



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 29, 2015 which reads as follows:

“**G.R. No. 218013** (Lourdes Castillo, *petitioner*, v. People of the Philippines and Mary Ann Ello, *respondents*). – Presiding Judge Cesar O. Untalan, Regional Trial Court, Branch 149, Makati City, is **DELETED** as party respondent in this case, pursuant to Sec. 4, Rule 45, 1997 Rules of Civil Procedure, as amended.

For resolution of the Court is the Petition for Review on *Certiorari* filed by petitioner Lourdes Castillo assailing the Court of Appeals (CA) Decision¹ dated 9 October 2014 and the Resolution² dated 24 April 2015 in CA G.R. SP No. 124618. The CA affirmed the 13 September 2011 Order of the Regional Trial Court (RTC), granting the motion of the prosecution to withdraw the 30 March 2009 Information and allowed the filing of 30 March 2009 Amended Information.

The Antecedents

On 30 March 2009, an Information charging petitioner Lourdes Castillo with Estafa under paragraph 2(a) of the Revised Penal Code (RPC) was filed, in verbatim, it reads:

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¹ *Rollo*, pp. 48-61; Penned by Associate Justice Pedro B. Corales with Associate Justices Seseñando E. Villon and Flores S. Macalino concurring.

² *Id.* at 62-63.

On June 23, 2004, in the [C]ity of Makati, the Philippines, the above-named accused, did then and there, willfully, unlawfully and feloniously, defraud complainant, Mary Ann Ello, the amounts of P800,000.00, P200,000.00 and P8.3 million, or a total of P9.3 million regarding a contract of sale with these details: accused hawked for P10 million a condominium unit called "One Roxas Condominium Unit" complainant's cousin, Adrian Ocampo, purchased the condominium unit and entrusted to complainant the purchase price of P10 million from which a total of P9.3 million was later delivered by complainant to the accused in order for the accused to deliver the same to the alleged seller "Vicky Garchitorena"; the accused knew well that the sale and the subject condominium unit are inexistent and fictitious, and her misrepresentations thereof prejudiced complainant in the amount of P9.3 million.³

Finding that the foregoing Information was insufficient to constitute an offense because of the absence of any specific allegation that there was inducement or false pretense made by the petitioner which on the basis of such inducement the complainant parted with her money to her damage and prejudice, the RTC, in an Order dated 25 March 2011, directed the prosecution to amend the Information, thus:

Accordingly, the state prosecutor is hereby **DIRECTED** to cause the amendment of the information in Criminal Case No. 09-392 within thirty (30) days from notice. Nevertheless, pursuant to the Rules, if the prosecution fails to make the amendment, or if the Information still suffers from the same defect despite the amendment, the criminal charge against petitioner shall be dismissed.

WHEREFORE, the foregoing considered, the assailed Orders are hereby **MODIFIED**.⁴

In compliance therewith, the prosecution moved to withdraw the 30 March 2009 Information and prayed to admit the 27 April 2011 Amended Information which reads:

That during the period comprised between April and June 2004, in the [C]ity of Makati, the Philippines and within the jurisdiction of this Honorable Court, the above named accused, did then and there, willfully, unlawfully and feloniously defraud complainant, Mary Ann Ello, the amounts of Php800,000.00, Php200,000.00 and Php8,000,000.00 or a total of P9 million pesos in the following manner to wit: the said accused by means of false pretense and fraudulent representation, executed prior

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³ Id. at 102; CA Decision.

⁴ Id. at 50.

to or simultaneous with the commission of fraud, falsely represented to Adrian Ocampo and Mary Ann Ello that one Vicky Garchitorena is the owner of one condominium unit in "One Roxas Triangle" which the latter is willing to sell for the sum of P10 Million Pesos, the truth of the matter is, as the accused very well knew that the said Vicky Garchiterona does not own the said property neither did she authorize the accused to sell the said property, thereupon, Adrian Ocampo relying on the said representation, issued a check worth P10 Million Pesos in the name of Mary Ann Ello which the latter deposited in her bank account, and thereafter, Ello, out of the said P10 Million Pesos gave the accused the amounts of P800,000 and P200,000[.00] as her commission." x x x⁵

The motion was opposed by the petitioner on the ground that the insertion of the words "*false pretense*" on the Amended Information which was filed after her arraignment violates her right to constitutional due process. The prosecution, on the other hand, maintained that the changes made thru the Amended Information were not substantial but only a matter of form which is allowed under the Rules.

The Ruling of the RTC

In an Order dated 13 September 2011, the RTC dismissed the opposition of the petitioner and granted the motion of the prosecution to withdraw the Information and to admit the new one, thus:

WHEREFORE, premises considered, prosecution's **Motion to Withdraw Information and Admit Amended Information** is hereby **GRANTED**.

The attached Amended Information is hereby **ADMITTED** and the original Information is hereby considered **WITHDRAWN**.

Furnish copies of this order to the parties and their respective counsels and to Asst. City Prosecutor Benjamin S. Vermug, Jr.⁶

The Ruling of the Court of Appeals

On *Certiorari*, the appellate court held that the RTC did not abuse its discretion in allowing the prosecution to file the Amended Information. The CA ruled that under Section 14, Rule 110 of the Rules on Criminal Procedure, formal amendments in cases where the accused have already

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⁵ Id. at 217-218.

⁶ Id. at 243.

pleaded may be allowed provided that the amendments do not prejudice the rights of the accused. The test on whether the rights of the accused are prejudiced by amendment of complaint or Information is whether the defense under the complaint or Information, as it originally stood, would no longer be available after the amendment is made, and when any evidence the accused might have would be inapplicable to the complaint or Information.

Our Ruling

We deny the petition.

Under Section 14, Rule 110 of the Rules of Court, an amendment after the plea of the accused is permitted only as to matters of form, provided: (i) leave of court is obtained; and (ii) such amendment is not prejudicial to the rights of the accused. A substantial amendment is not permitted after the accused had already been arraigned.⁷

In *Teehankee, Jr. v. Madayag*,⁸ we had occasion to state that a substantial amendment consists of recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form. The following were held to be merely formal amendments: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecutions theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; and (4) amendment, which does not adversely affect any substantial right of the accused, such as his right to invoke prescription.

We further elucidated in the *Teehankee* case that the test as to whether an amendment is only of form and an accused is not prejudiced by such amendment is whether or not a defense under the information as it originally stood would be equally available after the amendment is made, and whether or not any evidence which the accused might have would be equally applicable to the information in one form as in the other; if the answer is in the affirmative, the amendment is one of form and not of substance.⁹

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⁷ *People v. Degamo*, 450 Phil. 159, 171 (2003).

⁸ G.R. No. 103102, 6 March 1992, 207 SCRA 135, 142 as cited in *People v. Degamo*, id. at 171-172.

⁹ *People v. Degamo*, supra note 3 at 172.


Applying the foregoing doctrine laid down in *Tehankee* in the case at bar, we find that no right of the accused to due process was violated since the defenses she pleaded on the original Information would still stand after the prosecution inserted the words "*false pretense*" in the Amended Information.

Moreover, in *Poblete v. Sandoval*,¹⁰ the Court explained that an amendment is only in form when it merely adds specifications to eliminate vagueness in the information and does not introduce new and material facts. Amendment of an information after the accused has pleaded thereto is allowed, if the amended information merely states with additional precision something which is already contained in the original information and which, therefore, adds nothing essential for conviction for the crime charged. Again, the insertion of the words "*false pretense*" in the Amended Information merely clarified the vagueness that attended the original Information and in no way violates the right of the accused to due process.

WHEREFORE, the Decision of the Court of Appeals dated 9 October 2014 and the Resolution dated 24 April 2015 in CA-G.R. SP No. 124618 are hereby **AFFIRMED**.

SO ORDERED. SERENO, C.J., on official leave; PERALTA, J., acting member per S.O. No. 2103 dated July 13, 2015.

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court ^{msh}
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(CA-G.R. SP No. 124618)

The Solicitor General (x)
Makati City

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¹⁰ G.R. No. 150610, 25 March 2004, 426 SCRA 346, 356 as cited in *Cabo v. Sandiganbayan*, 524 Phil. 575, 586 (2006).



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