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SECOND DIVISION

[G.R. Nos. 107964-66, February 01, 1999]

THE PEOPLE OF THE PHILIPPINES REPRESENTED BY THE PANEL OF PROSECUTORS, DEPARTMENT OF JUSTICE, PETITIONER, VS. HON. DAVID G. NITAFAN, PRESIDING JUDGE, BRANCH 52, REGIONAL TRIAL COURT OF MANILA, AND IMELDA R. MARCOS, RESPONDENTS.

D E C I S I O N

MARTINEZ, J.:

On January 9, 1992, three criminal informations for violation of Section 4 of Central Bank Circular No. 960, as amended,[1] in relation to Section 34 of Republic Act No. 265[2] were filed against private respondent Imelda R. Marcos before Branch 158 of the Regional Trial Court (RTC) of Pasig (herein Branch 158-Pasig). Said Informations docketed as Criminal Case Nos. 90384-92, 90385-92 and 90386-92 were amended prior to arraignment.[3]

After arraignment, where private respondent pleaded not guilty, the People thru herein petitioner, Panel of Prosecutors from the Department of Justice (DOJ) and the Solicitor General filed separate motions for consolidation of the three (3) Informations pending before Branch 158-Pasig with the 21 other cases pending before RTC Branch 26-Manila (herein Branch 26-Manila).[4] The Solicitor General alleged in its motion that "the indictable acts under the three informations form part of and is related to the transaction complained" of in criminal cases 91-101732, 91-101734 and 91-101735 pending before Branch 26-Manila[5] and that these two groups of cases (the Pasig and Manila cases) "relate to a series of transactions" devised by then President Ferdinand Marcos and private respondent to hide their ill-gotten wealth.[6] The RTC of Pasig granted the motion for consolidation provided there is no objection from the presiding judge of Branch 26-Manila.[7] Before the Manila RTC, the three (3) informations were re-raffled and re-assigned instead to Branch 52-Manila presided by public respondent Judge Nitafan wherein the three informations (Criminal Cases Nos. 90384-92, 90385-92 and 90386-92) were re-numbered as Criminal Case Nos. 92-107942; 92-107943 and 92-107944.

Then, without private respondent yet taking any action or filing any motion to quash the informations, respondent judge issued an order dated July 20, 1992 requiring petitioners to show cause why criminal case number 92-107942 should not be dismissed on the ground that it violates private respondent's right against *ex post facto* law.[8] In that order, respondent judge said that a "check with official publications reveals that CB Circular 960 is dated 21 October 1983 (x x x) and that said regulatory issuance was imperfectly published* in the January 30, 1984 issue of the Official Gazette."[9] Respondent judge concluded that "since the date of violation alleged in the information was prior to the date and complete publication of

the Circular charged to have been violated, the information in this case appears peremptorily dismissible, for to apply the Circular to acts performed prior to its date and publication would make it an *ex post facto* law, which is a violation of the Constitution."[10]

On the same day, respondent judge issued another order requiring the prosecution to show cause why the two other criminal informations (92-107943 and 92-107944) should not be dismissed on the ground that private respondent's right to double jeopardy was violated.[11] It is respondent judge's posture that based on the Solicitor-General's allegations in its Motion for Consolidation filed in Branch 58-Pasig that the three cases form part of a series of transactions which are subject of the cases pending before Branch 26-Manila, all these cases constitute one continuous crime. Respondent judge further stated that to separately prosecute private respondent for a series of transaction would endow it with the "functional ability of a worm multiplication or amoeba reproduction".[12] Thus, accused would be unduly vexed with multiple jeopardy. In the two orders, respondent judge likewise said that the dismissal of the three "seemingly unmeritorious" and "duplicitous" cases would help unclogged his docket in favor of more serious suits.[13] The prosecution complied with the twin show cause orders accompanied by a motion to inhibit respondent judge.

On August 6, 1992, respondent judge issued an order denying the motion for consolidation (embodied in the prosecution's compliance with the show cause orders) of the three informations with those pending before Branch 26-Manila on the ground that consolidation of cases under Rule 31 of civil procedure has no counterpart in criminal procedure, and blamed the panel of prosecutors as "apparently not conversant with the procedure in the assignment of cases." As additional justification, respondent judge stated that since he is "more studious and discreet, if not more systematic and methodical," than the prosecution "in the handling of cases," it would be unfair to just pull out the case when he had already studied it.[14]

The next day, August 7, 1992, respondent judge issued an 8-page order dismissing criminal case no. 92-107942 on the ground that the subject CB Circular is an *ex post facto* law.[15] In a separate 17-page order dated August 10, 1992, respondent judge also dismissed the two remaining criminal cases (92-107943 & 92-107944) ruling that the prosecution of private respondent was "part of a sustained political vendetta" by some people in the government aside from what he considered as a violation of private respondent's right against double jeopardy.[16] From his disquisition regarding continuing, continuous and continued offenses and his discussion of *mala prohibita*, respondent judge further ratiocinated his dismissal order in that the pendency of the other cases before Branch 26-Manila had placed private respondent in double jeopardy because of the three cases before his sala.

The prosecution filed two separate motions for reconsideration which respondent judge denied in a single order dated September 7, 1992 containing 19 pages wherein he made a preliminary observation that:

> "(T)he very civil manner in which the motions were framed, which is consistent with the high ideals and standards of pleadings envisioned in the rules, and for which the panel should be commended. This only

shows that the Members of the panel had not yielded to the derisive, panicky and intimidating reaction manifested by their Department Head when, after learning the promulgation of the orders dismissing some of Imelda Romualdez-Marcos cases, Secretary Drilon went to the media and repeatedly aired diatribes and even veiled threats against the trial judges concerned.

"By the constitutional mandate that `A member of the judiciary must be a person of proven competence, integrity, probity, and independence (Sec 7[3], Art. VIII, judges are precluded from being dragged into running debates with parties-litigants or their counsel and representatives in media, yet by reason of the same provision judges are mandated to decide cases in accordance with their own independent appreciation of the facts and interpretation of the law. Any judge who yields to extraneous influences, such as denigrating criticisms or threats, and allows his independence to be undermined thereby, leading to violation of his oath of office, has no right to continue in his office any minute longer.

The published reaction of the Hon. Secretary is to be deplored, but it is hoped that he had merely lapsed into impudence instead of having intended to set a pattern of mocking and denigrating the courts. He must have forgotten that as Secretary of Justice, his actuations reflect the `rule of law' orientation of the administration of the President whom he represents as the latter's alter ego."[17] (emphasis supplied).

The dispositive portion of the order denying the motions for reconsideration provides:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court finds no valid reason to reconsider the dismissals heretofore decreed, and the motions for reconsideration are consequently denied for manifest lack of merit." [18]

Obviously dissatisfied, petitioners elevated the case *via* petition for *certiorari*, where the primary issue raised is whether a judge can *motu proprio* initiate the dismissal and subsequently dismissed a criminal information or complaint without any motion to that effect being filed by the accused based on the alleged violation of the latter's right against *ex post facto* law and double jeopardy.

Section 1, Rule 117 of the Rules on Criminal Procedure provides:

"Time to move to quash. - At any time before entering his plea, the accused may move to quash the complaint or information." (emphasis supplied).

It is clear from the above rule that the accused may file a motion to quash an information at any time before entering a plea or before arraignment. Thereafter, no motion to quash can be entertained by the court except under the circumstances mentioned in Section 8 of Rule 117 which adopts the omnibus motion rule. In the case at at bench, private respondent pleaded to the charges without filing any motion to quash. As such, she is deemed to have waived and abandoned her right to avail of any legal ground which she may have properly and timely invoke to

challenge the complaint or information pursuant to Section 8 of Rule 117 which provides:

> "*Failure to move to quash or to allege any ground therefore*. - The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in his motion, shall be deemed a waiver of the grounds of a motion to quash, except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty and jeopardy, as provided for in paragraphs (a), (b), (f) and (h) of section 3 of this Rule." (emphasis supplied)

It is also clear from Section 1 that the right to file a motion to quash belongs only to the accused. There is nothing in the rules which authorizes the court or judge to *motu proprio* initiate a motion to quash if no such motion was filed by the accused. A motion contemplates an initial action originating from the accused. It is the latter who is in the best position to know on what ground/s he will based his objection to the information. Otherwise, if the judge initiates the motion to quash, then he is not only pre-judging the case of the prosecution but also takes side with the accused. This would violate the right to a hearing before an independent and impartial tribunal. Such independence and impartiality cannot be expected from a magistrate, such as herein respondent judge, who in his show cause orders, orders dismissing the charges and order denying the motions for reconsideration stated and even expounded in a lengthy disquisition with citation of authorities, the grounds and justifications to support his action. Certainly, in compliance with the orders, the prosecution has no choice but to present arguments contradicting that of respondent judge. Obviously, however, it cannot be expected from respondent judge to overturn the reasons he relied upon in his different orders without contradicting himself. To allow a judge to initiate such motion even under the guise of a show cause order would result in a situation where a magistrate who is supposed to be neutral, in effect, acts as counsel for the accused and judge as well. A combination of these two personalities in one person is violative of due process which is a fundamental right not only of the accused but also of the prosecution.

That the initial act to quash an information lodged with the accused is further supported by Sections 2, 3 and 8 of Rule 117 which states that:

> "**Section 2**. The motion to quash shall be in writing signed by the accused or his counsel. It shall specify distinctly the factual and legal grounds therefor and the Court shall consider no grounds other than those stated therein, except lack of jurisdiction over the offense charged."

> "**Section 3**. *Grounds*. - The accused may move to quash the complaint or information on any of the following grounds:

a) That the facts charged do not constitute an offense;
b) That the court trying the case has no jurisdiction over the offense charged or the person of the accused;
c) That the officer who filed the information had no authority to do so;
d) That it does not conform substantially to the prescribed

form;

e) That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses;

f) That the criminal action or liability has been extinguished;

g) That it contains averments which, if true, would constitute a legal excuse or justification; and

h) That the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged.

"**Section 8**. The failure of the accused to assert any ground of a motion to quash before he pleads (Emphasis supplied).

Section 2 requires that the motion must be signed by "accused" or "his counsel"; Section 3 states that "the accused" may file a motion, and; Section 8 refers to the consequence if "the accused" do not file such motion. Neither the court nor the judge was mentioned. Section 2 further, ordains that the court is proscribed from considering any ground other than those stated in the motion which should be "specify(ied) distinctly" therein. Thus, the filing of a motion to quash is a right that belongs to the accused who may waived it by inaction and not an authority for the court to assume.

It is therefore clear that the only grounds which the court may consider in resolving a motion to quash an information or complaint are (1) those grounds stated in the *motion* and (2) the ground of lack of jurisdiction over the offense charged, whether or not mentioned in the motion. Other than that, grounds which have not been sharply pleaded in the motion cannot be taken cognizance of by the court, even if at the time of filing thereof, it may be properly invoked by the defendant. Such proscription on considerations of other grounds than those specially pleaded in the motion to quash is premised on the rationale that the right to these defenses are waivable on the part of the accused, and that by claiming to wave said right, he is deemed to have desired these matters to be litigated upon in a full-blown trial. Pursuant to the Rules, the sole exception is lack of jurisdiction over the offense charged which goes into the competence of the court to hear and pass judgment on the cause.

With these, the rule clearly implies the requirement of filing a motion by the accused even if the ground asserted is premised on lack of jurisdiction over the offense charged. Besides, lack of jurisdiction should be evident from the face of the information or complaint to warrant a dismissal thereof. Happily, no jurisdictional challenge is involved in this case.

Assuming *arguendo* that a judge has the power to *motu proprio* dismiss a criminal charge, yet contrary to the findings of respondent judge, the grounds of *ex post facto* law and double jeopardy herein invoked by him are not applicable.

On *ex post facto* law, suffice it to say that every law carries with it the presumption of constitutionality until otherwise declared by this court.[19] To rule that the CB Circular is an *ex post facto* law is to say that it is unconstitutional. However, neither private respondent nor the Solicitor-General challenges it. This Court, much more the lower courts, will not pass upon the constitutionality of a statute or rule nor