

**ALVIN FRANCIS AND CHERYLL RAFOLS IN THEIR OWN BEHALF AND
IN BEHALF OF THEIR MINOR CHILD HANNAH FAYE S. RAFOLS,
PETITIONERS, VS. HON. RICHARD D. MORDENO, IN HIS CAPACITY AS
PRESI...**

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is a consolidated Petition for Certiorari under Rule 65 of the Revised Rules of Court assailing the Resolution and Order of the Regional Trial Court, Branch 22, Province of Misamis Oriental, in FC Criminal Case No. 2010-428 entitled People of the Philippines v. Annie Fe B. Oclarit for Violation of Republic Act No. 9258 otherwise known as the Guidance and Counseling Act of 2004.

CA-G.R. SP No. 04480-MIN is a Petition[1] for Certiorari filed by petitioners-spouses Rafols assailing the following: (1) Resolution of the RTC dated June 23, 2011 granting private respondent's Motion to Quash and dismissing FC Criminal Case No. 2010-428 and (2) Order dated July 19, 2011 denying petitioners-spouses' Motion for Reconsideration. CA-G.R. SP No. 04587, on the other hand, is a Petition[2] for Certiorari filed by the Republic of the Philippines, through the Office of the Solicitor General, assailing the same Resolution and Order of the RTC.

On 16 January 2012, this Court, in a Minute Resolution[3], ordered the consolidation of the two petitions upon findings that they involved the same parties and arose from the same case dismissed by the public respondent Court in FC Criminal Case No. 2010-438.

The undisputed facts are as follows:

Petitioners-spouses Rafols filed a complaint for violation of Republic Act No. 7610 (Anti-Child Abuse Law) against private respondent and others. During the preliminary investigation, private respondent submitted her counter-affidavit[4] alleging, inter alia, the following:

- I am the Guidance Counselor of Xavier University. I am in charge of counseling Grades 4, 5, and 6 students. I have been a Guidance Counselor for 11 years now. I am also presently the Guidance Coordinator and handling all the Guidance Counselors of Xavier University grade school. I have five (5) Counselors under me.

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- As a Guidance Counselor, my tasks are only as limited to my job description. Thus, I could not in any way be liable to the alleged trauma, if any, that Hannah is allegedly suffering since I have no direct participation to it.[5]

Based on such allegations, petitioners-spouses filed an administrative case against private respondent before the Professional Regulation Commission (PRC) - Board of Guidance and Counseling (Board for brevity). The Board dismissed the administrative case for want of jurisdiction over the person of private respondent as she is not a registered guidance counselor but advised petitioners-spouses to file a case for illegal practice of guidance and counseling against the private respondent before the Prosecutor's Office.

Heeding the Board's advice, petitioners-spouses filed a complaint for illegal practice before the Office of the City Prosecutor, Cagayan de Oro. Finding probable cause, Acting City Prosecutor of Cagayan de Oro Irene A. Meso filed an Information before the RTC charging private respondent Annie Fe B. Oclarit of Violation of Republic Act No. 9258 otherwise known as "Guidance and Counseling Act of 2004" committed as follows, to wit:

That on or about October 14, 2008 until October 21, 2008, or dates prior or subsequent thereto, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and criminally engage in the practice of guidance and counseling, by acting as guidance and counselor in Xavier University Grade School and by counseling student Hannah Faye Rafols, a minor, without first having secured the necessary license, or without having been issued with valid Certificate of Registration as Guidance Counselor and valid Professional Identification Card or a special permit by the Professional Regulatory Board of Guidance and Counseling and the Professional Regulatory Commission, to the damage and prejudice of minor Hannah Faye Rafols.[6]

Before she could be arraigned, private respondent filed a Motion to Quash the Information on the ground that the Acting City Prosecutor who filed the information had no authority to do so. Private respondent argued that since the supervision and regulation of the practice of guidance and counseling, including the power to investigate violations of the said Act, falls under the jurisdiction of the Board, the proper party to file the case is the Board and not the Prosecutor's Office. Private respondent also argued that petitioners-spouses failed to exhaust administrative remedies considering that they should have filed their complaint before the Board who has the power to initiate criminal actions under said Act and not before the Prosecutor's Office.

The prosecution opposed the motion to quash contending that the board, in a resolution dated September 7, 2010, had already dismissed the administrative case previously filed before it by the petitioners-spouses against private respondent on the ground of lack of jurisdiction and that it advised instead the filing of a complaint for illegal practice against the private respondent before the prosecutor's office of cagayan de oro. Thus, the criminal complaint.

The RTC, in a Resolution[7] dated June 23, 2011, granted private respondent's motion to quash and held, thus:

xxx [T]he action of the City Prosecutor's Office in assuming the case is an intrusion into a realm that rightly belongs to another agency of the State [and that it] is unclothed with the authority to determine violations of the provisions of R.A. No. 9258 [and, as] a result, its findings on the existence of probable cause, and the filing of this instant case before the court is, therefore, premature so that the court loses jurisdiction to try and hear [the] case.[8] (emphasis supplied)

The RTC also denied the prosecution's motion for reconsideration in its Order[9] dated July 19, 2011. Hence, these consolidated petitions.

In this recourse, petitioners-spouses fault the RTC with this sole error, to wit:

I. THE HONORABLE RESPONDENT COURT ACTED WITH ABSOLUTE LACK OF AUTHORITY OR WITHOUT JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT GRANTED THE MOTION TO QUASH ON THE GROUND THAT THE OFFICER WHO FILED THE INFORMATION HAD NO AUTHORITY TO DO SO AND FOR

DENYING THE MOTION FOR RECONSIDERATION FOR LACK OF MERIT.[10]

The Republic, on the other hand, through the OSG, raised this sole ground for the allowance of its petition, to wit:

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED RESOLUTION AND ORDER BECAUSE IT DEPRIVED THE PEOPLE OF ITS DAY IN COURT.[11]

Our Ruling

The petition is impressed with merit.

Petitioners-spouses and the OSG essentially raise the same issue, viz: the propriety of the quashal of the information resulting to the dismissal of the criminal complaint.

Petitioners-spouses argue that there is nothing in the Guidance and Counseling Act of 2004 that states or even suggests that exclusive original jurisdiction over determination and prosecution of violation of the law is vested in the Board. The Prosecutor's Office is not precluded from conducting investigations of violations of the said law. Absent such a clear intent, the Prosecutor's Office cannot be prevented from investigating complaints of violation of the Guidance and Counseling Act of 2004 and filing the information in court if evidence warrants.

We agree.

A careful perusal of the assailed resolution reveals that the public respondent, in quashing the information for being premature, chiefly relied on the following provisions of R.A. No. 9258 which provide, thus:

SEC. 5 Powers, Functions, Duties and Responsibilities of the Board. - The Board shall have the following specific powers, functions, duties, and responsibilities:

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(j) Investigates violations of this Act and the Rules and Regulations, Code of Ethics, Code of Technical Standards, administrative policies, orders and issuances promulgated by the Professional Regulatory Board. The Rule on administrative investigation promulgated by the Commission shall govern in such investigation;

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(l) Render decision, order or resolution on preliminary investigation or inquiry against violators of this Act, Rules and Regulations, Code of Ethics, Code of Technical Standards or any policy on undocketed cases and the docketed administrative cases against examinees and registrants, which shall become final and executory unless appealed with the Commission within fifteen (15) days from receipt of the copy thereof;

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(o) Initiate criminal action against any violator of this Act and/or the rules and regulation of the Board;

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(emphasis supplied)

Public respondent then ruled that the Board must first assume primary and/or prior jurisdiction over violations of R.A. 9258 before regular courts can take cognizance of the criminal case.

We disagree with the findings of the public respondent.

While it is clear from the aforequoted provisions of R.A. 9258 that the Board is given the power to investigate violations of the Act, render decision, order or resolution on preliminary investigations conducted by it, and initiate criminal complaints, there is nothing, however, in the aforequoted provisions of R.A. 9258 which states that jurisdiction over criminal cases for violations of R.A. 9258 exclusively falls upon the Board, nor must criminal complaints be initiated solely or exclusively by the Board.

In the instant case, records show that petitioners-spouses filed an administrative case against the private respondent before the Board. Understandably, the Board dismissed the administrative complaint for lack of jurisdiction over the person of private respondent whose application for professional license as guidance counselor is still pending before the PRC. However, the Board, in dismissing the administrative complaint, advised petitioners-spouses to file a criminal complaint against the private respondent for illegal practice under Section 27 of RA 9258 before the prosecutor's office.

It may not be amiss to state that this directive of the Board, as contained in its resolution, is made after it found in its investigation that the private respondent is engaged in the practice of guidance and counseling without the requisite license and may be held liable for illegal practice. Notably, nowhere in RA 9285 and its implementing rules and regulation could it be found that an applicant for a professional license for guidance and counseling may engage in such profession pending the approval of his application for, and issuance of, the requisite license. In fact, it bears stressing that the Board, in its resolution, did not even consider the pendency of private respondent's application for professional license as a prejudicial question nor a viable defense from a charge of illegal practice under Section 27, Article IV of RA 9258.

As regards the issue raised by the Republic, it claims that the public respondent effectively denied the People of its day in court by the quashal of the information on the grounds that: 1.) the Board had already exercised its mandate and made a determination that private respondent should be criminally prosecuted for illegal practice under Section 27, Article IV of RA 9258; 2.) the criminal action against private respondent was instituted pursuant to the advice of the Board; and 3.) the Board's specialized knowledge is not required for the determination of private respondent's criminal culpability for practicing the profession of guidance and counseling without the required license.

We agree.

Section 27 of RA 9258 provides:

Sec. 27. - Prohibition Against the Practice of Guidance and Counseling.- "No person shall (a) engage in the practice of guidance and counseling without a valid Certificate of Registration and a valid Professional Identification Card or a special permit; (b) make representations to the public or to third persons as a licensed guidance counselor during the time that the license has been revoked or suspended, and (c) allow anybody to use his/her license as guidance counselor to enable such unqualified individual to engage in the practice of

guidance and counseling. (emphasis supplied)

From the plain import of Section 27, it is crystal clear that a person engaged in the practice of guidance and counseling without a valid license is violating RA 9285. Thus, it may not be amiss to state that the Board's specialized knowledge is not entirely indispensable in properly interpreting the aforequoted provision of RA 9258.

Nonetheless, We are of the opinion that the Board had already exercised its jurisdiction in initially determining private respondent to be culpable for illegal practice under Section 27, Article IV of RA 9258 after it found private respondent engaged in guidance and counseling without a valid PRC license or a special permit, precisely the reason the Board advised petitioners-spouses to file a complaint for illegal practice before the prosecutor's office. Thus, there is no dispute that the criminal action against private respondent was instituted pursuant to the directive of the Board in the exercise of its function and after a finding that private respondent may have violated RA 9258.

In fine, We disagree with the RTC in holding that the court does not have jurisdiction to try the case for being premature and that the prosecutor who filed the information lacks authority to initiate the criminal action. On the contrary, We rule that the prosecutor's office was properly clothed with authority when it filed the case in court, which case is far from premature considering that it was filed pursuant to the Board's directive to file the case and in deference to the principle of primary jurisdiction.

We, therefore, hold that the public respondent acted with grave abuse of discretion in quashing the information for illegal practice against private respondent and in dismissing FC Criminal Case No. 2010-438.

WHEREFORE, these consolidated petitions are hereby GRANTED. The assailed Resolution and Order of the public respondent dated June 23, 2011¹² and July 19, 2011¹³ are hereby REVERSED and SET ASIDE and an Order is issued remanding FC Criminal Case No. 2010-438 to the Regional Trial Court, Misamis Oriental for continuation of criminal proceedings.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

[*]Lopez and Badelles, JJ., concur.

[*] New Member per Raffle dated April 18, 2013

[1] Rollo (CA-G.R. SP No. 04480-MIN), pp. 2-28

[2] Rollo (CA-G.R. SP No. 04587-MIN), pp. 2-18

[3] Id., p. 57

[4] Id., pp. 32-34

[5] Ibid

[6] Rollo (CA-G.R. SP No. 04480-MIN), p. 61

[7] Rollo (CA-G.R. SP No. 04480-MIN), pp. 33-41; Rollo (CA-G.R. SP No. 04587-MIN), pp. 21-29

[8] Rollo (CA-G.R. SP No. 04480-MIN), p. 41

[9] Rollo (CA-G.R. SP No. 04480-MIN), pp. 42-43 ; Rollo (CA-G.R. SP No. 04587-MIN), pp. 30-31

[10] Rollo (CA-G.R. SP No. 04480-MIN), p. 19

[11] Rollo (CA-G.R. SP No. 04587-MIN), p. 10

[12] Supra at note 7

[13] Supra at note 9

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