

JORGE MARQUES, JAYSAN LAW, JUAN CARLOS MARQUES, JESUS SALVACION, MARIA FELISA MARQUES, CHARLINA SALVACION, JOSEFINA ANA MARQUES, DOLORES MARQUES AND YOLANDA SISI, PETITIONERS, ...

Ponente: YBAÑEZ, J.

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YBAÑEZ, J.:

Because the Department of Justice (DOJ) issued these Resolutions dated 28 October 2010[1] and 13 February 2012[2] respectively, which dismissed their petition for review and the consequent motion for reconsideration thereof, petitioners filed this Petition for Certiorari[3] to reverse and set aside the aforesaid resolutions and order the withdrawal of the information for the crime of estafa that was filed against them on the ground that the public respondent, in rendering the said resolutions, acted with grave abuse of discretion amounting to lack or excess of jurisdiction since there is no probable cause to indict them for the crime charged.

The Facts

On 22 January 2007, private respondents filed a Joint Affidavit-Complaint[4] against the petitioners before the Office of the City Prosecutor for the filing of a criminal charge of estafa under paragraph 2 (a), Article 315 of the Revised Penal Code. They alleged that they were greatly prejudiced when petitioners misrepresented that e-Academy, the school established by the latter, was affiliated with or registered as Philippine Paramedical Technical School of Davao, Inc. (PPTSDI), who in turn, was associated with different organizations abroad. Due to this purported affiliation with PPTSDI, private respondents enrolled in e-Academy but, to their dismay, they found out that it was not at all associated with PPTSDI.

In his Counter-Affidavit,[5] petitioner Jorge Marques denied the allegations averring that there was no intent to defraud because e-Academy and PPTSDI are partner schools. In fact, as one of the incorporators of PPTSDI, he was authorized to establish e-Academy. Private respondents, who were e-Academy's former students, just filed the instant complaint because the school was demanding payment for their unpaid accounts.

As answer to petitioner Marques' counter-affidavit, private respondents, while admitting the former's averment that the main reason for entering e-Academy and paying the expensive tuition fees is its alleged filiation with PPTSDI, posited that despite being an incorporator and a stockholder, Marques had no authority to mislead them that the school they enrolled in is a Paramedical and Technical School when in fact it was not. Such act of misrepresentation is further bolstered when he erased the letters "PPTS" in the signage of e-Academy after learning that they are going to file a complaint. Because of this deception, petitioners should be made liable for estafa.[6] Marques refuted these averments in his Rejoinder-Affidavit[7] and reiterated his innocence.

Finding that there was a reasonable ground to believe that estafa has been committed by the petitioners, Assistant City Prosecutor Jose Contridas Blanza, Jr. recommended the filing of an information before the Regional Trial Court on 29 August 2007. He posited that e-Academy, who had no affiliation with PPTSDI, deceived its students and the general public when it put the latter's name alongside its own in the signages, posters, flyers and

brochures. E-Academy also committed another deception when it offered a Practical Nursing course when it was only allowed to offer Vocational Nursing and Applied Science in Nursing.[8]

Undaunted, petitioners moved for the reconsideration[9] of the aforesaid resolution. Pending determination of the same, an Information[10] for the crime of estafa under Article 315, paragraph 2 (a) of the Revised Penal Code (RPC) was filed against the petitioners before the Regional Trial Court (RTC) which, however, was dismissed without prejudice because of a pending motion for reconsideration.[11] On 20 September 2007, City Prosecutor Edilberto Jamora resolved to deny petitioners' reconsideration.[12]

Consequently, petitioners elevated the matter to Department of Justice via a petition for review.[13] Said recourse proved to be futile in view of the issuances of the assailed resolutions.

Hence, petitioners filed the instant petition interposing this sole ground,[14] to wit:

THE DOJ GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR REVIEW AND DENIED THE MOTION FOR RECONSIDERATION.

The Ruling of this Court

This petition lacks merit.

Petitioners argued that the information for estafa should be withdrawn because the first element of false pretense, fraudulent act or fraudulent means is not present as e-Academy's affiliation with PPTSDI was sufficiently established by the Memorandum of Agreement (MOA) and Board Resolutions of PPTSDI's officers.

We disagree.

In order to warrant the filing of information against the petitioners, there should be probable cause that they committed a violation of paragraph 2(a), Article 315 of the Revised Penal Code, to wit:

“ART. 315. Swindling (estafa). – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

xxx xxx xxx

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceptions.

xxx xxx xxx”

The elements of the crime of estafa under the foregoing provision are: (1) there must be a false pretense,

fraudulent act or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage.[15]

In other words, to sustain a charge and subsequent conviction for estafa under the aforecited provision, petitioners must be alleged to have actually made fraudulent misrepresentations or false pretenses which, in turn, caused private respondents to part with their money.[16]

In the instant case, Assistant City Prosecutor Blanza found sufficient evidence to indict petitioners for the said crime. Private respondents sufficiently established that petitioners falsely misrepresented that e-Academy is affiliated with PPTSDI through the signages and brochures[17] they sent out as advertisement of the said school. It should be noted that the latter school is associated with different foreign organizations which the students believed to give them good employment opportunities once they graduate in e-Academy.[18] Due to this purported affiliation and notwithstanding the expensive tuition fees, private respondents enrolled in e-Academy only to find out later that the school was established independently from PPTSDI and not affiliated with it, as shown by the letter[19] of Dr. Ruben Robillo, Vice Chairman and Board Secretary of PPTSDI.

Petitioners' argument of an existing MOA and board resolutions is insufficient to support the alleged affiliation since as provided in the documents[20] and pointed out by Dr. Robillo,[21] the participation of PPTSDI in the new corporation or institution is subject to a ten (10%) percent share if a stock corporation or ten (10%) percent franchise fee or management fee, if a non-stock corporation or foundation, which however, were not complied with by the petitioners when they established e-Academy.

As competently found by Assistant City Prosecutor Blanza:

“xxx xxx xxx

E-Academy, Inc. is a non-stock, non-profit educational institution, which has a separate and distinct personality from that of its members, like respondent Jorge N. Marques who is its chairman and president. The Joint Stockholders and Board Resolution No. 3 of the Philippine Paramedical & Technical School of Davao, Inc. (PPTSDI) authorizes its individual incorporators, like respondent Jorge N. Marques, to create, establish and start other schools utilizing technologies and licenses of PPTSDI. They are allowed to use its name, i.e., Philippine Paramedical and Technical School, Inc. by the new corporation to be organized and registered by the individual incorporator. However, this authority is subject to a condition by way of 10% share of its shareholdings or 10% franchise fee or management fee. Board Resolutions No. 7, 8 and the Memorandum of Agreement stipulate the same condition.

E-Academy has not complied said condition for which reason Dr. Ruben G. Robillo, Vice-Chairman and Board Secretary of Philippine Paramedical & Technical School of Davao, Inc. categorically states that their school does not have any participation in the business operations of e-Academy. xxx”

Thus, the Secretary of Justice did not commit any grave abuse of discretion when it affirmed the findings of Assistant City Prosecutor Blanza. The joint affidavit-complaint as well as the supporting documents imputed an overt act of deceit on the part of the petitioners so as to constitute a prima facie case for estafa under Article 315, paragraph 2 (a) of the Revised Penal Code. It bears to reiterate that a finding of probable cause is merely based on

opinion and reasonable belief and does not require an inquiry into whether there is sufficient evidence to procure conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. While probable cause demands more than “bare suspicion,” it requires “less than evidence which would justify conviction.” A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.[22]

For reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause for otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations. In the absence of any showing that the Secretary of Justice committed manifest error, grave abuse of discretion or prejudice, courts will not disturb its findings. Moreover, the Court will decline to interfere when records show that the findings of probable cause is supported by evidence, law and jurisprudence.[23]

WHEREFORE, premises considered, the instant petition is DENIED. The assailed Resolutions dated 28 October 2010 and 13 February 2012, respectively of the Department of Justice are AFFIRMED.

SO ORDERED.

Dimaampao, (Chairperson), and Sadang, JJ., concur.

[1] Rollo, pp. 28-30

[2] Ibid, pp. 31-33

[3] Ibid, pp. 3-27

[4] Ibid, pp. 36-38

[5] Ibid, pp. 52-61

[6] Ibid, pp. 129-134

[7] Ibid, pp. 138-146

[8] Ibid, pp. 157-161

[9] Ibid, pp. 167-182

[10] Ibid, pp. 162-164

[11] Ibid, p. 186

[12] Ibid, p. 187

[13] Ibid, pp. 192-213

[14] Supra on note 3, p. 12

[15] RCL Feederrs Pte., Ltd. vs. Hon. Hernando Perez, in his capacity as Secretary of the Department of Justice and Feliciano Zuluaga, G. R. No. 162126, December 9, 2004, 445 SCRA 696, 703

[16] Ibid.

[17] Rollo, pp. 40-41

[18] Ibid., pp. 36-37

[19] Ibid., pp. 48-49

[20] Ibid., pp. 64-69

[21] Supra on note 19

[22] R. R. Paredes, et al., vs. Tarcisio Calilung, G. R. No. 156055, March 5, 2007, 517 SCRA 369, 394

[23] Ligaya Cruz vs. Hon. Raul Gonzales, et al., G. R. No. 173844, April 11, 2012, 669 SCRA 224, 230-231

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