



BY: VIA  
TIME: 2:45 PM

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:

**“UDK 16502-03 - JOSE N. ZIALCITA, petitioner versus ANTONIO S. TAN, respondent.**

An order<sup>1</sup> granting a motion to withdraw an information and dismissing a criminal case is final and the remedy to question this final order is an appeal. Rule 40 of the Rules of Court provides that an appeal of a judgment or final order of a Municipal Trial Court, as in this case, may be taken to the Regional Trial Court by filing a notice of appeal with the court that rendered the judgment or final order. Rule 41 of the same rules, on the other hand, states, that an appeal via petition for review on certiorari may be filed directly to this Court only when questions of law are raised.

Here, in seeking the reversal of the dismissal of the criminal case against respondent for lack of probable cause, the petition<sup>2</sup> raises issues which are factual in nature. A review of the factual findings of the lower court is not a function of this Court. It is not the duty of this Court to analyze or weigh all over again evidence already considered in the proceedings below.<sup>3</sup> This Court therefore finds no reason to disturb the factual findings of the lower court.

Moreover, petitioner has no standing to file the instant pleading. It is a fundamental principle in remedial law that if the trial court dismisses the case or renders a judgment of acquittal, the private offended party cannot appeal the criminal aspect of the case. Only the

<sup>1</sup> Rollo, pp. 13-16. Penned by Presiding Judge Zenaida Najera Bragais.

<sup>2</sup> Id. at 3-10.

<sup>3</sup> *Tan v. People*, G.R. No. 237137, April 16, 2018, p. 1 (Unsigned Resolution).

Office of the Solicitor General can represent the State in actions brought before the Court of Appeals or this Court.<sup>4</sup>

More importantly, Section 1, Rule 122 of the Rules of Court provides that: "Any party may appeal from a judgement or final order, unless the accused will be placed in double jeopardy." The elements of double jeopardy are as follows: (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted or the case was dismissed without the express consent of the accused.<sup>5</sup> In this case, when the Office of the City Prosecution filed an Urgent Motion to Withdraw the Informations and the lower court dismissed the case for lack of probable cause, respondent had already been arraigned under valid Informations for violation of Republic Act No. 9994.<sup>6</sup> Thus, the constitutional prohibition against double jeopardy applies.

Verily, for the foregoing reasons, the instant petition for review on certiorari is hereby **DENIED**.

**SO ORDERED.** *Inting, J., was designated additional member per Special Order No. 2726 dated October 25, 2019.*

Very truly yours,

  
**LIBRADA C. BUENA**

Division Clerk of Court <sup>116</sup>

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<sup>4</sup> *Guy v. Tulfo*, G.R. No. 213023, April 10, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65234>>.

<sup>5</sup> *SMART Communications, Inc. v. People*, G.R. No. 199653, October 13, 2014, p. 2 (Unsigned Resolution).

<sup>6</sup> Expanded Senior Citizens Act of 2010, approved on February 15, 2010.



RESOLUTION

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UDK 16502-03  
December 5, 2019

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The Presiding Judge  
Municipal Trial Court in Cities, Branch 3  
Naga City, 4400 Camarines Sur  
(Criminal Case Nos. 131474 & 131475)



**155-B**

RIA