

JAY ILAGAN Y MANALO, PETITIONER, VS. HON. GIRLIE M. BORRELYU, IN HER CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 35, ORMOC CITY, HON. CLINTON C. NUEVO, I...

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

The petition filed under Rule 65 of the 1997 Rules of Civil Procedure, seeks to nullify the September 4, 2014 Order[2] and the October 10, 2014 Joint Order[3] of the Regional Trial Court, Branch 35, Ormoc City (RTC) in Crim. Case No. R-ORM-14-00109-HC for violation of Sec. 4(a), RA 9208 as amended by RA 10364 and Crim. Case No. R-ORM-14-00110-HC for rape.

THE ANTECEDENTS[4]

Stripped of the unessentials, the facts of this case are as follows:

On December 12, 2013, AAA filed a complaint against petitioner, the incumbent Mayor of the Municipality of Mataasnakahoy, Batangas for Rape and, together with a certain Dinah Tupas (Tupas), for Violation of Anti-Trafficking in Persons Act of 2003, before the Office of the City Prosecutor of Ormoc City (OCP).

On February 4, 2014, the OCP issued the Resolution finding probable cause against petitioner and Tupas.[5]

On April 2, 2014, the RTC issued the Order[6] for the issuance of the warrant of arrest against petitioner and Tupas.

On May 12, 2014, petitioner filed the Urgent Omnibus Motion to Set Aside the Order of the Court dated April 2, 2014, Quash Warrant of Arrest and Conduct a Reinvestigation,[7] praying among others for the re-investigation of the criminal cases filed against him.

An exchange of pleadings ensued.

On May 30, 2014, the RTC issued the Order[8] deferring the court proceedings, countermanding the implementation of the warrant of arrest, and directing the OCP to conduct a re-investigation and for it to submit a recommendation to the court.

On July 22, 2014, a clarificatory hearing on the reinvestigation of the criminal cases was conducted by the OCP.[9]

On August 15, 2014, the OCP issued the Resolution (on Reinvestigation)[10] recommending to the RTC that the Information against petitioner be given due course.

On September 2, 2014, petitioner filed before the OCP his Motion for Reconsideration[11] to the August 15, 2014 Resolution (on Reinvestigation).

On September 4, 2014, before petitioner's motion for reconsideration to the August 15, 2014 Resolution (on

Reinvestigation) was resolved by OCP, the rendered the assailed Order, the fallo of which reads:

WHEREFORE, let the previously issued warrant of arrest against accused Jay Ilagan y Manalo in the two cases and Dinah Tupaz in Criminal Case No. R-ORM-14-109-CR be implemented. Insofar as Criminal Case No. R-ORM-14-109-CR is concerned, pursuant to the amendment of R.A. 9208 by R.A. No. 10364, the court hereby set the bail bond for the accused' temporary liberty at Php200,000.00 each

SO ORDERED.

On September 9, 2014, petitioner filed before the RTC his Urgent Motion for Reconsideration (Re: Order dated 04 September 2014).[12]

On October 10, 2014, the RTC issued the Joint Order,[13] denying petitioner's motion for reconsideration.

Hence, this petition.

ASSIGNMENT OF ERRORS

- THE RTC ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT ISSUED THE SEPTEMBER 4, 2014 ORDER (FOR THE IMPLEMENTATION OF PETITIONER'S WARRANT OF ARREST) DESPITE THE FACT THAT THE REINVESTIGATION OF THE CASE BEFORE THE OCP HAS NOT BEEN CONCLUDED BECAUSE A MOTION FOR RECONSIDERATION TO THE OCP'S AUGUST 15, 2014 RESOLUTION (ON REINVESTIGATION) WAS NOT YET RESOLVED;

- THE RTC ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT ISSUED THE SEPTEMBER 4, 2014 ORDER WITHOUT EXAMINING THE EVIDENCE SUPPORTING THE OCP'S AUGUST 15, 2014 RESOLUTION (ON REINVESTIGATION).

THE COURT'S RULING

The petition is DISMISSED.

Petitioner argues that the RTC committed grave abuse of discretion when it issued the September 4, 2014 Order (for the implementation of petitioner's warrant of arrest), because the reinvestigation of the criminal case filed against him was still pending. A motion for reconsideration to the OCP's August 15, 2014 Resolution (on Reinvestigation) - which recommended to the RTC that the criminal cases filed against petitioner be given due course - was not yet to be resolved. Petitioner contends that the RTC's hasty issuance of the September 4, 2014 Order violated his right to due process especially since under the 2000 NPS Rule on Appeal, he is granted 15-days to file a motion for reconsideration to the resolution of the OCP.

The argument is without merit.

We quote with approval the RTC's discussion on the matter:

It is elementary that this Court's determination of probable cause for the issuance of warrant of arrest against the accused after a criminal information is filed for the conduct of a trial is separate and distinct from the determination of probable cause conducted by the investigation prosecutor in a preliminary investigation/reinvestigation proceeding on whether to charge a person with a crime or an offense. The former is a judicial function while the latter is an executive function. What is now pending at the investigating prosecutor's office (the motion for reconsideration to the report on reinvestigation) is primarily the concern of the prosecutorial arm of the Executive Department. Such proceeding being separate and distinct from the subject matter of the assailed Order of September 4, 2014 - which concerns the issuance of a warrant of arrest after a finding of probable cause to do (so) - there is no strong reason to warrant a reversal of the questioned Order at this stage of the case. In short, the pendency of a motion for reconsideration at the investigating

prosecutor's office does not affect this Court's jurisdiction to act on matters addressed to its discretion nor impairs the validity of the Informations already filed with this Court. Finding no cogent reason to digress from its earlier determination of probable cause and consequent issuance of a warrant of arrest against the accused, the questioned Order is maintained in toto.[14]

Indeed, the task of determining probable cause for purposes of issuing a warrant of arrest is a responsibility which is exclusively reserved by the Constitution to judges. It is not for the Provincial Fiscal or Prosecutor to ascertain. Only the Judge and the Judge alone makes this determination. The preliminary inquiry made by a Prosecutor does not bind the Judge. It merely assists him to make the determination of probable cause. The Judge does not have to follow what the Prosecutor presents to him. By itself, the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge to make his determination.[15]

Given this fundamental principle, the RTC does not have to wait for the OCP's action on petitioner's motion for reconsideration. As regards to it (RTC), any result of such action would only be a formality. Whether the OCP will grant or deny petitioner's motion for reconsideration is of no moment to the court. The RTC can disregard the outcome of the OCP's findings especially since the OCP's report on the reinvestigation (i.e., August 15, 2014 Resolution [on Reinvestigation]), the transcripts of stenographic notes and the other supporting documents, sufficient "tools" to aid it in its task, are already at its disposal.

In *Viudez v. The Court Of Appeals*,[16] the Supreme Court held:

The function of the judge to issue a warrant of arrest upon the determination of probable cause is exclusive; thus, the consequent implementation of a warrant of arrest cannot be deferred pending the resolution of a petition for review by the Secretary of Justice as to the finding of probable cause, a function that is executive in nature. To defer the implementation of the warrant of arrest would be an encroachment on the exclusive prerogative of the judge (emphasis supplied).

Similarly, the RTC's issuance of the warrant of arrest cannot be deferred pending the resolution of a petitioner's motion for reconsideration, otherwise the exclusive prerogative of a judge to issue a warrant would be hampered.

Petitioner also points out that in the September 4, 2014 Order, the RTC held among others that, "the court belabored itself to examine and evaluate the resolution and found no ground to digress from its previous finding of the existence of probable cause." He contends that this shows that the RTC only evaluated the OCP's Resolution (on Reinvestigation) dated August 15, 2014 but did not examine its supporting documents and the other evidences. Allegedly, this violated Section 6(a), Rule 112 of the Rules on Criminal Procedure which states:

Sec. 6. When warrant of arrest may issue. - (a) By the Regional Trial Court. - Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence x x x

The argument is unavailing.

Petitioner is reading the RTC's September 4, 2014 Order literally. In examining the OCP's resolution, the RTC has to inevitably sieve into various documents and evidences mentioned therein. It goes without saying that the RTC did not only evaluate the OCP's Resolution (on Reinvestigation) dated August 15, 2014 but also its supporting evidences, as this is but the natural and ordinary way to go.

However, if We are going to be overly literal about it, We note that the RTC, when it held that it "belabored itself to examine and evaluate the resolution," did not use the proper noun, "Resolution (on Reinvestigation)," which it

should have employed if it wanted to refer to the actual document dated August 15, 2014 containing the OCP's findings. Instead it used the common noun, "resolution" which means "the act or process of resolving." [17] This implies that contrary to petitioner's contention, the RTC wanted to convey that it did not rely solely on the document dated August 15, 2014 and denominated as "Resolution (on Reinvestigation)," when it held that it examined the "resolution." It meant that it evaluated the whole of the OCP's "act or process of resolving" the case. Necessarily, the RTC had to look, not only into the actual document containing its finding (i.e., Resolution (on Reinvestigation dated August 15, 2014), but also the other supporting documents and evidences. This conclusion is further bolstered by the fact that in the subsequent Joint Order dated October 10, 2014, the RTC had clarified that the September 4, 2014 Order "was arrived at after belaboring to examine and evaluat[e] the pieces of evidence relied upon by the investigating prosecutor in his resolution on reinvestigation." [18] Clearly, petitioner's argument has no leg to stand on.

In fine, We find that the RTC did not commit grave abuse of discretion. An act of a court or tribunal may only be considered as committed in grave abuse of discretion when it was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. [19] As discussed earlier, this is not present here. We find that the RTC was within legal bounds when it issued the assailed orders.

IN VIEW OF THE FOREGOING, and pursuant to Section 8, Rule 65 of the 1997 Rules of Civil Procedure, [20] the instant petition is DISMISSED for being patently without merit.

SO ORDERED.

Delos Santos, J., Chairperson, and Lopez, JJ., concur.

[1] Pursuant to People v. Cabalquinto, 533 Phil. 703 (2006), Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC, fictitious initials are used to preserve the confidentiality of the identity of the woman-victim and her immediate family and other identifying details such as their address.

[2] Rollo, p. 236, penned by Presiding Judge Girlie M. Borrel-Yu.

[3] Rollo, p. 261, penned by Pairing Judge Clinton C. Nuevo.

[4] See Rollo, pp. 5-13.

[5] Rollo, p. 45.

[6] Rollo, p. 49.

[7] Rollo, p. 50.

[8] Rollo, p. 75.

[9] See TSN, rollo, p. 133.

[10] Rollo, p. 206.

[11] Rollo, p. 229.

[12] Rollo, p. 243.

[13] Because of the inherent urgency of petitioner's motion for reconsideration, the Branch Clerk of Court of the RTC forwarded it the Hon. Clinton C. Nuevo, Presiding Judge of the Regional Trial Court, Branch 12, Ormoc City, and the Pairing Judge of the RTC (i.e., the court a quo) for appropriate action, in view of the official leave of respondent Judge Yu (See Rollo, p. 9); Also on October 10, 2014, the OCP issued the Order (Re: Motion for Reconsideration dated September 1, 2014), denying petitioner's motion for reconsideration. (See Rollo, p. 265. Allegedly, this was received by petitioner on October 14, 2014).

[14] See Joint Order dated October 10, 2014, rollo, p. 263.

[15] Roberts, Jr. v. The Court Of Appeals, G.R. No. 113930, March 05, 1996.

[16] G.R. No. 152889, June 05, 2009.

[17] <http://www.merriam-webster.com/dictionary/resolution>, visited on January 13, 2015, 4:31 pm.

[18] Rollo, p. 262.

[19] Robosa, et al. v. NLRC, et al., G.R. No. 176085, February 8, 2012.

[20] Section. 8. Proceedings after comment is filed. After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If, after such hearing or filing of memoranda or upon the expiration of the period for filing, the court finds that the allegations of the petition are true, it shall render judgment for such relief to which the petitioner is entitled.

However, the court may dismiss the petition if it finds the same patently without merit or prosecuted manifestly for delay, or if the questions raised therein are too unsubstantial to require consideration. In such event, the court may award in favor of the respondent treble costs solidarily against the petitioner and counsel, in addition to subjecting counsel to administrative sanctions under Rules 139 and 139-B of the Rules of Court.

The Court may impose *motu proprio*, based on *res ipsa loquitur*, other disciplinary sanctions or measures on erring lawyers for patently dilatory and unmeritorious petitions for certiorari.

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