

J. Motion to Quash – Rule 117

Section 1. *Time to move to quash.* — At any time before entering his plea, the accused may move to quash the complaint or information. (1)

Section 2. *Form and contents.* — The motion to quash shall be in writing, signed by the accused or his counsel and shall distinctly specify its factual and legal grounds. The court shall consider no ground other than those stated in the motion, except lack of jurisdiction over the offense charged. (2a)

Section 3. *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:

- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged;
- (c) That the court trying the case has no jurisdiction over the person of the accused;
- (d) That the officer who filed the information had no authority to do so;
- (e) That it does not conform substantially to the prescribed form;
- (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
- (g) That the criminal action or liability has been extinguished;
- (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
- (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (3a)

Section 4. *Amendment of the complaint or information.* — If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made. (4a)

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment. (n)

Section 5. *Effect of sustaining the motion to quash.* — If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge. (5a)

Section 6. *Order sustaining the motion to quash not a bar to another prosecution; exception.* — An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in section 3 (g) and (i) of this Rule. (6a)

Section 7. *Former conviction or acquittal; double jeopardy.* — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

However, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

- (a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;
- (b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information; or
- (c) the plea of guilty to the lesser offense was made without the consent of the prosecutor and of the offended party except as provided in section 1 (f) of Rule 116.

In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgment, he shall be credited with the same in the event of conviction for the graver offense. (7a)

Section 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. (n)

Section 9. *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule. (8)

1. Grounds

Section 3. *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:

- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged;
- (c) That the court trying the case has no jurisdiction over the person of the accused;
- (d) That the officer who filed the information had no authority to do so;
- (e) That it does not conform substantially to the prescribed form;
- (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
- (g) That the criminal action or liability has been extinguished;
- (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
- (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (3a)

2. Omnibus Motion Rule

Section 9. *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule. (8)

3. Double Jeopardy

Section 7. *Former conviction or acquittal; double jeopardy.* — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon

a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

However, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

- (a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;
- (b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information; or
- (c) the plea of guilty to the lesser offense was made without the consent of the prosecutor and of the offended party except as provided in section 1 (f) of Rule 116.

In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgment, he shall be credited with the same in the event of conviction for the graver offense. (7a)

4. Provisional Dismissal

Section 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. (n)

RULE 117 – MOTION TO QUASH

1. IVLER v. MODESTO-SAN PEDRO

TITLE: *Jason Ivler y Aguilar v. Hon. Maria Rowena Modesto-San Pedro, Judge of the Metropolitan Trial Court, Branch 71, Pasig City, and Evangeline Ponce*

G.R. NO.: 172716

DATE: November 17, 2010

FACTS:

Jason Ivler filed a Petition for Certiorari before the Supreme Court questioning the orders of Judge Maria Rowena Modesto-San Pedro of the Metropolitan Trial Court (MeTC) of Pasig City and the Regional Trial Court (RTC) concerning his prosecution for reckless imprudence. Following a vehicular collision, Ivler was charged in two separate cases: one for reckless imprudence resulting in slight physical injuries and another for reckless imprudence resulting in homicide and damage to property. Ivler pleaded guilty to the first charge and was convicted. He thereafter moved to quash the second Information on the ground of **double jeopardy**, arguing that both cases arose from the same reckless act. The MeTC denied the motion to quash, holding that the offenses were different. When Ivler failed to appear at the scheduled arraignment in the second case, his bail was cancelled and an order for his arrest was issued. The RTC subsequently dismissed his petition challenging the denial of his motion to quash. Ivler elevated the matter to the Supreme Court. The Supreme Court **granted the petition**, holding that his prior conviction barred the second prosecution because reckless imprudence under Article 365 is a single quasi-offense, regardless of the number or severity of the resulting consequences. The Court ordered the dismissal of the second criminal case on the ground of double jeopardy.

ISSUE:

WHETHER the Information for reckless imprudence resulting in homicide and damage to property should be quashed under **Rule 117** because Ivler had already been convicted of reckless imprudence resulting in slight physical injuries arising from the same reckless act, thereby placing him in **double jeopardy**.

RULING:

YES. The Supreme Court held that the second prosecution was barred by **double jeopardy** and that the Information should therefore be dismissed.

The Court explained that reckless imprudence under Article 365 is **a single quasi-offense**. The various consequences resulting from the negligent act—whether physical injuries, death, or property damage—do not create separate offenses for purposes of prosecution. Since Ivler had already been validly convicted by a court of competent jurisdiction based on a valid Information, a subsequent prosecution arising from the **same reckless act** would place him twice in jeopardy for the same offense.

WHY INCLUDED IN RULE 117:

This case is included under **Rule 117 – Motion to Quash**, particularly the ground of **double jeopardy**.

Under **Rule 117, Section 3**, an Information may be quashed when the accused has already been **convicted or acquitted of the offense charged**, or the case was otherwise terminated without the accused's express consent, and the requisites for double jeopardy are present.

KEY DOCTRINE:

One reckless act under Article 365 = one quasi-offense.

The prosecution cannot split the consequences of one reckless act into separate criminal cases because doing so may expose the accused to **double jeopardy**.

2. BONSUBRE, JR. v. YERRO

TITLE: *Atty. Segundo B. Bonsubre, Jr. v. Erwin Yerro, Erico Yerro and Ritchie Yerro*

G.R. NO.: 205952

DATE: February 11, 2015

CITATION: 750 SCRA 490 / 753 Phil. 653

FACTS:

Atty. Segundo B. Bonsubre, Jr. filed a criminal complaint for **estafa** against Erwin Yerro, Erico Yerro, and Ritchie Yerro before the Regional Trial Court of Cebu City. During the proceedings, the parties entered into a Compromise Agreement concerning the civil aspect of the case, and the prosecution manifested that it would submit the necessary motion regarding the settlement. However, the prosecution failed to furnish the RTC with the Compromise Agreement and failed to take the necessary steps to prosecute the criminal case. Consequently, on September 18, 2001, the RTC dismissed the criminal case for failure to prosecute, considering the accused's constitutional right to **speedy trial**. More than two years later, Bonsubre sought reconsideration and eventually attempted to appeal the dismissal of the criminal aspect. The RTC denied due course to the appeal, and the Court of Appeals affirmed. Bonsubre then filed a petition for certiorari before the Supreme Court, arguing that the dismissal should not have been considered final because the parties had agreed to a provisional dismissal. The Supreme Court **denied the petition**, holding that the dismissal based on the accused's right to speedy trial operated as an **acquittal**, was final and immediately executory, and could no longer be appealed absent grave abuse of discretion amounting to lack or excess of jurisdiction. The Court further explained that the requirements for a valid provisional dismissal under **Rule 117, Section 8** had not been complied with.

ISSUE:

WHETHER the dismissal of the criminal case based on the accused's right to speedy trial could be considered a **provisional dismissal under Rule 117, Section 8**, such that the case could later be revived and appealed by the complainant.

RULING:

NO. The dismissal could not be treated as a valid provisional dismissal under Rule 117, Section 8.

The Supreme Court explained that a **provisional dismissal** requires compliance with specific requisites, including the **express consent of the accused**, notice to the offended party, an order of the court granting the provisional dismissal, and service of the order on the public prosecutor.

In *Bonsubre*, these requisites were not satisfied. Although there was a Compromise Agreement between the parties, it was never properly presented to the court for approval and no valid order of provisional dismissal was issued pursuant to Rule 117, Section 8.

The dismissal instead rested upon the **constitutional right of the accused to speedy trial**. Such dismissal operates as an **acquittal**, which bars further prosecution and is not subject to an ordinary appeal by the prosecution.

WHY INCLUDED IN RULE 117:

This case is directly included under **Rule 117, Section 8 – Provisional Dismissal**.

It explains the **requisites and effect of a provisional dismissal**.

KEY DOCTRINE:

For a provisional dismissal to be valid under **Rule 117, Section 8**, the following must concur:

1. The prosecution, with the **express conformity of the accused**, or the accused, moves for provisional dismissal;
2. The **offended party is notified**;
3. The court issues an **order granting the provisional dismissal**; and
4. The **public prosecutor is served** with a copy of the order.

If these requisites are absent, a supposed agreement between the parties does **not automatically constitute a provisional dismissal** under Rule 117.