

ENGR. RUBEN U. YU, PETITIONER, VS. THERESA ROSE H. SIA, RESPONDENT.

Ponente: INTING, S.B., J.

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INTING, S.B., J.:

This Petition[1] seeks to reverse and set aside the Resolution[2] dated 19 November 2012 of the Department of Justice through the Regional Prosecution Office, Regional Office No. V, Rawis, Legazpi City, Albay, as well as its Order[3] dated 12 January 2013 in NPS Docket No. V-02-INV-11E-00121 entitled, "Engr. Ruben Y. Yu, Complainant-appellant, -versus- Theresa Rose H. Sia, Respondent-appellee," which dismissed herein petitioner's petition for review and denied his motion for reconsideration, respectively.

THE FACTS

Ruben U. Yu (herein petitioner) filed a criminal complaint for Falsification of Document penalized under paragraph 1, of Article 172, in relation to paragraphs 1 and 2 of Article 171 of the Revised Penal Code against Theresa Rose H. Sia (herein respondent). The latter allegedly falsified two (2) separate certifications she attached to: 1) the civil complaint for specific performance with damages; and 2) criminal complaint for violation of Presidential Decree 1096 and Estafa and other deceits, which she filed against petitioner before the Regional trial Court, Legazpi City and the Office of the City prosecutor of Legazpi, respectively, on behalf of the Heirs of Manuel T. Sia, Inc.

On 4 June 2012 the Prosecutor II of the Office of the Provincial Prosecutor of Albay, Rawis, Legazpi City, rendered a resolution.[4] The dispositive portion of which reads:

"WHEREFORE, for lack of competent evidence to show that respondent is liable for the crime of falsification defined under paragraph 1, Article 172 of the Revised Penal Code, the above-entitled case is DISMISSED, without prejudice.

SO RESOLVED."[5]

Petitioner filed his motion for reconsideration of the above-quoted resolution. However, it was denied in a Resolution[6] dated 12 September 2012, by the Provincial Prosecutor of Sorsogon in this wise:

"WHEREFORE, the motion for reconsideration is DENIED for lack of merit. Let the entire records of this case be returned to the Office of the Regional Prosecutor.

SO RESOLVED."[7]

Petitioner then filed his petition for review before the Regional State Prosecutor, Regional Office No. V, Rawis, Legazpi City, which issued a Resolution[8] dated 19 November 2012, denying said petition, as follows:

"WHEREFORE, In view of the foregoing premises, there being no new issue/s raised to warrant the reversal or modification of the resolution sought to be reconsidered, the petition for review is hereby denied for lack of merit."[9]

Petitioner filed his motion for reconsideration before the above-mentioned Regional Prosecution Office but it was denied. Hence, this appeal by petition for review.

THE APPEAL

Petitioner filed the present appeal by petition for review[10] with the following assignment of errors:

"A. The Honorable Department of Justice, with all due respect and deference, committed grave reversible error in the application of law in dismissing the Petition for review interposed by the Petitioner thereby injuriously affecting substantial rights of the Petitioner.

B. Furthermore, the Honorable Investigating Prosecutor committed reversible error in dismissing the complaint of the Petitioner for alleged absence of competent evidence to sustain the finding of probable cause against the respondent.[11]

Petitioner asserts that that it was erroneous for the Department of Justice (DOJ) to dismiss his complaint on the basis of private respondent's acknowledgement on an affidavit that the signatures appearing on the two (2) certificates, subject of petitioner's complaint, are hers. According to petitioner, simple affidavit would not suffice to establish genuineness and authenticity of a particular document. Without authentication, it was mere hearsay and had no evidentiary weight.

Petitioner also argues that the Investigating Prosecutor was mistaken when it found no probable cause to hold private respondent for trial for the crime of falsification as it overstepped the boundary of proof required for the determination of probable cause. He contended that it is enough that it is believed that the act or omission complained of constitute the offense charged. Thus, he prayed that his petition be granted.

THIS COURT'S RULING

The core of the controversy to be resolved by this Court is whether petitioner's appeal by petition for review would be granted or not.

We rule in the negative.

This case involves a Petition for Review under Rule 43 of the Rules of Court, which seeks to reverse and set aside the resolutions of the investigating prosecutor and of the Department of Justice (DOJ) which found no probable cause against respondent.

Now, this Court has to resolve whether the petition for review under Rule 43 of the Rules of Court was the proper remedy of petitioner.

We agree with the Office of the Solicitor General's contention that petitioner resorted to an improper remedy when he filed a petition for review under Rule 43 of the Rules of Court, instead of filing a petition for certiorari under Rule 65.

It bears stressing that in the determination of probable cause during the preliminary investigation, the executive branch of government has full discretionary authority. Thus, the decision whether or not to dismiss the criminal complaint against the private respondent is necessarily dependent on the sound discretion of the Investigating Prosecutor and ultimately, that of the Secretary of Justice. Courts are not empowered to substitute their own judgment for that of the executive branch.[12]

The resolution of the Investigating Prosecutor is subject to appeal to the Justice Secretary who, under the Revised Administrative Code, exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor.[13] Thus, while the CA may review the resolution of the Justice Secretary, it may do so only in a petition for certiorari under Rule 65 of the Rules of

Court, solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.[14] [Emphasis supplied]

It bears stressing that the Resolution of the Justice Secretary affirming, modifying or reversing the resolution of the Investigating Prosecutor is final. Under the 1993 Revised Rules on Appeals (now the 2000 National Prosecution Service Rules on Appeals), resolutions in preliminary investigations or reinvestigations from the Justice Secretary's resolution, except the aggrieved party, has no more remedy of appeal or of a motion for reconsideration of the said resolution if it is denied by the said Secretary. The remedy of the aggrieved party is to file a petition for certiorari under Rule 65 of the Rules of Court since there is no more appeal or other remedy available in the ordinary course of law.[15]

Based on the foregoing, petitioner clearly resorted to an improper remedy when he filed a petition for review under Rule 43 of the Rules of Court, assailing the resolutions of the Justice Secretary instead of filing a petition for certiorari under Rule 65 of the same rules. Thus, this Court is left with no other recourse but to dismiss the present petition.

WHEREFORE, premises considered, the petition is DISMISSED. Accordingly, the 19 November 2012 Resolution and 12 January 2013 Order of the Department of Justice through the Regional Prosecution Office, Regional Office No. V, Rawis, Legazpi City, Albay, @.

SO ORDERED.

Reyes, Jr., (Chairperson), and Lopez, JJ., concur.

[1] Rule 43 under the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 54-57.

[3] Rollo, p. 64.

[4] Rollo, pp. 19-30.

[5] Rollo, p. 29.

[6] Rollo, pp. 38-39.

[7] Rollo, p. 39.

[8] Rollo, pp. 54-57.

[9] Rollo, p. 57.

[10] Rollo, pp. 7-8.

[11] Rollo, p. 10.

[12] Metropolitan Bank and Trust Company v. Tonda, 392 Phil. 797, 814 (2000).

[13] Public Utilities of Olongapo City v. Guingona, Jr., 417 Phil. 798, 805 (2001).

[14] Supra, note 12.

[15] Filadams Pharma, Inc. v. Court of Appeals, G. R. No. 132422, March 30, 2004, 426 SCRA 460,

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