

SPECIAL FIRST DIVISION

[CA-G.R. SP No. 126178, May 26, 2014]

ATTY. BENJAMIN S. ABALOS, SR., PETITIONER, VS. HON. EUGENIO G. DELA CRUZ, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 117, PASAY CITY, HON. LEILA M. DE LIMA, IN HER CAPACITY AS SECRETARY OF THE DEPARTMENT OF JUSTICE AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

BARRIOS, M. M., J.:

This petition for certiorari under Rule 65 of the 1997 Revised Rules of Court seeks to nullify the Order dated 24 May 2012 of the Regional Trial Court of Pasay City, Branch 117 giving due course to the Motion to Discharge from the Information accused Lilian Suan-Radam to be utilized as a state witness that was filed by the Department of Justice as well as the proceedings and other actions taken thereon. Also assailed is the Order dated 10 July 2012 denying petitioner's Motion for Reconsideration.

The Antecedents

On 15 February 2011, eleven (11) Informations for electoral sabotage was filed against Atty. Lilian S. Radam and were previously raffled to the Regional Trial Court, Branch 114, Pasay City.

Thereafter, on 16 January 2012, the Commission on Elections ("COMELEC") filed a Motion with Leave of Court to Withdraw the aforesaid Informations against Atty. Radam, and this was granted by the trial court.

On 18 January 2012, COMELEC promulgated En Banc Resolution No. 9333 giving authority to the Secretary of Justice to designate not more than six (6) DOJ Prosecutors to assist in the prosecution of said cases. Resultantly, Justice Secretary Leila M. De Lima designated Assistant State Prosecutor Mari Elvira B. Herrera, Assistant City Prosecutor Orlando G. Mariano, Associate Prosecution Attorney Gerard E. Gaerlan and Associate Prosecution Attorney Mark Roland S. Estepa to assist in the prosecution of the cases covered by Resolution No. 9333.

Thenceforth, on 25 January 2012, eleven (11) Informations for Electoral Sabotage were filed against herein petitioner Atty. Benjamin S. Abalos, Sr. and Atty. Lilian S. Radam. The case was then raffled to the Regional Trial Court, Branch 117, Pasay City presided by public respondent judge.

Later, on 14 February 2012, petitioner Abalos filed a petition for bail.

Pending resolution of the aforementioned bail petition, COMELEC promulgated Resolution No. 9403 dated 17 April 2012 enjoining the filing of any Motion to Discharge during the bail hearing. However, despite the aforesaid COMELEC resolution, the Department of Justice (DOJ) prosecutors filed in open court a Motion

to Discharge from Information accused Atty. Lilian S. Radam, pursuant to Republic Act No. 6981 known as The Witness Protection, Security and Benefit Act.

Petitioner Abalos filed an opposition to the motion to discharge on the ground that said move by the DOJ is without the concurrence of the COMELEC and is, in fact, repugnant to COMELEC Resolution No. 9403, and should not be given due course by the trial court. Needless to state, with respect to election offense, it is the COMELEC which acts as prosecutor.

However, in the Order dated 24 May 2012, public respondent judge resolved not to outrightly dismiss the Motion filed by the DOJ and instead, required accused Radam to testify as witness to demonstrate compliance with Section 17 of Rule 119 relating to discharge as a state witness. Petitioner moved for reconsideration, but the same was denied.

Hence, this petition premised on the following grounds:

I.

RESPONDENT JUDGE EUGENIO G. DELA CRUZ ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GIVING DUE COURSE TO THE DOJ'S MOTION TO DISCHARGE DESPITE THE RESOLUTION OF THE COMELEC, THE PUBLIC PROSECUTOR, NOT TO FILE ANY MOTION TO DISCHARGE IN FAVOR OF RADAM AND THE DOJ PROSECUTORS' ADMISSION THAT THEY ARE UNDER THE DIRECT CONTROL AND SUPERVISION OF THE COMELEC IN PROSECUTING THIS CASE.

II.

RESPONDENT JUDGE EUGENIO G. DELA CRUZ ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING A RELIEF THAT WAS NOT PRAYED FOR IN THE DOJ'S MOTION TO DISCHARGE.

III.

SECTION 43 OF REPUBLIC ACT NO. 9369 IS UNCONSTITUTIONAL BECAUSE ARTICLE IX-C, SECTION 2 (6) OF THE 1987 CONSTITUTION DOES NOT GIVE A BLANKET AUTHORITY TO MAKE THE PROSECUTION OF ALL ELECTION OFFENSES CONCURRENT WITH OTHER GOVERNMENT BODIES.

The Court's Ruling

After considering the contrasting arguments, the ultimate question that presents before Us is whether it is proper to require accused Atty. Radam to give her actual testimony before the trial court in the hearing of the motion to discharge even before she is admitted as a state witness.

The law on the matter is Section 17, Rule 119 of the Revised Rules of Court. It pertinently provides:

Section 17. Discharge of accused to be state witness. – When two or more persons are jointly charged with the commission of any offense,