

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, REPRESENTED BY MR. LUISITO C. MAGLANOC, PETITIONER, VS. THE HON. RAUL M. GONZALES, AS THE SECRETARY OF JUSTICE, VICTOR E. CABREROS, C...

Ponente: COSICO, J.

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COSICO, J.:

Before us is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, which seeks to annul and set aside the resolutions dated September 28, 2004 and March 4, 2005 issued by the Secretary of Justice in the petition for review docketed as I.S. No. 04-B-874 and entitled Philippine Long Distance Telephone Company, represented by Mr. Luisito C. Maglanoc, petitioner, versus Romeo D. Palo, et al., respondents. The said resolutions affirmed the Office of the City Prosecutor of Parañaque City's resolutions dated May 7, 2004 and June 16, 2004, insofar as said office recommended the dismissal of the complaint against herein private respondents for violation of Presidential Decree No. 401, as amended, which penalizes the unauthorized installation of water, electrical or telephone connections.

The Facts

Herein petitioner Philippine Long Distance Telephone Company (PLDT, for brevity) is a corporation duly organized and existing under and by virtue of the laws of the Philippines. Among its telephone services offered to the public is a "Ship to Shore" long distance telephone service, which enables mobile or stationary ships or vessels plying the seas anywhere in the world to make on-board international long distance telephone calls to the Philippines and vice-versa using their ship radio. The transmissions from the ship radio are then coursed/patched through the International Marine Satellite (INMARSAT) service facilities of PLDT, and are eventually terminated/connected to the intended telephone number anywhere in the Philippines, be it a landline or a cellular phone.

On or about October 13, 2003, the Local Route Monitoring Division of petitioner PLDT detected several illegal "ship to shore calls" originating from telephone numbers (02) 825-0285, (02) 829-5929 and (02) 829-9425, all installed at Unit B, Eriberta Townhomes, Salvador Estate, Barangay San Isidro, Parañaque City. Telephone number (02) 825-0285 was being subscribed by Romeo D. Palo, (02) 829-5929 by Jonathan Faderanga, and (02) 829-9425 by Michael Miles Magat. PLDT noticed that the volume of calls originating from these numbers were extraordinarily high for residential telephones. Upon further investigation, the company allegedly discovered that the subscribers/parties were receiving calls coming from different parts of the world originating from ship radios. Illegal connections and/or attachments were done on PLDT telephone lines so that "on board" calls, or calls originating from a mobile or stationary vessels can be charged by the "ship to shore" operator using a rate much cheaper than the rates of INMARSAT services offered by PLDT. PLDT then sought the assistance of the Philippine National Police, through P/Superintendent Gilbert C. Cruz, who conducted a series of investigations relative to the alleged illegal "ship to shore calls."

On January 28, 2004, Hon. Leoncia Real-Dimagiba of the Regional Trial Court, Branch 194 of Parañaque City issued Search Warrant No. 04-01[1] for violation of Presidential Decree No. 401, as amended, which ordered the immediate search of Unit B, Eriberta Townhomes, Salvador Estate, Barangay San Isidro, Parañaque City. The implementation of the search warrant revealed that PLDT lines were actually connected to ICOM radio telephone, interface boxes and cable wirings, among other things, which were all being used for “ship to shore” telecommunications activities. The search also resulted to the seizure of several telephone units, radio and other equipment, ledgers, books of various nature, documents containing lists of their clientele and several other documents. On February 20, 2004, PLDT, through Mr. Luisito C. Maglanoc, Fraud Investigator II of the Field Operations Division of the corporation, then filed a complaint-affidavit[2] charging Romeo D. Palo, Jonathan Faderanga, Michael Miles Magat, and herein private respondents Victor E. Cabreros, Cecilia D. Palo, Rodolfo H. Tan and Maria D. Palo for violation of PD No. 401. The private respondents were implicated because they were directors of Sealand Telecommunications Company, Incorporated (Sealand, for brevity), of which their co-respondent Romeo D. Palo was a director and the Vice President.

Romeo D. Palo denied in his counter-affidavit[3] the accusations hurled against him and his co-respondents. He claimed that Sealand was a legitimate operator of public marine coastal radio and telegraph services. The company allegedly did not tap the INMARSAT service facilities of the PLDT. There was thus no reason to implicate the officers of Sealand, herein private respondents, because the company’s services were legitimate and that these persons were not directly involved in the company’s operations.

A reply-affidavit, rejoinder-affidavit and sur-rejoinder were thereafter filed by the parties.

The Ruling of the City Prosecutor

On May 7, 2004, the Office of the City Prosecutor of Parañaque City issued a resolution[4] recommending the filing of the corresponding information against Romeo Palo, Jonathan Faderanga and Michael Miles Magat only. It found no sufficient evidence to warrant the indictment of herein private respondents Victor E. Cabreros, Cecilia D. Palo, Rodolfo Tan and Maria D. Palo because their respective participations and involvements in the offense charged were not duly established.

Feeling aggrieved by the dismissal of the complaint against herein private respondents, petitioner filed a partial motion for reconsideration of the resolution of May 7, 2004, which was however denied by the Office of the City Prosecutor of Parañaque City. Thus, PLDT filed a petition for review with the Secretary of Justice.

The Ruling of the Secretary of Justice

The Secretary of Justice, through Chief State Prosecutor Jovencito R. Zuño, dismissed PLDT’s petition for review via a resolution[5] dated September 28, 2004. It was ruled that no reversible error was presented to warrant the modification or reversal of the assailed resolutions of the Office of the City Prosecutor of Parañaque City.

PLDT’s motion for reconsideration was denied via a resolution⁶ dated March 4, 2005. Hence, the instant petition for certiorari.

The Issue

The lone issue for this Court’s resolution is: Whether or not public respondent Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that no probable cause exists to hold private respondents Victor E. Cabreros, Cecilia D. Palo, Rodolfo H. Tan and Maria D. Palo to trial for violation of Presidential Decree No. 401, as amended.

This Court's Ruling

After due study, this Court finds no grave abuse of discretion committed by public respondent Secretary of Justice in issuing the assailed resolutions. These resolutions of the Secretary of Justice are in accord with the requirement under Section 1, Rule 112 of the 2000 Rules of Criminal Procedure, which reads –

“Section 1. Preliminary investigation defined; when required. – Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground 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.

x x x”

This Court emphasizes that the determination of probable cause to support the filing of an information is a function that belongs to public prosecutors – it is executive in character. A preliminary investigation is essentially an inquisitorial proceeding, and often, the only means of ascertaining who may be reasonably charged with a crime. It is not a trial on the merits and has no purpose except to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof.[7] Its primary objective is to free a respondent from the inconvenience, expense, ignominy and stress of defending himself/herself in the court of a formal trial, until the reasonable probability of his or her guilt has been passed upon in a more or less summary proceeding by a competent officer designated by law for that purpose. Secondly, such summary proceeding also protects the state from the burden of unnecessary expense and effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges.[8]

The jurisdiction of public respondent Secretary of Justice to issue the assailed resolutions is settled. Decisions or resolutions of prosecutors are subject to appeal to the Secretary of Justice, who exercises the power of direct control and supervision over said prosecutors. It is only where the decision of the Justice Secretary is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction that the Court of Appeals may take cognizance of the case in a petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure, whose decision may then be appealed to the Supreme Court by way of a petition for review on certiorari.[9]

This Court's perusal of the records of the case and a consideration of the parties' respective arguments reveal that the Secretary of Justice committed no such grave abuse of discretion. We emphasize that by “grave abuse of discretion” is meant such capricious and whimsical exercise of judgment which is equivalent to an excess, or a lack of jurisdiction, and 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.[10]

The evidence presented by the petitioner against herein private respondents was evidently insufficient to show probable cause. PLDT failed to clearly show the private respondents' participation in the alleged violation of P.D. No. 401, as amended. As per petitioner's claim and evidence, the connection of the parties to the commission of the offense charged supposedly rooted from the lone fact that they were directors of Sealand of which their co-respondent Romeo D. Palo was also a director. The private respondents' knowledge of and participation in the commission of the offense, sufficient to support a finding of probable cause, were lacking. The requirement of a “sufficient ground to support a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial” cannot be based on mere speculations, conjectures or surmises which herein petitioner in effect claims that the prosecutor and the Secretary of Justice should have done. The finding of probable cause to support the indictment of their co-respondent Romeo D. Palo could not necessarily lead to the existence of a probable cause against them. Unlike in the case of herein private respondents, Romeo D. Palo was the registered subscriber of one of the telephone lines found connected to

equipment initially found by the authorities to be used for illegal “ship to shore” telecommunications activities. No facts or circumstances of such nature were established against the private respondents. We emphasize that while a finding of probable cause rests on evidence showing that, more likely than not, a crime has been committed and was committed by the respondents, the existence of such facts and circumstance must be strong enough to create a rational and logical nexus between the acts and omissions and the respondents.[11]

The failure of the private respondents to file their individual counter-affidavits with the Office of the City Prosecutor of Parañaque City should also not be taken against them. Despite such failure, their indictment could not have necessarily followed, in the absence of sufficient evidence presented by the complainant linking them to the offense charged.

Prescinding from the foregoing, this Court finds that public respondent Secretary of Justice did not abuse his discretion in dismissing petitioner’s petition for review of the resolutions of the Office of the City Prosecutor of Parañaque City.

WHEREFORE, premises considered, the instant petition for certiorari is hereby DISMISSED for lack of merit.

SO ORDERED.

Sundiam and Dimaampao, JJ., concur.

[1] Rollo, p. 78.

[2] Id. at 67.

[3] Id. at 113.

[4] Id. at 144.

[5] Id. at 28.

[6] Id. at 40.

[7] Torres, Jr. v. Aguinaldo, 461 SCRA 599 (2005).

[8] Ledesma v. Court of Appeals, 278 SCRA 656 (1997).

[9] Torres, Jr. v. Aguinaldo, supra.

[10] Duero v. Court of Appeals, 373 SCRA 11 (2002).

[11] Torres, Jr. v. Aguinaldo, supra.

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