

COMMISSION ON ELECTIONS, PETITIONER, VS. HON. DOLORES L. ESPAÑOL, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 90, IMUS, CAVITE, RESPONDENTS.*G.R. Nos. 149164-73. December 10, 2003*

Ponente: CALLEJO, SR., J.

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This is a petition for certiorari and mandamus under Rule 65 of the Rules of Court, as amended, filed by the Commission on Elections (COMELEC) for the nullification of the Order of the respondent judge dated February 20, 2001, denying the "Omnibus Motion to Dismiss" filed by the petitioner in Criminal Case Nos. 7960-00 to 7969-00, and the Order dated May 16, 2001, denying the petitioner's motion for reconsideration.

The Antecedents

During the elections on May 11, 1998, Florentino A. Bautista was the official candidate of the Lakas for the position of Municipal Mayor of Kawit, Cavite. He executed an Affidavit-Complaint charging the incumbent Municipal Mayor Atty. Federico "Hit" Poblete, Vice-Mayor Reynaldo Aguinaldo, Bienvenido Pobre, Arturo Ganibe, Leonardo Llave, Diosdado del Rosario, Manuel Ubod, Angelito Peregrino, Mario Espiritu, Salvador Olaes and Pedro Paterno, Jr. of violation of paragraphs (a) and (b) of Section 261 of the Omnibus Election Code (vote buying) and filed the same with the Law Department of the COMELEC. The complaint was entitled Florentino A. Bautista vs. Federico A. Poblete, et al., and docketed as EO Case No. 98-219. Of the 77 persons offered by the complainant to prove the charges, 44 executed their respective affidavits and swore and subscribed to the truth thereof, on the vote-buying of the respondents. The Law Department of the petitioner conducted the requisite preliminary investigation, after which it submitted its comments and recommendations to the COMELEC En Banc. On February 25, 1999, the COMELEC En Banc issued Resolution No. 99-0346, the dispositive portion of which reads:

RESOLVED: (a) to file the necessary information against respondents Federico A. Poblete, Bienvenido C. Pobre, Reynaldo B. Aguinaldo, Leonardo Llave, Diosdado del Rosario, Angelito Peregrino, Mario Espiritu, Salvador Olaes, Pedro Paterno, Jr., Arturo Ganibe and Manuel Ubod, before the proper Regional Trial Court of Cavite for violation of Section 261 (a) and (b) of the Omnibus Election Code; and to authorize the Director IV of the Law Department to designate a COMELEC prosecutor to handle the prosecution of the case until termination thereof, with the duty to submit periodic report after every hearing of the case; and (b) to file a Motion before the Court for the preventive suspension for a period of ninety (90) days of respondents Mayor Bienvenido Pobre, Vice-Mayor Reynaldo Aguinaldo and Sangguniang Bayan members Leonardo Llave, Diosdado del Rosario, Angelito Peregrino, Mario Espiritu, Salvador Olaes and Pedro Paterno, Jr., while the case is pending pursuant to Section 60 Chapter IV of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 specifically on the ground of commission of an offense involving moral turpitude.[1]

The petitioner, through its Law Department, filed an Information against the respondents with the Regional Trial

Court of Cavite, docketed as Criminal Case No. 7034-99, raffled to Branch 90, presided by the respondent judge. On May 10, 1999, the court issued an order directing the Law Department of the petitioner to conduct a reinvestigation of the case, citing the ruling of this Court in *Lozano vs. Yorac*[2] and *Nolasco vs. Commission on Elections*.^[3]

In the meantime, Gerardo Macapagal and Inocencio Rodelas filed a criminal complaint for violation of Section 261(a) of the Omnibus Election Code (vote selling) against the witnesses of Florentino A. Bautista in Criminal Case No. 7034-99. The complaint was docketed as I.S. No. 1-99-1080. The Office of the Cavite Provincial Prosecutor conducted a preliminary investigation of the complaint, in his capacity as a deputy of the petitioner. On April 10, 2000, the Office of the Cavite Provincial Prosecutor issued a resolution in I.S. No. 1-99-1080 finding probable cause against the respondents for violations of Section 261(a) and (b) of the Omnibus Election Code, and filed separate Informations against them with the RTC of Cavite. The dispositive portion of the Resolution reads:

WHEREFORE, in the light of the preceding premises, let separate Informations for "vote-selling" penalized under Section 261 (a) (b) of the Omnibus Election Code be immediately filed against all respondents, thirteen of whom were deemed to have waived their right to present evidence in their behalf during the preliminary investigation.^[4]

The cases were raffled and assigned to the RTC branches as follows:

Criminal Case No.

Branch Number

7940-00 to 7949-00 and 7981-00

Branch 22

7973-00 to 7979-00 and 7970-00

Branch 21

7950-00 to 7959-00 and 7980-00

Branch 20

7960-00 to 7969-00

Branch 90

On June 15, 2000, the respondents in I.S. No. 1-99-1080 received copies of the Resolution of the Provincial Prosecutor, and on June 23, 2000 appealed the same to the petitioner, contending that:

Violation of Section 261 (a)(2) of the Omnibus Election Code is an election offense under Article XXII of the same code. Under Section 265 of the Code, it is this Honorable Commission which has the exclusive power to conduct (the) preliminary investigation thereof, and to prosecute the same. As such, it is also this Honorable Commission which has the "exclusive power" to review, *motu proprio* or through an appeal, the "recommendation or resolution of investigating officers" in the preliminary investigation.

This appeal is, therefore, made pursuant to this Honorable Commission's "exclusive power to conduct preliminary investigation of all election offenses xxx and to prosecute the same" and to review the recommendation or resolution of investigating officers, "like the" chief state prosecutor and/or provincial/city prosecutors" in preliminary investigations thereof under Section 265 of the Omnibus Election Code and Section 10, Rule 34 of the COMELEC Rules of Procedure.[5]

On July 6, 2000, the petitioner came out with Minute Resolution No. 00-1378 denying the appeal of the respondents-appellants therein for lack of jurisdiction. But on the same day, the respondents-appellants filed an "Urgent Motion to Withdraw or Revoke the Delegated Authority of the Law Department to Direct the Said Office to Suspend or Move for the Suspension of the Prosecution of Criminal Cases Nos. 7940-00 to 7981-00." The respondents-appellants also filed a Manifestation with Urgent Motion to Set for Hearing Re: Appeal from the Resolution of the Provincial Prosecutor of Resolution No. I.S. No. 1-99-1080. On September 7, 2000, the COMELEC approved Resolution No. 00-1826, thus:

The Commission, after due deliberation, RESOLVED as it hereby RESOLVES to defer action on the aforesaid matter. Meanwhile, to refer the same to the Law Department for comment and recommendation.

Let the Law Department implement this resolution.[6]

On October 24, 2000, the Law Department of the petitioner filed a motion before Branches 20, 21, 22 and 90, praying for the suspension of the proceedings against all the accused until the petitioner shall have resolved the incidents before it. The public prosecutor did not object to the motion. On October 25, 2000, RTC, Branch 22, issued an Order granting the motion in the criminal cases before it.

Meanwhile, acting on the appeal of the respondents-appellants in I.S. No. 1-99-1080, Atty. Michael L. Valdez submitted his recommendation in behalf of the COMELEC's Law Department, Investigation and Prosecution Division on November 13, 2000. It was recommended that the petitioner nullify the Resolution of the Office of the Cavite Provincial Prosecutor in I.S. No. 1-99-1080, for the reason that the respondents-appellants are exempt, under Section 28(4) of Republic Act No. 6646, from prosecution for violation of Section 261(a)(b) of the Omnibus Election Code:

WHEREFORE, premises considered, the Law Department RECOMMENDS to declare as null and void the Resolution of the Office of the Provincial Fiscal (Prosecutor) of Cavite in I.S. No. 1-99-1080, entitled "Gerardo Macapagal, et al. vs. Celerino Villarosa, et al., finding the existence of a probable cause against the respondents for being a violation of Section 28 (4) of Rep. Act No. 6646, and to exempt them from criminal prosecution, accused: Celerino Villarosa, Felisa Villarosa, Leonardo Collano, Azucena Collano, Jonathan Francisco, Berna Francisco, David Zablan, Teresita Zablan, Rowel Del Rosario, Reynaldo Morales, Lolita Morales, Sherlita Borejón, Leonardo Mabiliran, Virgilio Duco, Marina Duco, Bencio Planzar, Rudy Solomon, Nenita Viajador, Antonio De la Cruz, Guinata Agarao, Luis Cantiza, Ramilo Pinote, Miriam Pinote, Wilfredo/Fredo Rodriguez, Marlene/Marlyn Rodriguez, Rodelio Pinote, Saludia Pinote, Ronel Escalante, Alejandrino Duco, Dominga Duco, Joel De la Rosa, Shirley De la Rosa, Ernesto Del Rosario, Nilda Del Rosario, Rodger Pinote, Ma. Theresa Pinote, Wilfredo Del Rosario, Roberto Pinote, Jocelyn Pinote, Norma De la Rosa, Lita Montad and Nacy Daiz, whose cases are pending before Branches Nos. 20, 21, 22, and 90, Regional Trial Court, Imus, Cavite, and who are witnesses of the prosecution in Crim. Case No. 7034-99, Regional Trial Court, Branch 90, Imus, Cavite, and to direct the Law Department to file the necessary motion before the court to dismiss their cases, by citing Section 28 (4) of Rep. Act No. 6646.[7]

During the regular meeting of the COMELEC En Banc on November 23, 2000, the Chairman and two other commissioners were on official leave. The remaining four commissioners met and issued Resolution No. 00-2453 approving the foregoing recommendation, to wit:

The Commission RESOLVED, as it hereby RESOLVES, to approve the recommendation of the Law Department as follows:

- to declare the Resolution of the Office of the Provincial Prosecutor of Cavite in I.S. No. 1-99-1080 (Gerardo Macapagal, et al. vs. Celerino Villarosa, et al.) as null and void, and to exempt the aforementioned accused from criminal prosecution pursuant to Section 28 (4) of R.A. No. 6646; and
- to direct the Law Department to file the necessary motion to dismiss before the proper court the cases against the herein-named accused.

Let the Law Department implement this resolution.

SO ORDERED.[8]

In compliance with the Resolution of the COMELEC En Banc, its Law Department, through Attys. Jose P. Balbuena and Michael Valdez, filed with the RTC, Branch 90, an Omnibus Motion (1) Motion for Reconsideration Re: Order of this Court dated November 22, 2000; (2) Motion for Leave to Reiterate Urgent Motion to Suspend Proceedings; and (3) Motion to Dismiss filed on January 8, 2001. The Public Prosecutor opposed the petitioner's motion to dismiss on the following grounds: (a) the exemption under the last paragraph of Section 28 of Republic Act No. 6646 applies only to the offense of vote-buying, as the accused in Criminal Case No. 7034-99 in which the respondents-appellants gave their sworn statements was for vote-buying; this exemption will not apply to the charge for vote-selling which was the crime charged in I.S. No. 1-99-1080; (b) the July 6, 2000 Resolution No. 00-1378 of the petitioner had become final and executory; hence, it is no longer subject to review by the petitioner; and (c) the review of the Provincial Prosecutor's resolution made by the petitioner was a re-investigation of the case, and was done without prior authority of the Court.

On February 20, 2001, the trial court issued an Order denying the Omnibus Motion of the petitioner. The petitioner filed a Motion for Reconsideration of the said order on March 31, 2000. The Provincial Prosecutor opposed the motion. On May 16, 2001, the trial court issued an Order denying the said motion holding that the petitioner had no absolute power to grant exemptions under Section 28 of Republic Act No. 6648. The trial court also held that the issue of whether or not the accused are exempt from prosecution and consequent conviction for vote-buying is a matter addressed to the Court and not to the petitioner.

In its petition at bar, the petitioner raises the following issues for resolution, viz:

(1) WHETHER THE ACCUSED ARE EXEMPT FROM CRIMINAL PROSECUTION PURSUANT TO SECTION 28 (4) OF R.A. No. 6646.

(2) WHETHER THERE IS NO NEED FOR AN EN BANC RESOLUTION REVOKING THE AUTHORITY OF THE PROVINCIAL PROSECUTOR FROM HANDLING THE CASES FILED IN COURT SINCE THE COMELEC EN BANC ALREADY DIRECTED THE LAW DEPARTMENT TO FILE A MOTION TO DISMISS THESE CASES; [9]

On the first issue, the petitioner contends that the complainants-appellees in I.S. No. 1-99-1080 failed to file any motion for the reconsideration of the petitioner's Resolution No. 00-2453 reversing Resolution No. 00-1378 which, in turn, dismissed the respondents-appellants' appeal. Neither did the said complainants-appellees file a petition for certiorari under Rule 65 of the Rules of Court from its Resolution No. 00-2453. Consequently, Resolution No. 00-2453 has become final and executory; hence, is binding and conclusive on the complainants-appellees, the Office of the Provincial Prosecutor and the herein respondent judge. The petitioner further asserts that the respondents-appellants' motion for reconsideration in I.S. No. 1-99-1080 of COMELEC Resolution No. 00-1378 is not a prohibited pleading under Rule 13, Section 1, paragraph (d) of the COMELEC

Rules of Procedure.

According to the petitioner, the prosecution of election offenses is under its sole control. Any delegation of its authority to the Provincial or City Prosecutor to prosecute election cases may be revoked or withdrawn by it, expressly or impliedly, at any stage of the proceedings in the RTC. The petitioner, through Atty. Michael Valdez of its Law Department, had already entered his appearance for the petitioner as public prosecutor before the respondent judge. The Provincial Prosecutor was, thus, ipso facto divested of his authority, as deputized prosecutor, to represent the petitioner on the motion to dismiss and to prosecute the cases before the respondent judge.

The respondent judge, for her part, avers that COMELEC Resolution No. 00-2453 was approved only by four of the seven members of the petitioner sitting en banc, and as such, could not have validly revoked Resolution No. 00-1378 which was, in turn, approved by unanimous vote of the Commission Members sitting en banc. It behooved the petitioner to conduct a joint reinvestigation in I.S. No. 1-99-1080 and EO No. 98-219 to ascertain whether the respondents-appellants in I.S. No. 1-99-1080 were exempt from prosecution for vote-selling.

Finally, according to the respondent judge, Section 2, Rule 34 of the COMELEC Rules of Procedure is contrary to Section 265 of the Omnibus Election Code, which does not allow the petitioner to withdraw its deputation of Provincial or City Prosecutors.

We agree with the petitioner.

Under Article IX, Section 2(b) of the Constitution,[10] the petitioner is empowered to investigate and, when appropriate, prosecute election offenses. The grant by the Constitution to the petitioner of the express power to investigate and prosecute election offenses is intended to enable the petitioner to assure the people of a fine, orderly, honest, peaceful and credible election.[11] Under Section 265 of the Omnibus Election Code, the petitioner, through its duly authorized legal officers, has the exclusive power to conduct preliminary investigation of all election offenses punishable under the Omnibus Election Code, and to prosecute the same. The petitioner may avail of the assistance of the prosecuting arms of the government.[12] In Section 2, Rule 34 of the COMELEC Rules of Procedure, all Provincial and City Prosecutors and/or their respective assistants are given continuing authority as its deputies to conduct preliminary investigation of complaints involving election offenses under election laws and to prosecute the same. The complaints may be filed directly with them or may be indorsed to them by the petitioner or its duly authorized representatives.[13] The respondent's assertion that Section 2, Rule 34, of the COMELEC Rules of Procedure is a violation of Section 265 of the Omnibus Election Code has been laid to rest by this Court in *Margarejo vs. Escoses*,[14] wherein this Court ruled that until revoked, the continuing authority of the Provincial or City Prosecutors stays.

The deputation of the Provincial and City Prosecutors is necessitated by the need for prompt investigation and dispensation of election cases as an indispensable part of the task of securing fine, orderly, honest, peaceful and credible elections. Enfeebled by lack of funds and the magnitude of its workload, the petitioner does not have a sufficient number of legal officers to conduct such investigation and to prosecute such cases. The prosecutors deputized by the petitioner are subject to its authority, control and supervision in respect of the particular functions covered by such deputation. The acts of such deputies within the lawful scope of their delegated authority are, in legal contemplation, the acts of the petitioner itself.[15] Such authority may be revoked or withdrawn any time by the petitioner, either expressly or impliedly, when in its judgment such revocation or withdrawal is necessary to protect the integrity of the process to promote the common good, or where it believes that successful prosecution of the case can be done by the petitioner. Moreover, being mere deputies or agents of the petitioner, provincial or city prosecutors deputized by the petitioner are expected to act in accord with and not

contrary to or in derogation of the resolutions, directives or orders of the petitioner in relation to election cases such prosecutors are deputized to investigate and prosecute. Otherwise, the only option of such provincial or city prosecutor is to seek relief from the petitioner as its deputy.

The withdrawal by the petitioner of its deputation of the provincial or city prosecutors may not be interfered with or overruled by the trial court. In this case, the petitioner had resolved to approve the recommendation of its Law Department and nullified the Resolution of the Provincial Prosecutor in I.S. No. 1-99-1080, and directed its Law Department, not the Provincial Prosecutor, to implement the said resolution and file the necessary motion to dismiss Criminal Cases Nos. 7960-00 to 7969-00 pending with the respondent judge. The Law Department did file before the respondent a "Motion to Dismiss" the said cases and a motion for the respondent to, in the meantime, suspend the proceedings. Atty. Michael L. Valdez, a legal officer of the petitioner's Law Department, entered his appearance for the petitioner. The Provincial Prosecutor was thereby relieved of his deputation to represent the petitioner in connection with the said motion. However, the Provincial Prosecutor refused to give way to the Legal Officer of the petitioner and even opposed the said motion. The act of the Provincial Prosecutor constituted a defiance of the resolution of the petitioner and should have been ignored by the respondent judge.

It bears stressing that when the Provincial Prosecutor conducted the preliminary investigation of I.S. No. 1-99-1080, and filed the Information in Criminal Cases Nos. 7960-00 to 7969-00, he did so because he had been duly deputized by the petitioner. He did not do so under the sole authority of his office.[16] The resolution of the Provincial Prosecutor in I.S. No. 1-99-1080 was subject to appeal by the aggrieved party to the petitioner and may be reversed by the petitioner in the exercise of its supervision and control of its deputies/subordinates.[17]

While it is true that the petitioner initially dismissed the appeal of the respondents-appellants from the resolution of the Provincial Prosecutor in I.S. No. 1-99-1080, the petitioner later gave due course and granted the appeal, and nullified the resolution of the Provincial Prosecutor. Contrary to the latter's claim, the petitioner did not conduct a reinvestigation of I.S. No. 1-99-1080. It merely acted on the appeal of the respondents-appellants.

The respondent has failed to cite any COMELEC rule which requires the unanimous votes of all its Commissioners sitting en banc for the reversal or revocation of a prior resolution approved by unanimous vote. On the other hand, Section 5, Rule 2 of the COMELEC Rules of Procedure provides that:

SEC. 5. Quorum; Votes Required.— (a) When sitting en banc, four (4) Members of the Commission shall constitute a quorum for the purpose of transacting business. The concurrence of a majority of the Members of the Commission shall be necessary for the pronouncement of a decision, resolution, order or ruling.

In this case, COMELEC Resolution No. 00-2453 was approved by four of the seven Commissioners of the petitioner, three of whom were on official leave. Irrefragably, the said resolution of the petitioner giving due course to the appeal of the respondents-appellants in I.S. No. 1-99-1087 was a valid reversal of COMELEC Resolution No. 00-1378 which initially denied the said appeal of the respondents-appellants.

The conduct of a preliminary investigation of election offenses for the purpose of determining whether or not there is probable cause to believe that the accused is guilty of the offense charged and, therefore, should be subjected to trial is the function of the petitioner.[18] The Court will not even interfere with the finding of the petitioner absent a clear showing of grave abuse of discretion. Neither should the respondent. This principle emanates from the COMELEC's exclusive power to conduct preliminary investigation of all election offenses and to prosecute the same except as may otherwise be provided by law. While it is the duty of the petitioner to prosecute those committing election offenses, it is equally its duty not to prosecute those offenses where no probable cause exists. The exclusion and inclusion of persons in Informations for election offenses is a prerogative granted by the law and the Constitution to the petitioner.[19] The petitioner may not be compelled to

charge a person or include the latter in an Information when it believes that under the law and on the basis of the evidence in its possession, such person should not be charged at all.

On the second issue, the petitioner contends that respondents-appellants in I.S. No. 1-99-1080, who were its witnesses in Criminal Case No. 7034-99, had been granted exemptions from prosecution and punishment for the offense of vote-buying, pursuant to Section 28(4) of Republic Act No. 6848. The petitioner avers that the respondents-appellants in I.S. No. 1-99-1080, are also exempt from criminal liability for the offense of vote-selling; hence, should not be charged with the latter offense. Thus, Criminal Cases Nos. 7960-00 to 7969-00 should be dismissed. The petitioner avers that the witnesses had executed their respective affidavits as to where and how the accused in Criminal Case No. 7034-99 committed the crimes of vote-buying. The petitioner also contends that the charges of vote-selling filed against the said witnesses in Criminal Cases Nos. 7960-00 to 7969-00 were designed to frighten and discourage them from testifying against the vote buyers, who are the accused in Criminal Case No. 7034-99. The respondent, thus, committed a grave abuse of discretion amounting to excess or lack of jurisdiction in denying its motion to dismiss Criminal Cases Nos. 7960-00 to 7969-00 grounded on the exemption of the accused therein.

For her part, the respondent avers that under Section 265 of the Omnibus Election Code, both the vote-buyer and the vote-seller must be charged, investigated and prosecuted by the petitioner for violation of Section 261(a)(b) of Republic Act No. 6648, as provided for in Section 28 of Rep. Act No. 6698. She cites the ruling of the Court in *Lozano vs. Yorac, et al.*,^[20] to support her stand. She contends that vote-buyers cannot be exempt from criminal liability for vote-buying because there can be no vote-buying without someone selling his vote. Preliminary investigations of the charges for vote-buying and vote-selling must be jointly conducted. This is to enable the COMELEC's Law Department to determine whether the witnesses in Criminal Case No. 7034-99 had voluntarily presented themselves to give information on the vote-buying of the accused in Criminal Cases Nos. 7960-00 to 7969-00. Based on the records, the witnesses in Criminal Case No. 7034-99 executed their sworn statements only after the preliminary investigation of EO No. 98-219; hence, the Law Department of the petitioner could not have intelligently determined whether the said witnesses were exempt from prosecution or not.

We agree with the petitioner.

Section 261(a)(b) of the Omnibus Election Code penalizes vote-buying and vote-selling and conspiracy to bribe voters.

(a) Vote-buying and vote-selling.— (1) Any person who gives, offers or promises money or anything of value, gives or promises any office or employment, franchise or grant, public or private, or makes or offers to make an expenditure, directly or indirectly, or cause an expenditure to be made to any person, association, corporation, entity, or community in order to induce anyone or the public in general to vote for or against any candidate or withhold his vote in the election, or to vote for or against any aspirant for the nomination or choice of a candidate in a convention or similar election process of a political party.

...

(b) Conspiracy to bribe voters.— Two or more persons, whether candidates or not, who come to an agreement concerning the commission of any violation of paragraph (a) of this section and decide to commit it.

Not only principals but also accomplices and accessories are criminally liable for election offenses.^[21] Section 28 of Republic Act No. 6648 governs the prosecution of the crimes of vote-buying and vote-selling, thus:

SECTION 28. Prosecution of Vote-buying and Vote-selling. — The presentation of a complaint for violations of paragraph (a) or (b) of Section 261 of Batas Pambansa Blg. 881 supported by affidavits of complaining witnesses attesting to the offer or promise by or of the voter's acceptance of money or other consideration from

the relatives, leaders or sympathizers of a candidate, shall be sufficient basis for an investigation to be immediately conducted by the Commission, directly or through its duly authorized legal officers, under Section 68 or Section 265 of said Batas Pambansa Blg. 881.

Under the last paragraph of the said provision, any person guilty of vote-buying and vote-selling who voluntarily gives information and willingly testifies on violations of paragraphs (a) and (b) of Section 261 of the Omnibus Election Code shall be exempt from prosecution and punishment for the offense with reference to which their information and testimony were given, without prejudice to their liability for perjury and false testimony, thus:

SEC. 265. Prosecution.— . . .

. . .

The giver, offerer, and promisor as well as the solicitor, acceptor, recipient and conspirator referred to in paragraphs (a) and (b) of Section 261 of Batas Pambansa Blg. 881 shall be liable as principals: Provided, That any person, otherwise guilty under said paragraphs who voluntarily gives information and willingly testifies on any violation thereof in any official investigation or proceeding shall be exempt from prosecution and punishment for the offenses with reference to which his information and and testimony were given: Provided, further, That nothing herein shall exempt such person from criminal prosecution for perjury or false testimony.

Under Section 265 of the Omnibus Election Code, the petitioner is mandated to conduct a preliminary investigation of all election offenses and to prosecute the same. The general rule is that the petitioner must investigate, charge and prosecute all those committing election offenses without any discrimination to ensure a clean, orderly and speedy elections. A joint preliminary investigation thereof must be conducted and the appropriate Information filed in court against all the offenders. To enable the petitioner to comply with its mandate to investigate and prosecute those committing election offenses, it has been vested with authority under the last paragraph of Section 28 of Republic Act No. 6648 to exempt those who have committed election offenses under Section 261 (a) and (b) but volunteer to give informations and testify on any violation of said law in any official investigation or proceeding with reference to which his information and testimony is given. The law is an immunity statute which grants transactional immunity to volunteers from investigation and prosecution for violation of Section 261 (a) and (b) of the Omnibus Election Code.[22] The immunity statute seeks a rational accommodation between the imperatives of the privilege against self-incrimination and the legitimate demands of government to encourage citizens, including law violators themselves, to testify against law violators. The statute operates as a complete pardon for the offenses to which the information was given. The execution of those statutes reflects the importance of the testimony therefor, and the fact that many offenses are of such character that the only persons capable of giving useful testimony are those implicated in the crimes. Indeed, their origins were in the context of such offenses and their primary use has been to investigate and prosecute such offenses.[23] Immunity from suit is the only consequence flowing from a violation of one's constitutional right to be protected from unreasonable search and seizure, his right to counsel and his right not to be coerced into confessing.[24] By voluntarily offering to give information on violations of Section 261(a) and (b) and testify against the culprits, one opens himself to investigation and prosecution if he himself is a party to any violation of the law. In exchange for his testimony, the law gives him immunity from investigation and prosecution for any offense in Section 261(a) and (b) with reference to which his information is given. He is, therefore, assured that his testimony cannot be used by the prosecutors and any authorities in any respect, and that his testimony cannot lead to the infliction of criminal penalties on him.[25] The testimony of a voluntary witness in accord with his sworn statement operates as a pardon for the criminal charges to which it relates.[26]

It bears stressing that one may voluntarily give information on violations of Section 261(a) and (b) and execute an affidavit before a complaint is filed with the petitioner, or any provincial or city prosecutor. This may be done

even during the preliminary investigation or even after an Information is filed, on the condition that his testimony must be in accord with or based on his affidavit. If such witness later refuses to testify or testifies but contrary to his affidavit, he loses his immunity from suit, and may be prosecuted for violations of Section 261(a) and (b) of the Omnibus Election Code, perjury under Article 183 of the Revised Penal Code, or false testimony under Article 180 of the same Code.

The power to grant exemptions is vested solely on the petitioner. This power is concomitant with its authority to enforce election laws, investigate election offenses and prosecute those committing the same. The exercise of such power should not be interfered with by the trial court. Neither may this Court interfere with the petitioner's exercise of its discretion in denying or granting exemptions under the law, unless the petitioner commits a grave abuse of its discretion amounting to excess or lack of jurisdiction.

There is no showing in the record that the petitioner committed abuse of discretion in granting immunity to the witnesses in Criminal Case No. 7034-99 and in nullifying the Resolution of the Provincial Prosecutor in I.S. No. 1-99-1080.

It cannot be over-emphasized that the authority given to the petitioner to grant exemptions should be used to achieve and further its mandate to insure clean, honest, peaceful and orderly elections.

The respondents' reliance on the ruling of this Court in *Lozano v. Yorac* is misplaced. The issue of the application of the immunity statute was not raised in that case.

In sum then, the Court finds that the respondent committed a grave abuse of discretion amounting to excess or lack of jurisdiction in denying the petitioner's motion to dismiss Criminal Cases Nos. 7960-00 to 7969-00 before it and the motion for reconsideration of the said denial.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed Orders dated February 20, 2001 and May 16, 2001 are SET ASIDE. Respondent Judge Dolores Español, RTC, Imus, Cavite, Branch 90, is directed to dismiss Criminal Cases Nos. 7960-00 to 7969-00. No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, and Tinga, JJ., concur.

[1] Rollo, p. 26.

[2] 203 SCRA 270 (1991).

[3] 275 SCRA 780 (1997).

[4] Id. at 27.

[5] Rollo, p. 20.

[6] Id. at 24.

[7] Id. at 30.

[8] Id. at 30-31.

[9] Id. at 9.

[10] (6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

[11] Bay Tan v. COMELEC, G.R. No. 153945, February 4, 2003.

[12] SEC. 265. Prosecution.— The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complaint may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.

[13] 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.

[14] 365 SCRA 190 (2001).

[15] People v. Basilla, 179 SCRA 87 (1989).

[16] Ibid; People v. Inting, 187 SCRA 788 (1990).

[17] SEC. 10. Appeals from the Action of the State Prosecutor, Provincial or City Fiscal.—Appeals from the resolution of the State Prosecutor, or Provincial or City Fiscal on the recommendation or resolution of investigating officers may be made only to the Commission within ten (10) days from receipt of the resolution of said officials; Provided, however, that this shall not divest the Commission of its power to motu proprio review, revise, modify or reverse the resolution of the chief prosecutor and/or provincial/city prosecutors. The decision of the Commission on said appeals shall be immediately executory and final. (Rule 34, Section 10, Rules of Procedure for COMELEC).

[18] People v. Judge Inting, supra.

[19] Lim v. Court of Appeals, et al., 222 SCRA 279 (1993).

[20] Supra.

[21] Section 263, Omnibus Election Code.

[22] Immunities are also provided:

Article XIII, Section 18 (8) of the 1987 Constitution which provides that the Commission of Human Rights shall have the power to grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence necessary or convenient to determine the truth in any investigation conducted by it or under its authority.

Presidential Decree No. 749. Granting immunity from prosecution to givers of bribes and other gifts and to their

accomplices in bribery and other graft cases against public officers.

Presidential Decree No. 1731, October 8, 1980. Providing for rewards and incentives to government witnesses and informants and other purposes.

Presidential Decree No. 1732, October 8, 1980. Providing immunity from criminal prosecution to government witnesses and for other purposes.

Republic Act No. 6981, otherwise known as the "Witness Protection Security and Benefit Act."

Section 3. Admission into the Program.— Any person who has witnessed.

Section 17, Rule 119 of the Revised Rules on Criminal Procedure (Discharge of State Witness)

Sec. 17. Discharge of accused to be state witness.— When two or more persons are jointly charged with the commission of any offense, upon ...

[23] *Kastigar vs. United States*, 33 L.ed. 2d. 345.

[24] *Id.* at 22.

[25] *Id.*

[26] *Piccirillo vs. New York State*, 27 L. ed. 2d. 596 (1978).

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