

## EN BANC

[ G. R. Nos. 148948 & 148951-60, February 17, 2003 ]

**COMMISSION ON ELECTIONS, PETITIONER, VS. HON LUCENITO N. TAGLE, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 20, IMUS, CAVITE, RESPONDENT.**

### D E C I S I O N

**DAVIDE JR., C.J.:**

In this special civil action for *certiorari* and *mandamus*, petitioner Commission on Elections (COMELEC) seeks the nullification of the orders of 16 March 2001<sup>[1]</sup> and 9 May 2001<sup>[2]</sup> of respondent Judge Lucenito N. Tagle of the Regional Trial Court (RTC), Branch 20, Imus, Cavite, denying petitioner's motion to dismiss Criminal Cases Nos. 7950-00 to 7959-00 and 7980-00 and motion for reconsideration, respectively.

During the 11 May 1998 elections, Florentino A. Bautista ran for the position of mayor in the Municipality of Kawit, Cavite. On 8 July 1998, he filed with the COMELEC a complaint against then incumbent mayor Atty. Federico Poblete, Bienvenido Pobre, Reynaldo Aguinaldo, Arturo Ganibe, Leonardo Llave, Diosdado del Rosario, Manuel Ubod, Angelito Peregrino, Mario Espiritu, Salvador Olaes and Pedro Paterno, Jr., for violation of Section 261 (a) and (b) of the Omnibus Election Code. The complaint was supported by the separate affidavits of forty-four (44) witnesses attesting to the vote-buying activities of the respondents and was docketed as E.O. Case No. 98-219.

On 25 February 1999, upon the recommendation of its Law Department, the COMELEC *en banc* issued a resolution<sup>[3]</sup> directing the filing of the necessary information against the respondents in E.O. Case No. 98-219 and authorizing the Director IV of the Law Department to designate a COMELEC prosecutor to handle the prosecution of the cases and to file the appropriate motion for the preventive suspension of the respondents.

The Law Department filed the corresponding information against the respondents in E.O. Case No. 98-219 before the RTC, Branch 90, Imus, Cavite, which was docketed as Criminal Case No. 7034-99.

Before the trial of Criminal Case No. 7034-99 commenced, or on 2 December 1999, a complaint was filed by Innocencio Rodelas and Gerardo Macapagal with the Office of the Provincial Prosecutor in Imus, Cavite, for violation of Section 261(a) of the Omnibus Election Code against the witnesses in the criminal case for vote-buying, who were the witnesses in E.O. Case No. 98-219. The complaint was docketed as I.S. No. 1-99-1080.

On 10 April 2000, the Office of the Provincial Prosecutor resolved to file separate

informations for vote-selling in the various branches of the RTC in Imus, Cavite, against the respondents in I.S. No. 1-99-1080. The cases were docketed as (1) Criminal Cases Nos. 7940-00 to 7949-00 and 7981-00, which were assigned to Branch 22; (2) Criminal Cases Nos. 7973-00 to 7979-00 and 7970-00, assigned to Branch 21; (3) Criminal Cases Nos. 7950-00 to 7959-00 and 7980-00, assigned to Branch 20; and (4) Criminal Cases Nos. 7960-00 to 7969-00, assigned to Branch 90.

On 23 June 2000, the respondents in I.S. No. 1-99-1080 appealed before the COMELEC the 10 April 2000 Resolution of the Provincial Prosecutor. On 6 July 2000, the COMELEC *en banc* denied the appeal for lack of jurisdiction.<sup>[4]</sup> However, upon the urgent motion to set for hearing the appeal, the COMELEC *en banc* resolved to defer action on the appeal and refer the same to the Law Department for comment and recommendation.<sup>[5]</sup>

The Law Department of the COMELEC filed motions to suspend proceedings before Branches 20, 21, 22 and 90 of the RTC of Imus, Cavite, until the COMELEC would have resolved the appeal of the respondents in I.S. No. 1-99-1080. The Presiding Judge of Branch 22 granted the motion for the suspension of proceedings in Criminal Cases Nos. 7940-00 to 7949-00 and 7981-00.

In its Minute Resolution No. 00-2453,<sup>[6]</sup> the COMELEC *en banc*, upon the recommendation of its Law Department, declared null and void the resolution of the Office of the Provincial Prosecutor in I.S. No. 1-99-1080. It held that the respondents therein are exempt from criminal prosecution pursuant to the fourth paragraph of Section 28 of R.A. No. 6646,<sup>[7]</sup> otherwise known as "The Electoral Reforms Law of 1987," which grants immunity from criminal prosecution persons who voluntarily give information and willingly testify against those liable for vote-buying or vote-selling. It further directed the Law Department to file the necessary motions to dismiss the criminal cases filed against the said respondents.

Pursuant to Minute Resolution No. 00-2453, the Law Department filed a motion to dismiss<sup>[8]</sup> Criminal Cases Nos. 7950-00 to 7959-00 and 7980-00 before Branch 20 of the RTC of Imus, Cavite, presided by herein respondent judge. The latter, however, denied the said motion and the motion for reconsideration. According to respondent judge, before one can be exempt from prosecution under the fourth paragraph of Section 28 of R.A. No. 6646, it is necessary that such person has already performed the overt act of voluntarily giving information or testifying in any official investigation or proceeding for the offense to which such information or testimony was given. It was thus premature to exempt the respondents in I.S. No. 1-99-1080 from criminal prosecution, since they have not yet testified.

Hence, this petition, ascribing to the respondent judge grave abuse of discretion amounting to excess or lack of jurisdiction in peremptorily denying the prosecution's motion to dismiss Criminal Cases Nos. 7950-00 to 7959-00 and 7980-00.

This Court referred the petition to the Office of the Solicitor General (OSG) and required it to manifest whether it is adopting the petition.<sup>[9]</sup> In a Manifestation and Motion<sup>[10]</sup> filed with this Court, the OSG stated that it repleads the submissions contained in the petition and adopts the petition as its own.

The petition is meritorious.

A free, orderly, honest, peaceful, and credible election is indispensable in a democratic society. Without it, democracy would not flourish and would be a sham. Election offenses, such as vote-buying and vote-selling, are evils which prostitute the election process. They destroy the sanctity of the votes and abet the entry of dishonest candidates into the corridors of power where they may do more harm. As the Bible says, one who is dishonest in very small matters is dishonest in great ones. One who commits dishonesty in his entry into an elective office through the prostitution of the electoral process cannot be reasonably expected to respect and adhere to the constitutional precept that a public office is a public trust, and that all government officials and employees must at all times be accountable to the people and exercise their duties with utmost responsibility, integrity, loyalty, and efficiency.

The provision of law alleged to have been violated by the respondents in E.O. Case No. 98-219, who are the accused in Criminal Case No. 7034-99, reads as follows:

SEC. 261. Prohibited Acts. - The following shall be guilty of an election offense:

(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 selection process of a political party.

(2) Any person, association, corporation, group or community who solicits or receives, directly or indirectly, any expenditure or promise of any office or employment, public or private, for any of the foregoing considerations.

(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.

One of the effective ways of preventing the commission of vote-buying and of prosecuting those committing it is the grant of immunity from criminal liability in favor of the party whose vote was bought. This grant of immunity will encourage the recipient or acceptor to come into the open and denounce the culprit-candidate, and will ensure the successful prosecution of the criminal case against the latter. Congress saw the wisdom of this proposition, and so Section 28 of R.A. No. 6646 on Prosecution of Vote-Buying and Vote-Selling concludes with this paragraph:

The giver, offeror, the promisor as well as the solicitor, acceptor, recipient and conspirator referred to in paragraphs (a) and (b) of Section 261 of