

EXTRA EXCEL INTERNATIONAL PHILIPPINES, INC., PETITIONER, VS. HONORABLE JUDGE AFABLE E. CAJIGAL, IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY...

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is a Petition for Certiorari[1] filed by herein petitioner Extra Excel International Philippines, Inc. (“petitioner”) pursuant to Rule 65 of the 1997 Revised Rules of Court seeking to annul and set aside the Resolution[2] that was issued by public respondent Judge Afable E. Cajigal (“public respondent judge”) of Branch 96 of the Regional Trial Court of the National Capital Judicial Region in Quezon City (“trial court”) dated June 10, 2013 in Criminal Case No. R-QZN-13-00488 which, inter alia, directed the Office of the Prosecutor of Quezon City to conduct a preliminary investigation of the case for qualified theft that was filed by herein petitioner against private respondent Ike R. Katipunan (“private respondent”) in the said office. Likewise assailed in the instant petition is the subsequent Resolution[3] of the trial court dated September 16, 2013 which denied the motion for reconsideration of the June 10, 2013 Resolution that was issued by the said court for lack of merit.

The material and relevant facts of the case, as culled from the record, are as follows:

The instant case stemmed from a Complaint-Affidavit[4] for the crime of qualified theft that was filed by one Jose Asencio D. Taña (“Taña”) against herein private respondent at the Office of the Prosecutor of Quezon City on March 16, 2012. The said complaint-affidavit stated that Taña was the operations manager of herein petitioner, a domestic corporation that is engaged in multi-level marketing of health products with several branches in the Philippines, including a store that is located at West Avenue, Quezon City (“store”). The aforesaid store, in turn, employed only two (2) employees, one of whom was herein private respondent, the store stockman, who had the duty to receive the delivery of various health products at the warehouse of the petitioner and to keep them safe at the stockroom or otherwise release the said health products from storage upon presentment upon him of their corresponding sales invoices.

On January 4, 2012, Taña, along with his team, went to the store in order to conduct its annual audit therein but he was informed by the other employee, Rubelyn R. Hidalgo (“Hidalgo”), that the private respondent had been on emergency leave since on December 29, 2011. Thereafter, when the audit team conducted an examination and physical inventory of the products that had been stored in the stockroom, it discovered some missing health products therein with a total value of One Million Five Hundred Thirty Thousand One Hundred Five Pesos (Php1,530,105.00). Company record likewise showed that the missing products had not been sold to any of the customers of the store and that the petitioner never received any payment for the said products.

The petitioner then conducted an investigation whereby it learned of the purported scheme that was employed by the private respondent in that the latter allegedly offered the products of the store on discount to its customers on the condition that the private respondent would not be issuing any receipt for the purchase of the same.

Subsequently, a Notice to Explain[5] dated January 9, 2012 was served upon the private respondent requiring the latter to explain in writing why no disciplinary action should be taken upon him for the purported violations that he had committed against the petitioner. However, Taña maintained that, despite his receipt of the said notice to explain, the private respondent still failed and refused to account for the missing store products. Worse, the private respondent never reported back to work from the time when he took an emergency leave on December 29, 2011, thereby indicating his guilt that he misappropriated or stole the missing health products of the petitioner.

The foregoing antecedents then prompted herein petitioner to file a criminal case for qualified theft against the private respondent at the Office of the Prosecutor of Quezon City on March 16, 2012. The said case was docketed as NPS Docket No. XV-03-INV-12C-2504. In a Motion to Re-Open[6] that was filed by the private respondent in the said office on May 6, 2013, the private respondent averred that he was not able to participate in the proceedings during the preliminary investigation of the case in that he did not receive any notice, order or subpoena from the Office of the Prosecutor of Quezon City. Thus, the private respondent prayed that, in order to serve the ends of justice, the case against him be re-opened in order to provide him an opportunity to be heard. The petitioner opposed the said motion to re-open the case on the ground that it did not contain any notice of hearing or notification to the other party, thereby rendering the said motion to be a mere scrap of paper which had no probative value. Further, the petitioner pointed out that the address which the private respondent used and indicated in his motion to re-open was the same address that was provided by the petitioner in its complaint-affidavit. Thus, the petitioner asseverated that it was highly improbable that the private respondent did not receive any subpoena from the Office of the Prosecutor of Quezon City where the case was being heard for preliminary investigation.

On November 15, 2012, the Office of the Prosecutor of Quezon City, issued a Resolution[7] recommending that the private respondent be charged with the crime of qualified theft. On the same day, a criminal Information[8] for the crime of qualified theft under Article 310 of the Revised Penal Code was filed against the private respondent, as follows:

“That on or about the period comprised from December 8, 2011 up to December 29, 2011, in Quezon City, Philippines, the said accused, being then employed as Inventory Control Service Assistant or stockman at Extra Excel, represented by Jose Asencio D. Taña with office branch at 2/F Westlife Place, 107 West Avenue corner Bulacan St., this City, who has the duty to receive the delivery of various health products from the warehouse of Extra Excel and keep them safe at the stock room or otherwise release the products from the storage after being presented the corresponding sales invoice and as such has free access to the health products, with grave abuse of confidence reposed upon him by his employer, did then and there, willfully, unlawfully and feloniously with intent to gain and without the knowledge and consent of the owner thereof, take, steal and carry away the said assorted health products in the total amount of P1,530,105.00, Philippine Currency, belonging to Extra Excel, represented by Jose Asencio D. Taña, to the damage and prejudice of said offended party in the aforementioned amount.

“CONTRARY TO LAW.”

Thereafter, the private respondent filed in the trial court a Motion for Preliminary Investigation[9] alleging that he did not receive any notice of the filing of the criminal complaint for qualified theft against him in the Office of the Prosecutor of Quezon City. In the aforesaid motion for preliminary investigation, the private respondent claimed that no valid preliminary investigation was conducted in the criminal case that was filed against him since he was not given an opportunity to defend himself against the aforesaid charge. Moreover, the private respondent contended that the charge against him was so serious and non-bailable in that it would be a gross violation of his fundamental rights should a warrant of arrest be issued against him and should he be detained in jail without having been given the opportunity to defend himself.

In the herein first assailed Resolution dated June 10, 2013, the trial court gave due course to the motion for preliminary investigation that was filed by the private respondent. Accordingly, the Office of the Prosecutor of Quezon City was directed to conduct a preliminary investigation or re-investigation of NPS Docket No. XV-03-INV-12C-2504. In the meantime, the criminal case for qualified theft that was filed in the trial court against the private respondent was deferred pending the outcome of the said re-investigation.

Aggrieved by the foregoing disposition of the public respondent judge, herein petitioner filed a Motion for Reconsideration[10] of the June 10, 2013 Resolution of the said public respondent judge. However, in the second assailed Resolution dated September 16, 2013, the public respondent judge likewise denied the aforementioned motion for reconsideration that was filed by the petitioner for lack of merit.

Hence, the petitioner filed this petition for certiorari wherein the petitioner raised the following acts of grave abuse of discretion that were purportedly committed by the public respondent RTC judge:

I.

THE HONORABLE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE GRANTED RESPONDENT KATIPUNAN'S MOTION FOR PRELIMINARY INVESTIGATION DESPITE THE MANDATORY PROVISION OF A.M. NO. 11-6-10-SC WHICH STATES THAT A MOTION FOR PRELIMINARY INVESTIGATION SHALL ONLY BE GRANTED WHERE THE ACCUSED WAS MADE SUBJECT TO INQUEST PROCEEDINGS AND THE EXISTENCE OF ESTABLISHED JURISPRUDENCE THAT SECTION 7, RULE 112 OF THE RULES OF COURT APPLIES ONLY TO PERSONS LAWFULLY ARRESTED WITHOUT A WARRANT.

II.

THE HONORABLE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE STILL ENTERTAINED AND GAVE DUE COURSE TO RESPONDENT KATIPUNAN'S SUBJECT MOTIONS WHEN, IN TRUTH AND IN FACT, THE SAME WERE MERE SCRAPS OF PAPER.

In sum, the sole issue to be resolved by us in the instant petition is whether or not the public respondent judge committed grave abuse of discretion when he directed the Office of the Prosecutor of Quezon City to conduct a re-investigation of the criminal case for qualified theft that was filed against the private respondent. After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be impressed with merit.

In the instant petition, the petitioner averred that the private respondent was not made subject to inquest proceedings which was a requisite for a preliminary investigation pursuant to A.M. No. 11-6-10-SC, otherwise known as the "Guidelines for Litigation in Quezon City Trial Courts", which states that "a motion for preliminary investigation shall only be granted where the accused was made subject to inquest proceedings pursuant to Rule 112, Section 7 of the Rules of Court". Thus, the petitioner submitted that it was an utter defiance of the afore-quoted provision of law when the public respondent judge granted the motion for preliminary investigation that was filed by the private respondent in the trial court despite the fact that no inquest proceedings was conducted by the Office of the Prosecutor of Quezon City in NPS Docket No. XV-03-INV-12C-2504.

Moreover, the petitioner contended that the public respondent judge should not have granted the motion for preliminary investigation and the motion to suspend arraignment that was filed by the private respondent in that the said motions failed to faithfully comply with the requirements for a valid notice of hearing. According to the

petitioner, a close scrutiny of the said motions would show that the same were only addressed to the clerk of court and that the petitioner was never furnished with copies of the said motions. Moreover, the petitioner pointed out that the fact that the public prosecutor was given an opportunity to comment on the said motions did not cure the aforementioned fatal defect of lack of notice of hearing which could not be cured at all.

For his part, herein private respondent countered that remanding the case to the Office of the Prosecutor of Quezon City would ensure that his right to due process would not be violated. The private respondent emphasized that he was charged with the serious crime of qualified theft with no bail recommended on the basis of mere assumptions and the self-serving audit report that were made by the representative of the petitioner. Moreover, the private respondent maintained that A.M. No. 11-6-10-SC is not applicable in the instant case and, assuming, for the sake of argument, that A.M. No. 11-6-10-SC was applicable, the same is a mere guideline for the trial court and could not prevail over the substantive right of an accused who is under preliminary investigation.

Further, the private respondent argued that the motion for preliminary investigation which he filed in the trial court complied with the requirements of notice and hearing. In fact, he stressed that the Office of the Prosecutor of Quezon City was furnished with a copy of the aforesaid motion and it was notified of the hearing thereof but the latter failed to file its comment or opposition to the said motion. However, be that as it may, the private respondent noted that the petitioner was a mere witness, and not a party, to the case. The People of the Philippines was the plaintiff in the case below and, consequently, notice to the Office of the Prosecutor of Quezon City was sufficient.

Verily, a preliminary investigation is a judicial proceeding wherein the prosecutor or investigating officer, by the nature of his or her functions, acts as a quasi-judicial officer. Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime, with the end in view of determining whether or not an information may be prepared against the accused. Indeed, a preliminary investigation is, in effect, a realistic judicial appraisal of the merits of the case. In order to satisfy the due process clause, it is not enough that the preliminary investigation is conducted in the sense of making sure that a transgressor shall not escape with impunity. A preliminary investigation serves not only the purposes of the State. More importantly, it is a part of the guarantee of freedom and fair play which are birthrights of all who live in our country.[11]

In the case at bench, a preliminary investigation was conducted by the Office of the Prosecutor of Quezon City after the complaint-affidavit for qualified theft was filed by the petitioner against the herein private respondent in the said office. Before the resolution of the criminal complaint against the private respondent, however, the latter filed a motion to reopen the case, insisting that he was denied due process of law in that he was not afforded the opportunity to be heard during the preliminary investigation. The said motion to re-open was, however, denied by the Office of the Prosecutor of Quezon City. Subsequently, the aforesaid office found probable cause to charge the private respondent of the said crime and filed an information for qualified theft against the private respondent in the trial court. Undaunted, the private respondent filed a motion for preliminary investigation in the trial court, again alleging and reiterating that he was denied due process of law when he was not given the opportunity to participate in the preliminary investigation that was conducted in the criminal case against him.

Be that as it may, a perusal of the record of the instant case reveals that a Subpoena[12] was issued by the Office of the Prosecutor of Quezon City addressed to Taña, the private complainant in NPS Docket No. XV-03-INV-12C-2504, as well as to herein private respondent, on March 26, 2012. In the said subpoena, the private respondent was required to appear before the said office on April 24, 2012 and May 8, 2012 in connection with the preliminary investigation that was being conducted in the aforementioned case. The address of the

private respondent, as it appeared on the subpoena, was at “704 Galicia St., Sampaloc, Manila”. A year later, when the private respondent filed his motion to re-open the case, his address that was stated in the said motion to re-open was also at “704 Galicia St., Sampaloc, Manila”. In other words, his address which appeared in the subpoena was his exact and correct address. However, the private respondent merely denied having received any subpoena for him to attend the preliminary conferences but he did not offer any proof to support this claim. Thus, this Court could not simply accept his claim, hook, line and sinker, that he did not receive any subpoena or notice for the preliminary investigation of the case against him when it appears and it is clear that there was no error on his personal details as reflected in the case record of NPS Docket No. XV-03-INV-12C-2504.

At this point, it is worth to note the age-old but familiar rule that he or she who alleges must prove his or her allegation.[13] In this case, apart from the bare allegations by the private respondent that he did not receive any subpoena, notice, resolution or order from the Office of the Prosecutor of Quezon City relative to the conduct of the preliminary investigation on the criminal case that was filed against him, the private respondent failed to support this claim by any other evidence. In other words, it was an act of grave abuse of discretion on the part of the trial court when it granted the motion for preliminary investigation that was filed by the private respondent on the basis of mere allegation by the latter that he did not receive any notice from the Office of the Prosecutor. This is especially true in that the address which was stated in the subpoena was the exact same address which he indicated in his motion to re-open the case that was filed in the same office.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case. The Resolutions that were issued by Branch 96 of the Regional Trial Court of the National Capital Judicial Region in Quezon City (“trial court”) dated June 10, 2013 and September 16, 2013 in Criminal Case No. R-QZN-13-00488 are hereby ANNULLED and SET ASIDE. Consequently, the trial court is DIRECTED to continue with the proceedings in the said criminal case with dispatch.

SO ORDERED.

Antonio-Valenzuela[*] and Paredes, JJ., concur.

[*]Acting Senior Member vice J. Elbinias per Office Order No. 239-14-ABR dated May 23, 2014.

[1]Rollo, pages 3-24.

[2] Ibid, Annex “B”, pages 26-27.

[3] Ibid, Annex “C”, pages 28-31.

[4] Ibid, Annex “D”, pages 32-37.

[5] Ibid, Annex “G”, pages 47-51.

[6] Ibid, Annex “F”, pages 53-54.

[7] Ibid, Annex “H”, pages 58-61.

[8] Ibid Annex “I”, pages 64-63.

[9] Ibid, Annex “J”, pages 64-66.

[10] Ibid, Annex “L”, pages 69-75.

[11]Estandarte v. People of the Philippines, G.R. No. 156851-55, February 18, 2008.

[12] Rollo, page 52.

[13] Evangelista v. People of the Philippines, G.R. No.163267, May 5, 2010.

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