

ENGR. JOSE K. TUPAZ, ENGR. RODOLFO A. CADAVIS, ENGR. ANDRES M. SEVILLA, JR., ENGR. ARNULFO CAÑETE, MR. VICTOR A. ROMUALDEZ, AND WILFREDO PAJARA, PETITIONERS, VS. HON. SALVADOR Y...

G.R. Nos. 151380-91. December 10, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In this petition for certiorari and prohibition with a prayer for the issuance of a writ of preliminary injunction and a temporary restraining order,[1] petitioners seek to nullify the July 4, 2001 Order[2] and the December 3, 2001 Resolution[3] issued by public respondent Judge Salvador Y. Apurillo, Presiding Judge of the Regional Trial Court, Branch 8 of Tacloban City. Petitioners also seek to enjoin Judge Apurillo from further proceeding with the trial of the consolidated criminal cases revived in the assailed Order of July 4, 2001.

This case arose from reports of certain alleged anomalies committed in connection with a government infrastructure project at the Sta. Rita Resettlement Site in Western Samar. The National Bureau of Investigation, upon discovering the anomalies, filed several criminal complaints with the Office of the Ombudsman in Visayas against the alleged perpetrators. Included as respondents in the complaints were herein petitioners Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete, all of whom were employees of the Department of Public Works and Highways, and petitioners Victor A. Romualdez and Wilfredo Pajara, the project's private contractors.

After preliminary investigation, Graft Investigation Officer Avito P. Cahig found probable cause, and recommended the filing of criminal charges. His Resolution, dated May 17, 1994, was approved by Ombudsman Aniano Desierto on September 29, 1995. Consequently, Special Prosecutors of the Office of the Ombudsman filed with the Regional Trial Court of Tacloban City the following criminal cases:

- Criminal Case No. 96-01-25 for Violation of Section 2 in relation to Section 1 of Presidential Decree No. 1759 against Engr. Ricardo Tabungar, Engr. Francisco V. Odal, Engr. Damaso dela Cuadra, Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete and Florentino Cruz;...
- Criminal Case No. 96-01-25-A for Violation of Section 2, in relation to Section 1 of PD 1759 against Engr. Ricardo Tabungar, Engr. Francisco V. Odal, Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete and Florentino Cruz;...
- Criminal Case No. 96-01-25-B for Violation of Section 2, in relation to Section 1 of PD 1759 against Engr. Ricardo Tabungar, Engr. Francisco V. Odal, Engr. Damaso dela Cuadra, Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete and Florentino Cruz;...
- Criminal Case No. 96-01-25-C for Estafa through Falsification of Public Document against Engr. Ricardo Tabungar, Engr. Francisco V. Odal, Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete and Florentino Cruz;...

- Criminal Case No. 96-01-25-D for Estafa through Falsification of Public Document against Engr. Ricardo Tabungar, Engr. Francisco V. Odal, Engr. Damaso dela Cuadra, Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete and Florentino Cruz;...
- Criminal Case No. 96-01-25-E for Estafa through Falsification of Public Document against Engr. Ricardo Tabungar, Engr. Francisco V. Odal, Engr. Damaso dela Cuadra, Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete and Florentino Cruz;...
- Criminal Case No. 96-01-26 for Violation of Section 2 in relation to Section 1 of Presidential Decree No. 1759 against Engr. Ricardo Tabungar, Engr. Francisco V. Odal, Engr. Damaso dela Cuadra, Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete and Victor Romualdez;...
- Criminal Case No. 96-01-26-A for Violation of Section 2 in relation to Section 1 of PD No. 1759 against Engr. Ricardo Tabungar, Engr. Francisco V. Odal, Engr. Damaso dela Cuadra, Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete and Victor A. Romualdez;...
- Criminal Case No. 96-01-26-B for Violation of Section 2 in relation to Section 1 of PD No. 1759 against Engr. Ricardo Tabungar, Engr. Francisco V. Odal, Engr. Damaso dela Cuadra, Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete and Victor A. Romualdez;...
- Criminal Case No. 96-01-26-C for Estafa through Falsification of Public Document against Engr. Ricardo Tabungar, Engr. Francisco V. Odal, Engr. Damaso dela Cuadra, Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete and Victor A. Romualdez;...
- Criminal Case No. 96-01-27 for Estafa through Falsification of Public Documents against Engr. Ricardo Tabungar, Engr. Francisco V. Odal, Engr. Damaso dela Cuadra, Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete and Wilfredo Pajara;...
- Criminal Case No. 96-01-27-A for Violation of Section 2 in relation to Section 1 of PD No. 1759 against Engr. Ricardo Tabungar, Engr. Francisco v. Odal, Engr. Damaso dela Cuadra, Engr. Jose K. Tupaz, Engr. Rodolfo A. Cadavis, Engr. Andres M. Sevilla, Jr., Engr. Arnulfo Cañete and Wilfredo Pajara....[4]

The cases were consolidated and assigned to Branch 8 of the Regional Trial Court of Tacloban City. Owing to the retirement of the presiding judge of the branch, petitioners' arraignment started only on February 17, 2000.[5]

Meanwhile, on August 9, 1999, this Court had ruled in *Uy v. Sandiganbayan*[6] that the Ombudsman exercises prosecutorial powers only in cases cognizable by the Sandiganbayan. The Court stated that in criminal cases cognizable by the Regional Trial Court, the authority to file Informations lies with the concerned Prosecutor, not with the Ombudsman. This decision became executory with the denial, on February 22, 2000, of the Ombudsman's Motion for Reconsideration.

On the strength of this ruling, petitioners jointly sought to quash the twelve Informations. They cited that the court a quo lacked jurisdiction since the Special Prosecutors who filed the Informations had no authority to do so.[7]

Over the opposition of the prosecution,[8] public respondent Judge Apurillo granted the motion in an Order dated January 23, 2001, thus:

WHEREFORE, premises considered, these cases are hereby DISMISSED without prejudice to Section 6 of Rule 117 of the Revised Rules of Criminal Procedure.

SO ORDERED.[9]

Nearly a month after the order attained finality, the prosecution filed a Motion to Admit Amended Information[10] alleging that double jeopardy has not attached. This motion was opposed by petitioners who

likewise moved to have the amended Informations expunged.[11]

Petitioners contended that since the Informations previously filed were void, amendment was improper. They argued that the prosecution should have instead conducted a new preliminary investigation.

Later, in a Resolution[12] promulgated on March 20, 2001, this Court, acting on a Motion for Clarification filed by the Ombudsman, set aside the August 9, 1999 Decision in *Uy v. Sandiganbayan*, as well as the February 22, 2000 Resolution denying reconsideration of the decision. This Court upheld the authority of the Ombudsman to conduct preliminary investigation and to prosecute all criminal cases involving public officers and employees, whether jurisdiction over those criminal cases lies with the Sandiganbayan or the regular courts.

Armed with the March 20, 2001 Resolution in *Uy v. Sandiganbayan*, the prosecution, on May 8, 2001, moved for reconsideration of the January 23, 2001 Order of dismissal of the trial court. The prosecution likewise prayed for a withdrawal of the amended informations it had filed.[13]

Despite opposition from the petitioners,[14] Judge Apurillo rendered on July 4, 2001, the questioned Order, which considered the criminal cases re-filed, to wit:

WHEREFORE, in view of the foregoing considerations, the Motion to Admit Amended Information, the Motions to Withdraw Cash and Property Bonds, the Motion to Dismiss are hereby DENIED for having been overtaken by events and rendered moot and academic. The Notice of Death and Motion to Withdraw Property Bond filed for deceased-accused Damaso [de la] Cuadra are hereby GRANTED and said accused is hereby dropped from these cases. The Property Bond posted for his (Damaso dela Cuadra) provisional liberty is hereby cancelled and released and the prosecution's prayer that these cases be considered as re-filed, as far as the other accused are concerned, is hereby GRANTED.

In the meantime, set these cases for hearing on July 12, 2001 at 2:00 P.M., as scheduled.[15] (Emphasis supplied.)

Later, in the assailed Resolution of December 3, 2001, Judge Apurillo also denied petitioners' Motion for Reconsideration; hence, the instant petition.

Petitioners argue that respondent Judge Apurillo committed grave abuse of discretion amounting to excess or lack of jurisdiction

I.

...WHEN HE RECONSIDERED AND REVERSED THE FINAL AND EXECUTORY ORDER OF DISMISSAL OF JANUARY 23, 2001.

II.

...WHEN HE RETROACTIVELY APPLIED TO THE SUBJECT MATTER A QUO THE RESOLUTION, DATED MARCH 2[0], 2001, OF THE HONORABLE SUPREME COURT IN THE CASE OF *GEORGE UY VERSUS SANDIGANBAYAN, ET AL.*, G.R. NOS. 105965-70.

III.

...WHEN HE CATEGORIZED THE ABSENCE OF A VALID AND LEGAL PRELIMINARY INVESTIGATION AND INFORMATIONS FILED BY PUBLIC OFFICERS WITHOUT AUTHORITY AS MERELY PROCEDURAL, INSTEAD OF SUBSTANTIVE, INFIRMITIES.

IV.

...WHEN HE REFUSED TO RESOLVE THE LEGAL HIATUS IN FAVOR OF THE ACCUSED, HEREIN

PETITIONERS.[16]

Simply stated, for our resolution is the issue whether Judge Apurillo committed grave abuse of discretion amounting to excess or lack of jurisdiction when he revived the subject criminal cases in the assailed Order dated July 4, 2001.

It is a fact that on February 2, 2001, the prosecution received a copy of the January 23, 2001 Order dismissing Criminal Cases Nos. 96-01-25, 96-01-25-A, 96-01-25-B, 96-01-25-C, 96-01-25-D, 96-01-25-E, 96-01-26, 96-01-26-A, 96-01-26-B, 96-01-26-C, 96-01-27, and 96-01-27-A. The prosecution did not seek reconsideration of the Order nor did it file an appeal. Hence, the Order attained finality on February 17, 2001.

After the lapse of the 15-day reglementary period to appeal,[17] an order becomes executory, and it goes beyond the jurisdiction of the court that rendered it to further amend or revoke.[18] The subsequent filing of a Motion for Reconsideration cannot disturb the finality of a judgment, nor restore jurisdiction that had already been lost.[19] A final and executory judgment or order cannot be modified in any respect, even if the modification sought is to correct an erroneous conclusion by the court that rendered it.[20]

It may well be true that the order of dismissal was erroneous or was issued with grave abuse of discretion. Nevertheless, the order of dismissal having attained finality must be given effect.[21] The doctrine of finality of judgment, which is grounded on fundamental considerations of public policy and sound practice, dictates that at the risk of occasional error, the judgments of the courts must become final and executory at some definite date set by law.[22]

With the finality of the order of dismissal, the subject criminal cases were removed from the docket of the trial court. The Regional Trial Court no longer had jurisdiction to consider as re-filed the criminal cases and then proceed with the trial thereof. When the dismissal order attained finality, for the failure of the prosecution to seek reconsideration or to appeal the order, the jurisdiction that the trial court had over the cases was finally discharged and terminated.[23] Thus, at that time, there was grave abuse of discretion when Judge Apurillo reversed the final and executory order of dismissal notwithstanding the March 20, 2001 Resolution of this Court in *Uy v. Sandiganbayan*.

Under the circumstances, the remedy available to the prosecution, if it really wanted to pursue the criminal charges, is to file Informations anew. Mere revival of the dismissed cases by motion or otherwise is not procedurally feasible, considering that the dismissal, although without prejudice, had already attained finality.

WHEREFORE, the petition is GRANTED. For having been issued with grave abuse of discretion, the Order, dated July 4, 2001, which revived Criminal Cases Nos. 96-01-25, 96-01-25-A, 96-01-25-B, 96-01-25-C, 96-01-25-D, 96-01-25-E, 96-01-26, 96-01-26-A, 96-01-26-B, 96-01-26-C, 96-01-27, and 96-01-27-A, as well as the Resolution, dated December 3, 2001, that denied reconsideration of the said Order, are SET ASIDE.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[*] Also Engr. Andres M. Sevilla, in some parts of the Records.

[**] Solely referred to as “Leyte” in some parts of the Records.

[1] Rollo, pp. 3-36.

[2] Records (Crim. Case No. 96-01-27 to 27-A), pp. 430-431.

[3] *Id.* at 483-487.

[4] *Rollo*, pp. 8-10, 200-204.

[5] Records (Crim. Case No. 96-01-25), p. 361; Records (Crim. Case No. 96-01-25-B), p. 7; Records (Crim. Case No. 96-01-25-C), p. 7; Records (Crim. Case No. 96-01-25-D), p. 8; Records (Crim. Case No. 96-01-25-E), p. 8; Records (Crim. Case No. 96-01-26), p. 52; Records (Crim. Case No. 96-01-26-A), p. 7; Records (Crim. Case No. 96-01-26-B), p. 9; Records (Crim. Case No. 96-01-26-C), p. 8; Records (Crim. Case No. 96-01-27 to 27-A), p. 290.

[6] G.R. Nos. 105965-70, 9 August 1999, 312 SCRA 77.

[7] Records (Crim. Case No. 96-01-25), pp. 386-390.

[8] *Id.* at 391-392.

[9] *Id.* at 402.

[10] Records (Crim. Case No. 96-01-26), pp. 72-73.

[11] *Id.* at 62-63.

[12] *Uy v. Sandiganbayan*, G.R. Nos. 105965-70, 20 March 2001, 354 SCRA 651.

[13] Records (Crim. Case No. 96-01-26), pp. 78-80.

[14] *Id.* at 81-83.

[15] Records (Crim. Case No. 96-01-27 to 27-A), p. 431.

[16] *Rollo*, pp. 13-14.

[17] SEC. 6. When appeal to be taken.—An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run. (Rule 122, Revised Rules of Criminal Procedure.)

[18] *Republic v. Court of Appeals*, G.R. No. 95533, 20 November 2000, 345 SCRA 63, 69; *Borillo v. Court of Appeals*, G.R. No. 55691, 21 May 1992, 209 SCRA 130, 140; *Alabanzas v. Intermediate Appellate Court*, G.R. No. 74697, 29 November 1991, 204 SCRA 304, 307-308; *Olympia International, Inc. v. Court of Appeals*, No. L-43236, 20 December 1989, 180 SCRA 353, 362; *Heirs of Patriaca v. Court of Appeals*, No. L-59701, 31 August 1983, 124 SCRA 410, 412-413; *Turqueza v. Hernando*, No. L-51626, 30 April 1980, 97 SCRA 483, 488.

[19] *Pfleider v. Victoriano*, No. L-49809, 30 June 1980, 98 SCRA 491, 497.

[20] *Republic v. Court of Appeals*, *supra*, note 18.

[21] See *Turqueza v. Hernando*, *supra*, note 18 at 490.

[22] *Mercury Drug Corporation v. Court of Appeals*, G.R. No. 138571, 13 July 2000, 335 SCRA 567, 578.

[23] *Olympia International, Inc. v. Court of Appeals*, *supra* at 361-362.

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