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

Promulgated:

November 10, 2020

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CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I join the *ponencia* in abandoning previous jurisprudence on the subject,[1] which holds that an Information filed by an investigating prosecutor, without prior written authority or approval of the provincial, city or chief state prosecutor (or the Ombudsman or his deputy), constitutes a jurisdictional defect which cannot be cured and waived by the accused. Indeed, the trial court does not lose jurisdiction over the subject matter or the person of the accused if the Information does not bear, on its face, the stamp of approval of the provincial, city or chief state prosecutor, provided, however, that the prosecutor who filed the Information had, at least, colorable title to make such filing.[2] Section 3 (d), Rule 117[3] of the Rules of Criminal Procedure, which pertains to the prosecuting officer's lack of authority to file the Information in court, must be raised by the accused prior to his arraignment; otherwise, pursuant to the clear language of Section 9, Rule 117, the ground is deemed waived:

> 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 except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.** (Emphases supplied)

As the *ponencia* extensively explains, the ground to quash under Section 3 (d), Rule 117 is not jurisdictional in nature since it does not relate to the trial court's power to hear, try, and decide a case,[4] nor the apprehension

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1 See *Villa v. Ibañez* (88 Phil. 402 [1951]) and similar cases discussed in the *ponencia*.

2 See discussion of *ponencia* on *de facto* officers, pp. 24-27.

3 Section 3 (d), Rule 117 of the Revised Rules of Court reads:

> Section 3. *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:
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> x x x x
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> **(d) That the officer who filed the information had no authority to do so**[.] (Emphasis and underscoring supplied)

4 *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, 760 Phil. 954, 960 (2015), citing *Spouses Genato v. Viola*, 625 Phil. 514, 527 (2010).

or the submission of the accused to the court's authority.[5] Thus, the "[l]ack of prior written authority or approval on the part of the officer filing an Information has nothing to do with a trial court's assumption of jurisdiction."[6]

As stated in Section 9, Rule 117, only the grounds to quash under Section 3 (a), (b), (g) and (i) are not waivable. These grounds are: that the facts charged do not constitute an offense (Section 3 [a]); that the court trying the case has no jurisdiction over the offense charged (Section 3 [b]); that the criminal action or liability has been extinguished (Section 3 [g]); and 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 (Section 3 [i]).

Section 3 (b), Rule 117 is self-explanatory: the trial court's lack of jurisdiction over the offense charged negates any authority to proceed with the case; hence, it may be raised by the accused as a ground for dismissal at any stage of the proceedings.

The same goes for Section 3 (a), Rule 117 since when the Information does not charge an offense at all, there is no criminal case to speak of as the offense is one that does not legally exist.[7] Jurisdiction over the subject matter or nature of the offense is conferred by law,[8] and determined by the allegations in the Complaint or Information. Hence, where an Information does not really charge an offense, the case against the accused must be dropped immediately instead of subjecting the accused to the anxiety and inconvenience of a useless trial.[9]

Section 3 (g) is also clear: if the criminal action or liability is found to have already been extinguished, there is no more reason to proceed with the case.

And finally, pursuant to Section 21, Article III of the 1987 Constitution, which states that "[n]o person shall be twice put in jeopardy of punishment for the same offense," Section 3 (i) is a ground to quash the Information or dismiss the criminal case, which ground may be invoked at any stage of the proceedings.

These non-waivable grounds are simply not on the same plane as Section 3 (d), Rule 117. To my mind, the investigating prosecutor's lack of authority only pertains to the accused's opportunity to question, prior to his arraignment, the State's certainty in determining probable cause against him.

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5 See *Inocentes v. People*, 789 Phil. 318, 332 (2016).
6 *Ponencia*, p. 14.
7 See *De Lima v. Reyes*, 776 Phil. 623, 638-639 (2016).
8 See *Padlan v. Dinglasan*, 707 Phil. 83, 91 (2013).
9 *Cruz v. Court of Appeals*, 271 Phil. 968, 976 (1991).

Within the organizational workings of the State's prosecutorial machinery, it is recognized that the provincial, city or chief state prosecutor must officially approve the filing of the Information in court.[10] Hearkening back to the core considerations underlying preliminary investigations, the lack of official approval coming from these high-ranking officers – in my opinion – **puts into doubt whether or not probable cause was correctly determined by the investigating prosecutor as the former's subordinate**. Hence, the accused may preliminarily raise this ground so as to prevent "an open and public accusation of [a] crime"[11] from even commencing. Further, the State need not anymore expend its resources by proceeding to a criminal trial where it will be called to prove, beyond reasonable doubt, the accused's guilt.

However, these apparent concerns should already be addressed when the Information is already filed in court and the accused is already arraigned. The arraignment of the accused signifies that he has understood the nature and cause of the accusation against him and thereby enters a plea of guilt or non-guilt. By this time, issues pertaining to the prosecutor's probable cause finding should have already been resolved and determined. On this score, it is relevant to note that upon the filing of an information, the trial court judge is tasked, first and foremost, to determine the existence or non-existence of probable cause for the arrest of the accused,[12] based on his/her personal evaluation of the prosecutor's resolution and supporting evidence.[13] In making such independent and purely judicial determination,[14] the trial judge can: (*a*) dismiss the criminal case outright if the evidence on record clearly fails to establish probable cause; (*b*) issue a warrant of arrest or a commitment order if findings show probable cause; or (*c*) order the prosecutor to present additional evidence if there is doubt on the existence of probable cause.[15] Therefore, when a warrant of arrest or a commitment order is issued by the trial judge, the existence of probable cause is already judicially determined which, hence, permits the case to proceed.

Further, during arraignment, it is well to note that the prosecution is duly represented.[16] Should it deem that the investigating prosecutor erroneously filed the Information contrary to the prerogative of the provincial, city or chief state prosecutor, then it may well move to withdraw[17] the case. There is, in fact, no prohibition against the prosecution from filing a motion to withdraw even after trial has already commenced. Indeed, the prosecutor has full control of the prosecution of criminal actions.[18] In case of any

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10 See Section 1, Republic Act No. 5180, entitled "AN ACT PRESCRIBING A UNIFORM SYSTEM OF PRELIMINARY INVESTIGATION BY PROVINCIAL AND CITY FISCALS AND THEIR ASSISTANTS, AND BY STATE ATTORNEYS OR THEIR ASSISTANTS," approved on September 8, 1967.

11 See *Callo-Claridad v. Esteban*, 707 Phil. 172, 184 (2013).

12 *Maza v. Turla*, 805 Phil. 736, 757-758 (2017), citing *Leviste v. Hon. Alameda,* 640 Phil. 620, 649 (2009).

13 Id.

14 Id., citing *Napoles v. De Lima*, 790 Phil. 161, 175-176 (2016).

15 Id., citing *Ong v. Genio,* 623 Phil. 835, 843 (2009).

16 See Section 7.2, Chapter VII of the 2017 Revised Manual for Prosecutors.

17 See Section 10.4.1, Chapter X of the 2017 Revised Manual for Prosecutors.

18 *Estipona, Jr. v. Lobrigo*, 816 Phil. 789, 814-815 (2017), citing *People v. Villarama, Jr.*, 285 Phil. 723, 732 (1992).

uncertainty in proceeding with the prosecution of a criminal case, the prosecutor may always move to withdraw or dismiss the Information, subject to the permission of the trial court.[19] Thus, by proceeding to trial, the prosecution effectively ratifies any previous defects in its own officer's filing, and resultantly, demonstrates its interest in continuing with the prosecution of the criminal case.

In fine, I reiterate my concurrence with the *ponencia*'s well-reasoned proposal to abandon previous jurisprudence. Section 3 (d), Rule 117, *i.e.*, "[t]hat the officer who filed the information had no authority to do so," as a ground to quash the Information, must be raised prior to arraignment; otherwise, it is deemed waived. It is not a jurisdictional or fatal defect, unlike the non-waivable grounds provided under Section 3 (a), (b), (g), and (i) of Rule 117. Accordingly, the instant petition claiming the contrary must be denied and the Court of Appeals' Decision reinstating Criminal Case No. 10-1829 affirmed.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

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[19] See *De Lima v. Reyes*, supra note 7, at 649-650.