

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM CASE NO. 0-162

-versus-

Present:
CASTAÑEDA, JR.,
CASANOVA and
MINDARO-GRULLA, JJ.

MARIVIC BRIONES, DAVID BANGA
and BENJAMIN VALIC,
Accused.

Promulgated:

OCT 11 2010

1:30 p.m.

X-----X

R E S O L U T I O N

On September 30, 2010, a "JOINT MANIFESTATION AND MOTION FOR PROVISIONAL DISMISSAL" was filed by State Prosecutor Bernardo L. Parico, accused Marivic Briones with her counsels, Atty. Sinforoso M. Sarmiento, Jr. and Atty. Ramil Joselito B. Tamayo and accused Benjamin Valic with counsel Atty. Wilfredo T. Garcia.

Prior to the filing of the said "Joint Manifestation and Motion For Provisional Dismissal", accused Briones filed a "SUPPLEMENTAL PLEADING WITH MOTION FOR DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE" and a previous Motion To Quash The Information on the grounds, as follows:

- (1) the filing of the information violates the constitutional right of the accused to speedy disposition of cases; and
- (2) the information was filed without authority of the law and in violation of the clear mandate of Section 2, Rule 9 of the Revised Rules of Court of Tax Appeals and Section 3(D), Rule 117 of the Revised Rules of Criminal Procedure.

Accused Briones, in her supplemental pleading with motion for determination of the existence of probable cause, appeals that her previously filed Motion to Quash be treated as a Motion to Dismiss on the ground of violation of her constitutional rights and for want of probable cause. Accused argues that the prosecutor was confronted by a non-contested controversy considering that accused did not file her counter-affidavit since she did not receive a subpoena and for unknown reasons, the prosecution failed to resolve the case for more than five (5) years. Accused further argues that the Bureau of Customs had found her innocent of the imputations against her and that there was nothing on record which would substantiate and support the action of the State Prosecutor on the finding of probable cause considering that said State Prosecutor merely relied on photocopied documents in filing the subject information.

Suffice it to say that as early as January 5, 2010, this Court's First Division, in its Resolution, found the existence of probable cause for the issuance of a Warrant of Arrest against the accused and subsequently, this case was transferred to this Court's Second Division. Thereafter, on March 24, 2010, accused Benjamin Valic was arraigned and he pleaded not guilty. On June 7, 2010, accused Marivic Briones was arraigned and she pleaded not guilty.

As it is, the accused and counsels have joined and they interposed no objection to the Motion For Provisional Dismissal. Thus, accused Briones is deemed to have abandoned the "Motion for Determination of the Existence of Probable Cause."

State Prosecutor Parico alleges therein that he is still in the process of "retrieving, collating and securing the original copies of the documents which are vital and necessary in the prosecution of the instant case". As may be gleaned from the records, all the documents submitted by the prosecution are mere photocopies. In fact, during the Pre-trial in a similar case¹ pending before this Court's Third Division, the State Prosecutor himself admitted that he only has the photocopies of the documents and that even the counsels of the Bureau of Customs do not have a copy of the original documents.²

¹ CTA Crim Nos. 0-157 and 0-158.

² Transcript of Stenographic Notes (ISN) of CTA Crim Case No. 0-157, August 25, 2010.

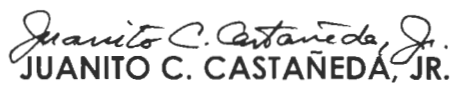
In *Torres, Jr. vs. Aguinaldo*³, the Supreme Court held that –

“There is provisional dismissal when a motion filed expressly for that purpose complies with the following requisites, viz.: (1) It must be with the express consent of the accused; and (2) There must be notice to the offended party.”

The “JOINT MANIFESTATION AND MOTION FOR PROVISIONAL DISMISSAL” of the case complied with the above mentioned requisites. The motion was based on valid ground, without objection and in fact joined by the accused, their counsels and the State Prosecutor.

WHEREFORE, premises considered, the “**JOINT MANIFESTATION AND MOTION FOR PROVISIONAL DISMISSAL**” is **GRANTED**. Accordingly, the above-captioned case is hereby **PROVISIONALLY DISMISSED**.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

³ G.R. No. 164268, June 28, 2005, 461 SCRA 599 (2005).