by petitioners and by the other passengers of said intercepted vehicle. Police Superintendent Dimayuga inquired from petitioners if they had the required licenses and the proper COMELEC authority for the firearms found in their possession and custody but petitioners could not produce any. Said firearms, together with live ammunition, were thus taken by the police and the corresponding receipts issued therefor."

Petitioners and three others were charged with the earlier mentioned crimes under two separate informations, thus:

> "CRIMINAL CASE NO. 14353
>
> "That on or about the 12[th] day of May, 1998, more or less 4:00 o'clock (sic) in the morning, at Bgy. Sta. Lourdes, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the

above-named accused, conspiring and confederating together, did then and there wilfully, unlawfully and feloniously have in their possession, custody, and control, the following firearms and ammunitions, to wit:

`1) One (1) piece Uzi Machine Pistol with Serial No. SN-70102 with Three (3) magazines loaded with Sixty Five (65) live ammunitions
`2) One (1) piece Para-Ordinance Caliber .45 Pistol with Serial No. 451529 with Ten (10) live ammunitions in Magazine
`3) One (1) piece Colt Mark IV Gold Cup .45 Pistol with Serial No. 369470 with Six (6) live ammunitions in Magazine
`4) One (1) piece Norinco .45 Caliber Pistol with Serial No. 704800 with Seven (7) live ammunitions in Magazine
`5) One (1) piece .45 Caliber Pistol with Serial No. 957202 (w/o brand name) with Five (5) live ammunitions in Magazine
`6) One (1) piece .357 Magnum Revolver Smith and Wesson with Serial No. SN-AJS-7876 with Twenty (20) live ammos
`7) One (1) piece M16 Baby Armalite Rifle with Serial Number SN 145710
`8) Ten (10) pieces M16 magazines loaded with 262 rounds of live ammunitions, without first securing the necessary permits/licenses to possess the same from the proper authorities concerned.'

"CONTRARY TO LAW."[3]

and,

"CRIMINAL CASE NO. 14354

"That on or about the 12[th] day of May, 1998, more or less 4:00 o'clock in the morning, at Bgy. Sta. Lourdes, City of Puerto Princesa, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together did then and there wilfully, unlawfully and feloniously have in their possession, custody and control during election period the following firearms and ammunitions, to wit:

`1. One (1) pc. UZI Machine Pistol with SN 70102
`2. Three (3) pcs. UZI magazine
`3. Sixty Five (65) pcs. UZI live ammos.
`4. One (1) pc. 45 cal. Pistol with five (5) live ammos. in magazine
`5. One (1) pc. COLT MARK IV .45 cal. Pistol SN 369470 with six (6) live ammos. in magazine
`6. One (1) pc. NORINCO .45 caliber pistol SN 704800 with seven (7) live ammos. in magazine
`7. One (1) pc. .45 cal. Pistol SN 451529 with ten (10) live ammos. in magazine
`8. One (1) pc. .357 Magnum revolver SN-AJS-7876 with twenty (20) live ammos.
`9. One (1) pc. M16A1 Baby Armalite Rifle with SN-145710
`10. Ten (10) pcs. Magazine for M16 Rifle
'11. Two Hundred Sixty Two (262) pc. Live ammos. for M16 Rifle.'

without first securing the written permit from the COMELEC to possess the same, which act is in violation of COMELEC Resolution No. 3064 in relation to Section 261 of the Omnibus Election Code.

CONTRARY TO LAW."[4]

Before arraignment, motions to quash the aforequoted informations were filed by petitioners. In the motion to quash filed in Criminal Case No. 14353, petitioners asserted that, "the facts charged in the Information did not constitute an offense, there being no allegation that `no other crime was committed,' which is an essential element of the offense penalized by PD 1866, as amended by RA 8294".[5] And in the motion to quash filed in Criminal Case No. 14354, petitioners claimed that, "... the City Prosecutor had no authority to file the information in said case since COMELEC, which has the exclusive authority to investigate and prosecute election offenses, was

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conducting its own preliminary investigation for the same act complained of.[6]

As stated in the prefatory statement, the motions to quash were denied in the order dated September 30, 1998:

> "WHEREFORE, premised on the foregoing jurisprudential tenets and rational application thereof to the facts of the instant case, the motion to quash the above-entitled cases is hereby denied. Let the accused be arraigned on the two Informations at bench at the earliest available calendar of the court."[7]

The motion for reconsideration of the aforequoted order was likewise denied in the resolution dated November 20, 1998:

> "WHEREFORE, premised on the foregoing doctrinal tenets applied to the facts as culled from the records of these cases, the formal joint and consolidated motion for reconsideration of the September 30, 1998 order of this Court is hereby denied. Let the arraignment of the accused on the Informations at bench be set at the earliest available calendar of the court."[8]

The issues raised by petitioners in their Memorandum are as follows:

> "ISSUES
>
> "WHETHER OR NOT THE NON-COMMISSION OF ANOTHER CRIME IS AN ESSENTIAL ELEMENT OF VIOLATION OF PD 1866 AS AMENDED BY RA 8294, WHICH ELEMENT MUST BE ALLEGED IN THE INFORMATION.
>
> "WHETHER OR NOT THE PENDENCY OF A PRELIMINARY INVESTIGATION CONDUCTED BY THE COMELEC INVOLVING THE SAME ACT OF PETITIONERS DEPRIVED THE CITY PROSECUTOR OF THE AUTHORITY TO FILE THE INFORMATION.
>
> "WHETHER OR NOT THE WARRANTLESS SEARCH WHICH SUPPOSEDLY RESULTED IN THE DISCOVERY AND SEIZURE OF FIREARMS FROM PETITIONERS IS LEGAL."

The first issue is resolved against the Petitioners. Their principal argument in support of this issue is not only amiss but also deceiving. Contrary to what they point out, the amendatory law (Republic Act No. 8294) does not add to the existing elements of the crime of illegal possession of firearms. What it does is merely to excuse the accused from prosecution of the same in case another crime is committed.

In People vs. Valdez,[9] this Court, under the ponencia of Justice Jose A.R. Melo, explained that the dismissal of the second case against Valdez involving violation of P.D. 1866 did not mean that there can no longer be any prosecution for the crime of illegal possession of firearm. Consequently, all pending cases as well as subsequent violations of P.D. 1866, as amended, will continue to be prosecuted and tried if no other crimes expressly indicated in R.A. 8294[10] concur. Considering that the other offense charged in Criminal Case No. 14354 - for violation of COMELEC Resolution No. 3045 - is not one of those enumerated under R.A. 8294, the respondent judge was correct in not quashing the information in Criminal Case No. 14353.[11]

Still under the first issue, Petitioners' argument that the continuation of the two questioned cases against them violates the Constitutional prohibition on double jeopardy is not only strained but totally unacceptable. It is manifestly clear from the records that no first jeopardy has yet attached. Section 7, Rule 117 of the Rules of Court, as amended, provides:

> "Section 7. Former conviction or acquittal; double jeopardy. - When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of

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> the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information."

Under said Section, the first jeopardy attaches only - "(1) upon a valid indictment, (2) before a competent court, (3) after arraignment, (4) when a valid plea has been entered, and (5) when the defendant was convicted or acquitted, or the case was dismissed or otherwise terminated without the express consent of the accused."[12] Significantly, the last three requisites are absent in this case, petitioners not having been arraigned in either case up to this date. Hence, Criminal Case No. 14353 should proceed.

The second issue is likewise resolved against Petitioners. While they are correct in saying that the Commission on Elections has the exclusive power to investigate and prosecute all election offenses under the Omnibus Election Code,[13] such authority was subsequently qualified and explained, thus:

> "1993 COMELEC RULES OF PROCEDURE
>
> "SECTION 1. Authority of the Commission to Prosecute Election Offenses. - The Commission shall have the exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law.
>
> "SEC. 2. Continuing Delegation of Authority to Other Prosecution Arms of the Government. - The Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants are hereby given continuing authority, as deputies of the Commission, to conduct preliminary investigation of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to them by the Commission or its duly authorized representatives and to prosecute the same. Such authority may be revoked or withdrawn any time by the Commission whenever in its judgment such revocation or withdrawal is necessary to protect the integrity of the Commission, promote the common good, or when it believes that successful prosecution of the case can be done by the Commission."

In the absence of any revocation of the aforequoted authority by COMELEC, the city prosecutor's "continuing delegation" to prosecute Criminal Case No. 14354 stays. At this point, we also take notice that no less than the counsels for the parties manifested that the COMELEC en banc has deferred further investigation of E.O. No. 98-170.[14] It has also come to our attention that the said election offense principally involves the disqualification and culpability of the late Gov. Salvador P. Socrates and does not therefore fall squarely with the one before us.[15] Thus, prosecution of Criminal Case No. 14354 must likewise continue.

As regards the third and final issue raised, the same may not be resolved without a full blown trial. Petitioners argue that P/Supt. F.C. Dimayuga, as Chief of Police of Puerto Princesa City, had no authority to set up check points by virtue of COMELEC Resolution No. 2968.[16] Consequently, the fruits of that allegedly unlawful search are inadmissible.

The Petitioners are wrong. First of all, there is no showing that it was P/Supt. Dimayuga who set up the COMELEC Checkpoint at Barangay Sta. Lourdes, Puerto Princesa City. What is stated in his affidavit is that they were conducting a COMELEC Checkpoint. "Conducting" may very well mean, manning a duly set up checkpoint. Second, it is hard to make any determination as to whether the checkpoint in question was sanctioned by either the Commander or the Director of the AFP or the PNP, respectively. Considering that frantic/emergency calls for assistance were sent to concerned government agencies and the local media through radio transceivers as early as the previous day, we cannot discount the possibility that the questioned checkpoint may have been sanctioned by the proper authorities. Third, the counter affidavit of the Petitioners contradicting the allegations of P/Supt. Dimayuga's affidavit only bolster the need for trial in order to ferret out the truth.

Petitioners are reminded that questions of fact are not permitted under Rule 65, the inquiry being limited only to the issue of whether or not the public respondent - the respondent judge in this case - acted without or in excess of his jurisdiction.[17]

All these considered, no capricious, whimsical, arbitrary or despotic actions equivalent to grave abuse of discretion amounting to excess or lack of jurisdiction may be validly attributed to the respondent's refusal to quash the informations in question.

WHEREFORE, for lack of merit, the instant petition is DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Puno, J., on official business.

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[1] Annex "A"/ RTC Order, p. 31, ROLLO.

[2] Annex "B"/ RTC Resolution, pp. 39-40, ROLLO.

[3] OSG Memo, p. 146-147, ROLLO.

[4] OSG Memo, p. 147-148, ROLLO.

[5] OSG Memo, p. 148, ROLLO; citing p. 4 of the Petition.

[6] OSG Memo, p. 148, ROLLO; citing p. 4 of the Petition.

[7] OSG Memo, p. 149, ROLLO; Annex "A," p. 10 of the Petition.

[8] OSG Memo, p. 149, ROLLO; Annex "A," p. 10 of the Petition.

[9] 304 SCRA 611, 630-631 [1999]; Promulgated almost two years after Republic Act No. 8294 took effect; and later reiterated in People vs. Ringor, Jr., 320 SCRA 342, 354-355 [1999].

[10] Murder or homicide under section 1, and rebellion, insurrection, redition or attempted coup d' etat under Section 3.

[11] For violation of P.D. 1866, otherwise known as the illegal possession of firearms law.

[12] People vs. Nitafan, 302 SCRA 424, 440 [1999].

[13] Section 265, Omnibus Election Code.

[14] Annex "B"/RTC Resolution, pp. 34-35, ROLLO.

[15] Annex "B"/RTC Resolution, pp. 34-35, ROLLO; in relation with Annex I-2, Complaint before the COMELEC, pp. 73-86, ROLLO.

[16] Annex "H-5"/COMELEC Resolution No. 2968, January 7, 1998, p. 63, ROLLO.

[17] Bunag vs. CA, 303 SCRA 591, 596 [1999].

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