FIFTH DIVISION

[CA-G.R. SP NO. 129391, March 18, 2015]

ANDAL U. AMPATUAN, JR., PETITIONER, VS. HON. JOCELYN SOLIS-REYES, IN HER CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT OF QUEZON CITY (BRANCH 221), PEOPLE OF THE PHILIPPINES, MAGUINDANAO MASSACRE PANEL OF PROSECUTORS, AND THE DEPARTMENT OF JUSTICE, RESPONDENTS.

DECISION

GARCIA-FERNANDEZ, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court, as amended, seeking to annul and set aside the joint order of the Regional Trial Court of Quezon City, Branch 221 (RTC) in Criminal Cases Nos. Q-09-162148 to 72, Q-09-162216 to 31, Q-10-162652 to 66, and Q-10-163766 dated February 13, 2013[1].

The antecedent facts are as follows:

The instant petition is an offshoot from Criminal Case Nos. Q-09-162148 to 72, Q-09-162216 to 31, Q-10-162652 to 66, and Q-10-163766 for multiple murder, known as the Maguindanao Massacre which are pending with the RTC Quezon City. Petitioner Andal U. Ampatuan, Jr. is charged with fifty-seven (57) counts of murder committed in conspiracy with 196 others, in relation to the incident known as the Maguindanao Massacre on November 23, 2009. Arraignment was held in the three cases on separate dates, i.e., on January 5, 2010, February 3, 2010, and July 3, 2010. Petitioner pleaded "not guilty" to all the charges.

Sukarno Badal was included as one of the accused in the informations, however, he was not arraigned because he was provisionally admitted[2] to the Witness Protection Program (WPP) pursuant to Section 12 of Republic Act No. 6981, otherwise known as "Witness Protection, Security and Benefit Act." Thus, respondent People filed a "Very Urgent Motion to Defer Arraignment of Accused Zukarno Badal and for Leave of Court to Amend Information/Admit Attached Amended Information Excluding/Dropping Zukarno Badal as an Accused[3]," alleging that there is absolute necessity for the testimony of Badal because there are matters which, according to the theory of the prosecution, only Badal has personal knowledge of; that his testimony can be substantially corroborated in its material points by other evidence on record; and that Badal does not appear to be the most guilty and has not been convicted of any offense involving moral turpitude.

Petitioner opposed Badal's exclusion from the infomations[4], alleging that the prosecution failed to comply with Section 17, Rule 119 of the Rules of Court in discharging Badal as state witness, and that Badal should not have been admitted to the WPP because he failed to comply with the requirements therefor.

On February 13, 2013, respondent Hon. Jocelyn A. Solis-Reyes issued an Order granting the "Very Urgent Motion to Defer Arraignment of Accused Zukarno Badal and for Leave of Court to Amend Information/Admit Attached Amended Information Excluding/Dropping Zukarno Badal as an Accused"[5] which states that:

> "It is admitted that there are two (2) modes of discharging an accused as State witness, viz: under R.A. 6981 and Section 17, Rule 119 of the Revised Rules on Criminal Procedure. Application thereof depends on whether the accused sought to be discharged as State witness has already been arraigned or not. Here, prosecution seeks to discharge as State witness and/or exclude Badal as an accused pursuant to R.A. 6981 which is being opposed by accused Andal Ampatuan, Sr. and Jr. as well as Moktar Daud, et.al. However, contrary to their claim, a hearing for the purpose of presenting evidence to show that the conditions set forth under Section 17, Rule 119 exist, is no longer necessary. In the case of *Eugene C. Yu vs. The Honorable Presiding Judge, Regional Trial Court of Tagaytay City, Branch 18, et.al.,* which the Court finds to be the case in point, the Highest Tribunal held, thus:
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> > "The discharge of an accused to be a state witness under Republic Act 6981 is only one of the modes for a participant in the commission of a crime to be a state witness. Rule 119, Section 17 of the Revised Rules on Criminal Procedure, is another mode of discharge. The immunity provided under Republic Act No. 6981 is granted by the DOJ while the other is granted by the court.
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> > Rule 119, Section 17 of the Revised Rules on Criminal Procedure contemplates a situation where the information has been filed and the accused had been arraigned and the case is undergoing trial. The discharge of an accused under this rule may be ordered upon motion of the prosecution before resting its case, that is, at any stage of the proceedings, from the filing of the information to the time the defense starts to offer any evidence.
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> > **On the other hand, in the discharge of an accused under Republic Act No. 6981, only compliance with the requirement of Section 14, Rule 110 of the Revised Rules of Criminal Procedure is required but not the requirement of Rule 119, Section 17."** (emphasis supplied)

Citing the case of Soberano v. People, the Highest Tribunal proceeded to elucidate in this wise:

> "An amendment of the information made before plea which excludes some or one of the accused must be made only upon motion by the prosecutor, with notice to the offended party and with leave of court in compliance with Section 14, Rule 110. Section 14, Rule 110, does not qualify the grounds for the exclusion of the accused. Thus, said provision applies in

> equal force when the exclusion is sought on the usual ground of lack or probable cause, or when it is for the utilization of the accused as state witness, as in this case, or on some other ground."

From the afore-quoted, it is crystal clear that accused Badal need not pass the crucible of conversion hearing. All that is required is compliance with Section 14 of Rule 110 which provides, thus:

> "Section 14. Amendment or substitution. - A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.
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> **However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court.** The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party." (emphasis supplied)

As further enunciated in the case of Eugene Yu, thus:

> "x x x x x, the determination of who should be criminally charged in court is essentially an executive function, not a judicial one.
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> In this connection, Section 12 of Republic Act 6981, provides that the issuance of a certification of admission into the program shall be given full faith by the provincial or city prosecutor who is required not to include the witness in the criminal complaint or information, and if included, to petition for his discharge in order that he can be utilized as a state witness. x x x x x"

The claim of accused that it is Section 17 of Rule 119 in accordance with the ruling in Guingona case which is applicable in the case of Badal and not Section 12 of R.A. 6981, does not hold water. It must be borne in mind that the issue raised in said case relative to the discharge of Roque who was not one of those accused in the Informations filed by the government prosecutors is different from the present issue. In fact, in the Guingona case, the Supreme Court had explicitly declared that petitioners (therein) failed not only to present an actual controversy but also to show a case ripe for adjudication. Hence, whatever pronouncement the Supreme Court may have made in the said case finds no application herein.

Neither is the case of Galo Monge vs. People applicable to Badal as the issue raised therein was the discharge of accused Potencio as a state

witness on the ground that he was not the least guilty of the offense and that there was no absolute necessity for his testimony, without clearly stating whether or not said accused was already arraigned prior to his discharge.

Unlike the Guingona and Monge cases, the case of Yu as discussed above is the one applicable to Badal as the factual backdrop and the issues raised in the latter are indubitably at all fours insofar as his discharge/exclusion as an accused is concerned.

The Court is in accord with the prosecution's asseveration that there is nothing under R.A. 6981 that disallows the provisional admission of a witness to be accepted in the WPSBP. The DOJ being an agency tasked to implement the provisions of said Act, it has the sole prerogative to determine whether accused Badal has satisfied the requirements for admission under the WPSBP, contrary to the claim of accused Moktar Daud, et al., Well-settled is the rule that determination of a government agency tasked to implement a statute is accorded great respect and ordinarily controls the construction of the courts.

Moreover, contrary to the contention of the accused that the motion failed to comply with *Sections 4 and 5, Rule 15 of the Rules of Court,* the Court is of the view that there was substantial compliance with the rule on notice of motion where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion. In the case of *Fausto R. Preysler, Jr. vs. Manila Southcoast Development Corporation, G.R. No. 171872, June 28, 2010, citing the case of Jehan Shipping Corporation vs. NFA, G.R. No. 159750, December 14, 2005,* the Highest Tribunal held:

> "As a rule, a motion without a notice of hearing is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading.
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> As an integral component of the procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution of the court.
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> The test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. x x x
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> A close perusal of the records reveal that the trial court gave petitioner ten days within which to comment on respondent's Motion for Reconsideration. Petitioner filed its Opposition to the Motion on November 26, 2001. In its 14-page Opposition, it not only pointed out that the Motion was defective for not containing a notice of hearing and should then be dismissed outright by the court; it also ventilated its substantial

> arguments against the merits of the Motion and of the Supplemental Motion for Reconsideration. Notably, its arguments were recited at length in the trial court's January 8, 2002 Joint Resolution. Nevertheless, the court proceeded to deny the Motions on the sole ground that they did not contain any notice of hearing.
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> The requirement of notice of time and hearing in the pleading filed by a party is necessary only to apprise the other of the actions of the former. Under the circumstances of the present case, the purpose of a notice of hearing was served."

Here, although the prosecution failed to comply with Sections 4 and 5 of Rule 15, records show that accused were not only given the opportunity to file their respective comments/oppositions to the prosecution's Motion but their rejoinder as well prior to the resolution of the instant Motion. Thus, following the aforementioned jurisprudence, substantial compliance with procedural due process is considered to have been complied with.

Likewise, it bears stressing that the requirement under Section 14, Rule 110 has been substantially complied with by the prosecution, contrary to the claim of accused Mokar Daud, et.al. A perusal of the records will show that listed on pages 6 and 7 of the prosecution's Motion which was filed with leave of Court are the names of the offended parties who were furnished copies thereof through registered mail as shown on the Registry Receipts attached thereto. Records also show that the latter were notified of the date set for the hearing of said Motion. The fact that the prosecution failed to attach to the Motion a copy of Badal's sworn statement is of no moment considering that only compliance with the aforementioned provision is required under R.A. No. 6981.

In view of the determination of Badal's qualifications to be discharged as State witness by the DOJ pursuant to Section 10 of R.A. No. 6981, and the subsequent issuance of a Certification dated May 30, 2011 which provisionally admitted said accused to the WPP effective November 10, 2010, pursuant to Section 12 of Republic Act No. 6981, the Court is of the opinion that said agency's finding must be accorded great respect. To do otherwise, would amount to an encroachment of a purely executive function exercised by the DOJ which is tasked to implement the provisions of R.A. No. 6981. Thus, it appearing that the requirements set forth under Section 14 of Rule 110 has already been complied with by the prosecution, it is only proper to grant the relief being prayed for in its Motion." [Citations omitted.]

Petitioner dispensed with the filing of a motion for reconsideration from the joint order dated February 13, 2003 and filed the instant petition for certiorari with this Court, stating that the respondent Judge acted without jurisdiction or gravely abused her discretion amounting to lack or excess of jurisdiction when she allowed the exclusion of Badal as an accused in the 57 amended informations on the sole basis of Badal's admission to the WPP.

The petition is bereft of merit.