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SECOND DIVISION

[G.R. No. L-49034. January 31, 1979]

REYNALDO LAUCHENGCO, *petitioner*, *vs.* **HON. JOSE P. ALEJANDRO, Presiding Judge of the Court of First Instance of Manila, Branch XXVI; HON. CITY FISCAL OF MANILA, and CLARITA LAUCHENGCO**, *respondents*.

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; REVIVAL THEREOF AFTER PROVISIONAL DISMISSAL; NO NEW INFORMATION NECESSARY. — The provisional dismissal of a criminal case does not call for the filing of a new information if the parties are clearly made aware in such order of provisional dismissal, that it is lacking the impress of finality and therefore could be revived and reinstated. Where a criminal case is provisionally dismissed at the instance of the provincial fiscal with the conformity of the accused and later revived without the filing of a new information there is neither a constitutional right violated nor a procedural rule disregarded in the revival of the case as ordered by respondent Judge. Not only was there no grave abuse of discretion, but the absence of any abuse. In the ultimate analysis, to grant the plea of petitioner would be to prefer form to substance.

APPEARANCES OF COUNSEL

Alberto C. Soriano for petitioner.
Rafael Y. Viola for private respondent.

DECISION

FERNANDO, *J.*:

There is no novelty to the question raised in this *certiorari* and prohibition proceeding as to whether or not upon a criminal

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case being provisionally dismissed at the instance of the provincial fiscal with the conformity of the accused, now petitioner Reynaldo Lauchengco, after he had been arraigned, pleaded not guilty, and after the initial presentation of the evidence for the prosecution,[1] it could thereafter be, as in the order now assailed,[2] revived and reinstated without the filing of a new information.

When asked to comment, the respondent City Fiscal Jose B. Flaminiano of Manila relied on *People v. Consulta*[3] as well as *Solis v. People*[4] to show that no abuse of discretion was committed by the court in ordering such revival without the need for any new information. As if conscious of the persuasive character of such a defense, petitioner sought to file a reply to such comment. He submitted a three-page pleading wherein by a rather constricted interpretation of the earlier case of *Solis v. Agloro*,[5] of which the above-cited case of *Solis v. People* is an aftermath, he would attempt to negate the force of the above comment of respondent City Fiscal. It cannot be said therefore that the reply is impressed with plausibility, not even of a deceptive character. There is however this paragraph in such reply: "That this present petition was purposely presented before this Honorable Supreme Court to settle once and for all the confusions in the various city courts of the country regarding provisional dismissal of the case and then revival of the same in court."[6] Accordingly, this Court resolved to consider the comment as answer and to render a decision on the merits.

On the above facts, and considering the authoritative doctrines, this petition for *certiorari* and prohibition should be dismissed.

1. *Solis v. Agloro* speaks categorically. In the language of the opinion: "Neither was there a violation of the constitutional

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[1] Petition, pars. 3 and 4.

[2] *Ibid.*, par. 7, and Annex E.

[3] L-41251, March 31, 1976, 70 SCRA 277.

[4] L-42485, July 31, 1978.

[5] L-39254, June 20, 1975, 64 SCRA 370.

[6] Reply, par. 4.

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right of petitioners against being put in jeopardy of punishment. In the order provisionally dismissing the case, it was explicitly made clear that defense counsel announced 'the readiness of the accused to give their express confirmity to the provisional dismissal of [their] case.' More than that, it was therein stated that respondent Judge 'called for the accused and asked them singly and individually, whether they are willing to have this case dismissed with their express conformity, explaining to them that such dismissal will mean possible revival of this case against them, to which each answered in the affirmative.' Accordingly, it was set forth in the dispositive portion that the case 'is hereby ordered dismissed with the express conformity of the accused Cenon C. Solis, Delfin Solis and Bonifacio Solis *y* Lualhati *alias* Pacio, with cost *de oficio*.' There being such a provisional dismissal, there is no merit to the contention that a revival of the case would amount to a disregard of the constitutional prohibition against double jeopardy."[7] When, therefore, the later case of *Solis v. People* was filed, this Court, in the decision, pointed out that the ground alleged by the very accused was the "need for a new information, which would likewise require that another preliminary investigation be undertaken, with the intimation that otherwise there would be a denial of procedural due process."[8] The ruling was square and to the point, namely, "that this second attempt to prevent the continuation of the prosecution of petitioners is likewise doomed to futility."[9] It was then categorically set forth that this second petition "is clearly devoid of merit."[10] Respondent Fiscal could thus vigorously assert that no new information was necessary.

2. An attempt was, however, made by petitioner to minimize the weight of this authoritative precedent by saying that the

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[7] 64 SCRA 370, 376-377. To support such a view, *Jaca v. Blanco*, 86 Phil. 452 (1950); *People v. Romero*, 89 Phil. 672 (1951); *Co Te Hue v. Encarnacion*, 94 Phil. 258 (1954); and *Republic v. Agoncillo*, L-27257, August 31, 1971, 40 SCRA 579; were cited.

[8] *Solis v. People*, L-42485, July 31, 1978.

[9] *Ibid.*, 2.

[10] *Ibid.*, 3.

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only settled question is one of double jeopardy. To bolster such an approach, he invoked *People v. Court of First Instance of Quezon*.[11] Again there was a failure on his part to appreciate the true significance of the ruling. As was pointed out in the last paragraph of the opinion, there was a dismissal definitive in character as the information failed to charge an offense. Necessarily, the proper course is not a petition for *certiorari* "but the refiling of a valid information,"[12] the previous one being fatally definitive. Petitioner did not even attempt, as he was devoid of justification, to show that the information in this case suffers from any defect. What is quite obvious is that there is neither a constitutional right violated nor a procedural rule disregarded in the revival of the case as ordered by respondent Judge Jose P. Alejandro. Not only was there no grave abuse of discretion, but the absence of any abuse. In the ultimate analysis, to grant the plea of petitioner would be to prefer form to substance.

3. With the resolution of this petition, it should be clear to all and sundry that the provisional dismissal of a criminal case does not call for the filing of a new information if, as in this case, the parties are clearly made aware, in such order of provisional dismissal, that it is lacking the impress of finality and therefore could be revived and reinstated.

WHEREFORE, the petition is dismissed for lack of merit. No costs.

Barredo, Antonio, Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

Abad Santos, J., took no part.

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[11] L-41045, November 28, 1975, 68 SCRA 305.

[12] *Ibid.*, 307.