

## TENTH DIVISION

[ CA-G.R. SP NO. 92979, August 31, 2006 ]

**HILARIO P. SORIANO, PETITIONER, VS. HON. MA. THERESA V. MENDOZA-ARCEGA, AS PRESIDING JUDGE OF BRANCH 17 OF THE REGIONAL TRIAL COURT OF MALOLOS, BULACAN, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**SALAZAR-FERNANDO, J.:**

Before this Court is a Petition for Certiorari and Prohibition under Rule 65 of the Rules of Court seeking to annul and set aside the Orders dated September 22, 2005<sup>[1]</sup> and November 25, 2005<sup>[2]</sup> of the Regional Trial Court, Third Judicial Region, Branch 17, Malolos City in Crim. Cases Nos. 237 and 238-M-01, entitled "People of the Philippines, versus Hilario P. Soriano and Rosalinda Ilagan, Accused," which read in their entirety as:

Order dated September 22, 2005:

"This pertains to the prosecution's a) 'Motion to Expunge (Manifestation dated August 10, 2005)' and b) 'Motion' (to Expunge the Ex Parte Manifestation dated August 3, 2005), to which accused Hilario Soriano, by himself, filed a 'Comment' dated August 22, 2005, and c) 'Motion to Expunge (Comment dated August 22, 2005),' and to the defense's i) 'Omnibus Motion' and ii) 'Motion to Approve Withdrawal of Appearance,' to which the prosecution submitted its respective 'Oppositions cum URGENT MOTION TO EXPUNGE,' and iii) 'Entry of Appearance' of Atty. Peter Paul S. Romero as counsel for the accused.

Denying all the prosecution's motions to expunge the papers and motions filed by the accused, but rebuking the allegations of the defense contrary to what the record reflects, the Court instead resolves to straighten out the antipathetic manifestations that smack of personal bickerings between the adverse parties.

Anent the 'Ex-Parte manifestation' of accused Hilario Soriano dated August 3, 2005, the reason found by the Court for the resetting of the hearing on July 19, 2005 was the absence of the State Prosecutor and the defense counsel (See Order of July 19, 2005).

Meanwhile, it is apparent that the motions, comments and manifestations of the accused all boil down to a single entreaty, i.e. a reasonable time to secure the services of a new attorney, competent enough to defend their cause against the 'overwhelming panel of prosecutors' consisting of the State Prosecutor, lawyers of the Bangko Sentral ng Pilipinas (BSP) and

the Philippine Deposit Insurance Corporation (PDIC) and the esteemed Atty. Hector Corpus of the M.M. Lazaro and Associates.

The Court finds the present controversy settled and closed. The entry of appearance of Atty. Peter Paul S. Romero of Chato & Vinzons-Chato, as the new defense counsel, is hereby NOTED.

The 'Motion to Approve Withdrawal of Appearance' filed by Hilario Soriano is now moot and academic, better yet a mere surplusage, as the Court has already taken note of the respective notices of withdrawal of Atty. Sedfrey A. Ordoñez and Atty. Lamberto A. Gonzales, Jr. on August 11, 2005. (See Order of August 11, 2005).

As regards the 'Motion to Cancel Hearing Date' scheduled on September 22, 2005 incorporated in the 'Entry of Appearance' of the new defense counsel, the Court is inclined to DENY the same. As pointed out by the Private Prosecutor, Atty. Romero's motion to cancel today's hearing failed to attach proof of his alleged conflict of schedule. More so, his law firm could have sent another lawyer to represent its client.

As prayed for by the prosecution, the re-direct examination of accused Hilario P. Soriano has been waived. Let the presentation of another defense witnesses proceed on October 11 and 20, November 17, December 1 and 13, 2005 all at 8:30 o'clock in the morning, as previously scheduled.

SO ORDERED."

Order dated November 25, 2005:

"This refers to the defense's Urgent Omnibus Motion (a) for Partial Reconsideration of the Order Dated 22 September 2005; (b) to Discharge Accused Soriano From the Information in Criminal Case No. 238-M-2001; and (c) to Suspend Proceedings; and the prosecution's Urgent Motion To Expunge (The So-Called Request for Subpoena ad Testificandum).

As to the first motion, the supplementing papers that purport to explain the lawyer's conflict of schedule cannot be regarded by the Court to cure the congenital infirmities, in fact, suffered by the motion from which the assailed Order spawned. The directive that considers the redirect examination of Hilario P. Soriano as waived is hereby affirmed.

As regards the second motion, both parties are directed to simultaneously file their respective position papers tackling the issue at hand within fifteen (15) days from receipt of this Order. Thereafter, the incident shall be deemed submitted for resolution.

With respect to the suspension of proceedings being sought for, the defense counsel is hereby required to submit a statement of the case in G.R. No. 162336 pending before the Supreme Court, attaching thereto certified true copies of the Court's Resolution, within fifteen (15) days from receipt of this Order.

Meanwhile, acting on the motion filed by the prosecution, the defense is given five (5) days from receipt of this Order within which to file their comment/opposition thereto. This issue shall thereafter be determined.

Pending resolution of the foregoing incidents, the defense is instructed to be ready with another witnesses to be presented on December 1, 2005 at 8:30 o'clock in the morning. Other trial dates are December 13, 2005, January 24, February 16 and 28, 2006 at 8:30 o'clock in the morning, as agreed upon by all the counsel last October 20, 2005.

SO ORDERED.”

The facts are:

Petitioner Hilario P. Soriano (Soriano for brevity) was charged with Estafa through falsification of commercial documents docketed as Crim. Case No. 237-M-2001 and for Violation of Section 38 of R.A. No. 337 docketed as Crim. Case No. 238-M-2001. Said cases were originally raffled to Branch 79 of the RTC, Malolos, Bulacan. By agreement of the parties, the cases were consolidated and heard jointly. Petitioner Soriano pleaded not guilty to the charges. Attorneys Sedfrey Ordoñez and Lamberto Gonzales, Jr. were his original counsels.

During the trial but before the prosecution could rest its case, the cases were re-raffled to Branch 17, RTC, Malolos. After the documentary evidence for the prosecution were admitted, the defense began presenting its evidence. Petitioner Soriano testified and was cross-examined exhaustively.

After the conclusion of the prosecution's cross-examination, petitioner's counsel, Atty. Sedfrey Ordoñez, expressly requested to conduct a redirect examination of petitioner Soriano in the next scheduled hearing. However, before the scheduled date of hearing, petitioner Soriano's counsels filed their respective notice of Withdrawal of Appearance.

Petitioner Soriano filed an Ex-Parte Manifestation requesting for sixty (60) days from the lower court's approval of the withdrawal of appearance of his counsels to secure the services of a new counsel. Meanwhile, the hearing for his redirect examination was scheduled on September 22, 2005.

On September 15, 2005, the law firm of Chato & Vinzons-Chato entered its appearance on behalf of petitioner Soriano. In the said entry of appearance, said counsel also sought for the cancellation of the September 22, 2005 hearing because of the need to study the case further and that Atty. Peter Paul S. Romero, the lawyer who will be handling the case, had a prior commitment to appear for another case<sup>[3]</sup> before the Municipal Trial Courts in Cities (MTCC) of Antipolo, Branch 1.

Notwithstanding the motion to cancel the September 22, 2005 hearing, petitioner Soriano still appeared in the said hearing and manifested that he had just recently engaged the services of a new counsel and that the handling lawyer had a conflict of schedule. However, the private prosecutor verbally moved that the redirect examination of petitioner Soriano be deemed waived.