Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

RURAL BANK OF MABITAC, LAGUNA, INC., represented by MRS. MARIA CECILIA S. TANAEL, Petitioner,	**G.R. No. 196015**
- versus -	Present: LEONARDO-DE CASTRO,* DEL CASTILLO, *Acting Chairperson*** JARDELEZA, TIJAM, and GESMUNDO,*** *JJ.*
MELANIE M. CANICON and MERLITA L. ESPELETA, Respondents.	Promulgated: JUN 27 2018

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DECISION

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by Rural Bank of Mabitac, Laguna, Inc., (petitioner), seeking to nullify the Court of Appeals' (CA) September 29, 2010 Decision[2] and March 4, 2011 Resolution[3] in CA-G.R. SP No. 104984 (collectively, Assailed Decision). The CA, in its Assailed Decision, denied petitioner's petition for *certiorari* under Rule 65 against the October 23, 2007 Order[4] of Branch 31 of the Regional Trial Court (RTC) of San Pedro, Laguna which set aside its November 15, 2006 Resolution,[5] and reinstated its September 17, 2003 Order[6] in Criminal Case No. 12508-B.

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* On official leave.

** Designated as Acting Chairperson of the First Division per Special Order No. 2562 dated June 20, 2018.

*** Designated as Acting Member of the First Division per Special Order No. 2560 dated May 11, 2018.

1 *Rollo*, pp. 13-33.

2 *Id.* at 35-48. Penned by Associate Justice Stephen C. Cruz, and concurred in by Associate Justices Isaias P. Dicdican and Samuel H. Gaerlan.

3 *Id.* at 49-52.

4 *Id.* at 76-82. Rendered by Assisting Presiding Judge Rommel O. Baybay.

5 *Id.* at 70-72. Rendered by Acting Presiding Judge Zenaida G. Laguilles.

6 *Id.* at 69. Issued by Judge Stella Cabuco-Andres.

Petitioner filed a criminal complaint for *estafa* under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, in relation to economic sabotage, against its employees Rica W. Aguilar (Aguilar), Melanie M. Canicon (Canicon), and Merlita L. Espeleta (Espeleta). Prosecutor Alfredo P. Juarez, Jr. (Prosecutor Juarez) conducted a preliminary investigation, where Espeleta and Canicon submitted their counter-affidavits. Prosecutor Juarez found probable cause against the three employees and recommended the filing of an information for *estafa*.[7]

On April 24, 2003, an information[8] for *estafa* in relation to Presidential Decree No. 1689[9] was filed against Aguilar, Canicon, and Espeleta before the RTC of Biñan, Laguna, which was later transferred to the RTC of San Pedro, Laguna. The case was docketed as Criminal Case No. 12508-B. Subsequently, the RTC, through Judge Stella Cabuco-Andres (Judge Cabuco-Andres), issued a warrant for the arrest of all three accused. Only Espeleta and Canicon were arrested, while Aguilar remains at large.[10]

On June 12, 2003, Espeleta filed an urgent motion for reinvestigation[11] before the RTC. She claimed that the preliminary investigation was conducted hastily, thereby denying her the chance to present her evidence. Petitioner opposed the motion. Without resolving the urgent motion for reinvestigation, the RTC arraigned both Espeleta and Canicon on June 30, 2003. Both accused entered a plea of not guilty to the offense charged.[12]

Meanwhile, Assistant Provincial Prosecutor Melchorito M. E. Lomarda (Prosecutor Lomarda) conducted a reinvestigation. In a Report[13] dated July 28, 2003 (Lomarda Report) approved by the Provincial Prosecutor, Prosecutor Lomarda recommended the dismissal of the case against Espeleta and the filing of an amended information. On August 4, 2003, the Office of the Provincial Prosecutor filed a motion for leave to amend the information[14] with attached amended information.[15] The amended information dropped Espeleta from the list of those originally charged, and recommended bail for all the remaining accused.[16]

The RTC, through Judge Cabuco-Andres, issued the September 17, 2003 Order[17] granting the provincial prosecutor's motion and admitted the amended information. Petitioner sought reconsideration of the September 17, 2003 Order.

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7 The complaint was docketed as I.S. No. 03-51. CA *rollo*, pp. 40-42.
8 *Id.* at 43-44.
9 Increasing the Penalty for Certain Forms of Swindling or Estafa (1980).
10 *Rollo*, pp. 36-37.
11 CA *rollo*, pp. 46-54.
12 *Rollo*, p. 37.
13 CA *rollo*, pp. 65-68.
14 *Id.* at 62.
15 *Id.* at 63.
16 *Rollo*, pp. 37-38.
17 *Supra* note 6.

Meanwhile, the Office of the Provincial Prosecutor of San Pedro, Laguna, through Prosecutor Lomarda, denied petitioner's motion for reconsideration of the Lomarda Report on September 26, 2003.[18]

The RTC, this time through Judge Zenaida G. Laguilles (Judge Laguilles), issued the November 15, 2006 Resolution[19] which recalled and set aside the September 17, 2003 Order issued by Judge Cabuco-Andres. Judge Laguilles ruled that a procedural misstep was committed when Prosecutor Lomarda conducted the reinvestigation without prior leave of court. The seeming acquiescence of former Presiding Judge Cabuco-Andres (in admitting the amended information) will not cure the procedural infirmity committed. As such, the reinvestigation conducted without judicial imprimatur is a nullity and created no vested right.[20]

Espeleta and Canicon filed their respective motions for reconsideration (with supplemental motion for Espeleta) of the November 15, 2006 Resolution, which petitioner opposed.[21]

In its October 23, 2007 Order,[22] the RTC, through Judge Rommel O. Baybay (Judge Baybay), granted private respondents' motion for reconsideration. It set aside the November 15, 2006 Resolution and reinstated the September 17, 2003 Order. The RTC held that the public prosecutor has the sole discretion to decide whether to indict a person. More, it found that reinstating the charge against Espeleta would violate her right against double jeopardy:

> In any event, the fact remains that an Urgent Motion for Reinvestigation was seasonably filed and there was an Opposition thereto. While no written order was issued granting the said motion, neither also was there any order denying it. Thus, when the public prosecutor proceeded with the reinvestigation and, thereafter, filed the Amended Information, accompanied by a Motion for Leave to Amend Information and to Admit Amended Information, the Court, in granting the motion and admitting the Amended Information is deemed to have ratified the reinvestigation

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18 CA *rollo*, p. 75. The Order stated:

> Considering that branch 31, Regional Trial Court has already acquired jurisdiction over the accused this Office therefore cannot give due course to the MOTION for Reconsideration filed by Complainant, Rural Bank of Mabitac, Laguna, Inc. through counsel to our Resolution, excluding accused Merlita L. Espeleta from the Information for Insufficiency of evidence.
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> So ORDERED.

19 *Supra* note 5. The dispositive portion of the November 15, 2006 Resolution reads:

> WHEREFORE, premises considered, the Motion for Reconsideration is hereby GRANTED. The Order dated September 17, 2003 is recalled and set aside. Accused Espeleta is reinstated as a co-accused in this case and the necessary Warrant of Arrest against her is hereto issued. Set this case for continuation of the proceedings on November 17, 2006 as previously scheduled.
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> SO ORDERED[.]

20 *Rollo*, pp. 39, 72.

21 *Id.* at 39-40.

22 *Supra* note 4.

> conducted. In other words, by granting the public prosecution leave to amend the Information and admitting the Amended Information, the Court, in effect, recognized the validity of the reinvestigation as if it were conducted with judicial *imprimatur*.
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> [T]he matter of deciding whether or not to indict a person criminally charged or to proceed with the criminal action already commenced against him rests solely on the government prosecutor. This is so because in criminal cases, the real offended party is the State, the interest of the private complainant, whose role is merely to testify as a witness for the prosecution, being limited to the civil liability.
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> Moreover, the Court sustains the argument of accused Espeleta that her reinstatement as a co-accused in this case as a result of the setting aside of the Order admitting the Amended Information which excluded her from the charge would violate her constitutional right against double jeopardy. This contention of hers finds support in the analogous case of People vs. Vergara. The High Court's pronouncements therein, which accused Espeleta quoted in her present motion, are squarely applicable to the case at bar.[23] (Citations omitted.)

A motion for reconsideration was filed by petitioner, but the same was denied in an Order dated April 21, 2008.[24] Thus, it filed a petition for *certiorari* under Rule 65 with the CA, attributing grave abuse of discretion on the part of the RTC.

The CA denied *certiorari*. It ruled that the petition suffered from a fatal procedural infirmity because a private prosecutor cannot prosecute the criminal aspect of a criminal case. The determination of probable cause as to warrant a criminal prosecution rests solely at the discretion of the public prosecutor.[25] The CA also said that "when [the trial court] admitted the amended information which dropped Espeleta among those to be charged, it effectively dismissed the case against the latter."[26] The judgment of the prosecutor to drop Espeleta, and the RTC's acquiescence to this judgment by admitting the amended information, cannot be considered as grave abuse of discretion on the part of the trial court; "[t]he criminal prosecution will always remain under the absolute control of the public prosecutor, and his judgment cannot be substituted by the opinion of the private prosecutor [or] by the court."[27]

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23 *Rollo*, pp. 79-81.
24 *Id.* at 41.
25 *Id.* at 43.
26 *Id.* at 44-45.
27 *Id.* at 46.

Petitioner insists that the CA erred in not finding that the RTC committed grave abuse of discretion in issuing the October 23, 2007 Order. *First,* its right to due process was violated (1) when the public prosecutor conducted a reinvestigation, and (2) when the RTC allowed the amendment of the information. The public prosecutor loses the sole discretion to determine the existence of probable cause when an information is filed in court. Hence, the prosecutor's office cannot conduct a reinvestigation without prior leave and approval by the court; the determination of probable cause is now at the sole discretion of the court. More, petitioner was not notified when the prosecutor's office conducted reinvestigation. Neither was petitioner notified when Prosecutor Lomarda filed a motion for leave to amend information and to admit amended information, in violation of the rules.[28] According to petitioner, due process requires that it be notified by the trial court at all stages of the proceedings as it is a "party" who may be affected by the orders issued and/or judgment rendered therein.[29] *Second*, petitioner also argues that the RTC (through Judge Cabuco-Andres) did not exercise the discretion required by law. Judge Cabuco-Andres merely approved the position taken by Prosecutor Lomarda without assessing the evidence on record. Such is not a valid and proper exercise of judicial discretion.[30] *Finally*, petitioner alleges that as private prosecutor, it has *locus standi* in filing the necessary pleadings in Criminal Case No. 12508-B. Since it did not file a separate civil action or reserve its right to file the same, petitioner claims that as the party injured by the crime, it had the right to be heard on a motion that was derogatory to its interest in the civil aspect of the case. It also alleges that it could not secure Prosecutor Lomarda's conformity because petitioner filed a criminal case against him.[31]

In her comment,[32] Canicon notes that petitioner does not question the merits of the Lomarda Report but merely attacks it on technicalities. She further alleges that petitioner does not have *locus standi*. The true complainant who would be prejudiced is the State or the People of the Philippines, not petitioner. The error in not procuring the conformity of the public prosecutor in filing the petition before the CA, and in this case, is further aggravated by the failure to notify or inform the Office of the Solicitor General (OSG).[33] Espeleta adopts Canicon's arguments and adds that her inclusion as respondent in this petition is a violation of her right against double jeopardy since the September 17, 2003 Order had validly dismissed the criminal offense against her after her arraignment.[34]

The issues presented are:

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28 *Id.* at 21-23.
29 *Id.* at 25.
30 *Id.* at 26.
31 *Id.* at 28-30.
32 *Id.* at 56-64.
33 *Id.* at 61-62.
34 *Id.* at 88, 90-91.

I. Whether petitioner has standing to file the petition without the conformity of the OSG.

II. Whether the present petition, which seeks the reinstatement of the original information, places Espeleta in double jeopardy.

III. Whether the CA erred in not finding grave abuse of discretion on the RTC in issuing the October 23, 2007 Order that reinstated the September 17, 2003 Order:

a. Whether petitioner was deprived of due process when the RTC admitted the amended information based on the reinvestigation, despite the alleged lack of notice to the petitioner of the reinvestigation and the motion.

b. Whether the trial court made its own independent evaluation of the evidence when it admitted the amended information dropping Espeleta as accused.

We grant the petition.

I

The OSG has the sole authority to represent the State in appeals of criminal cases before the Supreme Court and the CA.[35] The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant.[36] The interest of the private complainant or the private offended party is limited only to the civil liability.[37] In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. Thus, when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal on the criminal aspect may be undertaken only by the State through the Solicitor General. The private offended party or complainant may not take such appeal; but may only do so as to the *civil* aspect of the case.[38]

Nevertheless, we have recognized instances where a private complainant would have standing to file a petition for *certiorari* under Rule

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35 ADMINISTRATIVE CODE (1987), Book IV, Title III, Chapter 12, Sec. 35(1).
36 See *People v. Piccio*, G.R. No. 193681, August 6, 2014, 732 SCRA 254, 261-262.
37 *People v. Santiago*, G.R. No. 80778, June 20, 1989, 174 SCRA 143, 152.
38 *Id.*

65 against the dismissal of a criminal case. In *Dee v. Court of Appeals*,[39] we affirmed the CA's decision granting *certiorari* to a private complainant against a trial court's order dismissing the criminal case for *estafa* upon recommendation of the Secretary of Justice. We reiterated this in *Perez v. Hagonoy Rural Bank, Inc.*[40] where we said:

> *Second.* The private respondent, as private complainant, had legal personality to assail the dismissal of the criminal case against the petitioner on the ground that the order of dismissal was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.
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> In the case of *Dela Rosa v. Court of Appeals*, we held that:
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> > "In a special civil action for certiorari filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. **The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds.** In so doing, the complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in (the) name of the said complainant."
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> Thus, while it is only the Solicitor General that may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State in criminal proceedings pending in the Supreme Court and the Court of Appeals, the private offended party retains the right to bring a special civil action for certiorari in his own name in criminal proceedings before the courts of law.
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> Furthermore, our ruling in the case of *Dee v. Court of Appeals* allowing the private offended party to file a special civil action for certiorari to assail the order of the trial judge granting the motion to dismiss upon the directive of the Secretary of Justice is apropos. We held therein that although the correct procedure would have been to appeal the recommendation of the Secretary of Justice to the Office of the President, the said remedy was unavailable to the private offended party as the penalty involved was neither reclusion

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39 G.R. No. 111153, November 21, 1994, 238 SCRA 254.
40 G.R. No. 126210, March 9, 2000, 327 SCRA 588.

> perpetua nor death. Hence, as no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law was available to the private offended party, filing of the petition for certiorari under Rule 65 of the Rules of Court was proper.[41] (Emphasis supplied; italics and citations omitted.)

Thus, in cases where the dismissal of the criminal case is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved parties are both the State and the private complainant. This right of the private complainant is anchored on his interest on the civil aspect of the case that is deemed instituted in the criminal case.

In this case, the amended information dropped Espeleta as an accused after arraignment. As she is no longer included therein, the proceeding for the charge for *estafa* against her was effectively terminated.[42] Notably though, the nature of the offense charged, *i.e.*, *estafa*, immediately connotes civil liability and damages for which the accused may be held liable for in case of conviction, or even acquittal based on reasonable doubt.[43] The dismissal forecloses the right of petitioner to the civil action deemed instituted in the criminal case against Espeleta because petitioner neither reserved the right to file the same nor filed a case ahead of the criminal case. As argued by petitioner, it has the standing to pursue the remedy of a petition for *certiorari* before the CA. Similar to the case of *Dee*, petitioner alleges that the October 23, 2007 Order was issued with grave abuse of discretion amounting to lack or excess of jurisdiction. We thus uphold petitioner's legal personality to file the petition.

Notably, the records show that the OSG, in its manifestation and motion[44] before the CA, prayed that it be excused from filing a memorandum. The OSG is of the view that the presiding judge and the Office of the Provincial Prosecutor, being nominal parties, need not file their own separate memoranda. Private respondents, being the real parties interested in upholding the questioned rulings, have the personality to appear in their behalf and in behalf of public respondents pursuant to Section 5, Rule 65 of the Rules of Court. Accordingly, this lack of opposition from the OSG against the petition tacitly recognizes that petitioner, as private complainant, has the personality to bring the issue before the CA.

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41 *Id.* at 600-602.

42 See RULES OF COURT, Rule 117, Sec. 7 and *Tan, Jr. v. Sandiganbayan (Third Division)*, G.R. No. 128764, July 10, 1998, 292 SCRA 452, 456, 460. See also *Baltazar v. Ibarra*, G.R. No. 177583, February 27, 2009, 580 SCRA 369, 377-378, 382.

43 REVISED PENAL CODE, Art. 315. See *Dy v. People*, G.R. No. 189081, August 10, 2016, 800 SCRA 39, 46-47.

44 CA *rollo*, pp. 218-222.

II

a.

We first identify the standard of review we apply to the CA's Assailed Decision. The case before the CA is not a *certiorari* proceeding against the determination of probable cause by the prosecutor. It is, rather, against the order reinstating a previous order granting the amendment of the information. In reviewing a Rule 45 petition before us involving a CA decision made under Rule 65, we do not examine the decision on the basis of whether the RTC's October 23, 2007 Order and September 17, 2003 Order are legally correct. Our review is limited to whether the CA correctly determined the presence or absence of grave abuse of discretion on the part of the RTC. As we explained in *Hao v. People*:[45]

> We note that the present petition questions the CA's decision and resolution on the petition for *certiorari* the petitioners filed with that court. At the CA, the petitioners imputed grave abuse of discretion against the trial court for the denial of their twin motions to defer arraignment and to lift warrant of arrest.
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> This situation is similar to the procedural issue we addressed in the case of *Montoya v. Transmed Manila Corporation* where we faced the question of how to review a Rule 45 petition before us, a CA decision made under Rule 65. We clarified in this cited case the kind of review that this Court should undertake given the distinctions between the two remedies. In Rule 45, we consider the correctness of the decision made by an inferior court. In contrast, a Rule 65 review focuses on jurisdictional errors.
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> As in *Montoya*, we need to scrutinize the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it. Thus, we need to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion on the part of the trial court and not on the basis of whether the trial court's denial of petitioners' motions was strictly legally correct. In question form, the question to ask is: did the CA correctly determine whether the trial court committed grave abuse of discretion in denying petitioners' motions to defer arraignment and lift warrant of arrest?[46] (Citations omitted.)

As such, our review is limited to the issue brought before the CA—whether the RTC committed grave abuse of discretion in reinstating the September 17, 2003 Order.

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45 G.R. No. 183345, September 17, 2014, 735 SCRA 312.

46 *Id.* at 321.

b.

We recognize, nevertheless, that in addressing the issue above, the petition essentially questions the dismissal of the case against Espeleta and seeks reinstatement of the November 15, 2006 Resolution. This, in turn, results in the revival of the original information and reinclusion of Espeleta as an accused. Thus, before proceeding, we first determine whether the present petition will place Espeleta in double jeopardy.

The 1987 Constitution and its predecessors guarantee the right of the accused against double jeopardy.[47] Section 7, Rule 117 of the Rules of Court strictly adheres to the constitutional proscription against double jeopardy and provides for the requisites in order for double jeopardy to attach:

> Sec. 7. *Former conviction or acquittal; double jeopardy.* — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Double jeopardy attaches when the following elements concur: (1) a valid information sufficient in form and substance to sustain a conviction of the crime charged; (2) a court of competent jurisdiction; (3) the accused has been arraigned and had pleaded; and (4) the accused was convicted or acquitted, or the case was dismissed without his express consent.[48] The absence of any of the requisites hinders the attachment of the first jeopardy.

The first to third elements are non-issues in this petition. There is no dispute that the original information is valid and was filed with the RTC of San Pedro, Laguna, a court of competent jurisdiction. Espeleta was arraigned under this original information. The contentious element in this case is the fourth one, *i.e.*, whether the dismissal was with express consent of Espeleta. To recall, Espeleta was dropped as an accused when the RTC, in its September 17, 2003 Order, allowed the amendment of the original information after reinvestigation of the public prosecutor. After she was reinstated as an accused by virtue of the RTC's November 15, 2006 Resolution, Espeleta filed a motion for reconsideration. This resulted in the issuance of the October 23, 2007 Order which, for the second time, dropped her as an accused. As such,

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[47] CONSTITUTION, Art. III, Sec. 21; CONSTITUTION (1973), Art. IV, Sec. 22; and CONSTITUTION (1935), Art. III, Sec. 20.

[48] See *Tiu v. Court of Appeals*, G.R. No. 162370, April 21, 2009, 586 SCRA 118, 126.

there is a need to examine whether in both instances of dismissal, jeopardy had attached.

As a rule, where the dismissal was granted upon motion of the accused, jeopardy will not attach. In this case, Espeleta's filing of the urgent motion for reinvestigation did not amount to her express consent. We have held before that the mere filing of a motion for reinvestigation cannot be equated to the accused's express consent.[49] However, we still find that Espeleta gave her express consent when her counsel did not object to the amendment of the information.[50] As we have held in *People v. Pilpa*,[51] the dismissal of the case without any objection on the part of the accused is equivalent to the accused's express consent to its termination, which would bar a claim for violation of the right against double jeopardy:

> We hold that the oral manifestation at the hearing made by the counsel of the accused that he had no objection to the dismissal of the case was equivalent to a declaration of conformity to its dismissal or to an express consent to its termination within the meaning of section 9 of Rule 117. He could not thereafter revoke that conformity since the court had already acted upon it by dismissing the case. He was bound by his counsel's assent to the dismissal (People vs. Romero, 89 Phil. 672; People vs. Obsania, L-24447, June 29, 1968, 23 SCRA 1249, 1269-70).
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> In Pendatum vs. Aragon, 93 Phil. 798, 800 the prosecution filed a motion for the provisional dismissal of the complaints for physical injuries and slander against Aida F. Pendatum. At the bottom of that motion, her lawyer wrote the words: "No objection". The court granted the motion.
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> Later, the cases were revived. The accused contended that the revival of the cases would place her in double jeopardy. That contention was rejected because the provisional dismissal did not place the accused in jeopardy. There was no jeopardy in such dismissal because the words "No objection" conveyed the idea of full concurrence with the dismissal and was equivalent to saying "I agree."[52]

Likewise, when the October 23, 2007 Order reinstated the September 17, 2003 Order, the first jeopardy did not attach because it was prompted by Espeleta's motion for reconsideration of the November 15, 2006 Resolution.

The rule that the dismissal is not final if it is made upon accused's motion, of course, admits of exceptions such as: (1) where the dismissal is based on a demurrer to evidence filed by the accused after the prosecution has rested, which has the effect of a judgment on the merits and operates as an acquittal; and (2) where the dismissal is made, also on motion of the accused,

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49 *People v. Vergara*, G.R. Nos. 101557-58, April 28, 1993, 221 SCRA 560, 567.
50 *Rollo*, p. 69.
51 G.R. No. L-30250, September 22, 1977, 79 SCRA 81.
52 *Id.* at 86.

because of the denial of his right to a speedy trial which is in effect a failure to prosecute.[53] However, the foregoing are neither applicable nor raised in this case.

Considering that the first jeopardy did not attach when the case was previously dismissed as to Espeleta, this petition will not expose Espeleta to double jeopardy. We thus proceed with disposing of the third issue.

III

a.

A preliminary investigation is required before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four years, two months, and one day without regard to fine.[54] The conduct of this preliminary investigation pertains to the public prosecutor, who directs and controls the prosecution of all criminal actions commenced by a complaint or information.[55] This investigation terminates with the determination by the public prosecutor of the absence or presence of probable cause. In case of the latter, an information is filed with the proper court.

A public prosecutor's determination of probable cause for the purpose of filing an information in court is essentially an executive function.[56] The right to prosecute vests the prosecutor with a wide range of discretion—of what and whom to charge—which depends on a wide range of factors which are best appreciated by prosecutors.[57] It generally lies beyond the pale of judicial scrutiny.[58] The prosecution's discretion is not boundless or infinite, however. The determination of probable cause must not be tainted with grave abuse of discretion as when the public prosecutor arbitrarily disregards the jurisprudential parameters of probable cause.[59] In addition to this, the standing principle is that once an information is filed in court, any remedial measure must be addressed to the sound discretion of the court.[60]

Once an information is filed in court, all actions including the exercise of the discretion of the prosecution are subject to the disposal of the court. This includes reinvestigation of the case, the dropping of the accused from the information, or even dismissal of the action as to the accused. In the landmark case of *Crespo v. Mogul*,[61] we emphasized that once an information has been filed in court, the court is the best and sole judge on how to dispose of the criminal case:

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53 *Bangayan, Jr. v. Bangayan*, G.R. No. 172777, October 19, 2011, 659 SCRA 590, 600-601.
54 RULES OF COURT, Rule 112, Sec. 1.
55 *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 597.
56 *Aguilar v. Department of Justice*, G.R. No. 197522, September 11, 2013, 705 SCRA 629, 638.
57 *Leviste v. Alameda*, *supra* at 598.
58 *Aguilar v. Department of Justice*, *supra*.
59 *Id.* at 639.
60 *Crespo v. Mogul*, G.R. No. L-53373, June 30, 1987, 151 SCRA 462, 471.
61 *Supra*.

> Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.
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> x x x x
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> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as [to] its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court [which] has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[62]

We applied this rule in the case of *Martinez v. Court of Appeals*.[63] In that case, we held that the trial court must make its own independent assessment of the case and not merely blindly accept the conclusions of the executive department:

> Secondly, the dismissal was based merely on the findings of the Acting Secretary of Justice that no libel was committed. The trial judge did not make an independent evaluation or assessment of the merits of the case. Reliance was placed solely on the conclusion of the prosecution that "there is no sufficient evidence against the said accused to sustain the allegation in the information" and on the supposed lack of objection to the motion to dismiss, this last premise being, however, questionable, the prosecution having failed, as observed, to give private complainant a copy of the motion to dismiss.
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> In other words, the grant of the motion to dismiss was based upon considerations other than the judge's own personal individual conviction that there was no case against the accused. Whether to approve or disapprove the stand taken by the prosecution is not the exercise of discretion required in cases like this. The trial judge must himself be convinced that there was indeed no sufficient evidence

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62 *Id.* at 470-471.

63 G.R. No. 112387, October 13, 1994, 237 SCRA 575.

> against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.
>
> As aptly observed by the Office of the Solicitor General, in failing to make an independent finding of the merits of the case and merely anchoring the dismissal on the revised position of the prosecution, the trial judge relinquished the discretion he was duty bound to exercise. In effect, it was the prosecution, through the Department of Justice which decided what to do and not the court which was reduced to a mere rubber stamp in violation of the ruling in *Crespo v. Mogul*.[64] (Citation omitted.)

Further, in *Mosquera v. Panganiban*,[65] the Metropolitan Trial Court (MeTC) merely allowed the withdrawal of the information without making its own individual assessment of the case. We held that the court did not make the required exercise of discretion in acting on the motion to withdraw information:

> Indeed, the MeTC must have realized that it had surrendered its exclusive prerogative regarding the withdrawal of informations by accepting public prosecutor's say-so that the prosecution had no basis to prosecute petitioner. Its order of October 13, 1994 was based mainly on its notion that "the motion of the Trial Fiscal should be accorded weight and significance as it was premised on the findings [of the Department of Justice] that the filing of the information in question has no legal basis."
>
> This certainly was not the exercise of discretion. As we said in *Martinez*, "whether to approve or disapprove the stand taken by the prosecution is not the exercise of discretion required in cases like this [under the *Mogul* ruling] . . . What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency."
>
> Unfortunately, just as in allowing the withdrawal of the information by the public prosecutor, the MeTC did not make an independent evaluation of the evidence, neither did it do so in granting the private prosecutor's motion for reconsideration. In its order dated December 29, 1994, the MeTC simply stated that it was reinstating the case against petitioner because "[a]fter carefully weighing the arguments of the parties in support of their respective claims, the Court

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64 *Id.* at 585-586.

65 G.R. No. 121180, July 5, 1996, 258 SCRA 473.

> believes that the weight of the evidence and the jurisprudence on the matter which is now presented for resolution heavily leaned in favor of complainant's contention" and that after a case has already been "forwarded, raffled, and assigned to a particular branch, the Public Prosecutor loses control over the case." **The order contains no evaluation of the parties' evidence for the purpose of determining whether there was probable cause to proceed against petitioner. The statement that the "weight of evidence . . . lean[s] heavily in favor of complainant's [Jalandoni's] contention" is nothing but the statement of a conclusion.**
>
> **Nor could the MeTC rest its judgment solely on its authority under the Mogul doctrine to have the last word on whether an information should be withdrawn.** The question in this case is not so much whether the MeTC has the authority to grant or not to grant the public prosecutor's motion to withdraw the information—it does—but whether in the exercise of that discretion or authority it acted justly and fairly. In this case, the MeTC did not have good reason stated in its order for the reinstatement of the information against petitioner, just as it did not have good reason for granting the withdrawal of the information.
>
> The matter should therefore be remanded to the MeTC so that it can make an independent evaluation of the evidence of the prosecution and on that basis decide whether to grant or not to grant the withdrawal of the information against petitioner.[66] (Emphasis supplied; citations omitted.)

We concluded that the trial court's abdication of its exclusive prerogative in deference to the prosecution's conclusion was considered grave abuse of discretion. This was apparent from the court order itself, which contains no evaluation of the evidence. We remanded the case to the trial court for it to make an independent evaluation of the evidence of the prosecution.

b.

In this case, we need not discuss the validity of the reinvestigation or the amendment of the information. The petition before the CA does not concern the propriety or the merit of the reinvestigation. Also, an amendment is allowed even after arraignment for as long as it is beneficial to the accused, as in this case.[67]

We rule squarely on petitioner's claim that the RTC did not make its own evaluation of the records and evidence in the case when it allowed the amendment of the information.

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66 *Id.* at 481-482.

67 *People v. Janairo*, G.R. No. 129254, July 22, 1999, 311 SCRA 58, 67.

Petitioner argues that upon filing of the information before the court, the prosecution relinquishes its full control of the case to the discretion of the trial court. Thus, where the prosecution seeks an amendment of the information, the RTC must make its own independent assessment of the merits of the motion based on an evaluation of the evidence. This, according to petitioner, it failed to do.

We agree with petitioner.

Here, the October 23, 2007 Order was issued with grave abuse of discretion because the RTC did not make an independent determination or assessment of the merits of the motion to amend information. In the September 17, 2003 Order, the court granted, without any reason or explanation, the motion in the following tenor:

ORDER

> The Motion for Leave to Amend Information and to Admit Amended Information filed by the prosecution is hereby granted **without objection on the part of** Atty. Jose de Leon, Jr., counsel for accused Canicon, and **Atty. Joseph Arrojado, counsel for accused Espeleta**, and the Amended Information attached thereto is hereby admitted.
>
> As manifested by Atty. Jose de Leon, Jr. that he is waiving the pre-trial in this case with respect to accused Canicon which is now deemed to have been terminated, the continuation of the hearing for the initial presentation of evidence for the prosecution is hereby set on November 3, 2003 at 8:30 a.m. Subpoena all government witnesses.
>
> SO ORDERED.[68]

Likewise, the October 23, 2007 Order also did not indicate that Judge Baybay, in reinstating the September 17, 2003 Order, made his own examination of the facts and evidence in determining probable cause against Espeleta.[69] As earlier stated, once the information is filed with the court, the disposition of the case is subject to the discretion of the trial court. In turn, this judicial discretion is subject to the judicial requirement that the trial court must make its own evaluation of the case. This, the trial court failed to do.

The consequence of the above conclusion is the setting aside of the October 23, 2007 Order and reinstatement of the November 15, 2006 Resolution and the original information. We, again, emphasize that this will not place Espeleta in double jeopardy because as we concluded earlier, no jeopardy attached during the previous dismissals of the criminal case against her.

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68 *Rollo*, p. 69.

69 *Id.* at 76-82.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated September 29, 2010 and its Resolution dated March 4, 2011 are **SET ASIDE**, and the Resolution dated November 15, 2006 of Branch 31 of the Regional Trial Court of San Pedro, Laguna is **REINSTATED**. The Branch 31 of the Regional Trial Court of San Pedro, Laguna is **ORDERED** within 10 days from receipt of this Decision to **RESOLVE** the public prosecutor's motion for leave to amend the information and to admit amended information dated July 29, 2003 in Criminal Case No. 12508-B, stating in its order clearly the reason or reasons for its resolution, after due consideration of the evidence of the parties. No costs.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

(On Official Leave)
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson

NOEL GIMENEZ TIJAM
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice[****]

[****] Per Sec. 12 of Republic Act No. 296, The Judiciary Act of 1948, as amended.