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G.R. No. 216824 – GINA VILLA GOMEZ, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent.*

Promulgated:

November 10, 2020

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CONCURRING OPINION

DELOS SANTOS, *J.*:

The *ponencia* **DENIED** the instant petition after revisiting the case of *Villa v. Ibañez*[1] (*Villa*), which is the basis of the prevailing rule that makes paragraph (d) of Section 3,[2] Rule 117 of the Rules of Court a jurisdictional defect like those in paragraphs (a), (b), (g), and (i) under Section 9[3] of the same Rule.

Notably, the *ponencia* further declared that the pronouncement in *Villa* was clearly not sanctioned by any constitutional or statutory provision. Hence, *Villa* is rendered unconstitutional for violating the basic principles of separation of powers.

I concur.

The *ponencia*'s analysis of *Villa* presents a breakthrough illumination in criminal proceedings that lack of prior written authority or approval on the face of the Information by the prosecuting officers authorized to approve

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1 88 Phil. 402 (1951).

2 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;
(c) That the court trying the case has no jurisdiction over the person of the accused;
(d) That the officer who filed the information had no authority to do so;
(e) That it does not conform substantially to the prescribed form;
(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
(g) That the criminal action or liability has been extinguished;
(h) That it contains averments which, if true, would constitute a legal excuse or justification; and
(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (Emphasis supplied)

3 Section 9. *Failure to move to quash or to allege any ground therefor.* — 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 said motion, shall be deemed a waiver of any objections based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

and sign the same has nothing to do with the trial court's acquisition of jurisdiction in a criminal case.[4]

In this regard, I deem it proper to underscore *ponencia*'s re-examination of the legal and factual antecedents of *Villa*, to wit:

(1) The prevailing adjective law at the time was the 1940 Rules of Court;[5]
(2) There was nothing in the 1940 Rules of Court which requires the handling prosecutor to first secure either a prior written authority or approval or a signature from the provincial, city or chief state prosecutor before an Information may be filed with the trial court.[6]
(3) The Court merely clarified that to be eligible as special counsel to aid a fiscal, the appointee must either be an employee or officer of the Department of Justice (DOJ).[7]
(4) It was not explained why the handling prosecutor's lack of authority was intertwined with Section 2(b) of Rule 113 — so as to deprive the trial court of its jurisdiction over the offense charged or the person of the accused.[8]
(5) The information was rendered invalid because the handling prosecutor who signed and filed the initiatory pleading was not even an officer of the DOJ qualified to assist a fiscal or prosecuting attorney in the discharge of his or her duties under the Administrative Code during that time.[9]

In view of the foregoing elucidation, it is clear at the onset that *Villa* is not applicable to the instant case. Drastically, this also shows how the subsequent cases overlooked to review the background of *Villa* and misguidedly applied its ruling.

Significantly, in denying the instant petition, the *ponencia* holds:

(1) The issue on whether or not the handling prosecutor secured the necessary authority from his or her superior before filing the Information has nothing to do with jurisdiction over the subject matter and jurisdiction over the person of the accused;[10]
(2) The lack of prior authority or approval from the provincial, city or chief state prosecutor in the filing of the Information may be

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4 Discussion of *ponencia* on Grounds for Quashing an Information and Prevailing Jurisprudence, p. 14.
5 Id.
6 Id. at 16.
7 Id.
8 Id.
9 Id.
10 Discussion of *ponencia* on *Jurisdiction*, pp. 17-20.

waived by the accused if not raised as a ground in a motion to quash before entering a plea;[11] and

(3) Non-compliance on the duty of the handling prosecutor to secure prior written authority or approval from the provincial, city or chief state prosecutor merely affects the "standing" of such officer to appear for the Government of the Philippines, which is not a jurisdictional defect or handicap that prevents the courts from taking cognizance of the case.[12]

In sum, it was held that an information filed by a handling prosecutor with no prior approval or authority from the provincial, city or chief state prosecutor will be rendered as merely quashable, until waived by the accused, and binding on the part of the State due to the presence of colorable authority.[13]

I write this Concurring Opinion to likewise emphasize my view that the trial court committed a grave abuse of discretion since it has no power to *motu proprio* dismiss the instant case on the ground of absence of authority of the handling prosecutor to file the Information.

Brief restatement of antecedents.

The petitioner was charged with corruption of public officials under Article 212 of the Revised Penal Code in relation to Article 211-A of the same Code. Trial on the merits ensued. After the case was submitted for decision, the trial court *motu proprio* dismissed the case for lack of jurisdiction after finding that the Information was filed without written authority of the City Prosecutor. Citing the cases of *Villa* and *Turingan v. Garfin*[14] (*Turingan*), the trial court ruled that the foregoing infirmity in the Information constituted a jurisdictional defect and cannot be cured.[15] Respondent filed a motion for reconsideration, which however, was denied by the trial court.[16] At that time, the trial court acknowledged that the Resolution[17] dated September 21, 2010 recommending the approval of the attached Information was approved for filing by no less than the City Prosecutor, however, it further ratiocinated that said approval was only for the filing of the same. According to the trial court, nowhere in the said Resolution that the City Prosecutor authorized the Assistant Prosecutor to sign the Information in compliance with Section 4 of Rule 112 of the Rules of Court.[18] On appeal, the Court of Appeals (CA) found that the trial court

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[11] Id.
[12] Discussion of *ponencia* on *Authority to Appear*, pp. 20-32.
[13] Id.
[14] 549 Phil. 903 (2007).
[15] *Rollo*, pp. 66-67.
[16] Id. at 68-69.
[17] Id. at 70-71.
[18] Id. at 68.

committed grave abuse of discretion[19] and that a written authority and approval was secured by the assistant city prosecutor. In ruling that the error of the trial court was patent and gross, the CA pointed out that there was no provision under the law, specifically the Rules of Court, which requires with exclusivity that the Information shall only be signed by the City or Provincial Prosecutor and not by any of their assistants.[20] The CA held that since petitioner pleaded to the charges against her without filing any motion to quash, she is deemed to have waived and abandoned her right to avail of any legal ground which she may have properly and timely invoked to challenge the complaint or Information pursuant to Section 9 of Rule 117. Lastly, citing the case of *People v. Nitafan*[21] (*Nitafan*), the CA ruled that the act of the trial court in *motu proprio* dismissing the case on the ground that the Information was filed without prior authority of the City Prosecutor, allegedly a jurisdictional defect, is tantamount to quashing the Information which can no longer be done since the parties have already presented their respective evidence.

The handling prosecutor has the authority to file the Information.

In *motu proprio* dismissing the instant case, the trial court found that the handling prosecutor had no prior written authority to sign the Information, without giving credence to the Resolution dated September 21, 2010 issued by the Office of the City Prosecutor. Accordingly, the trial court ruled that Section 4, Rule 112 was not complied with.

Section 4, Rule 112 provides:

> **Section 4**. *Resolution of investigating prosecutor and its review.* — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.
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> Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from

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[19] Penned by Associate Justice Socorro B. Inting (now a Commissioner of Commission on Elections) with Associate Justices Jose C. Reyes, Jr. (a retired Member of this Court) and Mario V. Lopez (an incumbent Member of this Court), concurring; id. at 35-45.

[20] Id. at 41.

[21] 362 Phil. 58 (1999).

> their receipt thereof and shall immediately inform the parties of such action.
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> **No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.**
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> Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct any other assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.
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> If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphasis supplied)

Verily, there is nothing in the foregoing provision which restricts the signing of the information itself only to the provincial, city prosecutor or chief state prosecutor or the Ombudsman or his deputy. Moreover, the third paragraph of the provision is complied with provided that the filing of the information was made with prior approval of the city prosecutor, as in this case. The Resolution dated September 21, 2010, which was issued by the Office of the City Prosecutor and was attached to the Information, is a clear badge of the handling prosecutor's authority to sign and file the Information.

As correctly opined in the *ponencia*, the fact that the City Prosecutor signed the draft resolution himself constitutes a tacit approval to the contents of the attached Information as well as to such pleading/document's resultant filing. To require the City Prosecutor's signature on the face of the subject Information under the circumstances would be to impose a redundant and pointless requirement on the Prosecution.[22]

The cases of Villa and Turingan are not applicable.

In its Order[23] dated February 13, 2013, the trial court cited the cases of *Villa* and *Turingan* claiming that infirmity in the information, such as

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[22] Discussion of the *ponencia* on Authority to Appear, p. 29.
[23] *Rollo*, pp. 66-67.

absence of authority to sign the information, constitutes a jurisdictional defect that cannot be cured.

As noted earlier, the factual antecedents of *Villa* were different. *First*, Section 6, Rule 108 of the 1940 Rules of Court, the prevailing adjective law at the time of *Villa*, does not require the handling prosecutor to secure a prior written authority or approval or a signature from the provincial, city or chief state prosecutor before an information may be filed with the trial court. *Second*, the Court in that case, merely clarified that to be eligible as special counsel to aid a fiscal, the appointee must either be an employee or officer of the DOJ. *Lastly*, the information was rendered invalid because the handling prosecutor who signed and filed the initiatory pleading was not even an officer of the DOJ.

Meanwhile, in the case of *Turingan*, the dismissal of the case was upheld after finding that the prosecutor who filed the information was not authorized and designated by the Secretary of Justice to particularly act as special prosecutor in Social Security System cases.

In sum, the respective officers who filed the information in these two cases were indeed disqualified since they undoubtedly had no legal authority to file the information.

In clear contrast to the instant case, the handling prosecutor was proven as amply clothed with authority to file and sign the Information. The approval of the filing of the Information was clearly shown in the Resolution signed and approved by the City Prosecutor. At this juncture, I firmly agree with the *ponencia* that the trial court's casual disregard of and dismissive attitude towards the vital contents of the Resolution dated September 21, 2010 make up for a clear case of grave abuse of discretion.

The Regional Trial Court cannot motu proprio quash the Information and dismiss the criminal case.

Foremost, I share my observation with the *ponencia* that the *motu proprio* dismissal was done despite the fact that: (1) both the accused and the prosecution had already adduced all their evidence, and both have rested their respective cases; and (2) the case was already submitted for decision.[24]

Section 1, Rule 117 of the Rules of Court provides:

> **Section 1**. *Time to move to quash.* — At any time *before entering his plea, the accused* may move to quash the complaint or information. (Italics supplied)

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[24] Discussion of *ponencia* on The State's Right to Due Process in Criminal Cases, pp. 37-40.

Relatedly, Section 2 of the same rule provides:

> **Section 2.** *Form and contents.* — The motion to quash shall be in writing, *signed by the accused or his counsel* and shall distinctly specify its factual and legal grounds. The court shall consider no ground other than those stated in the motion, except for lack of jurisdiction over the offense charged. (Italics supplied)

In this case, the act of the trial court in dismissing the case *motu proprio* on the ground that the Information was not signed by the city prosecutor was tantamount to quashing the said Information. As correctly pointed out, the summary act of quashing the subject Information and perfunctorily dismissing the criminal case is an overt violation of Section 1, Rule 117 of the Rules of Court.

Clearly, the quashing of an information can only be ordered by the trial court upon written motion of the accused, which must be signed by him or by his counsel. In the case of *Nitafan*, the Court expounded the foregoing by ruling that: (1) the right to file a motion to quash belongs only to the accused; (2) 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; and (3) the filing of a motion to quash is a right that belongs to the accused who may waive it by inaction and not an authority for the court to assume.

Based on the foregoing, I submit my concurrence to the *ponencia*.

EDGARDO L. DELOS SANTOS
Associate Justice