

## SECOND DIVISION

**[ G.R. NOS. 154218 & 154372, August 28, 2006 ]**

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE  
JOSE R. HERNANDEZ, IN HIS CAPACITY AS PRESIDING JUDGE,  
BR. 158, RTC-PASIG CITY, ATTY. LIGAYA P. SALAYON AND ATTY.  
ANTONIO M. LLORENTE, RESPONDENTS.**

### D E C I S I O N

**PUNO, J.:**

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking the reversal of the Joint Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP Nos. 68922 and 69703 which affirmed the Order<sup>[2]</sup> issued by respondent Judge Jose R. Hernandez, presiding judge of Branch 158 of the Regional Trial Court (RTC) of Pasig City, dismissing Criminal Case Nos. 118823-31, 118848-91, 118902-9063 and 119099-204 for violation of private respondents Llorente and Salayon's right to speedy trial.

First, the facts.

The instant case stemmed from a complaint filed by Aquilino Pimentel, Jr., a senatorial candidate in the May 1995 elections, against private respondents Salayon and Llorente, Chairman and Vice-Chairman, respectively, of the City Board of Canvassers of Pasig City, and a certain Reynaldo San Juan, Campaign Manager of senatorial candidate Juan Ponce Enrile, for allegedly decreasing Pimentel's votes in the Statement of Votes per precinct and in the City Certificate of Canvass for Pasig City. Pimentel filed a petition with this Court, docketed as G.R. No. 133509, which sought the reversal of the resolutions of the COMELEC dismissing his complaint for lack of probable cause. On February 9, 2000, we promulgated our Decision in said case, granting Pimentel's petition and ordering the COMELEC "to file forthwith with the proper [RTC] the necessary criminal information for violation of Section 27(b) of [Republic Act] No. 6646,<sup>[3]</sup> otherwise known as the Electoral Reforms Law of 1987, against private respondents Ligaya Salayon and Antonio Llorente."<sup>[4]</sup>

Pursuant thereto, the COMELEC filed a total of 321 informations for violation of Section 27(b) of R.A. No. 6646 against private respondents Llorente and Salayon on the following dates: a) nine (9) informations were filed on August 28, 2000, docketed as Criminal Case Nos. 118823-118831; b) forty-four (44) informations on August 29, 2000, docketed as Criminal Case Nos. 118848-118891; c) one hundred sixty-two (162) informations on August 31, 2000, docketed as Criminal Case Nos. 118902-119063; and d) 106 informations on September 7, 2000, docketed as Criminal Case Nos. 119099-119204. The four sets of informations were raffled to Branches 164, 158, 153 and 69, respectively, of the RTC of Pasig City.

Private respondent Llorente filed an Urgent Ex-Parte Motion for Consolidation<sup>[5]</sup> of Criminal Case Nos. 118823-118831 (pending before Branch 164) with Criminal Case Nos. 118848-118891 (pending before Branch 158). This motion was granted by Branch 164,<sup>[6]</sup> thereby consolidating the nine (9) informations pending before it with the 44 other informations pending with Branch 158.

Subsequently, private respondent Llorente filed three (3) Omnibus Motions before Branches 158, 153 and 69 of the RTC of Pasig City, asking them: 1) to consolidate all the cases filed against him for violation of Section 27(b) of R.A. No. 6646; 2) to declare the multiple informations filed against him as constituting only one offense; 3) to treat the 321 informations filed against him as only one information for violation of Section 27(b) of R.A. No. 6646; and 4) to allow him to post bail to only one information.

After finding private respondent Llorente's prayer to consolidate to be "meritorious and there being no objection" from the prosecution, Judge Ericcio C. Ygaña of Branch 153 granted the same and remanded Criminal Case Nos. 118902-119063 to the Office of the Clerk of Court of the RTC of Pasig City for proper disposition.<sup>[7]</sup> Similarly, Judge Lorifel Lacap Pahimna of Branch 69 granted private respondent Llorente's motion to consolidate, finding that "it is for the convenience of the parties that these cases (Criminal Case Nos. 119099-119204) be consolidated with those cases pending before Branch 158 considering that all cases involved common questions of fact and law and the parties may have to introduce common evidence in support of their respective positions in these cases." Judge Pahimna forwarded the cases pending before Branch 69 to Branch 158 "unless the presiding judge of said branch interposes objection to such consolidation." Moreover, the other issues raised by private respondent Llorente were referred to Branch 158 for appropriate action.<sup>[8]</sup>

On September 27, 2000, Senior State Prosecutor Rogelio Bagabuyo filed his Notice of Appearance with Branch 158 of the RTC of Pasig City.<sup>[9]</sup> He likewise filed an Urgent Omnibus Motion To: 1) hold in abeyance the implementation of the orders of the court prior to his appearance as counsel; 2) remand all the cases pending before it to the Office of the Clerk of Court of the RTC of Pasig City; 3) hold in abeyance the resolution of all motions filed by private respondent Llorente with the court; 4) order the Office of the Clerk of Court of the RTC of Pasig City to hold in abeyance the re-raffling of all the "dagdag-bawas" cases against private respondents; and 5) allow him ample time to secure from the Supreme Court a transfer of venue of the cases from Pasig City to Manila or Pasay City.<sup>[10]</sup>

Private respondent Llorente filed an Opposition (to the Prosecution's Urgent Omnibus Motion dated 25 September 2000)<sup>[11]</sup> with Branch 158 of the RTC of Pasig City. On December 13, 2000, petitioner, through Senior State Prosecutor Bagabuyo, filed with Branch 158 of the RTC of Pasig City its Comment/Opposition to [the] Omnibus Motions filed by Accused Llorente,<sup>[12]</sup> reiterating its prayers in its Omnibus Motion dated September 25, 2000.

On March 2, 2001, respondent Judge issued an Order, the dispositive portion which reads:

WHEREFORE, accused Llorente's Omnibus Motion dated September 5, 2000, Omnibus Motion dated September 6, 2000 and Omnibus Motion dated September 8, 2000 are granted allowing the consolidation of cases against accused Llorente pending before Branches 69, 153 and 164 of this Court with those pending before this branch. The multiple acts alleged in the 321 Informations filed against him are declared to constitute only one violation of Section 27(b) of Republic Act No. 6646. There should then be only one information against accused Llorente. This benefit applies also to accused Salayon. Public Prosecutor's (sic) Bagabuyo's Omnibus Motion dated September 25, 2000 is denied.

The arraignment and pre-trial of both accused is (sic) set on March 20, 2001 at 8:30 in the morning.

SO ORDERED.<sup>[13]</sup>

The trial court noted that during the hearing on private respondent Llorente's motion on September 12, 2000, the prosecution, then through Director Jose P. Balbuena of the COMELEC, was heard on the matter of consolidation of the cases and in fact gave its consent thereto. Even the representative from the office of Senator Aquilino Pimentel, Jr., an Atty. Luis Gana, did not register any objection thereto. In ruling that only one information for violation of Section 27(b) of R.A. No. 6646 should have been filed, the trial court held:

[I]n this case[,] the unity of criminal intent is manifested by the fact that the several acts of tampering[,] while allegedly done separately over a three-day period, were perpetuated on one single occasion which is the canvassing of the votes cast in the May 8, 1995 elections in Pasig City, and, significantly, perpetuated only on one single document, the SoV, a document of fifty-eight (58) pages. While there maybe several acts of tampering, this Court could attribute only one crime against accused Llorente. This is what the Comelec did in *People vs. Maria Arsenia Garcia, et al.* docketed as Criminal Case No. 3485-A before the Regional Trial Court of Alaminos, Pangasinan. The multiple acts of tampering by the accused were treated by the COMELEC as one offense or a single count of (sic) the violation of Section 27(b) of R.A. 6646. There is no reason then why accused Llorente should be treated differently.<sup>[14]</sup>

On March 25, 2001, petitioner moved for the reconsideration of the March 2, 2001 Order of the trial court.<sup>[15]</sup> Private respondent Llorente filed his Comment and Opposition,<sup>[16]</sup> to which petitioner filed its rejoinder.<sup>[17]</sup>

In his Order<sup>[18]</sup> dated May 11, 2001, respondent Judge denied petitioner's motion for reconsideration of the March 2, 2001 Order and set the arraignment and pre-trial of private respondents "on June 15, 2001 at 8:30 in the morning."

On June 15, 2001, private respondents Llorente and Salayon were arraigned and pleaded "not guilty." Senior State Prosecutor Bagabuyo was absent during the arraignment but the same nevertheless proceeded in the presence of Public Prosecutor Jose Danilo C. Jabson, the assigned prosecutor in the trial court. The trial court held:

Both accused, assisted by their respective counsels, after having been informed of the charge filed against them and its attending consequences, entered a plea of NOT GUILTY.

Pursuant to the Order of March 2, 2001, the three hundred [twenty-one] (321) informations filed against both accused were treated to be only a single offense for which they should be made answerable. It is for this reason that both accused were arraigned and entered their plea to a single or one information only.

Having entered their plea, set the pre-trial of this case on June 29, 2001 at 8:30 in the morning.<sup>[19]</sup>

On June 27, 2001, petitioner filed an Omnibus Motion to Postpone and Motion for Reconsideration<sup>[20]</sup> of the Order dated June 15, 2001 of the trial court, asking the trial court to nullify the arraignment of respondents for lack of notice to the prosecution. The June 29, 2001 hearing was reset to July 6, 2001 in view of the prosecution's filing of the Omnibus Motion to Postpone and Motion for Reconsideration. The July 6, 2001 hearing was cancelled as Senior State Prosecutor Bagabuyo did not appear, a representative having telephoned the trial court that he was indisposed. The hearing was reset to July 26, 2001.<sup>[21]</sup> However, the hearing on July 26, 2001 was again cancelled and reset to August 2, 2001 for Senior State Prosecutor Bagabuyo's failure to appear, thus:

Since Prosecutor Rogelio Bagabuyo is again not available for today's hearing because he is indisposed as relayed to this Court by his representative, Atty. Jay I. Dejaresco, and through a telephone call from his secretary Orlando Nicolas, as prayed for, and over the vehement objection of counsels for both accused, the pre-trial/trial scheduled today is cancelled and reset on August 2, 2001 at 8:30 in the morning.

x x x

In the event that there will again be no appearance from Prosecutor Bagabuyo at the next scheduled hearing, the Legal Department of the COMELEC shall then make its appearance and take over the prosecution of this case.

SO ORDERED.<sup>[22]</sup>

After considering the respective positions of the prosecution and the private respondents, the trial court issued its Order dated August 2, 2001<sup>[23]</sup> denying the prosecution's Omnibus Motion to Postpone and Motion for Reconsideration. It found that contrary to the prosecution's claim that it was not notified of the arraignment on June 15, 2001, the records revealed that the Order of the trial court dated May 11, 2001 which set the date of the arraignment and pre-trial on June 15, 2001 was received by the Department of Justice on May 17, 2001. As a consequence, the arraignment of private respondents Llorente and Salayon proceeded as scheduled. The Motion for Reconsideration of the trial court's March 2, 2001 Order was likewise denied for being in the nature of a second motion for reconsideration which is a prohibited pleading under the Rules of Court. Despite the denial of the prosecution's motions, the pre-trial and trial were cancelled and reset to September 4, 2001 in

view of the prosecution's manifestation that it was appealing the trial court's order to a higher court. The court warned that "[i]n the event that the prosecution shall not be able to get any restraining order to stop the proceedings in this case, the hearing on said date shall proceed as scheduled."<sup>[24]</sup>

Accordingly, petitioner, through Senior State Prosecutor Bagabuyo, filed a petition for Certiorari, Prohibition, Mandamus, Injunction with Prayer for a Temporary Restraining Order with the CA, docketed as CA-G.R. No. SP No. 65966. On August 16, 2001, said petition was dismissed outright for having been filed without the participation of the Office of the Solicitor General (OSG), in violation of Section 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code.<sup>[25]</sup> Petitioner filed a Motion for Reconsideration, to no avail.<sup>[26]</sup> Unhindered, petitioner filed a Motion for Extension of Time to File Petition for Review on Certiorari<sup>[27]</sup> with this Court on October 30, 2001, pursuant to Section 2, Rule 45 of the Rules of Court. We granted petitioner's motion in our Resolution dated December 12, 2001. Petitioner filed its Petition for Review on January 10, 2002, docketed as G.R. No. 150317. We resolved to deny the petition on January 30, 2002 for having been filed out of time and for Senior State Prosecutor Bagabuyo's failure to sign the petition.<sup>[28]</sup> Petitioner again filed a Motion for Reconsideration with this Court, to no avail.<sup>[29]</sup>

Meantime, in the trial court, the hearing set on September 4, 2001 did not proceed due to Senior State Prosecutor Bagabuyo's absence. Another representative from the office of Senator Pimentel, an Atty. Galimpin, appeared in court and requested for a postponement. Again, the court received a call from the secretary of Senior State Prosecutor Bagabuyo that the latter had his tooth extracted, hence, could not appear in court. The trial court found this excuse quite odd since Atty. Galimpin informed the court that he saw Senior State Prosecutor Bagabuyo at the Office of the Clerk of Court in the first floor of the same building where the court sits. Private respondents moved for the dismissal of the instant cases due to the denial of their right to speedy trial. The trial court denied their motion and gave the prosecution the last opportunity to prosecute the instant cases, setting the next hearings on October 3 and 15, 2001, with the admonition that failure to proceed will be dealt with accordingly.<sup>[30]</sup>

On October 3, 2001, the prosecution refused to proceed with pre-trial and trial, giving as reason its pending petition before the CA. Private respondent Llorente reiterated his motion to dismiss the case on the ground of violation of his right to speedy trial. The trial court granted private respondents a period of three (3) days therefrom within which to formalize their motions to dismiss and the prosecution was also given three (3) days from receipt of private respondents' motions within which to file its comment or objection.<sup>[31]</sup>

Private respondent Llorente filed his Motion to Dismiss dated October 4, 2001.<sup>[32]</sup> Before petitioner could file an opposition, it filed its Motion to Inhibit<sup>[33]</sup> dated October 5, 2001, asking Judge Hernandez to voluntarily inhibit himself from hearing the instant cases and remand the same to the Clerk of Court of Pasig City for re-raffling. Later, the prosecution likewise filed its Opposition (to [Private Respondent's Motion to] Dismiss with Prayer to Hold in Abeyance its Resolution until after Resolution of our Motion to Inhibit). Private respondent Llorente filed his Reply (to Prosecution's Opposition dated October 7, 2001) and Comment-Opposition (to