

**RHODORA M. LEDESMA, PETITIONER, VS. COURT OF APPEALS AND
HON. MAXIMIANO C. ASUNCION, IN HIS CAPACITY AS PRESIDING
JUDGE OF RTC, QUEZON CITY, RESPONDENTS.**

G.R. No. 113216. September 05, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

When confronted with a motion to withdraw an information on the ground of lack of probable cause based on a resolution of the secretary of justice, the bounden duty of the trial court is to make an independent assessment of the merits of such motion. Having acquired jurisdiction over the case, the trial court is not bound by such resolution but is required to evaluate it before proceeding further with the trial. While the secretary's ruling is persuasive, it is not binding on courts. A trial court, however, commits reversible error or even grave abuse of discretion if it refuses/neglects to evaluate such recommendation and simply insists on proceeding with the trial on the mere pretext of having already acquired jurisdiction over the criminal action.

This principle is explained in this Decision resolving a petition for review on certiorari of the Decision[1] of the Court of Appeals,[2] promulgated on September 14, 1993 in CA-G.R. SP No. 30832 which in effect affirmed an order of the Regional Trial Court of Quezon City denying the prosecution's withdrawal of a criminal information against petitioner.

The Antecedent Facts

From the pleadings submitted in this case, the undisputed facts are as follows:

Sometime in April 1992, a complaint for libel was filed by Dr. Juan F. Torres, Jr. against Dr. Rhodora M. Ledesma, petitioner herein, before the Quezon City Prosecutor's Office, docketed as I.S. No. 92-5433A. Petitioner filed her counter-affidavit to the complaint.

Finding 'sufficient legal and factual basis,' the Quezon City Prosecutor's Office filed on July 6, 1992 an Information for libel against petitioner with the Regional Trial Court of Quezon City, Branch 104.[3] The Information filed by Assistant City Prosecutor Augustine A. Vestil reads: [4]

"That on or about the 27th day of June 1991, in Quezon City, Metro Manila, Philippines, the said accused, acting with malice, did, then and there, wilfully, unlawfully and feloniously send a letter addressed to Dr. Esperanza I. Cabral, Director of Philippine Heart Center, East Avenue, this city, and furnished the same to other officers of the said hospital, said letter containing slanderous and defamatory remarks against DR. JUAN F. TORRES, JR., which states in part, to wit:

'27June 1991

Dr. Esperanza I. Cabral

Director

Subject:

Return of all professional fees due Dr.

Rhodora M. Ledesma, Nuclear Medicine

Specialist/Consultant, Philippine Heart

Center, from January 31, 1989 to January 31,
1991.

Respondents:

Dr. Juan F. Torres, Jr., Chief, Nuclear

Medicine Section

Dr. Orestes P. Monzon,

Staff Consultant

Dear Dr. Cabral,

This is to demand the return of all professional fees due me as a consultant in Nuclear Medicine, this Center, since January 31, 1989 until my resignation effective January 31, 1991, amounting to at least P100,000.00 for the year 1990 alone. Records in the Nuclear Medicine Section will show that from January 1989 to January 1991, a total of 2,308 patients were seen. Of these, I had officially supervised, processed, and interpreted approximately a total of 1,551 cases as against approximately 684 and 73 cases done by Dr. Monzon and Dr. Torres respectively.

Until my resignation I had received a monthly share of professional fees averaging P1,116.90/month supposedly representing 20% of the total monthly professional fees. The rest were divided equally between Dr. Monzon and Dr. Torres. There was never any agreement between us three consultants that this should be the arrangement and I am certain that this was not with your approval. The burden of unfairness would have been lesser if there was an equal distribution of labor and the schedule of duties were strictly followed. As it was, the schedule of duties submitted monthly to the office of the Asst. Director for Medical Services was simply a dummy to comply with administrative requirements rather than a guideline for strict compliance. Both consultants have complete daily time records even if they did not come regularly. Dr. Torres came for an hour every week, Dr. Monzon came sporadically during the week while I was left with everything from training the residents and supervising the Techs to processing and interpreting the results on a regular basis. I had a part time appointment just like Dr. Monzon and Dr. Torres.

In the interest of fairness and to set a precedent for the protection of future PHC Nuclear Medicine Alumni I am calling your attention to the unfair and inhuman conditions I went through as a Consultant in that Section. I trust that your sense of professionalism will put a stop to this corruption.

I suggest that a committee be formed to make an audit of the distribution of professional fees in this Section. At this point, let me stress that since professional fees vary according to the type of procedure done and since there was no equity of labor between us I am not settling for an equal percentage share. I demand that I be indemnified of all professional fees due me on a case to case basis.

Let me make clear my intention of pursuing this matter legally should there be no favorable action in my behalf. Let me state at this point⁶ that the actions of Dr. Torres and Dr. Monzon are both unprofessional and unbecoming and are clearly violating the code of ethics of the medical profession and the Philippine Civil Service Rules and Regulations related to graft and corruption.

Thank you.'

and other words of similar import, when in truth and in fact, as the accused very well knew, the same are entirely false and untrue but were publicly made for no other purpose than to expose said DR. JUAN F. TORRES, JR. to public ridicule, thereby casting dishonor, discredit and contempt upon the person of the said offended party, to his damage and prejudice."

A petition for review of the resolution of Assistant City Prosecutor Vestil was filed by petitioner before the Department of Justice pursuant to P.D. No. 77 as amended by P.D. No. 911.

The Department of Justice gave due course to the petition and directed the Quezon City prosecutor to move for deferment of further proceedings and to elevate the entire records of the case.^[5] Accordingly, a "Motion to Defer Arraignment" dated September 7, 1992 was filed by Prosecutor Tirso M. Gavero before the court a quo.^[6] On September 9, 1992, the trial court granted the motion and deferred petitioner's arraignment until the final termination of the petition for review.^[7]

Without the consent or approval of the trial prosecutor, private complainant, through counsel, filed a Motion to Lift the Order dated September 9, 1992 and to Set the Case for Arraignment/Trial.^[8]

On January 8, 1993, the trial court issued an Order setting aside its earlier Order of September 9, 1992 and scheduling petitioner's arraignment on January 18, 1993 at two o'clock in the afternoon.^[9]

In a resolution dated January 27, 1993, then Justice Secretary Franklin M. Drilon reversed the Quezon City investigating prosecutor. Pertinent portions of Drilon's ruling read:^[10]

"From the circumstances obtaining, the subject letter was written to bring to the attention of the Director of the Philippine Heart Center for Asia and other responsible authorities the unjust and unfair treatment that Dr. Ledesma was getting from complainants. Since complainants and respondent are government employees, and the subject letter is a complaint to higher authorities of the PHCA on a subject matter in which respondent has an interest and in reference to which she has a duty to question the same is definitely privileged (US vs. Bustos, 37 Phil. 131). Moreover, in Ang vs. Castro, 136 SCRA 455, the Supreme Court, citing Santiago vs. Calvo, 48 Phil. 922, ruled that 'A communication made in good faith upon any subject matter in which the party making the communication has an interest or concerning which he has a duty is privileged... although it contains incriminatory or derogatory matter which, without the privilege, would be libelous and actionable.

The follow-up letter sent by respondent to the director of the PHCA, is a direct evidence of respondent's righteous disposition of following the rule of law and is a clear indication that her purpose was to seek relief from the proper higher authority who is the Director of PHCA.

The same interpretation should be accorded the civil and administrative complaints which respondent filed against complainants. They are mere manifestations of her earnest desire to pursue proper relief for the alleged injustice she got from complainants. If she was motivated by malice and ill-will in sending the subject communication to the Director of the PHCA, she would not have sent the second letter and filed the

administrative and civil cases against complainants.

Moreover, it is unbelievable that it took complainants one year to realize that the questioned letter subjected them to public and malicious imputation of a vice or omission. It is beyond the ordinary course of human conduct for complainants to start feeling the effects of the alleged libelous letter — that of experiencing sleepless nights, wounded feelings, serious anxiety, moral shock and besmirched reputation — one year after they read the communication in question.

The claim that the case of *Crespo vs. Mogul*, 151 SCRA 462 is applicable to the instant case is unfounded. In the first place, the instant cases are not being reinvestigated. It is the resolutions of the investigating prosecutor that are under review. Further, the record shows that the court has issued an order suspending the proceedings pending the resolutions of the petitions for review by this Office. In the issuance of its order, the court recognizes that the Secretary of Justice has the power and authority to review the resolutions of prosecutors who are under his control and supervision.

In view of the foregoing, the appealed resolutions are hereby reversed. You are directed to withdraw the Informations which you filed in Court. Inform this Office of the action taken within ten (10) days from receipt hereof.'

In obedience to the above directive, Quezon City Trial Prosecutor Tirso M. Gavero filed a Motion to Withdraw Information dated February 17, 1993,[11] attaching thereto the resolution of Secretary Drilon. The trial judge denied this motion in his Order dated February 22, 1993, as follows:[12]

'The motion of the trial prosecutor to withdraw the information in the above-entitled case is denied. Instead, the trial prosecutor of this court is hereby directed to prosecute the case following the guidelines and doctrine laid down by the Supreme Court in the case of *Crespo vs. Mogul*, 151 SCRA 462.'

Petitioner's motion for reconsideration[13] was denied by the trial judge in the Order dated March 5, 1993, as follows:[14]

"Finding no cogent reason to justify the reconsideration of the ruling of this Court dated February 22, 1993, the Motion for Reconsideration dated March 1, 1993 filed by the accused through counsel is hereby denied."

Aggrieved, petitioner filed a petition for certiorari and prohibition with the Supreme Court. In a Resolution dated March 31, 1993, this Court referred the case to the Court of Appeals for proper determination and disposition pursuant to Section 9, paragraph 1 of B.P. 129.[15]

Respondent Court dismissed the petition "for lack of merit," holding that it had no jurisdiction to overturn the doctrine laid down in *Crespo vs. Mogul* — once a complaint or information has been filed in court, any disposition of the case, i.e., dismissal, conviction or acquittal of the accused, rests on the sound discretion of the trial court.[16]

Hence, this recourse to this Court.

The Issues

For unexplained reasons, petitioner failed to make an assignment of errors against the appellate court. Her counsel merely repeated the alleged errors of the trial court: [17]

"I. The Orders, dated February 22, 1993 and March 5, 1993, of respondent Judge Asuncion relied solely on the '*Crespo vs. Mogul*' (151 SCRA 462) decision. It is respectfully submitted that said case is not applicable because:

- It infringes on the constitutional separation of powers between the executive and judicial branches of the

government;

- It constitutes or it may lead to misuse or misapplication of 'judicial power' as defined in the Constitution;
- It goes against the constitutional proscription that rules of procedure should not diminish substantive rights;
- It goes against the principle of non-delegation of powers;
- It sets aside or disregards substantive and procedural rules;
- It deprives a person of his constitutional right to procedural due process;
- Its application may constitute or lead to denial of equal protection of laws;
- It deprives the secretary of justice or the president of the power to control or review the acts of a subordinate official;
- It will lead to, encourage, abet or promote abuse or even corruption among the ranks of investigating fiscals;
- It does not subserve the purposes of a preliminary investigation because -
 - (10.a) It subjects a person to the burdens of an unnecessary trial, specially in cases where the investigating fiscal recommends no bail for the accused;
 - (10.b) It subjects the government, both the executive and the judiciary, to unnecessary time and expenses attendant to an unnecessary trial;
 - (10.c) It contributes to the clogging of judicial dockets; and
- It has no statutory or procedural basis or precedent.
 - II. On the assumption that 'Crespo vs. Mogul' is applicable, it is submitted that -
 - Respondent Judge Asuncion committed grave abuse of discretion, amounting to lack of jurisdiction, when he denied the Motion to Withdraw Information since he had already deferred to, if not recognized, the authority of the Secretary of Justice; and
 - The facts in 'Crespo vs. Mogul' are different from the instant case. Hence, respondent Judge Asuncion committed grave abuse of discretion, amounting to lack of jurisdiction, when he relied solely on said case in

denying the Motion to Withdraw Information.”

In sum, the main issue in this petition is: Did Respondent Court commit any reversible error in affirming the trial court’s denial of the prosecution’s Motion to Withdraw Information?

The Court’s Ruling

The petition is impressed with merit. We answer the above question in the affirmative.

Preliminary Matter

Before discussing the substance of this case, the Court will preliminarily address a procedural matter. Prior to the effectivity of the 1997 Rules of Civil Procedure on July 1, 1997, Section 2 of Rule 45, which governed appeals from the Court of Appeals to the Supreme Court, provided:

“SEC. 2. Contents of petition.—The petition shall contain a concise statement of x x x the assignment of errors made in the court below x x x.”

A petition for review on certiorari under Rule 45 requires a concise statement of the errors committed by the Court of Appeals, not of the trial court. For failure to follow this Rule, the petition could have been dismissed by this Court *motu proprio*, considering that under Section 4 of the same Rule, “review is not a matter of right but of sound discretion.”

We take this occasion to stress the need for precision and clarity in the assignment of errors. Review under this rule is unlike an appeal in a criminal case where the death penalty, *reclusión perpetua* or life imprisonment is imposed and where the whole case is opened for review. Under Rule 45, only the issues raised therein by the petitioner will be passed upon by the Court, such that an erroneous specification of the issues may cause the dismissal of the petition. We stressed this in Circular No. 2-90, entitled “Guidelines to be Observed in Appeals to the Court of Appeals and to the Supreme Court,” as follows:

“4. Erroneous Appeals. x x x x

e) Duty of counsel.—It is therefore incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether these be of fact or of law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client’s cause.

FOR STRICT COMPLIANCE.”

Be that as it may, the Court — noting the importance of the substantial matters raised — decided to overlook petitioner’s lapse and granted due course to the petition per Resolution dated July 15, 1996, with a warning that henceforth petitions which fail to specify an assignment of errors of the proper lower court may be denied due course *motu proprio* by this Court.

Determination of Probable Cause

Is an Executive Function

The determination of probable cause during a preliminary investigation is judicially recognized as an executive function and is made by the prosecutor. The primary objective of a preliminary investigation is to free a respondent from the inconvenience, expense, ignominy and stress of defending himself/herself in the course 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.[18]

Such investigation is not a part of the trial. A full and exhaustive presentation of the parties' evidence is not required, but only such as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.[19] By reason of the abbreviated nature of preliminary investigations, a dismissal of the charges as a result thereof is not equivalent to a judicial pronouncement of acquittal. Hence, no double jeopardy attaches.

In declaring this function to be lodged in the prosecutor, the Court distinguished the determination of probable cause for the issuance of a warrant of arrest or a search warrant from a preliminary investigation proper in this wise:[20]

“xxx Judges and prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from a preliminary investigation proper which ascertains whether the offender should be held for trial or released. xxx The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper — whether xxx there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether xxx he should be subjected to the expense, rigors and embarrassment of trial — is the function of the prosecutor.

We reiterate that preliminary investigation should be distinguished as to whether it is an investigation for the determination of a sufficient ground for the filing of the information or it is an investigation for the determination of a probable cause for the issuance of a warrant of arrest. The first kind of preliminary investigation is executive in nature. It is part of the prosecutor's job. The second kind of preliminary investigation which is more properly called preliminary examination is judicial in nature and is lodged with the judge.”

Sound policy supports this distinction. Otherwise, judges would be unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts. The Separate Opinion of Mr. Chief Justice Andres R. Narvasa in *Roberts, Jr. vs. Court of Appeals* stressed that the determination of the existence of probable cause properly pertains to the public prosecutor in the “established scheme of things,” and that the proceedings therein are “essentially preliminary, prefatory and cannot lead to a final, definite and authoritative judgment of the guilt or innocence of the persons charged with a felony or a crime.”[21]

In *Crespo vs. Mogul*,[22] the Court emphasized the cardinal principle that the public prosecutor controls and directs the prosecution of criminal offenses thus:

“It is a cardinal principle that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. The institution of a criminal action depends upon the sound discretion of the fiscal. He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt. The reason for placing the criminal prosecution under the direction and control of the fiscal is to prevent malicious or unfounded prosecution by private persons. It cannot be controlled by the complainant. Prosecuting officers under the power vested in them by law, not only have the authority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their office. They have equally the legal duty not to prosecute when after an investigation they become convinced that the evidence adduced is not sufficient to establish a prima facie case.”

In the same case, the Court added that where there is a clash of views between a judge who did not investigate and

a fiscal who conducted a reinvestigation, those of the prosecutor should normally prevail:[23]

“x x x The Courts cannot interfere with the fiscal’s discretion and control of the criminal prosecution. It is not prudent or even permissible for a Court to compel the fiscal to prosecute a proceeding originally initiated by him on an information, if he finds that the evidence relied upon by him is insufficient for conviction. Neither has the Court any power to order the fiscal to prosecute or file an information within a certain period of time, since this would interfere with the fiscal’s discretion and control of criminal prosecutions. Thus, a fiscal who asks for the dismissal of the case for insufficiency of evidence has authority to do so, and Courts that grant the same commit no error. The fiscal may re-investigate a case and subsequently move for the dismissal should the re-investigation show either that the defendant is innocent or that his guilt may not be established beyond reasonable doubt. In a clash of views between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the defendant, those of the fiscal’s should normally prevail. x x x x.”

Appeal as an Exercise of the Justice

Secretary’s Power of Control Over Prosecutors

Decisions or resolutions of prosecutors are subject to appeal to the secretary of justice who, under the Revised Administrative Code, exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, nullify, reverse or modify their rulings.

Section 39, Chapter 8, Book IV in relation to Section 5, 8, and 9, Chapter 2, Title III of the Code gives the secretary of justice supervision and control over the Office of the Chief Prosecutor and the Provincial and City Prosecution Offices. The scope of his power of supervision and control is delineated in Section 38, paragraph 1, Chapter 7, Book IV of the Code:

“(1) Supervision and Control.— Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; xxxx.”

Supplementing the aforequoted provisions are Section 3 of R.A. 3783 and Section 37 of Act 4007, which read:

“Section 3. x x x x

The Chief State Prosecutor, the Assistant Chief State Prosecutors, the Senior State Prosecutors, and the State Prosecutors shall x x x perform such other duties as may be assigned to them by the Secretary of Justice in the interest of public service.”

x x x

x x x

x x x

“Section 37. The provisions of the existing law to the contrary notwithstanding, whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify, or revoke any decision or action of said chief of bureau, office, division or service.”

“Supervision” and “control” of a department head over his subordinates have been defined in administrative law

as follows:[24]

“In administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform such duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.”

Review as an act of supervision and control by the justice secretary over the fiscals and prosecutors finds basis in the doctrine of exhaustion of administrative remedies which holds that mistakes, abuses or negligence committed in the initial steps of an administrative activity or by an administrative agency should be corrected by higher administrative authorities, and not directly by courts. As a rule, only after administrative remedies are exhausted may judicial recourse be allowed.

Appeal to the Secretary of Justice Is Not Foreclosed by the Ruling in Crespo

In *Marcelo vs. Court of Appeals*,^[25] the Court clarified that *Crespo*^[26] did not foreclose the power or authority of the secretary of justice to review resolutions of his subordinates in criminal cases. The Court recognized in *Crespo* that the action of the investigating fiscal or prosecutor in the preliminary investigation is subject to the approval of the provincial or city fiscal or chief state prosecutor. Thereafter, it may be appealed to the secretary of justice.

The justice secretary's power of review may still be availed of despite the filing of an information in court. In his discretion, the secretary may affirm, modify or reverse resolutions of his subordinates pursuant to Republic Act No. 5180, as amended,^[27] specifically in Section 1 (d):

“(d) x x x Provided, finally, That where the resolution of the Provincial or City Fiscal or the Chief State Prosecutor is, upon review, reversed by the Secretary of Justice, the latter may, where he finds that no prima facie case exists, authorize and direct the investigating fiscal concerned or any other fiscal or state prosecutor to cause or move for the dismissal of the case, or, where he finds a prima facie case, to cause the filing of an information in court against the respondent, based on the same sworn statements or evidence submitted without the necessity of conducting another preliminary investigation.”

Pursuant thereto, the Department of Justice promulgated Circular No. 7 dated January 25, 1990 governing appeals in preliminary investigation. Appeals under Section 2 are limited to resolutions dismissing a criminal complaint. However, Section 4 provides an exception: appeals from resolutions finding probable cause upon a showing of manifest error or grave abuse of discretion are allowed, provided the accused has not been arraigned. In the present case, petitioner's appeal to the secretary of justice was given due course on August 26, 1992 pursuant to this Circular.

On June 30, 1993, Circular No. 7 was superseded by Department Order No. 223; however, the scope of appealable cases remained unchanged:

“SECTION 1. What May Be Appealed. — Only resolutions of the Chief State Prosecutor/Regional State Prosecutor/Provincial or City Prosecutor dismissing a criminal complaint may be the subject of an appeal to the Secretary of Justice except as otherwise provided in Section 4 hereof.

Appeals from the resolutions of provincial/city prosecutors where the penalty prescribed for the offense charged does not exceed *prisión correccional*, regardless of the imposable fine, shall be made to the Regional State Prosecutors who shall resolve the appeals with finality, pursuant to Department Order No. 318 dated August 28, 1991 as amended by D.O. No. 34 dated February 4, 1992, D.O. No. 223 dated August 11, 1992 and

D.O. No. 45 dated February 2, 1993. Such appeals shall also be governed by these rules.

SEC. 4. Non-Appealable Cases; Exceptions.—No appeal may be taken from a resolution of the Chief State Prosecutor/Regional State Prosecutor/Provincial or City Prosecutor finding probable cause except upon showing of manifest error or grave abuse of discretion. Notwithstanding the showing of manifest error or grave abuse of discretion, no appeal shall be entertained where the appellant had already been arraigned. If the appellant (is) arraigned during the pendency of the appeal, x x x appeal shall be dismissed motu proprio by the Secretary of Justice.

An appeal/motion for reinvestigation from a resolution finding probable cause, however, shall not hold the filing of the information in court.”

Apart from the foregoing statutory and administrative issuances, the power of review of the secretary of justice is recognized also by Section 4 of Rule 112 of the Rules of Court:

“SEC. 4. Duty of investigating fiscal.—x x x x

x x x

x x x

x x x

If upon petition by a proper party, the Secretary of Justice reverses the resolution of the provincial or city fiscal or chief state prosecutor, he shall direct the fiscal concerned to file the corresponding information without conducting another preliminary investigation or to dismiss or move for dismissal of the complaint or information.”

This appeal rests upon the sound discretion of the secretary of justice arising from his power of supervision and control over the prosecuting arm of the government, not on a substantial right on the part of the accused as claimed by petitioner.

Appeal Did Not Divest the
Trial Court of Jurisdiction

Where the secretary of justice exercises his power of review only after an information has been filed, trial courts should defer or suspend arraignment and further proceedings until the appeal is resolved. Such deferment or suspension, however, does not signify that the trial court is ipso facto bound by the resolution of the secretary of justice. Jurisdiction, once acquired by the trial court, is not lost despite a resolution by the secretary of justice to withdraw the information or to dismiss the case.

Judicial Review of the Resolution
of the Secretary of Justice

Judicial power is defined under the 1987 Constitution as the duty of courts to settle actual controversies involving rights which are legally demandable and enforceable. Such power includes the determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.[28] Under this definition, a court is without power to directly decide matters over which full discretionary authority has been delegated to the legislative or executive branch of the government. It is not empowered to substitute its judgment for that of Congress or of the President. It may, however, look into the question of whether such exercise has been made in grave abuse of discretion.

Judicial review of the acts of other departments is not an assertion of superiority over them or a derogation of their functions. In the words of Justice Laurel in *Angara vs. Electoral Commission*:^[29]

“x x x [W]hen the judiciary mediates to allocate constitutional boundaries, it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument sources and guarantees to them. This is in truth all that is involved in what is termed ‘judicial supremacy’ which properly is the power of the judicial review under the Constitution. x x x.”

It is not the purpose of this Court to decrease or limit the discretion of the secretary of justice to review the decisions of the government prosecutors under him. In *Crespo*, the secretary was merely advised to restrict such review to exceptionally meritorious cases. Rule 112, Section 4 of the Rules of Court, which recognizes such power, does not, however, allow the trial court to automatically dismiss the case or grant the withdrawal of the information upon the resolution of the secretary of justice. This is precisely the import of *Crespo*, *Marcelo, Martinez vs. Court of Appeals*^[30] and the recent case of *Roberts, Jr. vs. Court of Appeals*, which all required the trial court to make its own evaluation of the merits of the case, because granting the motion to dismiss or to withdraw the information is equivalent to effecting a disposition of the case itself.

The Marcelo and Martinez Cases Are Consistent

In *Marcelo vs. Court of Appeals*,^[31] this Court ruled that, although it is more prudent to wait for a final resolution of a motion for review or reinvestigation from the secretary of justice before acting on a motion to dismiss or a motion to withdraw an information, a trial court nonetheless should make its own study and evaluation of said motion and not rely merely on the awaited action of the secretary. The trial court has the option to grant or deny the motion to dismiss the case filed by the fiscal, whether before or after the arraignment of the accused, and whether after a reinvestigation or upon instructions of the secretary who reviewed the records of the investigation; provided that such grant or denial is made from its own assessment and evaluation of the merits of the motion.

In *Martinez vs. Court of Appeals*,^[32] this Court overruled the grant of the motion to dismiss filed by the prosecuting fiscal upon the recommendation of the secretary of justice because such grant was based upon considerations other than the judge’s own assessment of the matter. Relying solely on the conclusion of the prosecution to the effect that there was no sufficient evidence against the accused to sustain the allegation in the information, the trial judge did not perform his function of making an independent evaluation or assessment of the merits of the case.

Despite the pronouncement in *Marcelo* that a final resolution of the appeal to the Department of Justice is necessary, both decisions followed the rule in *Crespo vs. Mogul*: Once a complaint or information is filed in court, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court. Trial judges are thus required to make their own assessment of whether the secretary of justice committed grave abuse of discretion in granting or denying the appeal, separately and independently of the prosecution’s or the secretary’s evaluation that such evidence is insufficient or that no probable cause to hold the accused for trial exists. They should embody such assessment in their written order disposing of the motion.

The above-mentioned cases depict two extreme cases in complying with this rule. In *Marcelo*, the dismissal of the criminal action upon the favorable recommendation of the Review Committee, Office of the City Prosecutor, was precipitate in view of the pendency of private complainant’s appeal to the secretary of justice. In effect, the

secretary's opinion was totally disregarded by the trial court. In contrast, in *Martinez* the dismissal of the criminal action was an "erroneous exercise of judicial discretion" as the trial court relied hook, line and sinker on the resolution of the secretary, without making its own independent determination of the merits of the said resolution.

No Grave Abuse of Discretion in the Resolution of the Secretary of Justice

In the light of recent holdings in *Marcelo* and *Martinez*; and considering that the issue of the correctness of the justice secretary's resolution has been amply threshed out in petitioner's letter, the information, the resolution of the secretary of justice, the motion to dismiss, and even the exhaustive discussion in the motion for reconsideration — all of which were submitted to the court -- the trial judge committed grave abuse of discretion when it denied the motion to withdraw the information, based solely on his bare and ambiguous reliance on *Crespo*. The trial court's order is inconsistent with our repetitive calls for an independent and competent assessment of the issue(s) presented in the motion to dismiss. The trial judge was tasked to evaluate the secretary's recommendation finding the absence of probable cause to hold petitioner criminally liable for libel. He failed to do so. He merely ruled to proceed with the trial without stating his reasons for disregarding the secretary's recommendation.

Had he complied with his judicial obligation, he would have discovered that there was, in fact, sufficient ground to grant the motion to withdraw the information. The documents before the trial court judge clearly showed that there was no probable cause to warrant a criminal prosecution for libel.

Under the "established scheme of things" in criminal prosecutions, this Court would normally remand the case to the trial judge for his or her independent assessment of the motion to withdraw the information. However, in order not to delay the disposition of this case and to afford the parties complete relief, we have decided to make directly the independent assessment the trial court should have done. The petitioner has attached as annexes to the present petition for review the information, which contains a complete and faithful reproduction of the subject letter, the resolution of the secretary of justice, the prosecution's motion for reconsideration of the trial court's Order of February 22, 1993, and even the private complainant's opposition to said motion. The records below have been reproduced and submitted to this Court for its appreciation. Thus, a remand to the trial court serves no purpose and will only clog the dockets.

We thus proceed to examine the substance of the resolution of the secretary of justice. The secretary reversed the finding of probable cause on the grounds that (1) the subject letter was privileged in nature and (2) the complaint was merely a countercharge.

In every case for libel, the following requisites must concur:

- “(a) it must be defamatory;
- (b) it must be malicious;
- (c) it must be given publicity; and
- (d) the victim must be identifiable.”

At the preliminary investigation stage, these requisites must show *prima facie* a well-founded belief that a crime has been committed and that the accused probably committed it. A cursory reading of the information immediately demonstrates a failure on the part of the complainant to establish the foregoing elements of libel.

Every defamatory imputation, even if true, is presumed malicious, if no good intention or justifiable motive for making it is shown. There is malice when the author of the imputation is prompted by personal ill will or spite and

speaks not in response to duty but merely to injure the reputation of the person who claims to have been defamed.[33] In this case however, petitioner's letter was written to seek redress of proper grievance against the inaccurate distribution and payment of professional fees and against unfair treatment in the Nuclear Medicine Department of the Philippine Heart Center. It is a qualified privileged communication under Article 354(1) of the Revised Penal Code which provides:

“ART. 354. Requirement of publicity. — Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

- A private communication made by any person to another in the performance of any legal, moral or social duty; and

x x x

x x x

x x x"

The rule on privileged communication is that a communication made in good faith on any subject matter in which the communicator has an interest, or concerning which he has a duty, is privileged if made to a person having a corresponding interest or duty, although it contains incriminatory matter which, without the privilege, would be libelous and actionable. Petitioner's letter was a private communication made in the performance of a moral duty on her part. Her intention was not to inflict an unjustifiable harm on the private complainant, but to present her grievance to her superior. The privileged nature of her letter overcomes the presumption of malice. There is no malice when justifiable motive exists; and in the absence of malice, there is no libel. We note that the information itself failed to allege the existence of malice.

Thus, we agree with the ruling of the secretary of justice:[34]

“x x x (T)he subject letter was written to bring to the attention of the Director of the Philippine Heart Center for Asia and other responsible authorities the unjust and unfair treatment that Dr. Ledesma was getting from government employees, and the subject letter is a complaint x x x on a subject matter in which respondent has an interest and in reference to which she has a duty to question the same is definitely privileged (US vs. Bustos, 37 Phil. 131). Moreover, in Ang vs. Castro, 136 SCRA 455, the Supreme Court, citing Santiago vs. Calvo, 48 Phil. 922, ruled that ‘a communication made in good faith upon any subject matter in which the party making the communication has an interest or concerning which he has a duty is privileged although it contains incriminatory or derogatory matter which, without the privilege, would be libelous and actionable.

The follow-up letter sent by respondent to the director of the PHCA, is a direct evidence of respondent's righteous disposition of following the rule of law and is a clear indication that her purpose was to seek relief from the proper higher authority xxx.

The same interpretation should be accorded the civil and administrative complaints which respondent filed against complainants. They are mere manifestations of her earnest desire to pursue proper relief for the alleged injustice she got from complainants. If she was motivated by malice and ill-will in sending the subject communication to the Director of the PHCA, she would not have sent the second letter and filed the administrative and civil cases against complainants.”

In Alonzo, the settled rule is that, when a public officer, in the discharge of his or her official duties, sends a communication to another officer or to a body of officers, who have a duty to perform with respect to the subject matter of the communication, such communication does not amount to publication within the meaning of the law

on defamation.[35] Publication in libel means making the defamatory matter, after it has been written, known to someone other than the person to whom it has been written.[36] The reason for such rule is that “a communication of the defamatory matter to the person defamed cannot injure his reputation though it may wound his self-esteem. A man’s reputation is not the good opinion he has of himself, but the estimation in which others hold him.”[37] In this case, petitioner submitted the letter to the director of said hospital; she did not disseminate the letter and its contents to third persons. Hence, there was no “publicity” and the matter is clearly covered by paragraph 1 of Article 354 of the Penal Code.

Further, we note that the information against petitioner was filed only on July 27, 1992 or one year after June 27, 1991, the date the letter was sent. It is obviously nothing more than a countercharge to give Complainant Torres a leverage against petitioner’s administrative action against him.

Ineluctably, Judge Asuncion’s denial of the motion to withdraw the information and the reconsideration thereof was not only precipitate but manifestly erroneous. This is further compounded by the fact that he did not explain his grounds for his denial inasmuch as he did not make an independent assessment of the motion or the arguments in the resolution of the secretary of justice. All in all, such rash action did not do justice to the sound ruling in *Crespo vs. Mogul* upon which, ironically, he supposedly rested his action, or to the directive in *Marcelo and Martinez* where this Court required trial courts to make an independent assessment of the merits of the motion.

WHEREFORE, the assailed Decision is hereby REVERSED and SET ASIDE. The Motion to Withdraw the Information dated February 17, 1993 filed before the trial court is GRANTED. No costs.

SO ORDERED.

Davide, Jr., Melo, and Francisco, JJ., concur.

Narvasa C.J., no part: Close relation to a party:

[1] Rollo, pp. 39-49.

[2] The Special Eighth Division is composed of JJ. Corona Ibay-Somera, ponente, and Arturo B. Buena and Buenaventura J. Guerrero.

[3] Presided by then Judge (now Justice of the Court of Appeals) Maximiano C. Asuncion.

[4] Rollo, pp. 53-55.

[5] Annex “D,” Rollo, p. 56.

[6] Annex “E,” Rollo, p. 57

[7] Annex “F,” Rollo, p. 58.

[8] Annex “G,” Rollo, pp. 59-62.

[9] Annex “I,” Rollo, p. 66.

[10] Annex “J,” Rollo, pp. 68-69.

[11] Annex “K,” Rollo, p. 71.

[12] Annex “L,” Rollo, p. 73.

[13] Annex “M,” Rollo, pp. 74-91.

- [14] Annex “O,” Rollo, p. 97.
- [15] Annex “P,” Rollo, p. 98.
- [16] Rollo, pp.44-49.
- [17] Memorandum for Petitioner, pp. 6-8; Rollo, pp. 182-184.
- [18] Cf. *People vs. Magpale*, 70 Phil. 176, 179-180 (1940).
- [19] *Ibid.*; *Mayuga vs. Maravilla*, 18 SCRA 1115, 1119, December 17, 1966, per Bengzon, J.
- [20] *Ibid.*, pp. 344-345.
- [21] 254 SCRA 307, 349-350, March 5, 1996.
- [22] 151 SCRA 462, 467, June 30, 1987, per Gancayco, J.
- [23] *Ibid.*, pp. 468-469.
- [24] *Mondano vs. Silvosa*, 97 Phil. 143, 148 (1955).
- [25] 235 SCRA 39, 48-49, August 4, 1994, per Davide, Jr., J.
- [26] *Supra*, p. 469.
- [27] Otherwise known as “An Act Prescribing a Uniform System of Preliminary Investigation by Provincial and City Fiscals and Their Assistants, and by State Attorneys or Their Assistants.”
- [28] Article VIII, Section 1, 2nd paragraph.
- [29] 63 Phil. 134.
- [30] *Infra*; see note 32.
- [31] 235 SCRA 39, August 4, 1994.
- [32] 237 SCRA 575, October 13, 1994, per Narvasa, C.J.
- [33] *Alonzo vs. Court of Appeals*, 241 SCRA 51, 59-60, February 1, 1995.
- [34] Rollo, pp. 68-69.
- [35] *Ibid.*, p. 65, citing 53 C.J.S. § 81 (1948).
- [36] *Id.*, p. 60.
- [37] *Id.*, pp. 60-61.

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