

**TERESITA CELESTINO HOWARD AND JOSE HOWARD, JR.,
PETITIONERS, VS. SECRETARY OF JUSTICE, PEOPLE OF THE
PHILIPPINES, HON. ROWENA DE JUAN-QUINAGORAN, PRESIDING
JUDGE OF THE REGIONAL...**

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

Before this Court is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, filed by petitioners Teresita Celestino Howard and Jose Howard, Jr., assailing the twin Resolutions dated February 12, 2013[1] and December 3, 2013[2] of the Secretary of Justice, which denied petitioners' petition for review of the Resolution dated July 3, 2012 of the Office of the City Prosecutor of Pasig City in I.S. No. XV-14-INV-12D-00733 (Crim. Case No. 148540-PSG, RTC of Pasig City, Branch 166), and the Motion for Reconsideration thereof, respectively.

On March 30, 2012, private respondent Raymond Theodore A. Almeda filed with the Pasig City Prosecutor's Office a Complaint-Affidavit,[3] charging petitioners with estafa under Article 315, paragraph 2(d) of the Revised Penal Code and violation of Batas Pambansa (B.P.) Blg. 22. The complaint alleged that sometime in June 2011, petitioners proposed a contract to produce and air a TV program in relation to the awarding and recognition of outstanding Filipino actors and actresses, among others. Considering the expenses of the production, petitioners borrowed from private respondent Php1,000,000.00, and promised to issue a check sufficiently funded upon presentment of payment. Since they were long-time friends, private respondent granted the loan of Php1,000,000.00 to petitioners who simultaneously issued and delivered Security Bank Check No. 0528040[4] in the same amount. However, when the subject check was presented for payment within ninety (90) days from the date appearing thereon, it was dishonored due to "ACCOUNT CLOSED" as indicated in the check. On several occasions, private respondent demanded that petitioners pay the loan obligation but the demand was ignored. Finally, private respondent sent petitioners a final demand letter[5] dated February 14, 2012 but the latter refused to receive it. To date, petitioners has failed and refused to pay their obligation causing private respondent damage and injury.

In their Counter-Affidavits,[6] petitioners refuted private respondent's allegations, saying that there was no probable cause to hold them liable for estafa and violation of B.P. Blg. 22. They denied that they were long-time friends with private respondent and that they borrowed Php1,000,000.00 from him in order to finance the production of the star awards in 2011. According to them, Airtime Marketing Phil., Inc. (Airtime), owned by petitioners, and Exile, Inc. (Exile), the president and CEO of which is Joey Valencia, agreed[7] to produce the star awards for television in 2011. Each corporation agreed to provide capital of Php2,000,000.00 and to share income on a 50-50 basis. On June 21, 2011, Mr. Valencia delivered to Airtime Bank of the Philippine Islands (BPI) Check No. 37105,[8] with the account name Almeda Construction & Equipment Rentals, in the amount of Php1,000,000.00, as payment for the share of Exile in the production. Petitioners have no knowledge of the relationship between private respondent and Almeda Construction & Equipment Rentals. Petitioners also denied

having issued and delivered to private respondent Security Bank Check No. 0528040. The truth according to them was that Mr. Valencia asked if he could borrow the check in the amount of Php1,000,000.00 to be used in another transaction and on the promise that he will not deposit the said amount. Petitioners relied on such promise and even told Mr. Valencia that the amount in the bank is not sufficient to cover the amount stated in the check. As a precautionary measure, petitioners did not place their signature on the check. On several occasions prior to the due date, petitioners asked Mr. Valencia to return the check but the latter said he could not find it. He averred though that he did not use nor delivered it to anybody. Considering that the check was apparently lost, petitioners closed their bank account to ensure that the check cannot be cleared in favor of the person who may have found or stolen it. They also denied having received a copy of the demand letter.

In their Supplemental Counter-Affidavit,[9] petitioners reiterated that they have no involvement with private respondent in the production of the star awards. They also reiterated that Joey Valencia of Exile, Inc., delivered the BPI Check No. 37105 dated June 21, 2011 with the account name Almeda Construction & Equipment Rentals in the amount of Php1,000,000.00. As evidence thereto, petitioners presented an Acknowledgment Receipt[10] dated June 21, 2011. They also reiterated that they never issued and delivered to private respondent Security Bank Check No. 0528040 dated September 10, 2011. The truth is that Mr. Valencia merely borrowed the said check with the undertaking that he will not deposit it without petitioners' consent. A copy of the Acknowledgment Receipt[11] dated June 27, 2011 signed by Mr. Valencia was presented in evidence.

After all pleadings were submitted, the Assistant City Prosecutor of Pasig City issued a Resolution,[12] finding probable cause to charge petitioners with estafa under Article 315, paragraph 2(d) and only petitioner Teresita Celestino Howard for violation of B.P. Blg. 22. Petitioners made private respondent believe that the check issued to pay the obligations would be honored upon presentment. Instead however, the account of petitioners was closed, hence, the check was dishonored. As regards the charge for violation of B.P. Blg. 22, it is clear from the evidence that only petitioner Teresita Celestino Howard issued the subject check for payment, but the same was dishonored by reason of the fact that the account was closed. On the other hand, the defenses claimed by petitioners showed that the same are evidentiary in nature and should be proven during trial.

On July 13, 2012, an Information[13] was filed with the Regional Trial Court (RTC) of Pasig City, charging petitioners with estafa under Article 315, paragraph 2(d) of the Revised Penal Code, committed as follows:

On or about or sometime on (sic) August 2011, in Pasig City and within the jurisdiction of this Honorable Court, the accused, with intent to defraud Raymond Theodore A. Almesa (sic), and by means of deceit, false pretenses and fraudulent acts, executed prior to or simultaneously with the commission of the fraud, did then and there willfully, unlawfully and feloniously make or draw and issue to said complainant the following check to wit:

Check No. : 0528040

Drawn Against : Security Bank

In the amount of : P1,000,000.00

Date/Postdated : September 10, 2012

Payable to : Cash

in exchange for cash, well knowing that at the time they issued the said check, they have no funds in or credit with the said bank for the payment in full of the face amount of said cheque upon its presentment which check when presented for payment was subsequently dishonored by the drawee bank for the reason "Account Closed", and despite receipt of notice of dishonor, the accused refused and still refuses despite repeated demands to make

arrangement for payment thereof or to pay amount of P1,000,000.00, to the damage and prejudice of Raymond Theodore A. Almeda.

On August 16, 2012, petitioner filed with the trial court an Urgent Motion for the Suspension of Arraignment,[14] and on September 27, 2012, an Urgent Motion for Suspension of Arraignment and for Leave to File Motion for Judicial Determination of Probable Cause.[15] However, in an Order[16] dated September 27, 2012, the RTC denied the motions declaring that: (1) the court had already suspended the proceedings for more than two months pursuant to Rule 116 of the Rule on Criminal Procedure; and (2) it had earlier issued an order dated July 22, 2012, finding probable cause to charge petitioners with estafa. Finally, the trial court did not allow further resetting of arraignment at the instance of petitioners.

On November 7, 2012, petitioners were arraigned in Criminal Case No. 148540-PSG for the crime of estafa, wherein both pleaded not guilty to the offense charged.[17]

Meanwhile, stressing that the issuance of the subject check does not constitute estafa and violation of B.P. Blg. 22, , petitioners, on July 27, 2012, filed with the DOJ a petition for review.[18]

However, the Secretary of Justice, in the first assailed Resolution[19] dated February 12, 2013, dismissed the petition on the ground that petitioners failed to append the motion to defer proceedings duly filed in court. As such, petitioners' right to appeal was deemed lost.

Petitioners moved for reconsideration for the Resolution but the motion was denied in the second assailed Resolution[20] dated December 3, 2013. The Secretary of Justice ruled that the issuance by the RTC of Pasig City of the Orders denying petitioners' Urgent Motion for Suspension of Arraignment and finding probable cause for the crime of estafa rendered the motion for reconsideration moot and academic. It further declared to leave the matter entirely for the determination of the court in line with the ruling in the case of Crespo vs. Mogul.

Aggrieved, petitioner filed with this Court a petition for certiorari, premised on the following grounds:[21]

1. PUBLIC RESPONDENT SECRETARY OF JUSTICE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY DISMISSING THE PETITION FOR REVIEW FILED BY PETITIONERS DUE TO ALLEGED FAILURE TO ATTACH A MOTION TO DEFER PROCEEDINGS FILED BEFORE TRIAL COURT;
2. PUBLIC RESPONDENT SECRETARY OF JUSTICE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY CONCLUDING THAT THE MOTION FOR RECONSIDERATION FILED BY PETITIONERS HAD BEEN RENDERED MOOT AND ACADEMIC BY THE ALLEGED DENIAL OF THE MOTION FOR SUSPENSION OF ARRAIGNMENT AND THE ISSUANCE BY THE TRIAL COURT OF AN ORDER FINDING PROBABLE CAUSE; and
3. PUBLIC RESPONDENT SECRETARY OF JUSTICE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY AFFIRMING THE DISMISSAL OF THE PETITION FOR REVIEW DESPITE THE FACT THAT THERE IS NO PROBABLE CAUSE AND THERE IS INSUFFICIENT EVIDENCE TO PROVE THAT PETITIONERS COMMITTED ESTAFA AND VIOLATION OF BATAS PAMBANSA BILANG 22.

Petitioners contend that the Secretary of Justice committed grave abuse of discretion when she dismissed the petition for review solely on the ground of non-compliance with the requirements of the 2000 National Prosecution Service (NPS) Rule on Appeal, more so, since petitioners had earlier submitted the required motion

for suspension of the arraignment. Likewise, according to petitioners, the Secretary of Justice committed grave abuse of discretion when she denied petitioners' motion for reconsideration on the ground that it had already become moot by the trial court's denial of their motion for suspension of the arraignment. Such ruling has no legal or factual basis. More importantly, petitioners argue that the DOJ did not make any ruling on the substantial issues raised by them. With this, petitioners maintain that there was no probable cause for the charge of estafa against them since the subject check was not issued in payment of an obligation contracted at the time it was issued. Petitioners had no obligation to private respondent under any contract or agreement. They did not also commit violation of B.P. Blg. 22. The subject check was incomplete because it did not contain petitioner Teresita Celestino Howard's signature and it was never issued nor delivered to private respondent. Petitioners also had no knowledge at the time of the issuance of the check that there was insufficient funds in the drawee bank and the notice of dishonor was not sent to nor received by them. Absent probable cause to indict petitioners of the the crimes charged, the complaints for estafa and violation of B.P. Blg. 22 against them should be dismissed.[22]

The Office of the Solicitor General (OSG), representing the Department of Justice (DOJ) and the People, in essence, contends that there was no grave abuse of discretion on the part of the Secretary of Justice in dismissing the petition for review, as it was in accordance with the procedural rules laid down in the 2000 NPS Rule on Appeal, and the jurisprudence which directed the Secretary of Justice to refrain from entertaining the petition for review or appeal from the action of the public prosecutor, when the complaint or information has already been filed in court, as properly done by the Secretary of Justice.[23]

The issues for this Court's determination are: first, whether the Secretary of Justice committed grave abuse of discretion in dismissing the case based on procedural lapses; and second, whether or not this Court can disturb the determination of probable cause made by the Assistant City Prosecutor in the case.

The petition deserves scant consideration.

The assailed DOJ Resolutions dated February 12, 2013 and December 3, 2013 were issued in accordance with Section 12 (b), in relation to Section 7, of the 2000 NPS Rules on Appeal, dated July 3, 2000, which authorizes the Secretary of Justice to dismiss a petition outright if he finds it to be patently without merit or manifestly intended for delay, or when the issues raised therein are too insubstantial to require consideration. In dismissing the petition for review, the Secretary of Justice ruled that petitioners failed to file the motion for suspension of arraignment which is a necessary requirement for the disposition of the appeal. We note, however, that the failure to attach the pleading was not the sole reason for the denial of the petition for review. As mentioned, the assailed Resolution dismissed the petition on the ground that the court already issued an order finding probable cause in accordance with the ruling in *Crespo vs. Mogul*.

At this point, it should be emphasized that we can no longer entertain the petition as petitioners had admittedly been arraigned. The 2000 NPS Rule on Appeal clearly states that if an information has been filed in court pursuant to the appealed resolution, the petition [for review] shall not be given due course if the accused has already been arraigned.

This notwithstanding, we have examined the records to determine the merit of the petition but found no error in the public prosecutor's determination that there exists a probable cause to justify the filing of a criminal complaint.

The decision whether or not to dismiss the criminal complaint against the accused depends on the sound discretion of the prosecutor. Courts will not interfere with the conduct of preliminary investigations, or reinvestigations, or in the determination of what constitutes sufficient probable cause for the filing of the corresponding information against an offender. Courts are not empowered to substitute their own judgment for

that of the executive branch. Differently stated, as the matter of whether to prosecute or not is purely discretionary on his part, courts cannot compel a public prosecutor to file the corresponding information, upon a complaint, where he finds the evidence before him insufficient to warrant the filing of an action in court. In sum, the prosecutor's findings on the existence of probable cause are not subject to review by the courts, unless they are patently shown to have been made with grave abuse of discretion.[24]

Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. The term does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.[25]

Further, a finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[26]

It must be mentioned, though, that in order to arrive at probable cause, the elements of the crime charged should be present.[27]

Under Article 315, paragraph 2(d) of the Revised Penal Code, estafa is committed by any person who shall defraud another by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud. It is committed with the following essential elements which must be proved to sustain a conviction:[28]

- postdating or issuance of a check in payment of an obligation contracted at the time the check was issued;
- lack of sufficiency of funds to cover the check; and
- damage to the payee thereof.

All the elements averred in the Complaint-Affidavit of private respondent are sufficient to engender a well-founded belief that a crime had been committed and that petitioners have committed it. In consideration of the loan amounting to Php1,000,000.00, petitioners issued a postdated check in favor of private respondent; the check was dishonored at the time of presentment due to "Account Closed"; and petitioners failed to pay private respondent the face value of the check as their loan obligation to the damage of private respondent. The mere presumption that petitioners issued the check in favor of private respondent in consideration of the loan and the fact that the check bounced at the time of presentment is enough to conclude that a probable cause exists to indict petitioners for the crime of estafa. As to whether the presumption can be rebutted by petitioners as a matter of defense should be best presented or offered during a full-blown trial.

In the same vein, the allegation in the complaint, coupled with the evidence attached thereto, constitute prima facie evidence of the violation of B.P. Blg. 22, the elements of which are, as follows:[29] (1) the mere issuance of the check for payment of an obligation; (2) the knowledge of the maker that at the time of issue he does not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the

same reason had not the drawer, without any valid cause, ordered the bank to stop payment. Petitioner's claim that the check was incomplete or that it was not issued for value is also a matter that can be best ventilated in a full-blown trial.

All told, we find no grave abuse of discretion on the part of the Secretary of Justice in affirming the assailed Resolutions of the Office of the City Prosecutor of Pasig City, finding probable cause to indict petitioners of the crimes of estafa and of violation of B.P. Blg. 22, they being in accordance with law and jurisprudence.

WHEREFORE, the petition is DISMISSED for lack of merit. The Resolutions dated February 12, 2013 and December 3, 2013, of the Secretary of Justice are AFFIRMED.

SO ORDERED.

Baltazar-Padilla, P.J., and Inting, S.B, JJ., concur.

[1] Rollo, pp. 28-29.

[2] Id. at 31-32.

[3] Id. at 53-58.

[4] Id. at 59.

[5] Id. at 60-61.

[6] Id. at 63-71, 85-86.

[7] Id. at 72-74.

[8] Id. at 79.

[9] Id. at 80-81.

[10] Id. at 83.

[11] Id. at 84.

[12] Id. at 50-51.

[13] Id. at 93.

[14] Id. at 105-120.

[15] Id. at 110-112.

[16] Id. at 122-123.

[17] Id. at 6.

[18] Id. at 33-46.

[19] See Note 1.

[20] See Note 2.

[21] Rollo, pp. 8-9.

[22] Id. at 12-23.

[23] Id. at 203-210.

[24] See *Baviera vs. Paglinawan*, 515 SCRA 170, 183-184 (2007).

[25] *Metropolitan Bank and Trust Company vs. Gonzales*, 584 SCRA 631, 640-641 (2009).

[26] *Fenequito v. Vergara, Jr.*, 677 SCRA 113, 120-121 (2012), citing *Reyes v. Pearlbank Securities, Inc.*, citation omitted.

[27] See *Sy Tiong Shiou v. Sy Chim*, 582 SCRA 517, 530 (2009).

[28] *People vs. Reyes*, 454 SCRA 635, 645-646 (2005).

[29] *Meriz vs. People*, 368 SCRA 524, 531 (2001).

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