Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

JANNECE C. PEÑALOSA,
Petitioner,

-versus-

JOSE A. OCAMPO, JR.,
Respondent.

G.R. No. 230299

Present:

LEONEN, *J., Chairperson,*
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:
APR 26 2023

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DECISION

LEONEN, *J.*:

The remedy against a court order granting a motion to withdraw information is an appeal, which may only be filed by the State through the Office of the Solicitor General.

This Court resolves the Petition for Review on Certiorari,[1] filed by Jannece C. Peñalosa (Peñalosa), assailing the Decision[2] and Resolution[3] of the Court of Appeals, which, in turn, reversed the Order[4] of the Regional

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1 *Rollo*, pp. 30–61.

2 *Id.* at 9–17. The April 27, 2016 Decision in CA-G.R. SP No. 139928 was penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Danton Q. Bueser and Agnes Reyes-Carpio of the Special First Division of Court of Appeals, Manila.

3 *Id.* at 23–25. The November 25, 2016 Decision in CA-G.R. SP No. 139928 was penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Danton Q. Bueser and Agnes Reyes-Carpio of the Special First Division of Court of Appeals, Manila.

4 *Id.* at 18–21. The January 26, 2015 Order in Criminal Case No. MC12-14668 was penned by Judge

Trial Court dismissing the Information for libel against Peñalosa. The Court of Appeals held that her allegedly libelous Facebook post against Jose A. Ocampo, Jr. (Ocampo, Jr.), though made in 2011 and before the enactment of the Cybercrime Prevention Act of 2012, is punishable under Article 355 of the Revised Penal Code.

An Information charging Peñalosa with libel read:[5]

> That on August 3 2011, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously, with malice, compose, prepare and post for circulation and dissemination in her facebook account, the following, to wit:
>
> "hoy arkitektong bobo kumain ka para di kalawangin ang utak mong ipis!
>
> grabe my kakamatay lng na tatay nakuha pang magreklamo kung saan san!!! Make yourself bc naman pls!
>
> grabe naman utusan m ung asawa m na magretire ng makalasap naman ng masarap na buhay at pagkain mga hampas lupa!
>
> ung totoo nasa patay o nasa barangay para magreklamo. Try m kayo lumaban ng lalake sa lalake.
>
> sino pa ba tatay ni jojo ocampo supot! Daming reklamo sa bahay namen kse walang pangpagawa eh.
>
> supot pls paki sabi sa tatay mong supot manahimik na lang at magjogging na lang twing umaga!!!
>
> lam ko mahirap buhay ngaun pero wag nyo naman pa mukha sa mga taga ayala na patay gutom kayo!!!
>
> tangina kse tatay ni jo ang daming reklamo sa bahay namen. Inggit kse di makapag pagawa ng balay eh."
>
> with intent to impute upon the person of JOSE A. OCAMPO, JR. vices or defects, whether real or imaginary, and made for no other purpose than to convey, as they did convey to all those whoever read then that said JOSE A. OCAMPO, JR. is brainless, disrespectful of his deceased father, lazy, a vagabond, a coward, uncircumsized, a beggar and an envious person, thereby exposing him to public ridicule, casting dishonor, discredit or contempt upon his person, to his damage and prejudice.[6]

The case was raffled to Branch 212 of the Regional Trial Court of Mandaluyong City and was docketed as Criminal Case No. MC12-14668.[7]

Rizalina T. Capco-Umali of the Regional Trial Court of Mandaluyong City, Branch 212.

5 *Id.* at 10.

6 *Id.* at 10–11.

7 *Id.* at 11.

Peñalosa filed a Motion for Reconsideration before the Office of the City Prosecutor, maintaining that there was no probable cause to charge her with libel.[8] She also filed a Motion for Deferment of Proceedings before the trial court, pending the resolution of her Motion for Reconsideration before the Office of the City Prosecutor.[9]

The Office of the City Prosecutor denied Peñalosa's Motion for Reconsideration, causing Peñalosa to file a Petition for Review before the Department of Justice.[10] She also filed another Motion to Suspend Proceedings before the trial court due to the pendency of her Petition for Review before the Department of Justice.[11]

In its June 24, 2014 Order, the trial court denied the Motion to Suspend Proceedings, found probable cause against Peñalosa, and issued a warrant for her arrest.[12]

In its September 16, 2014 Resolution, the Department of Justice granted Peñalosa's Petition for Review and ordered the City of Prosecutor to withdraw the information filed before the trial court.[13] According to the Department of Justice, when Peñalosa made the Facebook post complained of in 2011, there was still no law penalizing "Internet Libel." Furthermore, merely insulting words, such as those found in Peñalosa's Facebook post, are not necessarily libelous.[14]

In view of the September 16, 2014 Resolution of the Department of Justice, Peñalosa filed a Motion to Quash Information before the trial court.[15] A corresponding Motion to Withdraw Information dated September 25, 2014 was filed by the Office of the City Prosecutor of Mandaluyong.[16]

Acting on the Motion to Quash and Motion to Withdraw Information, the Regional Trial Court issued the Order[17] dated January 26, 2015. There, the trial court declared that Peñalosa's act constituted internet libel. However, when the acts complained of were committed on August 3, 2011, Republic Act No. 10175 was yet to be enacted. Therefore, according to the trial court, Peñalosa's acts were not criminally punishable when they were committed. Consequently, the trial court dismissed the case against Peñalosa and declared the Motion to Quash and Motion to Withdraw

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8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.*
12 *Id.* at 11–12.
13 *Id.* at 218.
14 *Id.* at 217–218.
15 *Id.* at 12.
16 *Id.*
17 *Id.* at 18–21. The January 26, 2015 Order in Criminal Case No. MC12-14668 was penned by Presiding Judge Rizalina T. Capco-Umali of the Regional Trial Court of Mandaluyong City, Branch 212.

Information moot and academic.

Arguing that the trial court gravely erred in dismissing the case, Ocampo, Jr. then filed a Petition for Certiorari before the Court of Appeals.[18]

In its April 27, 2016 Decision,[19] the Court of Appeals granted the Petition for Certiorari and annulled the January 26, 2015 Order of the Regional Trial Court. According to the Court of Appeals, Peñalosa's act of maligning Ocampo, Jr.'s reputation through a Facebook post was punishable under the libel provisions of the Revised Penal Code, specifically, Article 355,[20] which states that libel shall be punishable "by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means."[21]

In addition, the Court of Appeals interpreted Section 4(c)(4)[22] of the Cybercrime Prevention Act of 2012 to mean that the libel provision in the Revised Penal Code covers libelous internet or Facebook posts, being examples of libel by means of writing. The Court of Appeals thus remanded the case to the trial court for further proceedings.[23]

The dispositive portion of the Court of Appeals' April 27, 2016 Decision reads:

> **WHEREFORE**, the petition is **GRANTED**. The Order dated January 26, 2015, issued by Branch 212 of the Regional Trial Court of Mandaluyong City, is hereby **ANNULLED** and **SET ASIDE**. The case is **REMANDED** to the court of origin for further proceedings.
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> **SO ORDERED**.[24] (Emphasis in the original)

Peñalosa filed a Motion for Reconsideration, which the Court of

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18 *Id.* at 9 and 13–14.

19 *Id.* at 9–17.

20 REVISED PENAL CODE, art. 355 provides:
ARTICLE 355. *Libel by Means Writings or Similar Means.* — A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by *prision correccional* in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party.

21 *Rollo,* pp. 14–15.

22 Republic Act No. 10175, Art. 4(c)(4) provides:
SECTION 4. *Cybercrime Offenses.* — The following acts constitute the offense of cybercrime punishable under this Act:
. . . .
(c) Content-related Offenses:
. . . .
(4) Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.

23 *Rollo,* p. 16.

24 *Id.*

Appeals denied in its November 25, 2016 Resolution.[25]

On April 11, 2017, petitioner Peñalosa filed the Petition for Review on Certiorari before this Court.[26]

On June 7, 2017, this Court directed respondent Ocampo, Jr. to Comment on the petition.[27]

Respondent then filed their Comment,[28] which was noted in this Court's July 4, 2017 Resolution.[29]

In its July 4, 2018 Resolution, this Court issued a Temporary Restraining Order, enjoining the Presiding Judge of the Regional Trial Court, Branch 212, Mandaluyong City, from proceeding with the criminal case.[30]

In its October 17, 2018 Resolution, this Court required petitioner to file a Reply,[31] which she filed on January 17, 2019.

Petitioner contends that respondent availed himself of the wrong remedy against the order of the trial court dismissing the case. Instead of a Petition for Certiorari, petitioner contends that respondent should have filed a notice of appeal under Rule 122, Section 3[32] of the Rules of Court since the trial court's order was a final order disposing of the criminal case.

Petitioner adds that respondent had no legal standing to file the Petition for Certiorari with the Court of Appeals. She argues that under Book IV, Title III, Chapter 12, Section 35(1) of the Administrative Code of 1987 and in a long line of cases decided by this Court, only the Office of the Solicitor General has the authority to represent the People of the Philippines in appeals of criminal cases before the Court of Appeals.[33]

Going to the merits, petitioner maintains that the trial court did not gravely abuse its discretion in dismissing the libel case against her. Like the trial court, petitioner is of the view that allegedly libelous Facebook posts

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25 *Id.* at 23–25.
26 *Id.* at 30–61.
27 *Id.* at 261.
28 *Id.* at 274–281
29 *Id.* at 301.
30 *Id.* at 299.
31 *Id.* at 308–328.
32 RULES OF COURT, rule 122, sec. 3(a) provides:
Section 3. *How appeal taken.* —
(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.
33 *Rollo*, pp. 40–42.

cannot be punished under Article 355 of the Revised Penal Code but under Republic Act No. 10175. Even assuming that her Facebook post was libelous, she points out that she made the post in 2011 when the Cybercrime Prevention Act of 2012 was yet to be enacted. She thus argues that she cannot be prosecuted for an act that was not criminal at the time it was committed.[34]

Ultimately, citing the finding of the Department of Justice, petitioner argues that the words in her Facebook post were not libelous in nature. At best, they were offensive to respondent but this does not make the Facebook post actionable by itself.[35]

Respondent counters that petitioner's arguments in her Petition for Review on Certiorari are a mere rehash of her arguments before the Court of Appeals. In any case, respondent contends: first, that a special civil action for certiorari may be availed of only when "no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law [is] available to the private offended party." Specifically, in this case, an appeal to the President of the Secretary of Justice's withdrawal of information was unavailable because the penalty involved was neither *reclusion perpetua* nor death. As such, respondent had no recourse but to file a special civil action for certiorari to assail the trial court order dismissing the criminal case.[36]

Secondly, respondent maintains that as the "person aggrieved" by the dismissal of the libel case, he had legal standing to bring the petition for certiorari under Rule 65, Section 1 of the Rules of Court. He cites *De la Rosa v. Court of Appeals*,[37] where this Court said that aggrieved parties in a criminal case are both the State and the private offended party or complainant.[38]

On the merits, Ocampo, Jr. contends that this Court, in *Disini v. Secretary of Justice*,[39] held that "cyber libel is actually not a new crime"[40] but is punishable under Article 355 of the Revised Penal Code. Still citing *Disini,* respondent argues that Section 4(c)(4) of the Cybercrime Prevention Act of 2012 "merely affirms that online defamation constitutes 'similar means' for committing libel."[41] Consequently, it is not true that the act of making a defamatory Facebook post is not punishable under the Revised Penal Code.

For this Court's resolution are the following issues:

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34 *Id.* at 42–55.
35 *Id.* at 55–56.
36 *Id.* at 278.
37 323 Phil. 596 (1996) [Per J. Panganiban, Third Division].
38 *Rollo*, pp. 278–279.
39 727 Phil. 28 (2014) [Per J. Abad, En Banc].
40 *Id.* at 114.
41 *Rollo*, p. 277, *citing Disini v. Secretary of Justice*, 727 Phil. 28, 115 (2014) [Per J. Abad, En Banc].

First, whether or not respondent Jose A. Ocampo, Jr. properly availed himself of a petition for certiorari against the withdrawal of the Information against petitioner Jannece C. Peñalosa;

Second, whether or not respondent Jose A. Ocampo, Jr. had the legal personality and authority to assail and file the petition against the withdrawal of the Information against petitioner Jannece C. Peñalosa; and

Finally, whether or not the Regional Trial Court gravely abused its discretion in granting the withdrawal of the Information against petitioner Jannece C. Peñalosa. Subsumed in this issue is whether or not making an allegedly libelous Facebook post in 2011, i.e., before the enactment of the Cybercrime Prevention Act of 2012, is punishable under the Revised Penal Code.

The Petition for Review on Certiorari is granted.

I

We agree with petitioner that the proper remedy against the Regional Trial Court's Order granting the Motion to Withdraw Information is an appeal, not a petition for certiorari as erroneously availed of by respondent.

Under Rule 122, Section 1[42] of the 2000 Rules of Criminal Procedure, an appeal is the remedy against a judgment or final order. Specifically for cases decided by the Regional Trial Court in the exercise of its original jurisdiction, the appeal shall be taken by filing a notice of appeal with the court that rendered the judgment or final order appealed from and by serving a copy thereof on the adverse party.[43] Appeal, not a petition for certiorari, must be availed of, even if the ground relied upon is grave abuse of discretion. Certiorari will lie only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law available.

An example of a final order is an order granting a motion to withdraw information, as this Court ruled in *Santos v. Orda, Jr.*[44] Such an order is final because it "dispose[s] of the case and terminate[s] the proceedings therein, leaving nothing to be done by the court."[45] Here, the assailed Order

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42 RULES OF COURT, rule 122, sec. 1 provides:
SECTION 1. *Who may appeal.* — Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy.

43 RULES OF COURT, Rule 122, Sec. 3(a).

44 634 Phil. 452 (2010) [Per J. Nachura, Third Division].

45 *Id.* at 452–463, *citing Fuentes v. Sandiganbayan,* 528 Phil. 388 (2006) [Per J, Callejo Sr., First Division].

was one granting the prosecution's Motion to Withdraw Information. Therefore, the proper remedy was an appeal.

Respondent nevertheless justifies his filing of a petition for certiorari with *Perez v. Hagonoy Rural Bank, Inc.*[46] In *Perez*, this Court allowed the filing of a petition for certiorari against the order of the trial court granting the motion of the prosecution to exclude petitioner Cristina Perez as accused, a final order, because of the blatant grave abuse of discretion on the part of the trial court judge. There, the trial court judge merely relied on the resolution of the Department of Justice recommending the withdrawal of the information against Perez due to insufficient evidence, not making an independent evaluation of the merits of the case.

However, as will be discussed in depth in part III, the trial court judge in this case did not gravely abuse his discretion, much less err, in ordering the withdrawal of the information against petitioner. Unlike the judge in *Perez*, the trial judge in this case made an independent evaluation of why the libel charge against petitioner should be withdrawn. Without the exceptionally blatant grave abuse of discretion similar to that in *Perez*, a final order must be appealed, not brought on certiorari under Rule 65.

II

We likewise agree that respondent did not have the legal personality to file the petition and question the trial court Order granting the Motion to Withdraw Information.

It is doctrine that "in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability"[47] and that "the complainant's role is limited to that of a witness for the prosecution."[48] Continued the Court in *People v. Court of Appeals*:

> If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not take such appeal. However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused.[49] (Underscoring provided and citations omitted)

As the private offended party, respondent's interest is only limited to

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46 384 Phil. 322 (2000) [Per J. De Leon, Jr., Second Division].
47 *People v. Court of Appeals*, 755 Phil. 80–120 (2015) [Per J. Peralta, Third Division].
48 *Id.*
49 *Id.*

petitioner's civil liability. Yet, reading his Petition for Certiorari before the Court of Appeals, we find no arguments on civil liability. Instead, respondent prayed that the case be remanded to the trial court for the continuation of proceedings, arguing that cyber libel is not a new crime and is punishable under the Revised laws Penal Code. In other words, he insisted that petitioner is criminally liable under the Revised Penal Code for the allegedly defamatory Facebook post she made in 2011. Without the concurrence of the prosecution, respondent had no legal personality to do this.

The cases cited by respondent, where the private offended party was allowed to bring actions on behalf of the People of the Philippines before the Court of Appeals and this Court, do not apply here.

In *Paredes v. Gopengco*,[50] the private offended party filed a petition for certiorari to question the trial judge's refusal to inhibit himself from hearing the case despite his relation to the senior partner of the law firm representing the accused. In *People v. Calo, Jr.*,[51] the private offended party questioned the trial judge's grant of bail.

In both *Paredes* and *Calo Jr.*, substantial justice was indeed served when the respective private offended parties were allowed to bring the petitions for certiorari. For one, the orders they questioned were interlocutory orders, or those which "leave something to be done by the trial court with respect to the merits of the case."[52] Being interlocutory orders that still leave something to be done by the trial court, petitions for certiorari questioning such orders must be resolved in a just, speedy, and inexpensive manner so as not to cause too much disruption in the proceedings in the main case. It also appears that in *Paredes* and *Calo, Jr.*, the prosecution did not disagree in filing the petition for certiorari. The private offended parties in *Paredes* and *Calo,Jr.*, thus properly availed themselves of the remedy of certiorari.

In contrast with *Paredes* and *Calo Jr.*, the order assailed here is a final order, specifically, one granting a motion to withdraw information, the remedy against which is, to repeat, appeal, not certiorari. Hence, as explained by this Court in *Rodriguez v. Gadiane*,[53] only the State, through the Office of the Solicitor General, may assail the final order via appeal, not the offended party.

> As early as in the case of *Paredes v. Gopengco*, it was held that the offended parties in criminal cases have sufficient interest and personality

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50 140 Phil. 81 (1969) [Per J. Teehankee, En Banc].
51 264 Phil. 1007 (1990) [Per J. Bidin, En Banc].
52 *Metropolitan Bank & Trust Company v. Court of Appeals*, 408 Phil. 686–695 (2001) [Per J. Panganiban, Third Division].
53 527 Phil. 691 (2006) [Per J. Tinga, Third Division].

> as "person(s) aggrieved" to file the special civil action of prohibition and certiorari under Sections 1 and 2 of Rule 65. Apropos thereto is the case cited by petitioner, *De la Rosa v. Court of Appeals*, wherein it was categorically stated that the aggrieved parties are the State and the private offended party or complainant.
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> It was further held in De la Rosa that the complainant has such an interest in the civil aspect of the case that he may file a special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. He should do so and prosecute it in his name as such complainant. In the same vein, the cases of *Martinez v. Court of Appeals*, *Santos v. Court of Appeals*, and *Chua v. Court of Appeals* adhere to the doctrines mentioned above.
>
> The Court has nonetheless recognized that if the criminal case is dismissed by the trial court or if there is an acquittal, the appeal on the criminal aspect of the case must be instituted by the Solicitor General in behalf of the State. The capability of the private complainant to question such dismissal or acquittal is limited only to the civil aspect of the case. This rule is reiterated in the *Metrobank* case cited by respondent. However, it should be remembered that the order which herein petitioner seeks to assail is not one dismissing the case or acquitting respondents. Hence, there is no limitation to the capacity of the private complainant to seek judicial review of the assailed order.[54] (Underscoring provided and citations omitted)

The present case is similar to *Personal Collection Direct Selling v. Carandang*,[55] where the private offended party tried to file a petition for certiorari to question the grant of the motion to withdraw information. The Court immediately recognized the erroneous availment of the remedy. It thus reiterated that while private offended parties have been allowed to bring certiorari petitions to question interlocutory orders, it cannot be allowed for dismissals of cases, including the grant of motions to withdraw information.

Here, since the order being questioned is the grant of the Motion to Withdraw Information, respondent, the private offended party, had no legal personality to file a petition for certiorari. To allow him to file the petition when an appeal clearly exists violates Rule 65 of the Rules of Court, and this will enable erroneous availments of certiorari petitions.

All told, respondent had no legal personality to file the petition for certiorari against the grant of the motion to withdraw information.

III

Finally, the trial court did not gravely abuse its discretion in granting the Motion to Withdraw Information filed by the prosecution.

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54 *Id.* at 691–699.

55 820 Phil. 706 (2017) [Per J. Leonen, Third Division].

Grave abuse of discretion is the "capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility."[56] With respect to the grant of motions to withdraw information, judges are said to have gravely abused their discretion when they do not make an independent assessment of the lack of probable cause and the consequent withdrawal of the information. Again, in *Perez*:

> Succinctly put, the issues in the instant case are: *first*, whether or not Judge Masadao, presiding judge of RTC Branch 9, Malolos, Bulacan, committed grave abuse of discretion in granting the prosecutor's motion to dismiss the criminal case against petitioner without an independent assessment of the sufficiency or insufficiency of the evidence against the latter; . . . .
>
> *First*. Judge Masadao acted with grave abuse of discretion in granting the prosecutor's motion to dismiss the criminal charges against the petitioner on the basis solely of the recommendation of the Secretary of Justice.
>
> In moving for the dismissal of the case against the petitioner, the prosecutor averred:
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> > "1. That on October 18, 1994 (sic) he was in receipt of a resolution dated September 23, 1994 from the Secretary of Justice, the dispositive portion of which reads as follows:
> >
> > 'xxx xxx xxx
> >
> > WHEREFORE. Your resolution is partly reversed. You are directed to cause the dismissal of the information if any, filed against respondent Cristina Perez in the above-entitled case and report on the action taken therein within ten (10) days from receipt hereof.'
> >
> > "2. That pursuant to the said resolution, an amended information is (sic) hereto attached excluding Cristina Perez is well in order and copy of said amended information is hereto attached.
> >
> > "WHEREFORE, it is respectfully prayed that the case insofar as respondent Cristina Perez be dismissed and the amended information be admitted."
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> The Order granting the above quoted motion states in its entirety that:
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> "ORDER

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[56] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618–675 (2000) [Per J. Kapunan, En Banc].

> "Finding no legal impediment to the same, the motion filed by Public Prosecutor Jesus Y. Manarang seeking the amendment of the Information is hereby GRANTED, and the Amended Information attached thereto is hereby ADMITTED to form part of the record of the above-entitled case.
>
> "By the foregoing token, the warrant of arrest already issued is hereby recalled and rendered ineffective with respect only to accused CRISTINA PEREZ.
>
> "SO ORDERED."

The above quoted Order allowing the amendment of the information to exclude petitioner therefrom effectively dismissed the criminal case against the latter. That the trial judge did not make an independent evaluation or assessment of the merits of the case is apparent from the foregoing order. Judge Masadao's reliance on the prosecutor's averment that the Secretary of Justice had recommended the dismissal of the case against the petitioner was, to say the least, an abdication of the trial court's duty and jurisdiction to determine a *prima facie* case, in blatant violation of this Court's pronouncement in *Crespo v. Mogul* as reiterated in the later case of *Martinez v. Court of Appeals*[.][57]

Unlike the perfunctory grant of the motion to withdraw information in *Perez*, Judge Rizalina Capco-Umali (Judge Capco-Umali) in a four-page Order, exhaustively and independently assessed Peñalosa's Motion to Quash and the prosecution's Motion to Withdraw Information. This is apparent in Judge Capco-Umali's January 26, 2015 Order:

> For resolution is the Urgent Motion to Quash filed by accused Jannece Peñalosa seeking that the Information dated September 25, 2012 charging her with the crime of libel be quashed.
>
> . . . .
>
> Now, the court resolves.
>
> The court has the duty to make an independent assessment on the merits of the motion. When confronted with a motion to withdraw an information on the ground of lack of probable cause based on a resolution of the Secretary of Justice. Surely, this court, is called to validly and properly exercise judicial discretion and independence particularly in view of the Motion to Withdraw Information filed by Assistant State Prosecutor Josyli A. Tabajonda, OCP of Mandaluyong City in compliance with the Resolution dated 16 September 2014 of the DOJ directing the OCP of Mandaluyong City to cause the withdrawal of the Information for libel filed against accused Jannece Peñalosa.
>
> There is no question that once an information is filed in court any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court. Indeed, in **Crespo versus Mogul (151 SCRA 462)** it was emphasized that when a criminal action is initiated via

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[57] *Id.* at 322–329.

the filing of a complaint or information in court thereby acquired jurisdiction over the case, which is the authority to hear and determine the case. The court remains the best and sole judge on what to do with the case before it notwithstanding the power of prosecutor to retain the direction and control of the prosecution of criminal cases.

Jurisprudence is also explicit that once a motion to dismiss is filed, the trial judge may grant or deny it, not out of subservience to the Secretary of Justice, but in faithful exercise of judicial prerogative. Hence, in the determination thereof, trial judges are required to make their own independent assessment.

Indeed, this court in its Order dated 24 June 2014 found existence of probable cause for issuance of warrant of arrest against the herein accused.

After re-examination of the evidence on record, it is apparent from the reading of the subject Information that the very alleged libelous statements posted of the subject information that the very alleged libelous statements posted in accused's Facebook account on August 3, 2011 constitutes Internet Libel. However, the crucial fact is, on August 3, 2011, the date when the offense charged was allegedly committed, there is no law yet penalizing Internet Libel considering that Internet Libel became punishable only with the enactment of Republic Act No. 10175 "An Act Defining Cybercrime, Providing for the Prevention, Investigation, Suppression and the Imposition of Penalties Therefor and for Other Purposes." Said law was approved on September 12, 2012 and came to effectivity fifteen (15) days from the completion of its publication in at least two (2) papers of general circulation. The alleged date of commission in the Information as already mentioned by the court is August 3, 2011. Clearly then, the accused could not have committed the internet libel crime on August 3, 2011 as there is no statute defining and penalizing internet or online libel on said date.

It is a basic doctrine in criminal law that there is no crime when there is no law punishing it (*Nullum Crimen, nulla poena sine lege).*

Granting for the sake of argument, that accused's utterances in her Facebook account are of such nature as to constitute libel as defined by Article 353 of the RPC, this court holds that the accused may still not be [held] liable criminally as there is no such thing as "internet libel" under the RPC following the opinion given by the late Secretary of Justice Raul M. Gonzales in *Malayan Insurance Co., Inc.*, docketed as I.S. No. 05-1-11895 which this court took judicial notice of.

In part, said opinion [of] Secretary Gonzales, reads as follows:

> "*There is no dispute that all these messages were indeed posted on the websites of the respondents. The only thing that is left for consideration is whether there is libel in the Internet. It is in this regard that this Office holds that there is no such thing as "internet libel" under the Revised Penal Code. Under Article 355 of the RPC, it is very specific that libel can only be committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition or any similar means. When*

> *the RPC was enacted in 1932 by the Philippine legislature, there was no computer yet, much less any communication via internet connection. x x x so much so that the legislature did not intend to include Internet communication as a means of committing the crime of libel when it enacted the RPC in 1932."*
>
> Evidently, in view of the Motion to Withdraw Information filed by the OCP of Mandaluyong City and further in view of the foregoing discussion of this court, the Motion to Quash filed by accused Jannece Peñalosa has become moot and academic.
>
> WHEREFORE, premises considered, the instant Information dated September 25, 2012 is hereby ordered **DISMISSED**.
>
> **SO ORDERED**.[58] (Emphasis and italics in the original)

No grave abuse can be inferred simply because Judge Capco-Umali arrived at a similar conclusion as Prosecutor Josyli A. Tabajonda of the Office of the City Prosecutor of Mandaluyong.

It is true that in *Disini v. Secretary of Justice*,[59] the majority of this Court said that "cyber libel is. . . not a new crime";[60] hence, an allegedly libelous Facebook post made before the enactment of the Cybercrime Prevention Act can be prosecuted under the libel provisions of the Revised Penal Code.

But even then, the error respondent attributes to the withdrawal of the information is at best, an error of judgment or "one in which the court may commit in the exercise of its jurisdiction."[61] Such errors may only be remedied through appeal, a remedy which, as discussed in part II, cannot be brought by the private offended party like respondent.

Furthermore, criminal laws are to be construed strictly against the State and liberally in favor of the accused. To further expound on this point, Article 355 of the Revised Penal Code and Section 4(c)(a) of the Cybercrime Prevention Act are reproduced side-by-side below:

Article 355 of The Revised Penal Code	**Section 4(c)(a) of the Cybercrime Prevention Act**
ARTICLE 355. *Libel by Means Writings or Similar Means.* — A libel committed by means of writing, printing, lithography, engraving, radio, phonograph,	SECTION 4. *Cybercrime Offenses.* — The following acts constitute the offense of cybercrime punishable under this Act: . . . .

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58 *Rollo*, pp. 18–21.

59 727 Phil. 28 (2014) [Per J. Abad, En Banc].

60 *Id.* at 114.

61 *Marasigan v. Fuentes*, 776 Phil. 574, 581 (2016) [Per J. Leonen, Second Division], *citing People v. Court of Appeals*, 475 Phil. 568 (2004) [Per J. Callejo, Sr., Second Division].

painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by *prisión correccional* in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party. (Underscoring provided)	. . . . (c) Content-related Offenses: . . . . (4) Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future. (Underscoring provided)

Reading Article 355 of the Revised Penal Code, "similar means" could not have included "online defamation" under the statutory construction rule of *noscitur a sociis*. Under this rule, "where a particular word or phrase is ambiguous in itself or is equally susceptible to various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated."[62]

In Article 355, the associated words are "writing," "printing," "lithography," "engraving," "radio," "phonograph," "painting," "theatrical exhibition," and "cinematographic exhibition," clearly excluding "computer systems or other similar means which may be derived in the future" specifically added in Article 4(c)(4) of the Cybercrime Prevention Act. If it were true that Article 355 of the Revised Penal Code already includes libel made through computer systems, then Congress had no need to legislate Article 4(c)(4) of the Cybercrime Prevention Act, for the latter legal provision will be superfluous. That Congress had to legislate Article 4(c)(4) means that libel done through computer systems, *i.e.*, cyber libel, is an additional means of committing libel, punishable only under the Cybercrime Prevention Act.

To make cyber libel punishable under Article 355 of the Revised Penal Code is to make a penal law effective retroactively but unfavorably to the accused. This is contrary to Article 22 of the Revised Penal Code, which states that "[p]enal laws shall have a retroactive effect insofar as they favor the person guilty of a felony[.]"

For these reasons, an allegedly libelous Facebook post made may only be punished under the Cybercrime Prevention Act, not under Article 355 of the Revised Penal Code. Since the Facebook post complained of was made in 2011, a year before the Cybercrime Prevention Act was passed, there was no libel punishable under Article 355 of the Revised Penal Code. *Nullum crimen, nulla poena sine lege* – there is no crime when there is no law punishing it.[63] The prosecution in this case correctly withdrew the

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62 *Chavez v. Judicial and Bar Council*, 691 Phil. 173–216 (2012) [Per J. Mendoza, En Banc].

63 *Evangelista v. People*, 392 Phil. 449–458 (2000) [Per J. Ynares-Santiago, First Division].

information it had filed with the trial court.

This Court's resolution of the Petition will not leave respondent without recourse. Under Articles 19 to 21 of the Civil Code, aggrieved parties may bring civil actions for damages "for any harm inflicted upon them by defamatory falsehoods."[64] More importantly, in civil actions, the complainant has full control of the case,[65] unlike in criminal actions such as the present one, where the complainant has to defer to the prosecution.[66] "[The private complainant] must get the concurrence of the public prosecutor as well as the court whenever he or she wants the complaint to be dismissed."[67]

All told, there was no grave abuse of discretion on the part of Judge Capco-Umali in dismissing the criminal case for libel against petitioner. With the withdrawal of the information and the consequent dismissal of the criminal case he had filed, respondent cannot insist on the criminal prosecution of petitioner. He, however, still has the remedy of a civil action for damages should he opt to file one.

FOR THESE REASONS, the Petition for Review on Certiorari is **GRANTED**. The Court of Appeals' April 27, 2016 Decision and November 25, 2016 Resolution in CA-G.R. SP No. 139928 are **REVERSED** and **SET ASIDE**. The Order dated January 26, 2015 of the Regional Trial Court, Branch 212, Mandaluyong City dismissing the Information for Libel against petitioner Jannece C. Peñalosa is hereby **REINSTATED**.

The Temporary Restraining Order issued by this Court on July 4, 2018, is hereby made **PERMANENT**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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64 J. Leonen's Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, 727 Phil. 28, 391 (2014) [Per J. Abad, En Banc].

65 *Id.* at 391–392.

66 *Id.* at 392.

67 *Id.*

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
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.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify 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.

ALEXANDER G. GESMUNDO
Chief Justice