

## **SPECIAL THIRD DIVISION**

**[ G.R. No. 170447, December 04, 2009 ]**

**BIENVENIDO DIÑO AND RENATO COMPARATIVO, PETITIONERS  
VS. PABLO OLIVAREZ, RESPONDENT.**

### **R E S O L U T I O N**

**CHICO-NAZARIO, J.:**

Before Us is a Motion for Reconsideration<sup>[1]</sup> of Our Decision<sup>[2]</sup> filed by respondent Pablo Olivarez

In Our decision dated 23 June 2009, We found that the public prosecutor, in filing the Amended Informations, did not exceed the authority delegated by the Commission on Elections (COMELEC). We likewise ruled that no abuse of discretion could be attributed to Judge Fortunito L. Madrona (Madrona) when he issued the Orders dated 9 March 2005 and 31 March 2005 for the arrest of respondent due to his failure to be present for his arraignment and for the confiscation of his cash bond.

We disposed of the case as follows:

WHEREFORE, the instant appeal is GRANTED. The Decision of the Court of Appeals dated 28 September 2005 in CA-G.R. SP No. 89230 is REVEERSED. This Court orders the continuation of the proceedings in Criminal Cases No. 04-1104 and No. 04-1105 before the RTC, the prosecution of which shall be under the direction of the Law Department of the COMELEC. No. costs.<sup>[3]</sup>

In order to fully understand our resolution of the instant motion, we quote the factual antecedents as narrated in our decision:

Petitioners instituted a complaint for vote buying against respondent Pablo Olivarez. Based on the finding of probable cause in the Joint Resolution issued by Assistant City Prosecutor Antonietta Pablo-Medina, with the approval of the city prosecutor of Parañaque, two Informations were filed before the RTC on 29 September 2004 charging respondent Pablo Olivarez with Violation of Section 261, paragraphs a, b and k of Article XXII of the Omnibus Election Code x x x.

x x x x

The arraignment of the respondent was initially set on 18 October 2004.

On 7 October 2004, respondent filed before the Law Department of the Commission on Elections (COMELEC) an "[a]ppeal of [the] Joint Resolution of the City Prosecutor of Parañaque City with Motion to Revoke Continuing Authority" pursuant to Section 10, Rule 34 of the 1993 COMELEC Rules of Procedure. Respondent argued that the pendency of the appeal of the Joint Resolution before the COMELEC should prevent the filing of the Informations before the RTC as there could be no final finding of probable cause until the COMELEC had resolved the appeal. Moreover, he argued that the charges made against him were groundless.

In a letter dated 11 October 2004, the Law Department of the COMELEC directed the city prosecutor to transmit or elevate the entire records of the case and to suspend further implementation of the Joint Resolution dated 20 September 2004 until final resolution of the said appeal before the COMELEC *en banc*.

On 11 October 2004, respondent filed a Motion to Quash the two criminal informations on the ground that more than one offense was charged therein, in violation of Section 3(f), Rule 117 of the Rules of Court, in relation to Section 13, Rule 110 of the Rules of Court. This caused the resetting of the scheduled arraignment on 18 October 2004 to 13 December 2004.

Before Judge Madrona could act on the motion to quash, Assistant Prosecutor Pablo-Medina, with the approval of the city prosecutor, filed on 28 October 2004 its "Opposition to the Motion to Quash and Motion to Admit Amended Informations." The Amended Informations sought to be admitted charged respondent with violation of only paragraph a, in relation to paragraph b, of Section 261, Article XXII of the Omnibus Election Code.

On 1 December 2004, Judge Madrona issued an Order resetting the hearing scheduled on 13 December 2004 to 1 February 2005 on account of the pending Motion to Quash of the respondent and the Amended Informations of the public prosecutor.

On 14 December 2004, respondent filed an "Opposition to the Admission of the Amended Informations," arguing that no resolution was issued to explain the changes therein, particularly the deletion of paragraph k, Section 261, Article XXII of the Omnibus Election Code. Moreover, he averred that the city prosecutor was no longer empowered to amend the informations, since the COMELEC had already directed it to transmit the entire records of the case and suspend the hearing of the cases before the RTC until the resolution of the appeal before the COMELEC *en banc*.

On 12 January 2005, Judge Madrona issued an order denying respondent's Motion to Quash dated 11 October 2004, and admitted the Amended Informations dated 25 October 2004. Respondent filed an Urgent Motion for Reconsideration dated 20 January 2005 thereon.

On 1 February 2005, Judge Madrona reset the arraignment to 9 March 2005, with a warning that the arraignment would proceed without any

more delay, unless the Supreme Court would issue an injunctive writ.

On 9 March 2005, respondent failed to appear before the RTC. Thereupon, Judge Madrona, in open court, denied the Motion for Reconsideration of the Order denying the Motion to Quash and admitting the Amended Informations, and ordered the arrest of respondent and the confiscation of the cash bond.

On 11 March 2005, respondent filed an "Urgent Motion for Reconsideration and/or to Lift the Order of Arrest of Accused Dr. Pablo Olivarez," which was denied in an Order dated 31 March 2005. The Order directed that a bench warrant be issued for the arrest of respondent to ensure his presence at his arraignment.

On 5 April 2005, the Law Department of the COMELEC filed before the RTC a Manifestation and Motion wherein it alleged that pursuant to the COMELEC's powers to investigate and prosecute election offense cases, it had the power to revoke the delegation of its authority to the city prosecutor. Pursuant to these powers, the COMELEC promulgated Resolution No. 7457 dated 4 April 2005. The dispositive portion of Resolution No. 7457 states:

Considering the foregoing, the Commission **RESOLVED**, as it hereby **RESOLVES**, to **APPROVE** and **ADOPT** the recommendation of the Law Department as follows:

1. To revoke the deputation of the Office of the City Prosecutor of Parañaque to investigate and prosecute election offense cases insofar as I.S. Nos. 04-2608 and 04-2774, entitled "Renato Comparativo vs. Remedios Malabiran and Pablo Olivarez" and "Bienvenido et. al. vs. Sally Rose Saraos, et. al.," respectively, are concerned; and
2. To direct the Law Department to handle the prosecution of these cases and file the appropriate Motion and Manifestation before the Regional Trial Court of Parañaque, Branch 274, to hold in abeyance further proceedings on Criminal Case Nos. 1104 and 1105 until the Commission has acted on the appeal of respondents.

Let the Law Department implement this Resolution.

Thus, the Law Department of the COMELEC moved (1) that the RTC hold in abeyance further proceedings in Criminal Cases No. 04-1104 and No. 04-1105 until the COMELEC has acted on respondent's appeal; and (2) to revoke the authority of the city prosecutor of Parañaque to prosecute the case, designating therein the lawyers from the Law Department of the COMELEC to prosecute Criminal Cases No. 04-1104 and No. 04-1105.

On 8 April 2005, respondent filed a Special Civil Action for *Certiorari*

before the Court of Appeals docketed as CA-G.R. SP No. 89230, assailing the Orders, dated 12 January 2005, 9 March 2005 and 31 March 2005 of the RTC. The appellate court granted the appeal in a Decision dated 28 September 2005 declaring that the COMELEC had the authority to conduct the preliminary investigation of election offenses and to prosecute the same. As such, the COMELEC may delegate such authority to the Chief State Prosecutor, provincial prosecutors, and city prosecutors. The COMELEC, however, has the corresponding power, too, to revoke such authority to delegate. Thus, the categorical order of the COMELEC to suspend the prosecution of the case before the RTC effectively deprived the city prosecutor of the authority to amend the two informations. The appellate court also pronounced that Judge Madrona erred in admitting the amended informations, since they were made in excess of the delegated authority of the public prosecutor, and his orders to arrest the respondent and to confiscate the latter's cash bond were devoid of legal basis. The *fallo* of the Decision reads:

**UPON THE VIEW WE TAKE OF THIS CASE, THUS,** the petition at bench must be, as it hereby is, **GRANTED**. The impugned Orders of the public respondent Judge Fortunito L. Madrona of Branch 274, Regional Trial Court of Parañaque City dated 12 January 2005, 9 March 2005, and 31 March 2005 are hereby **VACATED** and **NULLIFIED**. The Temporary Restraining Order issued in the instant petition is made **PERMANENT**. Without costs in this instance.<sup>[4]</sup>

In finding that the public prosecutor of Parañaque, in filing the Amended Informations, did not exceed the authority delegated by the Commission on Elections (COMELEC), we said that the public prosecutor's delegated authority to prosecute the case was not yet revoked when said amended informations were filed on 28 October 2004, since the authority was revoked only on 4 April 2005 when COMELEC Resolution No. 7457 was issued. We explained that the letter from the COMELEC Law Department dated 11 October 2004, which directed the public prosecutor to transmit the entire records of the case by the fastest means available and to suspend further implementation of the questioned resolution (finding of probable cause to charge respondent with Violation of Section 261, paragraphs a, b and k of Article XXII of the Omnibus Election Code) until final resolution of respondent's appeal therefrom by the COMELEC En Banc did not revoke said delegated authority. We added that the filing of the amended informations was not made in defiance of the instructions dated 11 October 2004, but was rather "an act necessitated by the developments of the case." We said that the instructions were intended not to have the public prosecutor abandon the prosecution of the case and negligently allow its dismissal by not filing the Amended Informations. By filing the amended informations, the public prosecutor avoided the undesirable situation that would have forced the COMELEC to re-file the cases, waste government resources and delay the administration of justice.

As regards Judge Madrona, we ruled he did not abuse his discretion when he issued the Orders dated 9 March 2005 and 31 March 2005 for the arrest of respondent due to his failure to be present for his arraignment and for the confiscation of his cash

bond. Having acquired jurisdiction over the cases and the persons of the accused, the disposition thereof, regardless of what the fiscal may have felt was the proper course of action, was within the exclusive jurisdiction, competence and discretion of the court.

We further ruled that pursuant to Section 11 of Rule 116 of the 2000 Rules on Criminal Procedure, the arraignment of respondent cannot be suspended indefinitely, for the reviewing authority has at most 60 days within which to decide the appeal. The arraignment of respondent was initially scheduled on 18 October 2004, but the same was reset three times. A motion to quash the two informations was filed on 11 October 2004. On 12 January 2005, Judge Madrona denied the Motion to Quash and admitted the Amended Informations. Respondent sought the reconsideration of said order. On the scheduled arraignment on 9 March 2005, respondent failed to appear, resulting in the denial of his motion for reconsideration of the order denying the motion to quash and admitting the amended informations, the order for his arrest, and the confiscation of his cash bond. We said that five months was more than the sixty days allowed by the rules for the suspension of the arraignment and was ample time to obtain from COMELEC a reversal of the Joint Resolution finding probable cause.

Respondent anchors his motion for reconsideration on two grounds, to wit:

a. The Honorable Court, with due respect, is incorrect in finding that the public prosecutor (of Paranaque City) did not exceed the authority delegated by the COMELEC when they filed the subject Amended Informations against herein Respondent; and

x x x x

b. The Honorable Court, with due respect, incorrectly ruled that Judge Madrona of the Regional Trial Court of Paranaque City, acted, in accordance with law when he admitted the two (2) Amended Informations and dismissed the Respondent's Motion to Quash, as the ground stated therein - the informations charged more than one offense - could no longer be sustained, and ordered the arrest of the Respondent due to his alleged failure to be present for his arraignment and for the confiscation of his cash bond (at page 11 of the Assailed Decision).<sup>[5]</sup>

On the first ground, respondent argues that this Court erred in not construing the directive of the COMELEC to the public prosecutor of Parañaque City -- to transmit the entire records of the case to the COMELEC Law Department by the fastest means available and to suspend further implementation of the questioned resolution until final resolution of the appeal by the COMELEC *En Banc* -- as not a revocation of the public prosecutor's delegated authority. He further argues that the intention to revoke the delegated authority given to the public prosecutor is crystal clear. The order directing the transmission of the entire records deprives the public prosecutor of the means and bases to prosecute the criminal cases. He adds that the directive to suspend further implementation of the questioned resolution until final resolution of the appeal by the COMELEC *En Banc* is an express or, at the very least, an implied indication of revocation of the delegated authority inasmuch as the public