FORMING ACCESS AND SUPPORT, INC., REPRESENTED BY ITS PRESIDENT, FREDERICK V. ERUM, PETITIONER, VS. HON. LEILA M. DE LIMA, IN HER OFFICIAL CAPACITY AS THE SECRETARY OF THE DEPART...

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

In this Rule 65 certiorari petition, the petitioner seeks to nullify and set aside the resolution of 28 May 2013,[1] issued by the public respondent Secretary of the Department of Justice, which resolved to dismiss the complaint against respondent Ma. Magdalena Royo Mustafa (“Magdalena”) for falsification of public document by a private individual under Article 172(1) of the Revised Penal Code (RPC). The dispositive portion of the resolution states:

> “WHEREFORE, the instant petition is hereby DISMISSED for LACK OF MERIT.
>
> SO ORDERED.”[2]

Likewise assailed is the resolution of 19 December 2013[3] which denied the petitioner's motion for reconsideration[4] for lack of merit.

The pertinent and relevant facts, as can be culled from the submissions of the parties, are as follows:

On 22 May 2006, petitioner filed a complaint[5] for collection of sum of money, damages and with prayer for issuance of writ of preliminary attachment, levy and garnishment against Magdalena and her husband Ma'rouf Tawfiq Ahmad Mustafa (“Ma'rouf”), with the Regional Trial Court (RTC) of Pasig City. The complaint was docketed as Civil Case No. 70806 (“collection case”).

In a Resolution dated 24 May 2006, the RTC granted the petitioner's application for the issuance of a writ of preliminary attachment against the properties of the spouses. During the implementation of the writ on 26 May 2006, the RTC Sheriff discovered two (2) properties in Baguio City that were registered solely in the name of Magdalena[6], which were, two (2) parcels of land covered by Transfer Certificates of Title Nos. T-76301[7] and T-76302[8].

Sometime in June 2011, the petitioner caused an inquiry and research with the Office of the Registrar of Deeds of Baguio City and found out that the said certificates of title were issued by virtue of the two (2) Deeds of Absolute Sale notarized on 24 and 25 September 2001.[9] In both deeds of sale, Magdalena narrated the fact that she was “single”.

The said deeds of sale were executed at the time Magdalena was already married to her husband Ma'rouf and such marriage was then validly subsisting. Magdalena's marriage to Ma'rouf is evidenced by a Marriage Contract[10] dated 18 December 1984 and entered into in 87 Maharlika Village, Bicutan, Taguig, Metro Manila.

On 10 October 2011, the petitioner filed a complaint-affidavit[11] before the Baguio City Prosecutor for two counts of falsification of public document under Art. 172(1) of the RPC against Magdalena.

In its Resolution[12] issued on 26 October 2011, the Baguio City 2nd Assistant Prosecutor dismissed the complaint of the herein petitioner for want of probable cause. The prosecutor ratiocinated as follows:

> "However, the undersigned prosecutor finds no probable cause to indict the respondent of Falsification of Public Document by a PRIVATE INDIVIDUAL under Article 172(1) of the Revised Penal Code by means of "making untruthful statements in a narration of facts."
>
> xxx xxx xxx
>
> In the case at bar, the investigating prosecutor does not find the element that the declaration made by the respondent that she was single was made with wrongful intent of injuring a third person. Moreover, the statement of respondent that she acted in good faith deserves weight and credence."[13]

The petitioner moved for the reconsideration of the prosecutor's resolution but the same was denied via a Review Resolution[14] issued by the Assistant City Prosecutor as approved by the Deputy City Prosecutor. It declared that no sufficient evidence existed to sustain the finding of probable cause that the crime of falsification of public document under Art. 172 of the RPC has been committed by Magdalena. Not satisfied with the view of the assistant city prosecutor, the petitioner filed a Verified Petition for Review[15] with the Department of Justice.

In the assailed resolution, the Secretary of Justice found no reversible error committed by the city prosecutor. She concluded that the declaration made by Magdalena was not attended by any wrongful intent. Further, the Secretary of Justice gave credence to Magdalena's defense of good faith; thus, the city prosecutor's conclusion was upheld. Aggrieved, the petitioner moved for the reconsideration of the Secretary of Justice's resolution but the same was denied.

Undaunted, the petitioner came to us via the instant petition for certiorari which ascribes to the Secretary of Justice grave abuse of discretion amounting to lack or excess of jurisdiction. In support of its petition, the petitioner raised the following grounds:

> "I.
>
> THE EVIDENCE TAKEN DURING THE PRELIMINARY INVESTIGATION CLEARLY ESTABLISHES THE EXISTENCE OF PROBABLE CAUSE IN LIGHT OF THE PRESENCE OF ALL THE ELEMENTS OF THE CRIME OF FALSIFICATION UNDER ART. 172(1) OF THE RPC;
>
> II.
>
> THE DEFENSE OF GOOD FAITH BY PRIVATE RESPONDENT WAS NOT WELL TAKEN BY PUBLIC RESPONDENT.
> A. THE ELEMENT OF INTENT TO INJURE A THIRD PERSON IS NOT A REQUIREMENT IF THE DOCUMENT FALSIFIED IS A PUBLIC DOCUMENT. HERE, WHAT WERE FALSIFIED BY PRIVATE RESPONDENT ARE DEEDS OF ABSOLUTE SALE – WHICH ARE CLEARLY PUBLIC DOCUMENTS.
>
> B. THE DEFENSE OF "GOOD FAITH" IS EVIDENTIARY IN NATURE AND A MATTER THAT MAY BE PASSED UPON ONLY AFTER A FULL-BLOWN TRIAL ON THE MERITS BEFORE THE TRIAL COURT.
>
> THE RULE IS THAT THE VALIDITY AND MERITS OF A PARTY'S DEFENSE OR ACCUSATION, AS WELL AS THE ADMISSIBILITY OF TESTIMONIES AND EVIDENCE, ARE BETTER VENTILATED DURING TRIAL PROPER THAN AT THE PRELIMINARY INVESTIGATION LEVEL.
>
> C. THE REAL INTENTION OF PRIVATE RESPONDENT COULD BE SEEN FROM HER "OVERT ACT" OF SIGNING THE FALSIFIED DEEDS OF ABSOLUTE SALE, NOT FROM HER ALLEGED "STATE OF MIND";

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> D. THE FACTUAL STATEMENT OF PRIVATE RESPONDENT IN THE SUBJECT DEEDS OF ABSOLUTE SALE THAT SHE WAS "SINGLE" (WHEN IN TRUTH AND IN FACT, SHE WAS MARRIED AT THAT TIME) SMACKS OF EVIDENT BAD FAITH, NOT "GOOD FAITH".

The petitioner contends that the finding of the Secretary of Justice was gravely erroneous and marred with grave abuse of discretion as there was actually evidence on record that could support a determination of probable cause for the crime falsification of public document under Art. 172(1) of the RPC against Magdalena. The petitioner further contends that all the elements of the crime of falsification under Art. 172(1) had been established during the preliminary investigation. The petitioner opposes Magdalena's defense of 'good faith' or 'lack of wrongful intent to injure a third person' on the assertion that the said defenses are not essential when the document falsified is a public document.

The contentions of the petitioner are meritorious.

In a preliminary investigation, probable cause for the filing of an information by the prosecutor 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.[16] Further, the term probable cause 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 the presence of sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.[17]

Per complaint-affidavit dated 10 October 2011, the petitioner accused Magdalena of having committed the crime of falsification under Art. 172, paragraph 1 of the RPC in relation to number four of Art. 171 of the same code or "making untruthful statements in a narration of facts". The pertinent portion of the complaint-affidavit is herein quoted as follows:

> "9. Respondent Magdalena committed the act of falsification under Art. 172(1) of the RPC by means of making untruthful statements in a narration of facts which has the following elements: (a) that the offender makes in a document statements in a narration of facts; (b) that he has legal obligation to disclose the truth of the facts narrated by him; (c) that the facts narrated by him are absolutely false; and (d) that the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person. However, this element (wrongful intent to injure third person) is not essential when the document falsified is a public document.
>
> 9.1. All these elements are present in this case.
>
> 9.1.1 Firstly, the statement in the Deeds of Absolute Sale that respondent Magdalena was "single"at the time of the execution thereof is a narration of fact, not a conclusion of law.
>
> 9.1.2 Secondly, respondent Magdalena has the legal obligation to disclose her correct status, single or married, because the same is required by law, more particularly, Sec. 55, Chapter V, P.D. 1529, otherwise known as the "Property Registration Decree". Thus:
>
> xxx xxx xxx
>
> 9.1.3 Thirdly, the narrated factual statement in the subject Deeds of Absolute Sale (Annexes "F"and "G"hereof) by respondent Magdalena that she was "single" (at the time of the execution thereof) is absolutely false. As stated, the truth is that she was validly married with Ma'rouf during that time – a fact established by her own Marriage Contract (Annex "H" hereof) and judicial admission (Annex "I"hereof).
>
> 9.1.4 Fourthly, since the falsified Deeds of Absolute Sale are public documents, the last element of "wrongful intent to injure a third person"is not essential.

> 10. In the light of the foregoing, I believe that there is sufficient ground to engender a well-founded belief that the charge for Falsification of Public Document by a private individual under Art. 172(1) of the RPC committed by means of "making untruthful statements in a narration of facts"(Two Counts) has been committed by respondent Magdalena. Based on the evidence on record, there is clear showing that Magdalena is guilty or probably guilty thereof, and should be held for trial."

In support of the foregoing averments, the petitioner adduced the referenced deeds of sale and the corresponding titles issued and registered in the name of Magdalena which both indicated "single" as her civil status. The said public documents run counter to the valid and existing marriage of Magdalena with her husband Ma'rouf which was celebrated on 18 December 1984. Magdalena also made an admission that she affixed her signatures on the deeds of sale that the brokers prepared for her. She asserted, however, that as of the execution of the sale, she believed that she was still single because her marriage with her Jordanian husband was not yet registered with the National Statistics Office (NSO). When cross-examined in the collection case, Magdalena testified as follows:

> "Q Do you agree with me Madam that your marriage with your husband was never annulled by any Court?
>
> A Yes, sir.
>
> Q So, that remains valid?
>
> A Valid, sir.
>
> Q Do you recall madam when you purchased these two (2) properties?
>
> A In 2001, I think.
>
> Q In 2001, your marriage with your husband was still valid?
>
> A I don't remember.
>
> Q And there is no Court Order annulling your marriage with your husband?
>
> A No, sir.
>
> Q So, is it correct then to say Madam that sometime in 2001, you are still married with your husband?
>
> A Yes, sir.

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> Atty. Bumatay:
>
> Although stated in this transfer certificate of title... for this Honorable Court's reference, we note, Your Honor, that Ma. Magdalena O. Royo as stated in this title is still single, You Honor, contrary to her statement under oath. Just for the reference of this Honorable Court."[18]

The foregoing circumstances convince us of the presence of probable cause against Magdalena, as the evidence will show that there is a reasonable ground to conclude that a falsification exists as would lead the prosecutor to believe that she is probably guilty of the offense charged and can be held for trial. In other words, there is evidence to engender a well-founded belief that the felony complained of has been committed and that the respondent is probably guilty thereof and ought to be held for trial. Articles 172(1) and 171(4) of the Revised Penal Code, provide thus:

> "Article 171. xxx xxx xxx
>
> 4. Making untruthful statements in a narration of facts;"
>
> Art. 172. Falsification by private individuals and use of falsified documents.-- The penalty of prision correccional in its medium and maximum periods and a fine of not more than P5,000 shall be imposed upon:
>
> 1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document;"

In the instant case, there is no question that all the elements of falsification are present and the fact that Magdalena admitted that she indicated "single" as her civil status in the subject public documents would make her the author of the falsification.

It is a settled rule that in the falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person for the reason that in the falsification of a public document, the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.[19] The purpose for which the falsification was made and whether the offender profited or hoped to profit from such falsification are no longer material.[20]

An examination of the resolutions issued by the Assistant City Prosecutor as approved by the Deputy City Prosecutor and eventually by the Secretary of Justice will show that the finding of lack of probable cause was anchored on the supposed absence of wrongful intent on the part of Magdalena to cause damage or to injure a third person when she made a declaration that she was "single" instead of "married". As the prosecutor found and as affirmed by the Secretary of Justice, Magdalena supposedly acted in good faith because she knew that her marriage with Ma'rouf was not yet registered with the NSO and that the same was registered only on 13 October 2004 or three years after the subject deeds of sale were executed.

We do not agree with the prosecutor and the Secretary of Justice.

The Court is mindful of the established principle that the determination of probable cause is essentially an executive function that is lodged with the public prosecutor and the Secretary of Justice. Equally settled, however, is the rule that while the findings of prosecutors are reviewable by the Secretary of Justice, this does not preclude courts from intervening and exercising their own powers of review with respect to the Secretary of Justice's findings.[21] In the exceptional case in which grave abuse of discretion is committed, as when a clear sufficiency or insufficiency of evidence to support a finding of probable cause is ignored, the Court may take cognizance of the case via a petition under Rule 65 of the Rules of Court.[22]

Magdalena's testimony during her cross-examination in the collection case, the subject deeds of sale, the

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corresponding certificates of title, and her marriage certificate, sufficiently lead to the conclusion that there exists reasonable ground to believe that the crime of falsification of a public document by a private individual was committed and that Magdalena was its author.

When the falsification is committed by a private individual on a public document, the violation would fall under paragraph 1, Article 172 of the RPC. It is clear from the said provision that the offense is committed independent of evidence of damage or intention to cause the same to a third person. When the offense charged, however, is committed under paragraph 2 or 3 of the same Art. 172, damage to a third party or intent to cause such damage becomes a crucial element.

From the foregoing, it is clear that the Secretary of Justice's finding of lack of probable cause against Magdalena was based solely on surmises and conjectures, wholly unsupported by legal and factual bases. Consequently, her act may be nullified on the ground of grave abuse of discretion with respect to the relevant resolutions now assailed before the Court. “There is grave abuse of discretion when the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment, as when the assailed judgment or resolution is bereft of any factual and legal justification.[23]” Grave abuse of discretion refers not merely to palpable errors of jurisdiction. It also refers to violations of the Constitution, the law and jurisprudence and even to gross misapprehension of facts. In the particular case now before the Court, the Secretary of Justice may have inadvertently glossed over the factual milieu pertinent to the specific felony charged. Such inadvertence, however, constitutes an abuse of discretion grave enough to oust her of jurisdiction.

Although policy considerations call for the widest latitude of deference to the prosecutors' findings, courts should not shirk from exercising their power, when the circumstances warrant, to determine whether the prosecutors' findings are supported by the facts or by the law. In so doing, courts do not act as prosecutors but as organs of the judiciary that are exercising their mandate under the Constitution, relevant statutes, and remedial rules to settle cases and controversies. Indeed, the exercise of the Court's review power ensures that, on the one hand, probable criminals are prosecuted and, on the other hand, the innocent are spared from baseless prosecution.[24]

WHEREFORE, the petition is GRANTED. The challenged resolutions are VACATED and SET ASIDE to allow for the filing in court of the appropriate articles of “Information”.

IT IS SO ORDERED.

Bueser and [*]Reyes Carpio, JJ., concur.

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[*] Acting Junior Member per Office Order No. 81-15-ABR dated 3/16/15.

[1] Rollo, p. 172.

[2] Rollo, p. 173.

[3] Rollo, p. 175.

[4] Rollo, p. 35.

[5] Rollo, p. 56.

[6] Sheriff's Return dated 07 September 2007, rollo, p. 74.

[7] Rollo, p. 76.

[8] Rollo, p. 78.

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[9] Rollo, pp. 80 and 82.

[10] Rollo, p. 259.

[11] Rollo, p. 47.

[12] Rollo, p. 119.

[13] Rollo, p. 120.

[14] Rollo, p. 132.

[15] Rollo, p. 133.

[16] Lastrilla vs. Granda, GR No. 160257, 31 January 2006, 481 SCRA 324.

[17] Unilever Philippines, Inc. vs. Tan, GR No. 179367, 29 January 2014.

[18] Rollo, pp. 99-101.

[19] Pacasum vs. People, GR No. 180314, 16 April 2009, 585 SCRA 616.

[20] Id.

[21] Tan vs. Ballena, GR No. 168111, 04 July 2008, 557 SCRA 229.

[22] Id.

[23] The Senate Blue Ribbon Committee vs. Hon. Majaducon, 455 Phil. 61, 71 (2003), citing Flores vs. Office of the Ombudsman, 437 Phil. 684, 691 (2002).

[24] Social Security System vs. Department of Justice, GR No. 158131, 08 August 2007, 529 SCRA 426; see also Miller vs. Perez, GR No. 165412, 30 May 2011, 649 SCRA 158.

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