

JOSEPH BERNABE, PETITIONER, VS. OFFICE OF THE REGIONAL STATE PROSECUTOR, REGION VII, MIGUELA DAVIES, NANCY OCABA, JUSTIN OCABA, CHELO OCABA AND CHUD OCABA, RESPONDENTS.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This Petition for Certiorari[1] under Rule 65 of the Rules of Court seeks the annulment of two Resolutions dated October 22, 2013[2] and January 6, 2014[3] (“assailed Resolutions”) issued by the Office of the Regional State Prosecutor, Region VII, Cebu City (“public respondent”) for being tainted with grave abuse of discretion amounting to lack or in excess of jurisdiction. The October 22, 2013 Resolution dismissed the Complaint filed by herein petitioner for lack of probable cause, while the January 6, 2014 Resolution denied petitioner's Motion for Reconsideration.

On February 8, 2012, herein petitioner, Joseph Bernabe, (“petitioner Bernabe”) filed a criminal Complaint[4] for grave coercion under Article 286 of the Revised Penal Code against Miguela Davies, Nancy Ocaba, Justin Ocaba, Chelo Ocaba and Chud Ocaba (“private respondents”).

In his Affidavit-Complaint,[5] petitioner Bernabe averred that he was prevented by private respondents, through violence and intimidation, to enter the premises where he lives. He alleged that when he arrived home sometime on October 19, 2011, he was denied entry to their compound where he and the private respondents live. He was surprised that the main road was blocked and that nobody opened the gate of the premises despite his pleas. As such, he went to the police and reported the matter. Thereafter, he came back to the place, but private respondents were already at the gate to prevent him from entering the premises. On the following day, when he arrived at their place, he again found the gate locked. When he disembarked from his car, private respondent Chud Ocaba prevented him from entering, so he insisted to enter, but when he did this, private respondent Chud Ocaba pushed him and challenged him to a fist fight. Chud Ocaba then warned petitioner Bernabe that if the latter would insist to go inside the premises, trouble would ensue.[6]

Thus, petitioner Bernabe went to the police to report this incident, but while he was in the police station he was summoned by his mother to check his car which he left at the gate of their compound. When he checked his car, he found that its plate number was destroyed, and its body scratched and dented. On that same occasion, private respondent Miguela Davies warned petitioner Bernabe by telling him that if he insist on entering the premises, he will be personally liable to whatever that may happen to his car. Hence, without any choice, petitioner Bernabe was forced to look for another place to rest.[7]

On the basis of the said Affidavit-Complaint, an Information was filed before the Municipal Trial Court in San Fernando, Cebu, but the said court remanded the case to the Office of the Provincial Prosecutor for preliminary investigation.[8]

On November 29, 2012, Assistant Provincial Prosecutor Anabelle Robles dismissed the criminal complaint for

grave coercion.[9] Petitioner Bernabe moved for a reconsideration of this dismissal but the same was denied.[10]

Hence, on July 29, 2013, petitioner Bernabe filed a Petition for Review before the Office of the Regional State Prosecutor, but the said public respondent denied such petition and dismissed petitioner Bernabe's Complaint in the assailed October 22, 2013 Resolution.[11]

The dispositive portion of the October 22, 2013 Resolution reads:

“IN SUM, this Office finds no reason to disturb the findings of the Office of the Provincial Prosecutor of Cebu in its 29 November 2012 Resolution and in its 27 June Resolution on Complainant's Motion for Reconsideration, dismissing the Complaint for lack of probable cause. Accordingly, the same is hereby AFFIRMED.”[12]

In dismissing the Complaint filed by petitioner Bernabe, the Office of the Provincial Prosecutor through prosecutor Anabelle Robles mainly relied on the absence of violence employed in the alleged prevention of petitioner Bernabe from entering the compound where he lives. It ruled that mere installation of the gate is not coercion. It also found the act pushing and challenging to a fist fight insufficient to produce violence.[13]

This ruling was affirmed by the public respondent. Public respondent, however, went further by discussing that intimidation is already sufficient for grave coercion to exist, without the necessity of actually committing physical violence. And, finding that the allegations of petitioner's complaint do not reveal any clear threat or intimidation on the part of private respondents, public respondent thus dismissed petitioner's petition for review. It agreed with the investigating prosecutor that the allegations in the complaint, standing alone, would not amount to violence created by material force or display of force as would produce intimidation.[14]

Aggrieved by the October 22, 2013 Resolution of the public respondent, petitioner Bernabe filed a Motion for Reconsideration but the same was denied in the assailed January 6, 2014 Resolution, thus:

“WHEREFORE, in view of the foregoing, and for lack of merit, the Motion for Reconsideration is hereby DENIED.”[15]

Hence, this petition, which argues that:

“HONORABLE REGIONAL STATE PROSECUTOR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE COMPLAINT DESPITE THE EXISTENCE OF PROBABLE CAUSE TO INDICT THE PRIVATE RESPONDENTS FOR GRAVE COERCION.”[16]

Petitioner Bernabe maintains in the instant petition that the public respondent gravely abused its discretion when it only decreed the absence of threat or intimidation for the dismissal of the complaint. He argues that it is not the presence of threat or intimidation which should be resolved but the presence of violence which was clearly alleged in his affidavit-complaint. He cited the violence employed when he was prevented from entering the compound where he lives, these are: a) Chud Ocaba pushed and challenged him to a fist fight, and b) the placing of spikes and nails on the driveway so as to cause damage to his car.

Petitioner Bernabe likewise contends that when the public respondent affirmed the findings of the investigating prosecutor, the former also affirmed the latter's erroneous ruling that when the alleged grave coercion was committed, compulsion was used, when in fact, the crime was committed by prevention.

On their side, private respondents argue that the public respondent did not commit any grave abuse of discretion when the latter affirmed the ruling of the investigating prosecutor. They support the finding of the investigating prosecutor on the absence of violence. Thus, they argue that whether the alleged grave coercion was done by

either modes in committing the crime, the absence of violence supports the finding of lack of probable cause.[17]

Private respondents also argue that petitioner Bernabe erred in filing the instant petition for certiorari considering that the remedy of appeal is available to him. They claim that the resolution of the public respondent should have been appealed to the Secretary of Justice.[18]

We will first rule on the procedural issue raised by the private respondents.

Private respondents argue that the resolution of the public respondent should have been appealed to the Secretary of Justice pursuant to DOJ Circular No. 70 or the “2000 NPS Rule on Appeal”.

DOJ Circular No. 70, however, should be read in consonance with DOJ Circular No. 70-A issued on July 10, 2000, which reads:

“In order to expedite the disposition of appealed cases governed by Department Circular No 70 dated July 3, 2000, all petitions for review of resolutions of Provincial/City prosecutors in cases cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, except in the National Capital Region, shall be filed with the Regional State Prosecutor concerned who shall resolve such petitions with finality in accordance with the pertinent rules prescribed in the said Department Circular.

Xxxx.”[19]

Clearly, DOJ Circular No. 70-A authorizes the Regional State Prosecutor to resolve with finality petitions for review of resolutions of Provincial/City prosecutors in cases cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts. Hence, when the Regional State Prosecutor resolves a petition, the same is deemed to have been resolved by the Secretary of Justice, considering that the former's resolution is deemed final. As such, appeal to the Secretary of Justice is not anymore available as a rule.

Moreover, jurisprudence has held that appeal to the Secretary of Justice follows the principle of exhaustion of administrative remedies, but this principle is not without exception. For instance, actions of the Regional State Prosecutor, if patently illegal amounting to lack or excess of jurisdiction, constitutes an exception to the rule on exhaustion of administrative remedies.[20]

Alleging that the public respondent's resolution is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, and considering that there is no more appeal available, the instant petition for certiorari is proper.

Despite this recourse, however, We do not find any abuse of discretion on the part of the public respondent, much less a grave one.

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[21]

With these standards, We find that there was no hint of whimsicality, no gross and patent abuse of discretion as would amount to “an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law.” On the contrary, public respondent resolved the issues by scrutinizing the parties' allegations and applying the basic precepts of criminal law to the facts.

Indeed, the public respondent properly affirmed the resolution of the investigating prosecutor and dismissed petitioner's Complaint for lack of probable cause.

"Probable cause" is defined as "such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." [22]

And, in finding probable cause for the crime of grave coercion, the following elements must be prima facie established: "1) that a person is prevented by another from doing something not prohibited by law, or compelled to do something against his will, be it right or wrong; 2) that the prevention or compulsion is effected by violence, threats, or intimidation; and 3) that the person who restrains the will and liberty of another has no right to do so, or in other words, that the restraint is not made under authority of law or in the exercise of any lawful right." [23]

As earlier intimated, the public respondent affirmed the findings of the investigating prosecutor that violence was not established in the allegations of the affidavit-complaint. It added that not only violence was absent but also threat or intimidation.

The public respondent affirmed the following findings of the investigating prosecutor in its resolution dated November 29, 2012, thus:

"The acts complained of by the Complainant was basically on the installation of the gate and his alleged failure to enter the compound because of it. Such a situation, standing alone, would not amount to violence created by material force, or display of force as would produce intimidation.

xxxx

Taking into account the entire circumstances surrounding the herein parties, no coercion could have been committed on those particular dates of October 19 and 20, 2011. xxx

xxxx

To be noted is that Respondents Nancy Ocaba and Chud Ocaba were not present during the October 19, 2011 incident. Thus, no criminal liability could be attributed to them. As regards Respondents Miguela Davies, Justino Ocaba and Chelo Ocaba, their acts would not constitute coercion. Indeed, Complainant could not just surmise that mere prevention is already coercion. The law requires that a degree of violence be employed first.

As regards the October 20, 2011 incident, Complainant likewise failed to present sufficient evidence to establish violence purposely to coerce him in doing a particular act. While it may be true that Respondent Chad Ocaba pushed and challenged him to a fistfight, the Complainant was likewise ready to put up with a fight. With such reaction, it cannot be said that Complainant was intimidated that time. In fact, Respondent Chad Ocaba accused Complainant of being the first one to push and kick him (Respondent).

xxxx

xxxx." [24]

In its own findings, the public respondent ratiocinated that intimidation is already sufficient for grave coercion to exist, without the necessity of actually committing physical violence, but the same was not established by the affidavit-complaint, to wit:

"In substance, intimidation is already sufficient for Grave Coercion to exist, without really the necessity of actually committing physical violence. Coercion is often accomplished by means of mere threats or intimidation and may even be committed by compulsion brought about without the employment of physical force. If the attitude of the offender was notoriously menacing as to amount to grave intimidation, or to create a situation that would necessarily intimidate the victim, there would be coercion. The violence or intimidation, however, should be employed at the very moment that the complainant is doing or is about to do something he wants to do. Conversely, there is no coercion if no duress was employed.

In the instant case, the only evidence posited by herein Complainant-Appellant to show intimidation are the allegations contained in his Affidavit-Complaint. A perusal of these allegations, however, would reveal that no clear threat or intimidation on the part of Respondents-Appellees was ever mentioned. While Complainant-Appellant claims that Respondents-Appellees acted in conspiracy in preventing him from entering the compound, these allegations on its own are not enough to constitute intimidation. Even the allegations in the police blotter do not mention any specific act of intimidation that would constitute the offense. Grave Coercion must be adequately substantiated if only to support a finding of probable cause that indeed there was coercion. Unfortunately, the records of this case do not support the same. This Office agrees with the findings of the investigating prosecutor that the allegations "standing alone, would not amount to violence created by material force, or display of force as would produce intimidation... xxx (Complainant-Appellant) could not just surmise that mere prevention is already coercion." Evidence to be believed not only must proceed from the mouth of a credible witness but must also itself be credible.

In coercion, it is imperative that the alleged violence must be immediate, actual or imminent. Xxx.”[25]

Verily, the public respondent carefully scrutinized the findings of the investigating prosecutor considering that its own resolution did not only affirm the absence of violence in the acts complained of but also look into whether the acts if not constituting violence would amount to threat or intimidation. Then, the public respondent applied the law on the facts he found. As jurisprudence hold, “in the crime of grave coercion, violence through material force or such a display of it as would produce intimidation and, consequently, control over the will of the offended party is an essential ingredient.”[26]

We, thus, affirm the findings of the public respondent. We find that violence or intimidation was not sufficiently established even with the plain reading of the affidavit-complaint.

For one, the alleged putting of a gate on the premises and padlocking the same are not violence per se, considering that the private respondents also live in the same compound. The mere presence of the private respondents in front of the gate does not also present any violence. These acts also could not be tantamount to intimidation as there was no indication that their acts could actually intimidate petitioner Bernabe.

Second, the alleged pushing and challenging of petitioner Bernabe to a fistfight cannot be considered violence or material force which would produce intimidation. As found by the investigating prosecutor, petitioner Bernabe was also ready to put up a fight.

Lastly, the alleged putting of spikes or nails on the road is not material violence because there is no showing that it was done at the very moment or at the time the petitioner was doing or about to do the act to be prevented. “In grave coercion, the person coercing must have restrained his victim from doing something, not prohibited by law, at the time he wanted to do it. Thus, the violence must be employed at the very moment that the victim is doing or is about to do something he wants to do.”[27] Hence, the same can be said on the alleged scratching and denting of his car, the alleged violence was not done at the time the petitioner was doing or about to do the act to be prevented. In fact, he was at the police station that time when he left his car.

Petitioner Bernabe also argues on the modality that should have been considered by the investigating prosecutor. We find, however, that whether the complainant was compelled or prevented is not any more significant because of the absence of violence or intimidation in the complained acts. Moreover, the public respondent already corrected the alleged modality used. Its assailed October 22, 2013 Resolution discussed that there was no violence or intimidation when the Complainant was prevented from entering their compound.

Considering the foregoing, there is no basis for the petitioner to claim that the public respondent gravely abused its discretion amounting to lack or excess of jurisdiction. Without any taint of abuse of discretion, much less a

grave one, public respondent's assailed Resolutions are final and controlling.

Finally, We bear to emphasize that “the determination of probable cause for the filing of an information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice. For this reason, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.”[28]

WHEREFORE, the instant Petition is hereby DENIED. The Resolutions dated October 22, 2013 and January 6, 2014 of the Office of the Regional State Prosecutor, Region VII, Cebu City are hereby affirmed.

SO ORDERED.

Ingles,[*] and Azcarraga-Jacob, JJ., concur.

[*] Acting Chairperson in lieu of J. Ramon Paul L. Hernando, per Office Order No. 19-14-GTI dated July 7, 2014.

[1] Rollo, pp. 3-19.

[2] Rollo, pp. 21-24.

[3] Rollo, pp. 25-26.

[4] Rollo, pp. 27-29.

[5] Ibid.

[6] Ibid. p. 27.

[7] Ibid. p. 28.

[8] See page 5 of Petition, Rollo, p. 5.

[9] Rollo, pp. 36-39

[10] Ibid.

[11] Ibid.

[12] Rollo, p. 24.

[13] Rollo, pp. 36-39.

[14] Rollo, pp. 21-24.

[15] Rollo, p. 26.

[16] Rollo, p. 8.

[17] See private respondents' “Vehement Opposition”, Rollo, pp. 52-60.

[18] Ibid.

[19] Underscoring supplied.

[20] Verzano, Jr. v. Paro, et al., G.R. No. 171643, August 8, 2010.

[21] Estrada v. Desierto, G.R. No. 156160, 9 December 2004.

[22] Navarra v. Office of the Ombudsman, G.R. No. 176291, December 4, 2009, citing Vide Rules of Court, Rule 112, Section 1.

[23] Alejandro, et al. v. Bernas, et al., G.R. No. 179243, September 7, 2011.

[24] Rollo, p. 38.

[25] Rollo, pp. 22-23.

[26] Supra, note 23.

[27] People v. Madrid, C.A., 53 O.G. 711, cited in REYES, Revised Penal Code, Book II, 2001 ed., p. 587.

[28] First Women's Credit Corp., et al. v. Hon. Perez, G.R. 169026, June 15, 2006.

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