

**JERRY S. YAP, EDWIN R. ALCALA, AND GLORIA M. GALUNO,
PETITIONERS, VS. REGIONAL TRIAL COURT OF MANILA, BRANCH 16,
AND ROSALINO P. IBAY, JR., RESPONDENTS.**

Ponente: BATO, JR., J.

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BATO, JR., J.:

Assailed before this Court via a Petition for Certiorari under Rule 65 of the Rules of Court is the Resolution[1] dated February 10, 2014 issued by the Regional Trial Court (RTC) of Manila, Branch 16, denying petitioners' Motion for Reconsideration on Judicial Determination of Probable Cause.

The factual antecedents:

A complaint for libel was filed by Police Inspector Rosalino P. Ibay, Jr. before the Office of the City Prosecutor of Manila against Jerry S. Yap, Edwin R. Alcala, Gloria M. Galuno [hereinafter collectively referred to as the petitioners] and Atty. Berteni Causing. Yap, Alcala and Galuno are the columnist, circulation manager and editor, respectively, of the daily tabloid/newspaper Hataw. The complaint stemmed from the articles published in the issue of Hataw dated July 18, 2012, July 30, 2012, July 31, 2012 and August 28, 2012.

On June 25, 2013, the Office of the City Prosecutor (OCP for brevity) of Manila issued a Resolution[2] finding probable cause for libel against the petitioners. The complaint against Atty. Causing was however recommended for dismissal due to lack of probable cause. Petitioners filed a motion for reconsideration[3] before the OCP. On October 4, 2013, the OCP filed two (2) Informations[4] for two (2) counts of libel against the petitioners which were raffled to the Regional Trial Court of Manila [Branch 16] docketed as Criminal Cases Nos. 13-300157 and 13-300158. On October 17, 2013, the RTC issued an Order (Judicial Determination of Probable Cause)[5] stating therein that it found probable cause for the case to proceed to trial. Accordingly, the RTC issued a warrant of arrest[6] and set the bail at P10,000.00 each per case of libel.

The petitioners posted bail on October 18, 2013[7] and on the same day, the petitioners filed a Motion for Judicial Determination of Probable Cause.[8] Petitioners delved on the alleged absence of the element of actual malice and extensively argued that the OCP erred in finding probable cause. Likewise, they averred that the OCP erred in disregarding their claim that there exists a prejudicial question since they have instituted an action for damages against PInsp. Rosalino P. Ibay, Jr. grounded on the latter's act of filing the complaint for libel. Thus, they prayed for the dismissal of the Informations. Upon obtaining a copy of the Order dated October 17, 2013, the petitioners filed a Motion for Reconsideration on Judicial Determination of Probable Cause[9] reiterating their arguments on the alleged absence of actual malice and the existence of a prejudicial question. Again, they prayed for the dismissal of the case for utter lack of probable cause.

On February 10, 2014, the RTC issued the assailed Resolution. The RTC ruled that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be best passed upon after a full-blown trial on the merits. The RTC likewise emphasized that petitioners' plea for another judicial determination of probable cause is a superfluity because the judge is duty-bound to personally evaluate the

resolution of the prosecutor and the supporting evidence, with or without petitioners' Motion for Judicial Determination of Probable Cause.

Aggrieved thereby, petitioners filed the instant petition for certiorari alleging that the RTC committed grave abuse of discretion amounting to lack and/or excess of jurisdiction:

“...IN ISSUING A WARRANT FOR THE ARREST OF THE PETITIONERS AND IN ISSUING ANOTHER ORDER DENYING THE MOTION FOR RECONSIDERATION IN THE DETERMINATION OF PROBABLE CAUSE.”[10]

We dismiss the petition on both procedural and substantive grounds.

At the outset, it bears stressing that the right to appeal is not a natural right and is not part of due process.[11] It may be exercised only in the manner and in accordance with the provisions of law and the appealing party must strictly comply with the requisites laid down in the Rules of Court. Deviations from the Rules cannot be tolerated.[12] It must also be emphasized that a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules.[13]

On the procedural aspect, Section 1 of Rule 65 of the 1997 Revised Rules of Civil Procedure provides:

“Section 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.” [Emphasis supplied]

Meanwhile, Section 3 of Rule 46 states that the failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

In the present case, a perusal of the rollo of this case shows that petitioners failed to comply with the above-quoted requirements considering that the assailed Resolution dated February 10, 2014 is not a duplicate original nor is it a certified true copy thereof.

In addition, the petitioners failed to comply with the mandatory provisions[14] of Section 11, Rule 13 of the Rules of Court prescribing personal service and filing of pleadings and other papers, whenever practicable, and requiring a written explanation as to why the service or filing was not done personally if the party resorted to other modes of service. In this case, the petitioners failed to state that the personal service or filing of the petition was not practicable and they also failed to provide a written explanation as to why they resorted to service by registered mail.

More importantly, We find that petitioners had a plain and speedy remedy upon the denial of their Motion for Reconsideration on Judicial Determination of Probable Cause and that is to proceed to trial. We cannot help but observe that while petitioners' pleadings below were captioned, wittingly or unwittingly, as Motion for Judicial Determination of Probable Cause and Motion for Reconsideration on Judicial Determination of Probable Cause, they are actually motions to quash. Their arguments therein delved on the alleged absence of the element of actual malice and the existence of a prejudicial question. In their motions, they prayed for the dismissal of the

Informations or the cases for utter lack of probable cause. Necessarily, the assailed Resolution denying their Motion for Reconsideration on Judicial Determination of Probable Cause is akin to an order denying a motion to quash.

It is jurisprudentially settled that a court order denying a motion to quash is interlocutory. In the usual course of procedure, a denial of a motion to quash filed by the accused results in the continuation of the trial and the determination of the guilt or innocence of the accused. If a judgment of conviction is rendered and the lower court's decision of conviction is appealed, the accused can then raise the denial of his motion to quash not only as an error committed by the trial court but as an added ground to overturn the latter's ruling.[15] This being the case, the assailed Resolution cannot be a proper subject of a petition for certiorari which can be used only in the absence of an appeal or any other adequate, plain and speedy remedy.[16] The plain and speedy remedy upon the denial of an interlocutory order is to proceed to trial. Thus, a direct resort to a special civil action for certiorari is an exception rather than the general rule, and is a recourse that must be firmly grounded on compelling reasons.[17]

In the case at bench, We find no compelling reason to justify petitioners' resort to a petition for certiorari against the assailed Resolution of the RTC. Nothing is more settled than the principle that a special civil action for certiorari under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," as contemplated by the Rules of Court, is "the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power" that is so patent and gross that it "amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law." [18] Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order.[19]

After a perusal of the rollo of this case, We find no apparent abuse of discretion committed by the RTC in issuing the assailed Resolution denying their Motion for Reconsideration on Judicial Determination of Probable Cause.

The judicial determination of probable cause is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice.[20] For this purpose, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence.[21] In the case at bar, even prior to petitioners' filing of their Motion for Judicial Determination of Probable Cause, the judge had already ascertained that a warrant of arrest should be issued against the petitioners and that there was probable cause for the case to proceed to trial. Be that as it may, it is petitioners' stance that the RTC should have conducted another judicial determination of probable cause alleging that the OCP erred in its finding of probable cause; that there was no actual malice when the articles were published; and that there was a prejudicial question.

We are not persuaded.

Firstly, the executive determination of probable cause is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.[22] Especially in this case when the petitioners themselves admitted the pendency before the OCP of their Motion for Reconsideration of the OCP's Resolution dated June 25, 2013, finding probable cause for libel against them.

Secondly, it should be emphasized that in the judicial determination of probable cause, judges merely determine

personally the probability, not the certainty, of guilt of an accused. It need not be shown that the accused are indeed guilty of the crime charged as this matter should be left to the trial. Hence, judges do not conduct a hearing to determine the existence of probable cause. They just personally review the initial determination of the prosecutor finding probable cause to see if it is supported by substantial evidence.[23] Thus, absent a finding that an information is invalid on its face or that the prosecutor committed manifest error or grave abuse of discretion, a judge's determination of probable cause is limited only to the judicial kind or for the purpose of deciding whether the arrest warrants should be issued against the accused.[24]

In this case, an examination of the criminal informations against the petitioners shows that they are valid and regular considering their conformity with the guidelines under Section 6, Rule 110 of the Revised Rules of Criminal Procedure which provides:

“SEC. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.”

In the case at bench, the criminal informations are sufficient in form and substance as they clearly state: (a) the names of the petitioners as the accused; (b) the offense of libel as the designated offense committed; (c) the manner on how the offense of libel was committed and the petitioners' participation therein; and (d) the date and the place of the commission of the offense. Hence, the RTC correctly ruled that the case against petitioners should proceed to trial considering that they can be properly tried under the allegations of the informations.

As We have previously stated, the RTC had already determined the existence of probable cause and the petitioners failed to advance a valid and justifiable reason which would necessitate a second judicial determination of probable cause. As succinctly declared by the RTC in its assailed Resolution:

“To move this Court to conduct AGAIN a judicial determination of probable cause is a superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused which this Court already did.”[25]

While petitioners incessantly argue that there was no actual malice when the articles were published and that there was a prejudicial question, suffice it to state that the presence or absence of a prejudicial question and of the elements of the crime of libel are matters of defense and are evidentiary in nature. They are best left for the RTC to resolve after a full-blown trial on the merits.[26]

All told, the RTC did not commit grave abuse of discretion tantamount to lack and/or excess of jurisdiction in denying petitioners' Motion for Reconsideration on Judicial Determination of Probable Cause.

WHEREFORE, for being procedurally infirmed and for lack of merit, the instant petition for certiorari is DENIED DUE COURSE and DISMISSED outright.

SO ORDERED.

Zalameda and Sempio Diy, JJ., concur.

- [1] Rollo, pp. 289-294.
- [2] Rollo, pp. 198-207.
- [3] Rollo, pp. 209-227.
- [4] Rollo, pp. 228-231.
- [5] Rollo, p. 287.
- [6] Rollo, p. 288.
- [7] Rollo, p. 250.
- [8] Rollo, pp. 232-249.
- [9] Rollo, pp. 250-282.
- [10] Rollo, p. 5.
- [11] *Spouses Bergonia vs. Court of Appeals, et al.*, G.R. No. 189151, January 25, 2012 citing *Dimarucot vs. People of the Philippines*, G.R. No.183975, September 20, 2010.
- [12] *Boardwalk Business Ventures, Inc. vs. Villareal*, G.R No. 181182, April 10, 2013.
- [13] *Republic vs. Pantranco North Express, Inc., et al.*, G.R. No. 178593, February 15, 2012 citing *Sim vs. NLRC*, G.R. No. 157376, October 2, 2007.
- [14] *Aberca, et al. vs. Ver, et al.*, G.R. No. 166216, March 14, 2012 citing *Domingo vs. Court of Appeals*, G.R. No. 169122, February 2, 2010.
- [15] *Galzote vs. Briones, et al.*, G.R. No. 164682, September 14, 2011.
- [16] *Galzote vs. Briones, et al.*, G.R. No. 164682, September 14, 2011 citing *Santos vs. People*, G.R. No. 173176, August 26, 2008
- [17] *Galzote vs. Briones, et al.*, G.R. No. 164682, September 14, 2011.
- [18] *Novateknika Land Corporation vs. PNB, et al.*, G.R. No. 194104, March 13, 2013 citing *Beluso vs. Commission on Elections*, G.R. No. 180711, June 22, 2010
- [19] *Novateknika Land Corporation vs. PNB, et al.*, G.R. No. 194104, March 13, 2013 citing *Republic of the Philippines vs. Sandiganbayan*, 499 Phil. 138, 152 (2005).
- [20] *People vs. Castillo, et al.*, G.R. No. 171188, June 19, 2009 citing *Roberts, Jr. vs. Court of Appeals*, G.R. No. 113930, March 5, 1996
- [21] Rule 112, Section 6, Revised Rules of Court.
- [22] *People vs. Castillo, et al.*, G.R. No. 171188, June 19, 2009 citing *Roberts, Jr. vs. Court of Appeals*, G.R. No. 113930, March 5, 1996
- [23] *De Joya vs. Marquez*, G.R. No. 162416, January 31, 2006 citing *Webb vs. De Leon*, 247 SCRA 652 (1995).
- [24] *People vs. Castillo, et al.*, G.R. No. 171188, June 19, 2009.
- [25] RTC Resolution, Rollo, p. 293.

[26] Lee, et al. vs. KBC BANK N.V., G.R. No. 164673, January 15, 2010 citing Andres vs. Justice Secretary Cuevas, 499 Phil. 36 (2005).

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