

PEOPLE OF THE PHILIPPINES, PLAINTIFF,

Ponente: GARCIA, R. R. J.

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GARCIA, R. R. J.:

Before Us is an appeal from the Order[1] dated January 24, 2013 of the Regional Trial Court, Branch 18, Manila in Criminal Case No. 12-292520 which granted the City Prosecutor of Manila's motion to withdraw the information, thereby dismissing the criminal case for estafa against appellees Lin Chin Jung @ Jimmy Lin and Chen Kian Jung @ Robert Chen.

THE FACTS

On August 6, 2010, appellant Johnny Sia filed a complaint[2] for estafa under Article 315, Section 2(a) of the Revised Penal Code against appellees Lin Chin Jung @ Jimmy Lin and Chen Kuang[3] Jung @ Robert Chen before the City Prosecutor of Manila.

In his complaint, appellant alleged that sometime in 2006, he lent the amount of P504,500.00[4] to appellees Lin Ching Jung and Chen Kian Jung, to be used as capital for their telecommunication business of providing broadband network and Voice Over Internet Protocol (VOIP) devices and equipment. The loan shall be payable on or before May 31, 2010 and shall be subjected to twelve percent (12%) annual interest. In 2007, appellant extended a second loan to appellees, this time in the amount of P490,000.00[5], also payable on or before May 31, 2010 and subject to an annual interest of twelve percent (12%). Sometime in 2010, appellees told appellant that they cannot start their operation because of the prohibitive cost of interconnection fees charged by telephone companies. They have an alternative way of engaging in business in order to avoid paying the fees, but their corporation did not have sufficient funds to purchase the necessary equipment therefor. Appellant agreed to shoulder the initial expenses of the corporation after he was promised that he would be paid back with interest and service fee amounting to P100,000.00. Consequently, under appellees' instructions, appellant bought 1,618 pieces of Globe Tattoo prepaid sim cards, valued at P640.00 per unit, and secured a 2MB DSL line from Easter Communications. Later that year, appellant received a letter[6] dated July 6, 2010 from Globe Telecom, Inc. informing him that the method of providing broadband and VOIP services by way of prepaid sim cards in order to bypass payment of interconnection fees is a form of theft and was therefore illegal. Alarmed, appellant demanded[7] in vain from appellees to pay the amount owed to him amounting to P2,754,827.25 computed as follows:

Loan evidenced by
Metrobank Check No. 0125987
P 504,500.00

Loan interest (for 45 months) 227,025.00

Loan evidenced by
Equitable Bank Check No. 0437353
490,000.00

Loan interest (for 40 months) 196,000.00

1,618 pieces of Globe prepaid sim
cards valued at P640.00 per unit
1,035,520.00

Charges for a 2MB ADSL line

US\$3,197.07 x P45.226 144,592.81

US\$1,234.93 x P46.309 57,189.44

Service fee and interest 100,000.00

TOTAL P 2,754,827.25

For their defense[8], appellees denied that they borrowed money from appellant. Appellees admitted that they received from appellant P504,500.00 by way of Metrobank Check No. 0125987[9] dated September 14, 2006 and P490,000.00 by way of Equitable Bank Check No. 0437353[10] dated January 23, 2007 but asseverated that the same were not a loan obligation, but were appellant's investment share in their telecommunication business. It was, in fact, appellant who persuaded appellees to become business partners after representing that he not only has the capacity to put up a telecommunications business in the Philippines, but also that he has strong connections with Globe Telecom, Inc. and PLDT. Anent appellant's purchase of Globe Tattoo prepaid sim cards and acquisition of a DSL line with Easter Communications, the same were for his own personal account and not in connection with the telecommunication business they put up.

The investigating prosecutor initially dismissed the complaint against appellees after finding that appellant failed to establish the element of deception, which is necessary for the crime of estafa. However, in a Review Resolution[11] dated June 28, 2012, the Office of the City Prosecutor of Manila reversed the findings of the investigating prosecutor, finding instead that there was probable cause to charge appellees with estafa. It ratiocinated that there was "presumed intent" that appellees perpetrated deceit in order to convince appellant to invest in their telecommunication business. Moreover, appellees' defenses raised factual issues which are better threshed out in a full-blown litigation on the merits. We quote the pertinent portions of the assailed Review Resolution, to wit:

After re-examination and careful study of the uncontroverted facts of evidence on the case, the undersigned differs on the findings and recommendation of the Investigating Prosecutor.

The undersigned believed that there is probable [cause] to charge herein respondents with Estafa. It cannot be said that complainant have "presumed intent" as precisely he was a victim of deceit perpetrated by respondents to convinced him to invest in Aura Solima Telecommunications. At any rate, it is settled that the cloak of separate corporate personality cannot thwart criminal liability.

Moreover, respondent's defenses raise factual issues which are better threshed out in a full blown litigation on the merits.

THUS VIEWED, the Resolution of the Investigating Prosecutor is hereby reversed and set aside in that respondents should be indicted in court for Estafa.[12]

In an Information[13] dated June 28, 2012, appellees were charged with estafa under Article 315, paragraph 2(a) of the Revised Penal Code committed as follows:

That sometime in the year 2006, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and

feloniously defraud, JOHNNY SIA, in the following manner, to wit: the said accused by means of false representations which they made to the latter, prior to and even simultaneous with the commission of the fraud, to the effect that they were intending to put up a legitimate telecommunication systems business in the Philippines; that they intended to provide lawful Voice Over Internet Protocol (VOIP) Services by connecting those making and receiving calls via transporting international and domestic calls over the Internet rather than over the traditional public switch telephone network; that they represented that Cheng Kuang Jung @ Robert Chen (respondent) is a part-owner of Copillar Enterprises, Inc. which is the Philippine Counterpart of Yoda Communications, Inc.; that the Yoda Communications inc., a Taiwanese company which provides broadband networking and VOIP devices and equipment, would provide the necessary devices and equipment to operate the VOIP Services in the Philippines; that they had tried to induce and to convince complainant to lend it money which they would use in their alleged legitimate telecommunications systems business, that the Alien Certificate of Registration, driver's license and calling card of Robert Chen (respondent) and the Republic of China (Taiwan) Passport of Lin Ching Jung (respondent) were shown to the complainant; that relying on the representations of the said respondents that the business is sound and legitimate as well as the promise that complainant would be paid back in addition to the 12% annual interest payable on or before May 31, 2010, complainant lent the said respondents the amount of Php504,500.00 as evidenced by Metrobank Check No. 0125987 dated September 14, 2006 and Php490,000.00 evidenced by Equitable Bank Check No. 0437353 dated January 23, 2007; induced and succeeded in inducing the latter to give and deliver, as in fact, he gave and delivered the total amount of Ph994,500.00, the said accused, knowing fully well that his manifestations and representations were false and fraudulent and were made solely for the purpose of obtaining, as in fact he did obtain the said amount of Php994,500.00, which once in his possession, with intent to defraud, misappropriated, misapplied and converted the same to their own personal use and benefit, to the damage and prejudice of the said JOHNNY SIA, in the aforesaid amount of Php994,500.00, Philippine Currency.

Contrary to law.[14]

In an Order[15] dated August 3, 2012, the court a quo, after finding probable cause against appellees, ordered the issuance of arrest warrants[16] against them. Appellees were released on bail after posting bonds of P40,000.00 each.[17]

Meanwhile, on August 23, 2009, appellees filed a Petition for Review[18] before the Department of Justice (DOJ) seeking that the Review Resolution dated June 28, 2012 of the City Prosecutor of Manila be reversed and set aside.

In a Resolution[19] dated December 3, 2012, the DOJ ordered the City Prosecutor of Manila to withdraw the information for estafa. It found that appellant failed to establish the element of deceit. Appellees did not make any false statement or fraudulent representation to appellant that convinced the latter to part with his money or property. The pertinent portions of the DOJ Resolution read:

A careful perusal of the record reveals that there was no deceit employed by the respondents in the instant case.

First, as to the allegation of the complaint that the respondents misrepresented that they will start a telecommunication business, there is no false pretense present. The articles of incorporation readily manifests that there is indeed a corporation named ASTI registered with the Securities and Exchange Commission. In fact, some of the relatives of the complainant are incorporators of the said corporation.

Furthermore, there is no evidence depicting that the amounts of Five Hundred Four Thousand Pesos (P504,000.00) and Four Hundred Ninety Thousand Pesos (P490,000.00) given by complainant Sia was a loan to the respondents with interest and in reliance on the representation that a corporation shall be put up. Given the amount, the transaction should have been reduced into writing. In any case, as stated earlier, a corporation was indeed established negating false pretense on the part of respondents.

With regard to the claim of the complainant that he was deceived by the representation that the alternative method that will be used is legal, the record shows that complainant is involved in almost all the transactions of the corporation.

Truth be told, he was the one who transacted with Globe Telecom, Inc. The letter of Globe Telecom Inc stating that the Globe Handyphone accounts by ASTI are engaged in International Simple Resale, which is prohibited in the Philippines, is addressed to the complainant Sia alone. This manifests that complainant Sia was the one transacting with Globe Telecom, Inc.

Additionally, complainant Sia personally handled the transactions to acquire the equipment needed to run ASTI.

Record also shows that complainant Sia actively participated in the affairs of the corporations. Specifically, aside from his transactions with Globe Telecom, Inc., his relatives are incorporators of ASTI. Moreover, when the corporation applied for insurance with Stronghold Insurance Company, complainant Sia signed for ASTI as the treasurer. Complainant likewise signed the performance bond issued by Stronghold Insurance Company.

Given the foregoing, it is clear that the first and third elements of Estafa as defined under Article 325, par. 2(a) of the Revised Penal Code are not present in the instant case.

WHEREFORE, premises considered, the instant petition for review is hereby GRANTED. The resolution of the Office of the City Prosecutor of Manila is hereby REVERSED and SET ASIDE. The said Office is hereby ordered to withdraw the information filed and report compliance with five (5) days from receipt hereof.[20]

In compliance with the DOJ Resolution, the public prosecutor filed a Motion to Withdraw Information[21] dated December 21, 2012 before the court a quo.

In the assailed Order[22] dated January 24, 2013, the court a quo granted the Motion to Withdraw Information after finding merit in the public prosecutor's averment that there was no probable cause that appellees committed the crime of estafa under Article 315, paragraph 2(a) of the Revised Penal Code, pursuant to the DOJ Resolution dated December 3, 2012. We quote in full the assailed Order as follows:

ORDER

Before this Court is a Motion to Withdraw Information dated December 21, 2012 filed by public prosecutor Purificacion Baring-Tuvera, on the ground that there was a directive pursuant to DOJ Resolution dated December 3, 2012 granting the accused' Petition for Review, directing the Office of the City Prosecutor to withdraw the information in this case.

However, once a motion to dismiss or withdraw the information is filed, the trial judge may grant or deny it, not out subservience to the Secretary of Justice, but in faithful exercise of judicial prerogative. This Court pertinently stated so in *Martinez vs. Court of Appeals* that "whether to approve or disapprove the stand taken by the prosecution is not the exercise of discretion required in cases like this. The trial judge must himself be convinced that there was indeed no sufficient evidence against he accused, and this conclusion can be arrived only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency xxx".

After carefully examining the prosecution's evidence attached to the records of this case and the Resolution of the Department of Justice, the Court finds the allegations of the public prosecutor contained in this instant motion to be well-taken, and hereby grants the same.

In view thereof, the motion to withdraw information filed by the public prosecutor is hereby GRANTED.

Accordingly, this case is dismissed.

SO ORDERED.[23]

Appellant filed a motion for reconsideration, but this was denied in an Order[24] dated March 22, 2013 on the ground of lack of personality to file the same as the motion did not bear the conformity of the public prosecutor. The pertinent portions of the Order read:

Noteworthy, the aforesaid motions were filed by the private complainant thru the private prosecutor. In regard to this point, Sec. 5, Rule 10, of the Revised Rules of Court provides inter alia;

“Sec. 5. x x x All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor x x x.”

Since herein motions do not bear the conformity of the public prosecutor, nor do they bear authority from the latter for the private prosecutor to act as such pursuant to the above provision, the Motion for Reconsideration as well as the Supplement to the Motion for Reconsideration filed by the private complainant are DENIED.

SO ORDERED.[25]

Hence, this appeal in which appellant raised the following ASSIGNMENT OF ERRORS[26], to wit:

I THE COURT A QUO ERRED WHEN IT PREMATURELY GRANTED THE MOTION TO WITHDRAW INFORMATION;

II THE COURT A QUO ERRED WHEN IT REVERSED A FINDING OF PROBABLE CAUSE WITHOUT NEW EVIDENCE PRESENTED OR SUBMITTED;

III THE COURT A QUO ERRED WHEN IT ISSUED THE ASSAILED ORDER DATED JANUARY 24, 2013 GRANTING THE MOTION TO WITHDRAW INFORMATION WITHOUT EMBODYING AN EVALUATION OR ASSESSMENT IN THE ORDER DISPOSING THE MOTION; AND

IV THE COURT A QUO ERRED WHEN IT ISSUED THE ORDER DATED MARCH 22, 2013 UNREASONABLY REQUIRING THE CONFORMITY OF THE PUBLIC PROSECUTOR WITH RESPECT TO THE MOTION FOR RECONSIDERATION FILED BY APPELLANT.

THE ISSUE

The sole issue in the instant case is whether or not the court a quo correctly granted the motion to withdraw the information for estafa against appellees.

THE RULING

There is no merit in the instant appeal.

Appellant contends that the court a quo erred in granting the public prosecutor's motion to withdraw information. To do so was premature. It was also indicative of the court's inordinate haste considering that there was still a pending motion for reconsideration of the DOJ Resolution.

We are not persuaded.

The instant appeal is fatally defective for appellant's lack of legal personality to appeal the court a quo's ruling.

It is elementary that a criminal case must always be prosecuted under the control and guidance of the State through its government prosecutor. In the event of the dismissal of a criminal case, it is the Office of the Solicitor General that has the sole and exclusive authority to undertake an appeal from the criminal aspect thereof.[27] This is pursuant to Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987 which states that the Office of the Solicitor General is the representative of the People of the Philippines or the State in criminal proceedings. The provision provides that:

SECTION 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. . . . It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. [Emphasis supplied]

x x x

The exclusive authority of the Office of the Solicitor General to appeal the dismissal of a criminal case is rooted in the principle that the party affected by the dismissal of the criminal action is the State and not the private complainant who is a mere complaining witness. For this reason, the State is therefore deemed as the real party in interest in the criminal case. Since every action must be prosecuted or defended in the name of the real party-in-interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit, an appeal of the criminal case not filed by the State as represented by the Office of the Solicitor General is dismissible.[28] Hence, in *Palu-ay v. Court of Appeals*[29], as affirmed in *People of the Philippines, et al., vs. Court of Appeals and Florece*[30], the Supreme Court ruled thus:

It is well-settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability. Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not take such appeal. However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused. [Emphasis supplied]

The only instance when a private complainant or the offended party may file an appeal without the intervention of the Office of the Solicitor General is when the question raised is limited to the civil liability of the accused. The private complainant may also opt to file a special civil action for certiorari even without the intervention of the Office of the Solicitor General, but only to the end of preserving his interest in the civil aspect of the case. This finds support in the case of *People of the Philippines vs. Piccio*[31], where the Supreme Court ruled that:

Accordingly; jurisprudence holds that if there is a dismissal of a criminal case by the trial court or if there is an acquittal of the accused, it is only the OSG that may bring an appeal on the criminal aspect representing the People.[32] The rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses. For this reason, the People are therefore deemed as the real parties in interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court. In view of the corollary principle that every action must be prosecuted or defended in the name of the real party-in-interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit, an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible. The private complainant or the offended party may, however, file an appeal without the intervention of the OSG but only insofar as the civil liability of the accused is concerned. He may also file a special civil action for certiorari even without the intervention of the OSG, but only to the end of preserving his interest in the civil aspect of the case. [Emphasis supplied.]

It is therefore clear that the instant appeal must be dismissed as it was initiated solely by appellant who lacked the

legal personality to file the same. The civil liability of appellees was not even raised as an issue by appellant. Instead, appellant raised only the issue of the propriety of the withdrawal of the information filed against appellees, which issue is criminal in nature.

Worse, the Office of the Solicitor General not only refused to join appellant in filing the appeal, as it actually moved[33] that the instant appeal be dismissed, in recognition of the principle that in a criminal case, the offended party is the State. As such, it is the State, exclusively through the Office of the Solicitor General, which may file an appeal in the instant case.

Based on the foregoing discussion, this Court finds no compelling reason to reverse or modify the assailed order of the court a quo.

WHEREFORE, premises considered, the appeal is hereby DENIED. The Order[34] dated January 24, 2013 of the Regional Trial Court, Branch 18, Manila is AFFIRMED.

SO ORDERED.

Dimagiba, L. R., and [*]Manahan, C. S., JJ., concur.

[*] Acting Junior Member per Office Order No. 56-15-ABR dated February 23, 2015.

[1] Penned by Presiding Judge Carolina Icasiano-Sison; Annex “A” to the Appellant's Brief, Rollo, pp 48-48a.

[2] Records, pp 10-13.

[3] Also spelled as Kuan.

[4] Metrobank Check No. 0125987 dated September 14, 2006, Records, p 16.

[5] Equitable Bank Check No. 0437353 dated January 23, 2007, Records, p 17.

[6] Records, p 26.

[7] Demand Letter dated June 18, 2010, Records, pp 34-35; Demand Letter dated June 18, 2010, Records, pp 37-38.

[8] Appellees' respective Counter Affidavits both dated September 17, 2010, Records, pp 40-43, 67-70.

[9] Records, p 16.

[10] Records, p 17.

[11] Records, pp 3-9.

[12] Id., p 9.

[13] Records, pp 1-2.

[14] Ibid.

[15] Records, p 127.

[16] Records, pp 128, 128.

[17] Records, pp 147, 148.

[18] Records, pp 155-169.

[19] Records, pp 343-349a.

[20] Ibid., pp 348-349a.

[21] Records, pp 340-341.

[22] Supra, at note 1.

[23] Ibid.

[24] Annex “B” to the Appellant's Brief, Rollo, pp 49-50.

[25] Id, p 50.

[26] Rollo, p 35.

[27] People of the Philippines vs. Piccio, G.R. No. 193681, August 6, 2014.

[28] People of the Philippines vs. Piccio, G.R. No. 193681, August 6, 2014.

[29] G.R. No. 112995, July 30, 1998.

[30] G.R. No. 187409, November 16, 2011; see also *Bangayan vs. Go Bangayan*, G.R. No. 172777, October 19, 2011 and *Delfin vs. Go Bangayan*, G.R. No. 172792, October 19, 2011; *Metropolitan Bank and Trust Company vs. Veridiano and Ong*, G.R. No. 118251, June 29, 2001.

[31] G.R. No. 193681, August 6, 2014; See also *Villareal vs. Aliga*, G.R. No. 166995, January 13, 2014 citing *Bautista vs. Cuneta-Pangilinan*, G.R. No. 189754, 648 SCRA 521.

[32] Emphasis withheld.

[33] Rollo, pp 89-96.

[34] Supra at note 1.

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