

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES

Plaintiff,

CTA CRIM. CASE NO. O-159

For: Violation of Section 3602 of the
T.C.C.P. in relation to Article 172 of the
Revised Penal Code

- versus -

Members:

MARIVIC BRIONES

DAVID BANGA,

(Rm. 201 – El Hogar Bldg.

Juan Luna Street, Binondo, Manila)

BAUTISTA, Chairperson

PALANCA-ENRIQUEZ, and

COTANGCO-MANALASTAS, JJ.

JESURITO PAREJA

(1130-J 3/F Whitehouse Apartment
Concepcion Street, Ermita, Manila),

Accused.

Promulgated:

DEC 14 2010

Defendant 1:43 p.m.

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RESOLUTION

This resolves the "**Joint Manifestation and Motion for Provisional Dismissal**" filed on November 5, 2010 by the prosecution and joined by accused Marivic Briones.

Both the prosecution and accused Marivic Briones aver that during the preliminary conference of CTA Case Nos. O-157 and O-158, the accused objected to the documents submitted by the prosecution for being mere photocopies. During the pre-trial of the aforesaid cases, the prosecution

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admitted that the original copies of the documents are not yet in his possession.

They conclude that since this case involves the same parties, arises from the same set of facts, and tenders the same issues with that of CTA Case Nos. O-157 and O-158; the proceedings in the latter cases, such as defense' objection to the documents submitted by the prosecution and the admission that he does not yet have the possession of the original documents, shall also apply to this case.

Thus, the instant *Joint Manifestation and Motion* praying for the provisional dismissal of this case in order to give the prosecution ample time to retrieve, collate and secure the original documents necessary and vital for the prosecution of the case.

This Court finds the *Joint Manifestation and Motion* meritorious.

Section 8, Rule 117 of the Revised Rules of Criminal Procedure provides:

"SEC. 8. Provisional dismissal.—A case shall not be provisionally dismissed except with the **express consent of the accused and with notice to the offended party.**

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived. "(*Emphasis supplied.*)

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In *Ariel M. Los Baños, et al., vs. Joel R. Pedro*¹, in comparing the provisional dismissal covered by the aforesaid section and that of a Motion to Quash, the Supreme Court explained that "[a] first notable feature of Section 8, Rule 117 is that it does not exactly state what a provisional dismissal is. The modifier 'provisional' directly suggests that the dismissals which Section 8 essentially refers to are those that are temporary in character (i.e., to dismissals that are without prejudice to the re-filing of the case).xxx A second feature is that Section 8 does not state the grounds that lead to a provisional dismissal". However, the Supreme Court laid down the requirements that must concur before there can be provisional dismissal, as follows:

- "1) the prosecution with the express conformity of the accused, or the accused, moves for a provisional dismissal (*sin perjuicio*) of his case; or both the prosecution and the accused move for its provisional dismissal;
- 2) the offended party is notified of the motion for a provisional dismissal of the case;
- 3) the court issues an order granting the motion and dismissing the case provisionally; and
- 4) the public prosecutor is served with a copy of the order of provisional dismissal of the case."

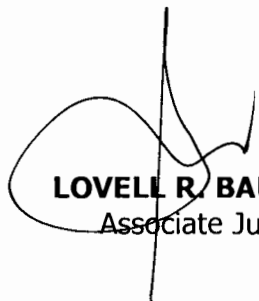
To recapitulate, before there can be provisional dismissal of a case, there must be the consent and notice of the parties, an order issued by the court provisionally dismissing the case, and the prosecution is notified of the order. In the instant case, consent and notice of the parties are clearly

¹ G.R. No. 173588, April 22, 2009.

present in view of the joint motion for the provisional dismissal of the instant case filed by both the prosecution and accused Marivic Briones; thus, this Court finds no reason not to grant the instant *Joint Manifestation and Motion*.

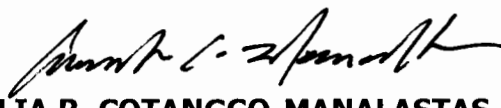
WHEREFORE, premises considered, the "**Joint Manifestation and Motion for Provisional Dismissal**" is hereby **GRANTED**. Accordingly, this case is **PROVISIONALLY DISMISSED** as far as accused Marivic Briones is concerned.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice



AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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