

**SPOUSES DANTE AND ARLENE LUDOVICE, PETITIONERS, MEMBERS:
VS. VALERIANO B. TIZON, THE SECRETARY OF JUSTICE AND THE
OFFICE OF THE PRESIDENT, RESPONDENTS.**

Ponente: VILLON, J.

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VILLON, J.:

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing, on grounds of grave abuse of discretion amounting to lack or excess of jurisdiction, the Resolutions dated January 21, 2010[1] and May 27, 2010[2] of the Department of Justice in I.S. No. 081-15668. The said issuances reversed the Resolutions dated March 4, 2009[3] and August 13, 2009 of the Office of the City Prosecutor (OCP) of Manila which, in turn, dismissed the complaint filed by private respondent Valeriano B. Tizon against petitioners, the spouses Dante and Arlene Ludovice for Estafa under Article 315 of the Revised Penal Code (RPC), as amended. The case was initially appealed[4] by petitioners to the Office of the President (OP) but was dismissed for lack of jurisdiction in its Order[5] dated July 15, 2011. Having failed to obtain favorable relief from the OP, petitioners filed the instant petition.

In the Complaint-Affidavit[6] executed by private respondent and filed with the OCP of Manila, he alleged that he was the winning party in Civil Case No. 04-109340 for abatement of nuisance and damages before Branch 50 of the Regional Trial Court (RTC) of Manila, where he was awarded ₱1,415,000.00 in damages in its Decision[7] dated March 13, 2006 (or “RTC Decision”); that the losing party (petitioners) have two (2) properties, the first, covered by Transfer Certificate of Title (TCT) No. T-7691 located in Las Piñas City and the other, TCT No. 258179 located in the City of Manila; that both were unencumbered when the RTC Decision was rendered; that when an Alias Writ of Execution was issued on January 26, 2007, petitioners started to dispose, mortgage or otherwise alienate the said properties to the damage and prejudice of private respondent; that when the Sheriff implemented the said writ of execution and levied on the said properties, it was found out that the titles thereto contained annotations of an Absolute Deed of Sale and Deed of Real Estate Mortgage in favor of third parties; and that the acts of petitioners in alienating their properties were intended to deceive and/or defraud complainant of what was due to him pursuant to the RTC Decision.

In his Counter-Affidavit,[8] petitioner Dante Ludovice (or “Dante”) claimed that the enforcement of the RTC Decision had been suspended indefinitely by the said court, thus, the filing of the instant case was premature; that the charge of deceit and defraudation against him were based on assumption or conclusion without support from credible proof. The other petitioner, Arlene Ludovice (or “Arlene”), merely claimed that she did not have knowledge of any fraud committed against private respondent.

In its Resolution[9] of March 4, 2009, the OCP of Manila recommended the dismissal of the case for insufficiency of evidence against therein respondents (herein petitioners).

Aggrieved by the above Resolution, private respondent interposed an appeal before the Department of Justice (DOJ) which issued the herein first assailed Resolution on January 21, 2010, to wit:

“WHEREFORE, the assailed Resolutions are hereby REVERSED and SET ASIDE. The City Prosecutor of Manila is directed to file two [2] informations accusing respondents Dante Ludovice and Arlene Ludovice for the commission of the crime of Other Deceits under Article 318 of the Revised Penal Code, and report the actions taken thereon within ten [10] days from receipt hereof.

SO ORDERED.”[10]

On January 28, 2010, petitioners filed their Motion for Reconsideration[11] which was denied with finality by the DOJ in the second assailed Resolution[12] dated May 27, 2010. As earlier pointed out, petitioners initially interposed an appeal to the OP which, however, dismissed the same for lack of jurisdiction. Hence, this Petition for Certiorari, petitioners submitting the following issues[13] for resolution:

I.

THE SECRETARY OF JUSTICE GROSSLY ERRED IN ISSUING THE QUESTIONED RESOLUTIONS DATED 21 JANUARY 2010 AND 27 MAY 2010 FOR LACK OF LEGAL AND FACTUAL BASIS.

II.

THE SECRETARY OF JUSTICE GROSSLY ERRED IN TAKING COGNIZANCE OF THE PETITION FOR REVIEW FILED BY PRIVATE RESPONDENT FROM THE RESOLUTIONS OF THE CITY PROSECUTOR OF MANILA DATED 4 MARCH 2009 AND 13 AUGUST 2009 CONSIDERING THE FINALITY OF THE 4 MARCH 2009 RESOLUTION.

III.

THE OFFICE OF THE PRESIDENT GROSSLY ERRED IN NOT REVERSING THE RESOLUTIONS OF THE SECRETARY OF JUSTICE.

On the first issue raised by petitioners, We hold that the Secretary of the DOJ did not commit error in issuing the questioned Resolutions dated January 21, 2010 and May 27, 2010. The pieces of evidence on record show that petitioners herein owned two (2) real properties registered in their names, one located in Las Piñas City and covered by TCT No. T-76291 and the other, in Tondo, Manila covered by TCT No. 258179.

It appears that during execution proceedings, upon the issuance of Writ of Execution by the RTC on January 26, 2007, of which petitioners were duly notified, they started to dispose, mortgage or otherwise alienate or transfer said properties to the damage of the herein private respondent.

The property in Las Piñas City was subsequently encumbered through a mortgage which was registered and annotated at the back of the covering title. It appears that earlier, it was first offered to private respondent by petitioners to answer for the award of damages in Civil Case No. 04-109340, as it was then unencumbered. It was only when the Sheriff was levying on the said property that the encumbrance by way of a mortgage thereon, in favor of a certain Juan Ronaldo Angeles through an instrument dated March 6, 2007, was discovered.[14] This was executed after the RTC Decision was rendered.

Petitioners likewise resorted to a similar act with respect to their Tondo property by conveying it, through a Deed of Absolute Sale, in favor of a certain Alberto J. Regunan.

The foregoing acts were clandestinely carried out by petitioner Dante in conspiracy with his spouse, petitioner Arlene, who expressly conformed to the execution of the aforesaid Deed of Real Estate Mortgage and Deed of Absolute Sale.

After a careful consideration of the respective allegations of the herein parties and the evidence presented, this

Court is convinced that indeed, there is a probable cause for the indictment of petitioners for Other Deceits under Article 318 of the RPC, all the elements thereof being present in this case.

It is provided under Article 318 that Other Deceits is committed by "any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles" referring to the general forms of Estafa under Article 315, Other Forms of Swindling under Article 316 and Swindling a Minor under Article 317. For one to be liable for "other deceits" under the law, it is required that the prosecution must prove the following essential elements: (a) false pretense, fraudulent act or pretense other than those in the preceding articles; (b) such false pretense, fraudulent act or pretense must be made or executed prior to or simultaneously with the commission of the fraud; and (c) as a result, the offended party suffered damage or prejudice.[15]

The petitioners had become judgment-debtors by virtue of the award for damages in Civil Case No. 04-109340. The money judgment in favor of private respondent amounted to P1,415,000.00. It is clear from the records of the case that petitioners disposed and transferred their properties after they learned of the RTC Decision dated March 13, 2006. The Tondo property was made the subject of a Deed of Absolute Sale on July 31, 2006. On the other hand, the Las Piñas property was subjected to a Deed of Real Estate Mortgage on March 6, 2007. Such actions on the part of petitioners were clearly made to defraud private respondent.

Fraud or malice (dolo) has been defined as a "conscious and intentional design to evade the normal fulfillment of existing obligations" and is, thus, incompatible with good faith.[16] Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal duty or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.[17] It is a "generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to secure an advantage and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated." [18] Measured against these standards, it cannot be gainsaid that petitioners committed fraud when they encumbered their real properties.

Anent the second issue, the Secretary of Justice did not commit reversible error in taking cognizance of the Petition for Review filed by private respondent from the Resolutions of the OCP of Manila dated March 4, 2009 and August 13, 2009.

It may be noted that private respondent received a copy of the Resolution dated March 4, 2009 of the OCP of Manila on June 17, 2009. Under Section 13[19] of the Department Circular No. 70 otherwise known as the 2000 NPS[20] Rules on Appeal, a motion for reconsideration of the resolution of the City Prosecutor should be filed within ten (10) days from receipt of such issuance. Thus, the complainant, private respondent in this case, had until June 27, 2009 within which to file his motion for reconsideration. Since June 27, 2009 fell on a Saturday, the motion could be filed on the next working day, that is, Monday, June 29, 2009. Thus, private respondent's motion for reconsideration of June 29, 2009 was seasonably filed.

On the third issue raised by petitioners, the OP did not err in not reversing the assailed Resolutions of the Secretary of the DOJ. The rationale behind this conclusion is that the OP has a limited jurisdiction in reviewing resolutions, orders, and decisions issued by the Secretary of Justice concerning preliminary investigations of criminal case. In this regard, Memorandum Circular No. 58, series of 1993, provides as follows:

"No appeal from or petition for review of decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by reclusion perpetua to death wherein new and material issues are raised which were not previously presented before the Department of Justice and were not ruled upon in the subject

decision/order/resolution, in which case the President may order the Secretary of Justice to reopen/review the case, provided, that, the prescription of the offense is not due to lapse within six (6) months from notice of the questioned resolution/order/decision, and provided further, that, the appeal or petition for review is filed within thirty (30) days from such notice.

Henceforth, if an appeal or petition for review does not clearly fall within the jurisdiction of the Office of the President, as set forth in the immediately preceding paragraph, it shall be dismissed outright and no order shall be issued requiring the payment of the appeal fee, the submission of appeal brief/memorandum or the elevation of the records to the Office of the President from the Department of Justice.

If it is not readily apparent from the appeal or petition for review that the case is within the jurisdiction of the Office of the President, the appellant/petitioner shall be ordered to prove the necessary jurisdictional facts, under penalty of outright dismissal of the appeal or petition, and no order to pay the appeal fee or to submit appeal brief/memorandum or to elevate the records of the case to the Office of the President shall be issued unless and until the jurisdictional requirements shall have been satisfactorily established by the appellant/petitioner.”

Here, the appealed case merely involved a complaint for Other Deceits under Article 318 of the RPC, an offense which is neither punishable by reclusion perpetua nor death. As correctly stressed by the DOJ, the OP did not have jurisdiction to take cognizance of this case. Hence, the appeal was correctly dismissed by the OP for lack of jurisdiction.

Finally, it must be stressed that the instant case merely involves a finding of probable cause or such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof.[21] Probable cause is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief; that is, the belief that the act or omission complained of constitutes the offense charged.[22] Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.[23]

Hence, this is not the occasion for the full and exhaustive display of the evidence of the parties. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. In fine, the validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[24]

WHEREFORE, in light of all the foregoing, the petition is DISMISSED for lack of merit. Accordingly, the Resolutions dated January 21, 2010 and May 27, 2010 issued by the Secretary of the Department of Justice in I.S. No. 081-15668 are hereby AFFIRMED.

SO ORDERED.

Macalino, and *Inting, JJ., concur.

*Vice Justice P.B. Corales per Office Order No. 161-14-AGT dated April 24, 2014.

[1] Rollo, pp. 38-41.

[2] Rollo, pp. 50-52.

[3] Rollo, p. 37.

[4] Rollo, pp. 53-63.

[5] Rollo, p. 66.

“Before this Office is a letter dated 04 April 2011 by the Department of Justice (DOJ) forwarding the complete records of the case, consisting of two hundred fifty-one (251) pages. The letter also interposed, by way of comment, that the Office of the President does not have jurisdiction over the case pursuant to Memorandum Circular No. 58 dated 30 June 1993.

Memorandum Circular No. 58 provides that no appeal from or petition for review of decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by reclusion perpetua to death x x x x. It must be noted, however, that the appealed case involves a complaint for other deceits under Article 318 of the Revised Penal Code, an offense which is neither punishable by reclusion perpetua nor death. As correctly stressed by the DOJ, therefore, this Office does not have jurisdiction to take cognizance of this case.

In view of the foregoing, the instant appeal cannot be given due course and is hereby DISMISSED for lack of jurisdiction.

SO ORDERED.”

[6] Rollo, pp. 35-36.

[7] Rollo, pp. 30-33.

[8] Rollo, pp. 7, 57 & 196.

[9] Rollo, p. 37.

[10] Rollo, p. 41.

[11] Rollo, pp. 42-47.

[12] Rollo, pp. 141-146.

[13] Rollo, p. 8.

[14] Rollo, p. 39.

[15] Jaime Guinhawa v. People of the Philippines, G.R. No. 162822, August 25, 2005.

[16] Spouses Delfin O. Tumibay and Aurora T. Tumibay v. Spouses Melvin A. Lopez and Rowena Gay T. Visitacion Lopez, G.R. No.171692, June 3, 2013.

[17] Rafael H. Galvez v. Court of Appeals, G.R. No. 187919, April 25, 2012.

[18] Commissioner of Customs v. Court of Tax Appeals, G.R. Nos. 171516-17, February 13, 2009.

[19] Section 13. Motion for reconsideration. The aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal, furnishing the adverse party and the Prosecution Office concerned with copies thereof and submitting proof of such service. No second or further motion for reconsideration shall be entertained.

[20] National Prosecution Service.

[21] Anthony T. Reyes v. Pearlbank Securities, Inc., G.R. No. 171435, July 30, 2008.

[22] Spouses Bernyl Balangauan & Katherene Balangauan v. Court of Appeals, G. R. No. 174350, August 13, 2008.

[23] Angelita de Guzman v. Emilio A. Gonzalez III, G.R. No. 158104, March 26, 2010.

[24] Leonardo M. Andres v. Justice Secretary Serafin R. Cuevas, G.R. No. 150869, June 9, 2005.

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