

DELIA CRYSTAL PETITIONER, VS. THE HON. SANDIGANBAYAN & PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 83635-53. February 28, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The petitioner, Delia Crystal, a collecting agent of the Bureau of Internal Revenue (BIR) seeks a review by this Court of the orders of the respondent Sandiganbayan denying the Tanodbayan Special Prosecutor's "Motion to Withdraw the Informations" (19 in all) against her; and entering pleas of not guilty for her when she refused to be arraigned after having announced her intention to elevate said orders to this Court for review.

Delia Crystal was a Bureau of Internal revenue collecting agent in Narvacan, Ilocos Sur. During a routine audit examination in September, 1984 by auditors of the Commission of Audit (COA), she was found to have incurred a cash shortage of P114,573.03, representing collections not reflected in her books of account at the time of inspection.

On September 18, 1984, the provincial auditor's office of Ilocos Sur, through COA Auditor Elvira Javier, addressed a letter to Crystal requiring her to submit a written explanation within 72 hours from notice and to produce the missing funds not later than October 31, 1984.

In compliance with that letter-demand, the petitioner produced the full amount of P115,214.53 on October 25, 1984 (six days before the deadline) which she promptly deposited in the Philippine National Bank branch in Vigan, Ilocos Sur. This notwithstanding, the provincial auditor of Ilocos Sur filed a criminal complaint for malversation against her before the Tanodbayan Special Prosecutor.

Acting on the complaint, the Tanodbayan Special Prosecutor on July 2, 1985, recommended that Crystal be charged before the Sandiganbayan with 19 counts of malversation of public funds and 41 counts of the same offense before the Regional Trial Court. The special prosecutor filed (19) informations in the Sandiganbayan, which were docketed as Criminal Cases Nos. 11375 to 11393 charging her with having willfully, unlawfully and feloniously, and with grave abuse of confidence, misappropriated, misapplied, and embezzled public funds, representing her cash collections and other accountabilities to the damage and prejudice of the government of the Philippines.

Crystal filed on December 11, 1986, a motion for reinvestigation alleging lack of intent to misappropriate the missing funds.

On November 6, 1987, the Tanodbayan Special Prosecutor, Carlos Montemayor, recommended the withdrawal of the nineteen (19) informations against Crystal as "no prima facie evidence existed against the accused" (Annex C, pp. 37-38, Rollo).

Accordingly, Tanodbayan Special Prosecutor Erdulfo Querubin filed a motion to withdraw the 19 informations (Annex B, pp. 35-36, Rollo).

On April 6, 1988, the Sandiganbayan First Division denied the motion. Its resolution reads as follows:

"The motion to withdraw Information on the ground that the sum of P114,573.03 was returned six (6) days before the deadline fixed by the auditing examiner but thirty-seven (37) days after the audit of the accounts of the accused is DENIED for lack of merit. In *People vs. Miranda* (2 SCRA 261), the accused returned the money malversed within twenty-four (24) hours after the discovery of the malversation yet the dismissal thereon by the Trial Court was set aside by the Supreme Court. Even *Sandiganbayan Case No. 435 (PP. vs. Falconi)* cited by the prosecution spoke of immediate return of the sum malversed. Obviously, a delay of more than one (1) month cannot per se erase criminal liability." (Annex A, p. 34, Rollo.)

The petitioner filed a motion for reconsideration (Annex D, pp. 39-42, Rollo) of that order but the Sandiganbayan denied the same.

At her scheduled arraignment on May 27, 1988, the accused refused to be arraigned, so the Sandiganbayan issued the following Order (Annex E-1, p. 44, Rollo);

"When called for arraignment accused, through counsel, was informed of the denial by this Court of her Motion for Reconsideration which substantially seeks to give due course to the prosecution's plea to withdraw Information against the accused Delia Crystal, which plea was denied by this Court in its Resolution dated April 6, 1988. In the light of this the Court, therefore, has ordered the accused to be arraigned to which accused through her counsel has begged to be excused because she seeks to elevate the matter to the Supreme Court questioning the denial of the motion.

"In view of the refusal of the accused to plead, the Court enters a plea of Not Guilty in favor of the accused. x x x."

Crystal has come to this Court for review of the Sandiganbayan's aforementioned orders. She alleges that the Sandiganbayan gravely abused its discretion in denying the Tanodbayan's motion to withdraw the informations against her for it thereby encroached on the Tanodbayan's function and prerogative to determine whether there exists probable cause that she committed the crime charged in the informations against her.

The petition for review is devoid of merit. The discretion of the court to deny the trial fiscal's or prosecutor's motion to withdraw an information already filed before it, was settled in *Crespo vs. Mogul*. G.R. No. L-53373, June 30, 1987, 151 SCRA 462, 471, where this Court ruled:

"The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of original cases even while the case already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation."

This rule was reiterated in *Republic vs. Judge Sunga*, G.R. No. L-38634, June 20, 1988, and *Peralta vs. Court of First Instance*, G. R. No. L-48011, January 29, 1988.

The denial of the Tanodbayan's motion to withdraw the informations against the petitioner should not be construed as a denigration of the authority of the special prosecutor of the Tanodbayan to control and direct the prosecution of the case, because after a case has been filed in court, its disposition rests upon the court. The fiscal's recommendations should be addressed to the court for its consideration and determination. Petitioner's

theory that because the fiscal has control of the prosecution the court must defer to his decision to withdraw the information against the accused, would place the disposition of the case in the hands of the fiscal, instead of the court. It would trench upon the court's jurisdiction to hear the case and determine the innocence or guilt of the accused.

WHEREFORE, the petition is dismissed for lack of merit.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Medialdea and Regalado, JJ., concur.

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