

## THIRD DIVISION

**[ G.R. Nos. 153714-20, August 15, 2003 ]**

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. MARIO K. ESPINOSA, RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

A waiver of the constitutional right against double jeopardy must be clear, categorical, knowing and intelligent. Corollary to this rule, the alleged conditions attached to an arraignment must be unmistakable, express, informed and enlightened. Otherwise, the plea should be deemed to be simple and unconditional.

#### The Case

Before us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court, seeking to nullify the April 10, 2002 Resolution<sup>[2]</sup> of the Sandiganbayan (SBN) in Criminal Case Nos. 26422-26428. The anti-graft court dismissed the criminal cases against Respondent Mario K. Espinosa on the ground of double jeopardy as follows:

"That being the case, the Court is constrained to concur with the accused that jeopardy has set in and that he is now at peril of punishment twice for the same offense in violation of the protection afforded by Sec. 21, Art. III of the Constitution.

"WHEREFORE, these cases are DISMISSED as against accused Mario K. Espinosa alone."<sup>[3]</sup>

#### The Antecedents

On February 4, 1998, separate cases of estafa and attempted corruption of public officers were filed before the SBN by the Office of the Ombudsman (OMB) against (1) Respondent Espinosa, then provincial administrator of Masbate; (2) Emma Vasquez; and (3) Romeo Sanano. The cases were docketed as Criminal Case Nos. 24438 and 24439.

Prior to his arraignment, Espinosa filed a Motion for Reinvestigation of the cases. The SBN Fourth Division granted the Motion in an Order<sup>[4]</sup> dated March 23, 1988, and directed the Office of the Special Prosecutor to evaluate the evidence against the accused.

While the cases were being reevaluated, Espinosa filed with the SBN a Motion for Leave to Travel Abroad for the period May 2-13, 1999.

On the date set for the hearing of the Motion, the SBN (Fourth Division) issued an

Order resetting the hearing to April 22, 1999. It required private respondent to be "conditionally arraigned on that date"<sup>[5]</sup> before it would act on his Motion to Travel.

As ordered, private respondent was arraigned, and thereafter granted his Motion to Travel. The Order of Arraignment dated April 22, 2000, stated that "upon being duly arraigned, [he] entered a plea of 'Not Guilty' to both Informations in Crim. Case Nos. 24438 and 24439."<sup>[6]</sup> The Court also ordered the deferment of the pretrial of the cases, pending the reinvestigation then being conducted by the Ombudsman.

On December 28, 2000, the OMB -- through the Office of the Special Prosecutor -- moved to withdraw *ex parte* the two cases against private respondent. The SBN granted the Motion in a Resolution dated January 9, 2001.

Thereafter, the OMB filed in the same court seven Informations for Malversation of Public Funds against Espinosa and several others. These Informations were docketed as Criminal Case Nos. 24622 to 24628 and raffled to the SBN First Division.

On January 22, 2001, Espinosa filed a Motion to Quash the Informations. He argued that double jeopardy had already attached, because (1) he had been arraigned in the previous estafa cases; and (2) the Motion to Withdraw the two earlier ones had been granted without his express consent.

Petitioner countered that the arraignment for the two previous cases was "conditional," because it was made solely for the purpose of accommodating private respondent's request to travel abroad while the matters were pending reinvestigation.

### **Ruling of the Sandiganbayan**

In its assailed Resolution, the SBN First Division ruled that jeopardy had attached in the first instance when Criminal Case Nos. 24438-24439 were dismissed upon the prosecution's "*ex parte* motion to withdraw the information." It noted that the dismissal had been sought and obtained without respondent's knowledge, much less express consent.

It likewise held private respondent's actual arraignment to be straightforward and unqualified. The records did not disclose any circumstance showing that the accused knew that his arraignment was subject to certain conditions.

Hence this recourse.<sup>[7]</sup>

### **Issue**

Petitioner submits the following issue for the Court's consideration:

"Whether or not [the SBN] acted with grave abuse of discretion amounting to lack or x x x excess of jurisdiction in dismissing Criminal Cases Nos. 34622 to 24628 as against Respondent Espinosa."<sup>[8]</sup>

### **The Court's Ruling**

The Petition is unmeritorious.

**Preliminary Issue:**  
**Procedural Lapses**

Before tackling the main issue raised by petitioner, the Court will point out some procedural lapses.

*First*, prior to submitting the instant Petition to this Court, petitioner should have filed a motion for reconsideration before the SBN. The extraordinary remedy of certiorari will lie only if there is "no appeal or any other plain, speedy and adequate remedy in the ordinary course of law."<sup>[9]</sup>

Here, the plain, speedy and adequate remedy expressly provided by law<sup>[10]</sup> is a motion for reconsideration to be filed within fifteen (15) days from promulgation or notice of the final order or judgment.<sup>[11]</sup> The purpose of the motion<sup>[12]</sup> is "x x x to afford public respondent an opportunity to correct any actual or fancied error attributed to it by way of a re-examination of the legal and factual aspects of the case."

Explaining further, the Court said:

"x x x. Petitioner's inaction or negligence under the circumstances is tantamount to a deprivation of the right and opportunity of the respondent commission to *cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed*. An improvident resort to certiorari cannot be used as a tool to circumvent the right of public respondent to review and purge its decision of an oversight, if any. x x x."<sup>[13]</sup> (Italics supplied)

*Second*, the proper remedy is appeal under Rule 45, not *certiorari* under Rule 65. Section 7 of Presidential Decree No. 1606, as amended by Republic Act No. 8249, provides that "[d]ecisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by [a] petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court." Section 1, Rule 45 of the Rules of Court, likewise provides that a judgment or final order or resolution of the Sandiganbayan may be appealed to the Supreme Court via a verified petition for review on certiorari.

Clearly then, the remedy of appeal was available to petitioner. For unexplained reasons, it chose not to pursue this recourse. Neither has it cited grounds to exempt the Petition from the stringent rule forbidding a substitution of remedies. Verily, its cavalier disregard of procedural requirements, especially its erroneous choice of remedy, is indeed enough reason to throw out this Petition summarily.

**Main Issue:**  
**Attachment of Legal Jeopardy**

Even if we are to gloss over these procedural infirmities, the Petition should nonetheless be dismissed for its lack of substantive merit.

Petitioner argues that the dismissal of the later Informations against private respondent on the ground of double jeopardy had no factual or legal basis,<sup>[14]</sup> because his arraignment in the earlier cases was only "conditional."

We are unconvinced.

Previous cases<sup>[15]</sup> have mentioned the SBN's practice of "conditionally" arraigning the accused pending the Ombudsman's reinvestigation of the case.<sup>[16]</sup> This practice is not mentioned or provided for in the regular rules of procedure.

Section 9 of PD 1606, as amended by RA 7975,<sup>[17]</sup> provides:

"Sec. 9. *Rules of Procedure.* - The Rules of Court promulgated by the Supreme Court shall apply to all cases and proceedings filed with the Sandiganbayan. The Sandiganbayan shall have no power to promulgate its own rules of procedure, except to adopt internal rules governing the allotment of cases among the divisions, the rotation of justices among them, and other matters relating to the internal operations of the court which shall be enforced until repealed or modified by the Supreme Court.

The Revised Internal Rules of the Sandiganbayan,<sup>[18]</sup> promulgated by this Court, do not mention any "conditional arraignment." Neither do the regular Rules of Court.

Arraignment is an indispensable requirement of due process. It consists of the judge's or the clerk of court's reading of the criminal complaint or information to the defendant. At this stage, the accused is granted, for the first time, the opportunity to be officially informed of the nature and the cause of the accusation.<sup>[19]</sup> Thus, arraignment cannot be regarded lightly or brushed aside peremptorily.

Espinosa pleaded simply and unconditionally on April 22, 1999. No unusual ceremony punctuated his arraignment. The SBN itself found this simple process inconsistent with its studied manner of "conditionally" arraigning the accused pending reinvestigation in other cases. We quote from its assailed Resolution as follows:

"Since it is the accused who wishes to travel even while his case is pending review, and in order that the Court might not lose jurisdiction over him while he is abroad, *the accused and counsel are advised as part of the arraignment process, that the arraignment is 'conditional', i.e., that arraignment is without prejudice to the results of the reinvestigation or review*; that if the prosecution should recommend the filing of new charges, in lieu of the present charge, which would necessarily include or be included in the present accusation, the accused would now be understood as having waived his right against double jeopardy; and that if the prosecution sought to withdraw the information, the arraignment would be deemed to have been of no effect. If the accused accepts these conditions for arraignment, then he is arraigned and allowed to travel. *In other words, in this instance, the accused is clearly aware of what is going on; at the time of his arraignment, there is an explicit waiver against the protection against double jeopardy as a condition for his travel.*"<sup>[20]</sup> (Italics supplied)