FELILIBETH AGUINALDO AND BENJAMIN PEREZ, PETITIONERS, VS. JUDGE FELIXBERTO T. OLALIA,PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 8 AND REYNALDO P. VENTUS AND J...

Ponente: SABIO, JR., J.

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SABIO, JR., J.:

This petition for certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure seeks to annul the following Orders of Branch 8 of the Regional Trial Court (RTC) of Manila in Criminal Case No. 03-215182:

- Order[1] dated May 16, 2005 which granted the prosecution's Motion to Reinstate Case, and ordered the issuance of a warrant of arrest against petitioner Felilibeth Aguinaldo; and

- Order[2] dated August 23, 2005 which denied petitioner Aguinaldo's Motion for Reconsideration of the Order dated May 16, 2005 as well as Motion to Quash Warrant of Arrest.

FACTUAL ANTECEDENTS

On December 2, 2002, the private respondents Reynaldo P. Ventus and Jojo B. Joson filed a complaint for Estafa against the petitioners Benjamin Perez and Felilibeth Aguinaldo before the Office of the City Prosecutor of Manila.[3]

On January 15, 2003, petitioner Perez filed his Counter-Affidavit,[4] to which the private respondents filed a Reply-Affidavit[5] on January 22, 2003, necessitating petitioner Perez to file a Rejoinder-Affidavit[6] on January 29, 2003.

On February 25, 2003, Assistant City Prosecutor Renato F. Gonzaga issued a Resolution[7] recommending both petitioners to be indicted in court for Estafa under Article 315, par. (2) of the Revised Penal Code (RPC). Petitioner Aguinaldo, however, alleged that she has neither received any notice of the preliminary investigation nor was she furnished any copy of the private respondents' affidavit prior to the issuance of the said resolution.[8]

On July 16, 2003, an Information[9] indicting the petitioners of the crime of Estafa under Article 315 par. 2(a) of the RPC was filed with the public respondent.

On July 18, 2003, the public respondent issued an Order of Arrest against the petitioners.[10]

On July 31, 2003, the petitioners through counsel filed a Very Urgent Motion to Recall or Quash Warrants of Arrest[11] alleging among others, that the Resolution dated February 25, 2003 of the Office of the City Prosecutor (OCP) has not attained finality because the petitioners' 15-day period to file a motion for reconsideration thereof has not as yet expired, and that the petitioners (accused therein) intended to file the said motion with the 15-day period from receipt of the resolution.

Meanwhile, the petitioners, on August 4, 2003, jointly filed with the OCP of Manila, a Motion for

Reconsideration of its resolution dated February 25, 2003 with Motion for the Withdrawal of the Information.[12]

On August 6, 2003, the public respondent issued an Order [13] granting the aforesaid motion and directing the recall of the warrant of arrest only insofar as petitioner Aguinaldo was concerned pending resolution of his motion for reconsideration with the OCP.

Upon the prosecution's motion, the proceedings was deferred pending the resolution of the petitioners' Motion for Reconsideration.[14]

On January 16, 2004, the OCP through Asst. City Prosecutor Antonio M. Israel issued a Resolution[15] recommending the denial for lack of merit of the petitioners' twin motions for reconsideration and withdrawal of the information. ACP Israel thus moved for the setting of the case for trial.[16]

Whereupon, the petitioners filed an Appeal or Petition for Review before the Department of Justice on February 27, 2004[17]

On March 15, 2004, the public respondent, acting favorably on the prosecution's recommendation for the denial of the petitioners' twin motions for reconsideration and withdrawal of the information, as well as the prosecution's motion to set case for trial, issued an Order[18] directing the issuance of a warrant of arrest against petitioner Aguinaldo and setting of the case for arraignment.

In view of the pendency of an Appeal or Petition for Review before the Department of Justice, the petitioners filed on March 26, 2004, an Urgent Motion to Cancel Arraignment and Suspend Further Proceedings[19] praying that the proceedings be held in abeyance until the aforesaid appeal or petition is resolved with finality. The petitioners reiterated the same prayer in its subsequent Urgent Motion for Reconsideration of the Order dated March 15, 2004.[20]

Finding the aforesaid motions meritorious, and there being no objections on the part of the prosecution, the same were granted in the Order[21] dated April 16, 2004, subject to the submission of a copy of the petitioners' Petition for Review, which the latter complied with on May 31, 2004.[22]

On June 23, 2004, a Motion to Reinstate Case and to Issue Warrant of Arrest[23] was filed by the Law Firm of Lapeña and Associates on behalf of Levita de Castro. It was alleged therein that the latter is the private complainant in the instant case and that this case has been ordered archived; hence, the motion for reinstatement of the case in the active file and the issuance of a warrant of arrest against the petitioners, to which petitioners seasonably filed an Opposition with Motion to Expunge.[24] Petitioners averred therein that Levita de Castro is not a party to the case and that the same is in active file awaiting resolution of their Petition for Review.

On October 6, 2004, Levita de Castro through counsel filed a Manifestation and Motion[25] dated October 4, 2004, praying that the petitioners' counsel be required to explain why she should not be cited in contempt of court for her alleged act of deliberately coddling, hiding, harboring and concealing petitioner Felilibeth Aguinaldo or in the alternative for said counsel to reveal the whereabouts of the said petitioner in order for the court to acquire jurisdiction over her person.

The pending motions herein had not as yet been resolved when Levita de Castro through counsel filed a Manifestation[26] informing the public respondent that the Secretary of Justice has already promulgated a Resolution dated September 6, 2004 denying the petitioners' Petition for Review. Attached to the said Manifestation is a photocopy of the Resolution.[27]

Before acting on the pending motions, the public respondent issued an Order[28] dated October 28, 2004, directing the petitioners' counsel to file her comment to De Castro's Manifestation and Motion dated October 4,

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2004, to which petitioners' counsel immediately complied with.[29]

On May 16, 2005, the public respondent issued the first assailed Order, the full text of which we quote hereunder:

> "ORDER
>
> "Pending with this Court are (1) Motion to Reinstate Case and to Issue Warrant of Arrest against accused Aguinaldo filed by the private prosecutor with the conformity of the public prosecutor and (2) Manifestation and Motion dated October 4, 2004 filed by the private prosecutor praying, among others, that defense counsel Atty. Benelita Mones be required to explain why she should not be cited in contempt of court.
>
> "It appears from the records that:
>
> (1) the warrant of arrest issued against accused Aguinaldo was recalled pending resolution of the Petition for Review filed with the DOJ; xxx
>
> (2) the Petition for Review was subsequently dismissed xxx
>
> (3) accused Aguinaldo has not yet posted bail bond.
>
> "In view of the foregoing, (the) Motion to Reinstate Case and to Issue Warrant of Arrest is GRANTED. Let this case be REINSTATED and let warrant of arrest be issued against accused Aguinaldo.
>
> "As to the Manifestation and Motion dated October 4, 2004 stating, among others, that there is constant communication between accused and counsel Atty. Mones; that the act of defense counsel in coddling, hiding and concealing accused well knowing that her client is a fugitive from justice is well beyond the bounds of ethical conduct expected of the good defense counsel; that the defense counsel must be required to explain why she should not be cited in contempt of court for her act or in the alternative be required to surrender her client to the authorities so that the Court shall acquire jurisdiction over the person of the accused. Atty. Mones filed her Comment and stated that being the counsel of record, she is bound to present every defense allowed by law; that the fact that the accused is absent does not excuse the lawyer to renege her sworn duty to submit pleadings and other supporting documents in defense of the accused.
>
> "Finding the Comment to be meritorious, motion to cite in contempt of court is hereby denied. Manifestation by Atty. Villanueva is noted by the Court.
>
> "SO ORDERED."[30]

On May 30, 2005, the petitioners through counsel filed a Motion for Reconsideration with Motion to Quash Warrant of Arrest[31] averring, among others: That their counsel has not received a copy of the resolution on the appeal; That the last Order received by the petitioners' counsel from the DOJ was a letter dated April 15, 2004 requiring her to submit the pertinent pleadings relative to the appeal, to which she complied with on October 15, 2004; That the DOJ issued a Certification[32] dated May 30, 2005 that their petition for review is pending resolution by the Department as of May 27, 2005; That private respondents' allegations in their Motion to Reinstate Case and to Issue Warrant of Arrest are contrary to the records of the case; That the motion was filed on behalf of Levita de Castro when the records show that the actual private complainants are Reynaldo P. Ventus and Jojo B. Joson (private respondents herein); That the simultaneous issuance of a warrant of arrest was unfounded baseless as it was issued on the basis of a prematurely filed Information while the Petition for Review is yet unresolved with the DOJ; and That the precipitate filing of an Information and issuance of a warrant of arrest put at risk the petitioners to incarceration without the Petition for Review having been first resolved by the DOJ in violation of the right to preliminary investigation.

On August 23, 2005, the public respondent issued the second assailed Order,[33] denying the petitioners' Motion

for Reconsideration with Motion to Quash Warrant of Arrest and setting the arraignment of the petitioners. In denying the motion, the public respondent ruled in this wise:

> "In the ruling of the Supreme Court in Crespo vs. Mogul, G.R. No. L-53373, it states that:'Once a complaint or information is filed in court, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court. Trial judges are thus required to make their own assessment of whether the secretary of justice committed grave abuse of discretion in granting or denying the appeal, separately and independently of the prosecution's or the secretary's evaluation that such evidence is insufficient or that no probable cause to hold the accused for trial exists.'

"Hence, the issuance of the warrant is at best left to the discretion of the trial court. However, records do not show that DOJ has resolved the petition for review, although photocopies were presented by the private complainant.

"But in view of Sec. 11 Rule 115 of the Revised Rules on Criminal Procedure, the suspension allowed for arraignment is beyond the 60-day period, the Motion for Reconsideration with Motion to Quash Warrant of Arrest is DENIED. xxx"[34]

Hence, this petition.

THE ISSUES

The petition is anchored on the following grounds:

> ITHE HONORABLE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING THE MOTION TO REINSTATE THE CASE AND ISSUE A WARRANT OF ARREST FILED BY LEVITA DE CASTRO WHO IS NOT A PARTY TO THE INSTANT CASE.
>
> II
> THE HONORABLE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE MOTION FOR RECONSIDERATION AND THE MOTION TO QUASH THE WARRANT OF ARREST FILED BY THE PETITIONERS.
>
> III
>
> THE PRELIMINARY INVESTIGATION OF THE INSTANT CASE BY THE OFFICE OF THE CITY PROSECUTOR OF MANILA HAS NOT YET BEEN COMPLETED

THE COURT'S RULING

The petition deserves scant consideration.

A petition for certiorari is the proper remedy when any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain, speedy, and adequate remedy at law.[35] Grave abuse of discretion implies a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty enjoined or to act at all in contemplation of law. It is not sufficient that a tribunal, in the exercise of its power, abused its discretion; such abuse must be grave.[36]

We now resolve whether the public respondent herein committed grave abuse of discretion in issuing the assailed

Orders dated May 16, 2005 and August 23, 2005.

Section 11(c), Rule 116 of the Revised Rules on Criminal Procedure provides—

> "SEC. 11. Suspension of arraignment.—Upon motion by the proper party, the arraignment shall be suspended in the following cases:
>
> xxx xxx xxx
>
> (c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; Provided, That the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office."

While the pendency of a petition for review is a ground for suspension of the arraignment, the aforecited provision limits the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office. It follows, therefore, that after the expiration of said period, the trial court is bound to arraign the accused or to deny the motion to defer arraignment.[37]

In the case at bar, the petitioners' petition for review was filed with the Secretary of Justice on February 27, 2004. As early as April 16, 2004, upon the petitioners' motion, the arraignment of the petitioners' herein was ordered deferred by the public respondent.[38] We believe that the period of one year and one month from April 16, 2004 to May 16, 2005 when the public respondent ordered the issuance of a warrant for the arrest of petitioner Aguinaldo, was more than ample time to give the petitioners the opportunity to obtain a resolution of their petition for review from the DOJ. The petitioners though submitted a Certification[39] from the DOJ dated May 30, 2005 stating that their petition for review is pending resolution by the Department as of May 27, 2005. However, such delay in the resolution of their petition for review does not extend the period of 60 days prescribed under the afore-quoted Section 11(c), Rule 116 of the Revised Rules on Criminal Procedure. Besides, the petitioners may be faulted for the delay in the resolution of their petition. According to their counsel, she received a letter dated April 15, 2004 from the DOJ requiring her to submit the pertinent pleadings relative to petitioners' petition for review; admittedly, however, the same was complied with only on October 15, 2004.[40] We therefore find that the trial court did not commit grave abuse of discretion in issuing the assailed orders.

In view of the foregoing, we deem it not necessary to discuss the other issues raised herein.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Asuncion-Vicente and Villon, JJ., concur.

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[1] Rollo, p. 27.

[2] Id. at p. 29.

[3] Id. at p. 31.

[4] Id. at p. 34.

[5] Id. at p. 37.

[6] Id. at p. 39.

[7] Id. at p. 41.

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[8] Petition, Id. at p. 13.

[9] Id. at p. 43.

[10] Original Record, pp. 23-24.

[11] Id. at p. 38.

[12] Rollo, p. 45.

[13] Id. at p. 59.

[14] Id. at pp. 60.

[15] Id. at p. 61.

[16] Original Record, p. 54.

[17] Rollo, p. 62.

[18] Id. at p. 79.

[19] Id. at p. 80.

[20] Id. at p. 85.

[21] Id. at p. 90

[22] Original Record, p. 76.

[23] Rollo, p. 91.

[24] Id. at p. 93.

[25] Original Record, p. 134.

[26] Id. at p. 136.

[27] Id. at p. 138.

[28] Rollo, p. 96.

[29] Orignal Record, p. 145.

[30] Rollo, p. 95.

[31] Id. at p. 100.

[32] Id. at p. 97.

[33] Id. at p. 191.

[34] Id. at p. 105.

[35] Punzalan vs. Dela Peña, 434 SCRA 601, 608.

[36] Id. at p. 609.

[37] Samson vs. Daway, 434 SCRA 612, 621.

[38] Rollo, pp. 80, 85 & 90.

[39] Id. at p. 97.

[40] Annex W, Id. at p. 101.

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