

**PAUL G. ROBERTS, JR., RODOLFO C. SALAZAR, LUIS LORENZO, SR.,  
LUIS LORENZO, JR., AMAURY R. GUTIERREZ, BAYANI N. FABIC, JOSE  
YULO, JR., ESTEBAN B. PALANNUAYAN, AND WONG FONG FUI, ...**

*G.R. No. 113930. March 05, 1996*

Ponente: DAVIDE, JR., J.

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**DAVIDE, JR., J.:**

We are urged in this petition to set aside (a) the decision of the Court of Appeals of 28 September 1993 in CA-G.R. SP No. 31226,[1] which dismissed the petition therein on the ground that it has been "mooted with the release by the Department of Justice of its decision x x x dismissing petitioners' petition for review"; (b) the resolution of the said court of 9 February 1994[2] denying the petitioners' motion to reconsider the decision; (c) the order of 17 May 1993[3] of respondent Judge Maximiano C. Asuncion of Branch 104 of the Regional Trial Court (RTC) of Quezon City in Criminal Case No. Q-93-43198 denying petitioners' motion to suspend proceedings and to hold in abeyance the issuance of the warrants of arrest and the public prosecutor's motion to defer arraignment; and (d) the resolution of 23 July 1993 and 3 February 1994[4] of the Department of Justice, (DOJ) dismissing petitioners' petition for the review of the Joint Resolution of the Assistant City Prosecutor of Quezon City and denying the motion to reconsider the dismissal, respectively.

The petitioners rely on the following grounds for the grant of the reliefs prayed for in this petition:

I

Respondent Judge acted with grave abuse of discretion when he ordered the arrest of the petitioners without examining the record of the preliminary investigation and in determining for himself on the basis thereof the existence of probable cause.

II

The Department of Justice "349" Committee acted with grave abuse of discretion when it refused to review the City Prosecutor's Joint Resolution and dismissed petitioner's appeal therefrom.

III

The Court of Appeals acted with grave abuse of discretion when it upheld the subject order directing the issuance of the warrants of arrest without assessing for itself whether based on such records there is probable cause against petitioners.

IV

The facts on record do not establish prima facie probable cause and Criminal Case No. Q-93-43198 should have been dismissed.[5]

The antecedents of this petition are not disputed.

Several thousand holders[6] of "349" Pepsi crowns in connection with the Pepsi Cola Products Phils., Inc.'s (PEPSI's) Number Fever Promotion[7] filed with the Office of the City Prosecutor of Quezon City complaints against the petitioners in their respective capacities as Presidents or Chief Executive Officers, Chairman of the Board, Vice-Chairman of the Board, and Directors of PEPSI, and also against other officials of PEPSI. The complaints respectively accuse the petitioners and the other PEPSI officials of the following crimes: (a) estafa; (b) violation of R.A. No. 7394, otherwise known as the Consumer Act of the Philippines; (c) violation of E.O. No. 913;[8] and (d) violation of Act No. 2333, entitled "An Act Relative to Untrue, Deceptive and Misleading Advertisements," as amended by Act No. 3740.[9]

After appropriate proceedings, the investigating prosecutor, Ramon M. Gerona, released on 23 March 1993 a Joint Resolution[10] where he recommended the filing of an information against the petitioners and others for the violation of Article 318 of the Revised Penal Code and the dismissal of the complaints for the violation of Article 315, 2(d) of the Revised Penal Code; R.A. No. 7394; Act No. 2333, as amended by Act No. 3740; and E.O. No. 913. The dispositive portion thereof reads as follows:

In view of all the foregoing, it is recommended that:

1. The attached information be filed against respondents Paul G. Roberts, Jr., Rodolfo C. Salazar, Rosemarie R. Vera, Luis F. Lorenzo, Sr., Luis P. Lorenzo, Jr., J. Roberto Delgado, Amaury R. Gutierrez, Bayani N. Fabic, Jose Yulo, Jr., Esteban B. Pacannuayan, Jr., Wong Fong Fui, Quintin J. Gomez, Jr. and Chito V. Gutierrez for estafa under Article 318, Revised Penal Code, while the complaint for violation of Article 315, 2(d), Revised Penal Code against same respondents Juanito R. Ignacio, R. Sobong, R.O. Sinsuan, M.P. Zarsadias, L.G. Dabao, Jr., R.L. Domingo, N.N. Bacsal, Jesus M. Manalastas, Janette P. Pio de Roda, Joaquin W. Sampaico, Winefreda O. Madarang, Jack Gravey, Les G. Ham, Corazon Pineda, Edward S. Serapio, Alex O. Caballes, Sandy Sytangco, Jorge W. Drysdale, Richard Blossom, Pablo de Borja, Edmundo L. Tan, Joseph T. Cohen, Delfin Dator, Zosimo B. San Juan, Joaquin Franco, Primitivo S. Javier, Jr., Luisito Guevarra, Asif H. Adil, Eugenio Muniosguren, James Ditkoff and Timothy Lane be dismissed;
2. The complaints against all respondents for violation of R.A. 7394 otherwise known as the Consumer Act of the Philippines and violation of Act 2333 as amended by Act 3740 and E.O. 913 be also dismissed for insufficiency of evidence, and
3. I.S. Nos. 92-7833; 92-8710 and 92-P-1065 involving Crowns Nos. 173; 401; and 117, 425, 703 and 373, respectively, alleged to be likewise winning ones be further investigated to afford respondents a chance to submit their counter-evidence.[11]

On 6 April 1993, City Prosecutor Candido V. Rivera approved the recommendation with the modification that Rosemarie Vera, Quintin Gomez, Jr., and Chito Gonzales be excluded from the charge on the ground of insufficiency of evidence.[12]

The information for estafa attached to the Joint Resolution was approved (on 7 April 1993) by Ismael P. Casabar, Chief of the Prosecution Division, upon authority of the City Prosecutor of Quezon City, and was filed with the RTC of Quezon City on 12 April 1993. It was docketed as Criminal Case No. Q-93-43198.[13] The information reads as follows:

The undersigned 1st Assistant City Prosecutor accuses PAUL G. ROBERTS, JR. RODOLFO C. SALAZAR, LUIS F. LORENZO, SR., LUIS P. LORENZO, JR., J. ROBERTO DELGADO, AMAURY R. GUTIERREZ, BAYANI N. FABIC, JOSE YULO, JR., ESTEBAN B. PACANNUAYAN, JR. and WONG FONG FUI, of the crime of ESTAFA, committed as follows:

That in the month of February, 1992, in Quezon City, Philippines and for sometime prior and subsequent thereto, the above-named accused -

Paul G. Roberts, Jr. )

being then the Presidents

Rodolfo G. Salazar )

and Executive Officers

Luis F. Lorenzo, Sr. )

being then the Chairman of the Board of Directors

Luis P. Lorenzo, Jr. )

being then the Vice Chairman of the Board

J. Roberto Delgado )

being then Members of the Board

Amaury R. Gutierrez)

Bayani N. Fabric)

Jose Yulo, Jr.)

Esteban B. Pacannuayan, Jr. and

Wong Fong Fui)

OF THE PEPSI COLA PRODUCTS PHILIPPINES, INC., CONSPIRING with one another, with intent of gain, by means of deceit, fraudulent acts or false pretenses, executed prior to or simultaneously with the commission of the fraud, did then and there willfully, unlawfully and feloniously defraud the private complainants whose names with their prizes claimed appear in the attached lists marked as Annexes "A" to "A-46"; "B" to "-33"; "C" to "C-281"; "D" to "D-238"; "E" to "E-30" and "F" to "F-244" in the following manner: on the date and in the place aforementioned, said accused pursuant to their conspiracy, launched the Pepsi Cola Products Philippines, Inc. "Number Fever Promotion" from February 17 to May 8, 1992 later extended to May 11-June 12, 1992 and announced and advertised in the media that "all holders of crowns and/or caps of Pepsi, Mirinda, Mountain Dew and Seven-Up bearing the winning 3-digit number will win the full amount of the prize printed on the crowns/caps which are marked with a seven-digit security code as a measure against tampering or faking of crowns and each and every number has its own unique matching security code," enticing the public to buy Pepsi softdrinks with aforesaid alluring and attractive advertisements to become millionaires, and by virtue of such representations made by the accused, the said complainants bought Pepsi softdrinks, but, the said accused after their TV announcement on May 25, 1992 that the winning number for the next day was "349," in violation of their aforesaid mechanics, refused as they still refuse to redeem/pay the said Pepsi crowns and/or caps presented to them by the complainants, who, among others, were able to buy Pepsi softdrinks with crowns/caps bearing number "349" with security codes L-2560-FQ and L-3560-FQ, despite repeated demands made by the complainants, to their damage and prejudice to the extent of the amount of the prizes respectively due them from their winning "349" crowns/caps, together with such other amounts they spent ingoing to and from the Office of Pepsi to claim their prizes and such other amounts used in buying Pepsi softdrinks which the complainants normally would not have done were it not for the false, fraudulent and deceitful posters of Pepsi Cola Products, Inc.

### CONTRARY TO LAW.

On 14 April 1993, the petitioners filed with the Office of the City Prosecutor a motion for the reconsideration of the Joint Resolution[14] alleging therein that (a) there was neither fraud in the Number Fever Promotion nor deviation from or modification of the promotional rules approved by the Department of Trade and Industry (DTI), for from the start of the promotion, it had always been clearly explained to the public that for one to be entitled to the cash prize his crown must bear both the winning number and the correct security code as they appear in the DTI list; (b) the complainants failed to allege, much less prove with prima facie evidence, the specific overt criminal acts or omissions purportedly committed by each of the petitioners; (c) the compromise agreement entered into by PEPSI is not an admission of guilt; and (d) the evidence establishes that the promo was carried out with utmost good faith and without malicious intent.

On 15 April 1993, the petitioners filed with the DOJ a Petition for Review[15] wherein, for the same grounds adduced in the aforementioned motion for reconsideration, they prayed that the Joint Resolution be reversed and the complaints dismissed. They further stated that the approval of the Joint Resolution by the City prosecutor was not the result of a careful scrutiny and independent evaluation of the relevant facts and the applicable law but of the grave threats, intimidation, and actual violence which the complainants had inflicted on him and his assistant prosecutors.

On that same date, the petitioners filed in Criminal Case No. Q-93-43198 Motions to Suspend Proceedings and to Hold in Abeyance Issuance of Warrants of Arrest on the ground that they had filed the aforesaid Petition for Review.[16]

On 21 April 1993, acting on the Petition for Review, Chief State Prosecutor Zenon L. De Guia issued a 1st Indorsement,[17] directing the City Prosecutor of Quezon City to inform the DOJ whether the petitioners have already been arraigned, and if not, to move in court for the deferment of further proceedings in the case and to elevate to the DOJ the entire records of the case, for the case is being treated as an exception pursuant to Section 4 of Department Circular No. 7 dated 25 January 1990.

On 22 April 1993, Criminal Case no. Q-93-41398 was raffled to Branch 104 of the RTC of Quezon City.[18]

In the morning of 27 April 1993, private prosecutor Julio Contreras filed an Ex-Parte Motion for Issuance of Warrants of Arrest.[19]

In the afternoon of that same day, petitioner Paul Roberts, Jr., filed a Supplemental Urgent Motion to hold in Abeyance Issuance of Warrant of Arrest and to Suspend Proceedings.[20] He stressed that the DOJ had taken cognizance of the Petition for Review by directing the City Prosecutor to elevate the records of I.S. No. P-4401 and its related cases and asserted that the petition for review was an essential part of the petitioners' right to a preliminary investigation.

The next day, respondent Judge Asuncion, Presiding Judge of Branch 104 of the RTC of Quezon City, issued an order advising the parties that his court would "be guided by the doctrine laid down by the Supreme Court in the case of Crespo vs. Mogul, 151 SCRA 462 and not by the resolution of the Department of Justice on the petition for review undertaken by the accused." [21]

On 30 April 1993, Assistant City Prosecutor Tirso M. Gavero filed with the trial court a Motion to Defer Arraignment wherein he also prayed that "further proceedings be held in abeyance pending final disposition by the Department of Justice." [22]

On 4 May 1993, Gavero filed an Amended Information,[23] accompanied by a corresponding motion[24] to

admit it. The amendments merely consist in the statement that the complainants therein were only "among others" who were defrauded by the accused and that the damage or prejudice caused amounted "to several billions of pesos, representing the amounts due them from their winning '349' crowns/caps." The trial court admitted the amended information on the same date.[25]

Later, the attorneys for the different private complainants filed, respectively, an Opposition to Motion to Defer Arraignment,[26] and Objection and Opposition to Motion to Suspend Proceedings and to Hold in Abeyance the Issuance of Warrants of Arrest.[27]

On 14 May 1993, the petitioners filed a Memorandum in support of their Motion to Suspend Proceedings and to Hold in Abeyance the Issuance of the Warrants of Arrest.[28]

On 17 May 1993, respondent Judge Asuncion issued the challenged order (1) denying the petitioners' Motion to Suspend Proceedings and to Hold In Abeyance Issuance of Warrants of Arrest and the public prosecutor's Motion to Defer Arraignment and (2) directing the issuance of the warrants of arrest "after 21 June 1993" and setting the arraignment on 28 June 1993.[29] Pertinent portions of the order read as follows:

In the Motion filed by the accused, it is alleged that on April 15, 1993, they filed a petition for review seeking the reversal of the resolution of the City Prosecutor of Quezon City approving the filing of the case against the accused, claiming that:

1. The resolution constituting [sic] force and duress;
2. There was no fraud or deceit therefore there can be no estafa;
3. No criminal overt acts by respondents were proved;
4. Pepsi nor the accused herein made no admission of guilt before the Department of Trade and Industry;
5. The evidence presented clearly showed no malicious intent on the part of the accused.

Trial Prosecutor Tirso M. Gavero in his Motion to Defer Arraignment averred that there is a pending petition for review with the Department of Justice filed by the accused and the Office of the City Prosecutor was directed, among other things, to cause for the deferment of further proceedings pending final disposition of said petition by the Department of Justice.

The motions filed by the accused and the Trial Prosecutor are hereby DENIED.

This case is already pending in this Court for trial. To follow whatever opinion the Secretary of Justice may have on the matter would undermine the independence and integrity of this Court. This Court is still capable of administering justice.

The Supreme Court in the case of *Crespo vs. Mogul* (SCRA 151, pp. 471-472) stated as follows:

"In order therefor to avoid such a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court. The matter should be left entirely for the determination of the Court."

WHEREFORE, let warrant of arrest be issued after June 21, 1993, and arraignment be set on June 28, 1993, at 9:30 in the morning.

On 7 June 1993, the petitioners filed with the Court of Appeals a special civil action for certiorari and prohibition

with application for a temporary restraining order,[30] which was docketed as CA-G.R. SP No. 31226. They contended therein that respondent Judge Asuncion had acted without or in excess of jurisdiction or with grave abuse of discretion in issuing the aforementioned order of 17 May 1993 because

I. RESPONDENT JUDGE FAILED TO EXAMINE THE RECORD OF PRELIMINARY INVESTIGATION BEFORE ORDERING THE ARREST OF PETITIONERS.

II. THERE IS NO PROBABLE CAUSE TO HOLD PETITIONERS CRIMINALLY LIABLE FOR ESTAFA, OTHER DECEITS, OR ANY OTHER OFFENSE.

III. THE PROCEEDINGS BELOW SHOULD HAVE BEEN SUSPENDED TO AWAIT THE SECRETARY OF JUSTICE'S RESOLUTION OF PETITIONERS' APPEAL, AND

IV. THERE IS NO OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.

On 15 June 1993, the Court of Appeals issued a temporary restraining order to maintain the status quo.[31] In view thereof, respondent Judge Asuncion issued an order on 28 June 1993[32] postponing indefinitely the arraignment of the petitioners which was earlier scheduled on that date.

On 28 June 1993, the Court of Appeals heard the petitioners' application for a writ of preliminary injunction, granted the motion for leave to intervene filed by J. Roberto Delgado, and directed the Branch Clerk of Court of the RTC of Quezon City to elevate the original records of Criminal Case No. Q-93-43198[33]

Upon receipt of the original records of the criminal case, the Court of Appeals found that a copy of the Joint Resolution had in fact been forwarded to, and received by, the trial court on 22 April 1993, which fact belied the petitioners' claim that the respondent Judge had not the slightest basis at all for determining probable cause when he ordered the issuance of warrants of arrest. It ruled that the Joint Resolution "was sufficient in itself to have been relied upon by respondent Judge in convincing himself that probable cause indeed exists for the purpose of issuing the corresponding warrants of arrest"; and that the "mere silence of the records or the absence of any express declaration" in the questioned order as to the basis of such finding does not give rise to an adverse inference, for the respondent Judge enjoys in his favor the presumption of regularity in the performance of his official duty. The Court of Appeals then issued a resolution[34] denying the application for a writ of preliminary injunction.

On 8 June 1993, the petitioners filed a motion to reconsider[35] the aforesaid resolution. The Court of Appeals required the respondents therein to comment on the said motion.[36]

On 3 August 1993, the counsel for the private complainants filed in CA-G.R. SP No. 31226 a Manifestation[37] informing the court that the petitioners' petition for review filed with the DOJ was dismissed in a resolution dated 23 July 1993. A copy[38] of the resolution was attached to the Manifestation.

On 21 September 1993, the public respondents filed in CA-G.R. SP No. 31226 a motion to dismiss the petition[39] on the ground that it has become moot and academic in view of the dismissal by the DOJ of the petitioners' petition to review the Joint Resolution. The dismissal by the DOJ is founded on the following exposition:

You questioned the said order of the RTC before the Court of Appeals and prayed for the issuance of a writ of preliminary injunction to restrain the Trial Judge from issuing any warrant of arrest and from proceeding with the arraignment of the accused. The appellate court in a resolution dated July 1, 1993, denied your petition.

In view of the said developments, it would be an exercise in futility to continue reviewing the instant cases for

any further action on the part of the Department would depend on the sound discretion of the Trial Court. The denial by the said court of the motion to defer arraignment filed at our instance was clearly an exercise of its discretion. With the issuance of the order dated May 17, 1993, the Trial Court was in effect sending a signal to this Department that "the determination of the case is within its exclusive jurisdiction and competence." The rule is that 'x x x once a complaint or information is filed in Court, any disposition of the case as to dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court, he cannot impose his opinion on the trial court. The court is the best and sole judge on what to do with the case before it. x x x' (Crespo vs. Mogul, 151 SCRA 462).[40]

On 28 September 1993, the Court of Appeals promulgated a decision[41] dismissing the petition because it had been "mooted with the release by the Department of Justice of its decision x x x dismissing petitioners' petition for review by inerrantly upholding the criminal court's exclusive and unshakable authority to control the entire course of the case brought against petitioners, reiterating with approval the dictum laid down in the 'Crespo' case."

The petitioners filed a motion to reconsider the DOJ's dismissal of the petition citing therein its resolutions in other similar cases which were favorable to the petitioners and adverse to other "349" Pepsi crowns holders.

In its resolution of 3 February 1994, the DOJ, through its "349" Committee, denied the motion and stated: "The instant petition is different from the other petitions resolved by this Department in similar cases from the provinces. In the latter petitions, the complaints against herein respondents [sic][42] were dismissed inasmuch as the informations have not yet been filed or even if already filed in court, the proceedings have been suspended by the courts to await the outcome of the appeal with this Department." [43]

The petitioners likewise filed a motion to reconsider[44] the aforesaid Court of Appeals' decision, which the said court denied in its resolution[45] of 9 February 1994. Hence, the instant petition.

The First Division of this Court denied due course to this petition in its resolution of 19 September 1994.[46]

On 7 October 1994, the petitioners filed a motion for the reconsideration[47] of the aforesaid resolution. Acting thereon, the First Division required the respondents to comment thereon.

Later, the petitioners filed a supplemental motion for reconsideration[48] and a motion to refer this case to the Court en banc.[49] In its resolution of 14 November 1994,[50] the First Division granted the latter motion and required the respondents to comment on the supplemental motion for reconsideration

In the resolution of 24 November 1994, the Court en banc accepted the referral.

On 10 October 1995, after deliberating on the motion for reconsideration and the subsequent pleadings in relation thereto, the Court en banc granted the motion for reconsideration; reconsidered and set aside the resolution of 19 September 1994; and reinstated the petition. It then considered the case submitted for decision, "since the parties have exhaustively discussed the issues in their pleadings, the original records of Criminal Case No. Q-93-43198 and of CA-G.R. SP No. 31226 had been elevated to this Court, and both the petitioners and the Office of the Solicitor General pray, in effect, that this Court resolve the issue of probable cause On the basis thereof."

The pleadings of the parties suggest for this Court's resolution the following key issues:

1. Whether public respondent Judge Asuncion committed grave abuse of discretion in denying, on the basis of Crespo vs. Mogul, the motions to suspend proceedings and hold in abeyance the issuance of warrants of arrest and to defer arraignment until after the petition for review filed with the DOJ shall have been resolved.
2. Whether public respondent Judge Asuncion committed grave abuse of discretion in ordering the issuance of

warrants of arrest without examining the records of the preliminary investigation.

3. Whether the DOJ, through its "349" Committee, gravely abused its discretion in dismissing the petition for review on the following bases: (a) the resolution of public respondent Court of Appeals denying the application for a writ of preliminary injunction and (b) of public respondent Asuncion's denial of the abovementioned motions.

4. Whether public respondent Court of Appeals committed grave abuse of discretion (a) in denying the motion for a writ of preliminary injunction solely on the ground that public respondent Asuncion had already before him the Joint Resolution of the investigating prosecutor when he ordered the issuance of the warrants of arrest, and (b) in ultimately dismissing the petition on the ground of mootness since the DOJ has dismissed the petition for review.

5. Whether this Court may determine in this proceedings the existence of probable cause either for the issuance of warrants of arrest against the petitioners or for their prosecution for the crime of estafa.

We resolve the first four issues in the affirmative and the fifth, in the negative.

I.

There is nothing in *Crespo vs. Mogul*[51] which bars the DOJ from taking cognizance of an appeal, by way of a petition for review, by an accused in a criminal case from an unfavorable ruling of the investigating prosecutor. It merely advised the DOJ to, "as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court." More specifically, it stated:

In order therefore to avoid such a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court. The matter should be left entirely for the determination of the Court.[52]

In *Marcelo vs. Court of Appeals*,[53] this Court explicitly declared:

Nothing in the said ruling forecloses the power or authority of the Secretary of Justice to review resolutions of his subordinates in criminal cases. The Secretary of Justice is only enjoined to refrain as far as practicable from entertaining a petition for review or appeal from the action of the prosecutor once a complaint or information is filed in court. In any case, the grant of a motion to dismiss, which the prosecution may file after the Secretary of Justice reverses an appealed resolution, is subject to the discretion of the court.

*Crespo* could not have intended otherwise without doing violence to, or repealing, the last paragraph of Section 4, Rule 112 of the Rules of Court[54] which recognizes the authority of the Secretary of Justice to reverse the resolution of the provincial or city prosecutor or chief state prosecutor upon petition by a proper party.

Pursuant to the said provision, the Secretary of Justice had promulgated the rules on appeals from resolutions in preliminary investigation. At the time the petitioners filed their petition for the review of the Joint Resolution of the investigating prosecutor, the governing rule was Circular No. 7, dated 25 January 1990. Section 2 thereof provided that only resolutions dismissing a criminal complaint may be appealed to the Secretary of Justice. Its Section 4,[55] however, provided an exception, thus allowing, upon a showing of manifest error or grave abuse of discretion, appeals from resolutions finding probable cause, provided that the accused has not been arraigned.

The DOJ gave due course to the petitioners' petition for review as an exception pursuant to Section 4 of Circular No. 7.

Meanwhile, the DOJ promulgated on 30 June 1993 Department Order No. 223[56] which superseded Circular No. 7. This Order, however, retained the provisions of Section 1 of the Circular on appealable cases and Section 4 on the non-appealable cases and the exceptions thereto.

There is nothing in Department Order No. 223 which would warrant a recall of the previous action of the DOJ giving due course to the petitioners' petition for review. But whether the DOJ would affirm or reverse the challenged Joint Resolution is still a matter of guesswork. Accordingly, it was premature for respondent Judge Asuncion to deny the motions to suspend proceedings and to defer arraignment on the following grounds:

This case is already pending in this Court for trial. To follow whatever opinion the Secretary of Justice may have on the matter would undermine the independence and integrity of this Court. This Court is still capable of administering justice.

The real and ultimate test of the independence and integrity of this court is not the filing of the aforementioned motions at that stage of the proceedings but the filing of a motion to dismiss or to withdraw the information on the basis of a resolution of the petition for review reversing the Joint Resolution of the investigating prosecutor. Before that time, the following pronouncement in Crespo did not yet truly become relevant or applicable:

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in court he cannot impose his opinion on the trial court. The court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[57]

However, once a motion to dismiss or withdraw the information is filed the trial judge may grant or deny it, not out of subservience to the Secretary of Justice, but in faithful exercise of judicial prerogative. This Court pertinently stated so in *Martinez vs. Court of Appeals*: [58]

Whether to approve or disapprove the stand taken by the prosecution is not the exercise of discretion required in cases like this. The trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.

As aptly observed the Office of the Solicitor General, in failing to make an independent finding of the merits of the case and merely anchoring the dismissal on the revised position of the prosecution, the trial judge relinquished the discretion he was duty bound to exercise. In effect, it was the prosecution, through the Department of Justice which decided what to do and not the court which was reduced to a mere rubber stamp in violation of the ruling in *Crespo vs. Mogul*.

## II.

Section 2, Article III of the present Constitution provides that no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce.

Under existing laws, warrants of arrest may be issued (1) by the Metropolitan Trial Courts (MeTCs) except those in the National Capital Region, Municipal Trial Courts (MTCs), and Municipal Circuit Trial Courts (MCTCs) in

cases falling within their exclusive original jurisdiction;<sup>[59]</sup> in cases covered by the rule on summary procedure where the accused fails to appear when required;<sup>[60]</sup> and in cases filed with them which are cognizable by the Regional Trial Courts (RTCs);<sup>[61]</sup> and (2) by the Metropolitan Trial Courts in the National Capital Region (MeTCs-NCR) and the RTCs in cases filed with them after appropriate preliminary investigations conducted by officers authorized to do so other than judges of MeTCs, MTCs and MCTCs.<sup>[62]</sup>

As to the first, a warrant can issue only if the judge is satisfied after an examination in writing and under oath of the complainant and the witnesses, in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.

As to the second, this Court held in *Soliven vs. Makasiar*<sup>[63]</sup> that the judge is not required to personally examine the complainant and the witnesses, but

[f]ollowing established doctrine and procedure, he shall: (1) personally evaluate the report and supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.<sup>[64]</sup>

Sound policy supports this procedure, "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." It must be emphasized that judges must not rely solely on the report or resolution of the fiscal (now prosecutor); they must evaluate the report and the supporting documents. In this sense, the aforementioned requirement has modified paragraph 4(a) of Circular No. 12 issued by this Court on 30 June 1987 prescribing the Guidelines on Issuance of Warrants of Arrest under Section 2, Article III of the 1987 Constitution, which provided in part as follows:

4. In satisfying himself of the existence of a probable cause for the issuance of a warrant of arrest, the judge, following established doctrine and procedure, may either:

(a) Rely upon the fiscal's certification of the existence of probable cause whether or not the case is cognizable only by the Regional Trial Court and on the basis thereof, issue a warrant of arrest. x x x

This requirement of evaluation not only of the report or certification of the fiscal but also of the supporting documents was further explained in *People vs. Inting*,<sup>[65]</sup> where this Court specified what the documents may consist of, viz., "the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge to make his determination of probable cause. Thus:

We emphasize the important features of the constitutional mandate that "x x x no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge x x x" (Article III, Section 2, Constitution).

First, the determination of probable cause is a function of the Judge. It is not for the Provincial Fiscal or Prosecutor nor the Election Supervisor to ascertain. Only the Judge and the Judge alone makes this determination.

Second, the preliminary inquiry made by a Prosecutor does not bind the Judge. It merely assists him to make the determination of probable cause. The Judge does not have to follow what the Prosecutor presents to him. By itself, the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's

certification which are material in assisting the Judge to make his determination.

In adverting to a statement in *People vs. Delgado*[66] that the judge may rely on the resolution of the Commission on Elections (COMELEC) to file the information by the same token that it may rely on the certification made by the prosecutor who conducted the preliminary investigation in the issuance of the warrant of arrest, this Court stressed in *Lim vs. Felix*[67] that

Reliance on the COMELEC resolution or the Prosecutor's certification presupposes that the records of either the COMELEC or the Prosecutor have been submitted to the Judge and he relies on the certification or resolution because the records of the investigation sustain the recommendation. The warrant issues not on the strength of the certification standing alone but because of the records which sustain it.

And noting that judges still suffer from the inertia of decisions and practice under the 1935 and 1973 Constitutions, this Court found it necessary to restate the rule "in greater detail and hopefully clearer terms." It then proceeded to do so, thus:

We reiterate the ruling in *Soliven vs. Makasiar* that the Judge does not have to personally examine the complainant and his witnesses. The Prosecutor can perform the same functions as a commissioner for the taking of the evidence. However, there should be a report and necessary documents supporting the Fiscal's bare certification. All of these should be before the Judge.

The extent of the Judge's personal examination of the report and its annexes depends on the circumstances of each case. We cannot determine beforehand how cursory or exhaustive the Judge's examination should be. The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be as brief as or detailed as the circumstances of each case require. To be sure, the Judge must go beyond the Prosecutor's certification and investigation report whenever, necessary. He should call for the complainant and witnesses themselves to answer the court's probing questions when the circumstances of the case so require.

This Court then set aside for being null and void the challenged order of respondent Judge Felix directing the issuance of the warrants of arrest against petitioners Lim, et al., solely on the basis of the prosecutor's certification in the informations that there existed probable cause "without having before him any other basis for his personal determination of the existence of a probable cause."

In *Allado vs. Diokno*,[68] this Court also ruled that "before issuing a warrant of arrest, the judge must satisfy himself that based on the evidence submitted there is sufficient proof that a crime has been committed and that the person to be arrested is probably guilty thereof."

In the recent case of *Webb vs. De Leon*,[69] this Court rejected the thesis of the petitioners of absence probable cause and sustained the investigating panel's and the respondent Judge's findings of probable cause. After quoting extensively from *Soliven vs. Makasiar*,[70] this Court explicitly pointed out:

Clearly then, the Constitution, the Rules of Court, and our case law repudiate the submission of petitioners that respondent judges should have conducted "searching examination of witnesses" before issuing warrants of arrest against them. They also reject petitioners' contention that a judge must first issue an order of arrest before issuing a warrant of arrest. There is no law or rule requiring the issuance of an Order of Arrest prior to a warrant of arrest.

In the case at bar, the DOJ Panel submitted to the trial court its 26-page report, the two (2) sworn statements of Alfaro and the sworn statements of Carlos Cristobal and Lolita Birrer as well as the counter- affidavits of the petitioners. Apparently, the painstaking recital and analysis of the parties' evidence made in the DOJ Panel Report satisfied both judges that there is probable cause to issue warrants of arrest against petitioners. Again,

we stress that before issuing warrants of arrest, judges merely determine personally the probability, not the certainty of the guilt of an accused. In doing so, judges do not conduct a de novo hearing to determine the existence of probable cause. They just personally review the initial determination of the prosecutor finding a probable cause to see if it is supported by substantial evidence. The sufficiency of the review process cannot be measured by merely counting minutes and hours. The fact that it took the respondent judges a few hours to review and affirm the Probable cause determination of the DOJ Panel does not mean they made no personal evaluation of the evidence attached to the records of the case. (*italics supplied*)

The teachings then of Soliven, Inting, Lim, Allado, and Webb reject the proposition that the investigating prosecutor's certification in an information or his resolution which is made the basis for the filing of the information, or both, would suffice in the judicial determination of probable cause for the issuance of a warrant of arrest. In Webb, this Court assumed that since the respondent Judges had before them not only the 26-page resolution of the investigating panel but also the affidavits of the prosecution witnesses and even the counter-affidavits of the respondents, they (judges) made personal evaluation of the evidence attached to the records of the case.

Unfortunately, in Criminal Case No. Q-93-43198, nothing accompanied the information upon its filing on 12 April 1993 with the trial court. As found by the Court of Appeals in its resolution of 1 July 1993, a copy of the Joint Resolution was forwarded to, and received by, the trial court only on 22 April 1993. And as revealed by the certification<sup>[71]</sup> of Branch Clerk of Court Gibson Araula, Jr., no affidavits of the witnesses, transcripts of stenographic notes of the proceedings during the preliminary investigation, or other documents submitted in the course thereof were found in the records of Criminal Case No. Q-93-43198 as of 19 May 1993. Clearly, when respondent Judge Asuncion issued the assailed order of 17 May 1993 directing, among other things, the issuance of warrants of arrest, he had only the information, amended information, and Joint Resolution as bases thereof. He did not have the records or evidence supporting the prosecutor's finding of probable cause. And strangely enough, he made no specific finding of probable cause; he merely directed the issuance of warrants of arrest "after June 21, 1993." It may, however, be argued that the directive presupposes a finding of probable cause. But then compliance with a constitutional requirement for the protection of individual liberty cannot be left to presupposition, conjecture, or even convincing logic.

### III.

As earlier stated, per its 1st Indorsement of 21 April 1993, the DOJ gave due course to the petitioners' petition for review pursuant to the exception provided for in Section 4 of Circular No. 7, and directed the Office of the City Prosecutor of Quezon City to forward to the Department the records of the cases and to file in court a motion for the deferment of the proceedings. At the time it issued the indorsement, the DOJ already knew that the information had been filed in court, for which reason it directed the City Prosecutor to inform the Department whether the accused have already been arraigned and if not yet arraigned, to move to defer further proceedings. It must have been fully aware that, pursuant to *Crespo vs. Mogul*, a motion to dismiss a case filed by the prosecution either as a consequence of a reinvestigation or upon instructions of the Secretary of Justice after a review of the records of the investigation is addressed to the trial court, which has the option to grant or to deny it. Also, it must have been still fresh in its mind that a few months back it had dismissed for lack of probable cause other similar complaints of holders of "349" Pepsi crowns.<sup>[72]</sup> Thus, its decision to give due course to the petition must have been prompted by nothing less than an honest conviction that a review of the Joint Resolution was necessary in the highest interest of justice in the light of the special circumstances of the case. That decision was permissible within the "as far as practicable" criterion in *Crespo*.

Hence, the DOJ committed grave abuse of discretion when it executed on 23 July 1993 a unilateral volte-face,

which was even unprovoked by a formal pleading to accomplish the same end, by dismissing the petition for review. It dismissed the petition simply because it thought that a review of the Joint Resolution would be an exercise in futility in that any further action on the part of the Department would depend on the sound discretion of the trial court, and that the latter's denial of the motion to defer arraignment filed at the instance of the DOJ was clearly an exercise of that discretion or was, in effect, a signal to the Department that the determination of the case is within the court's exclusive jurisdiction and competence. This infirmity becomes more pronounced because the reason adduced by the respondent Judge for his denial of the motions to suspend proceedings and hold in abeyance issuance of warrants of arrest and to defer arraignment finds, as yet, no support in Crespo.

#### IV.

If the only issue before the Court of Appeals were the denial of the petitioners' Motion to Suspend Proceedings and to Hold in Abeyance Issuance of Warrants of Arrest and the public prosecutor's Motion to Defer Arraignment, which were both based on the pendency before the DOJ of the petition for the review of the Joint Resolution, the dismissal of CA-G.R. SP No. 31226 on the basis of the dismissal by the DOJ of the petition for review might have been correct. However, the petition likewise involved the issue of whether respondent Judge Asuncion gravely abused his discretion in ordering the issuance of warrants of arrest despite want of basis. The DOJ's dismissal of the petition for review did not render moot and academic the latter issue.

In denying in its resolution of 1 July 1993 the petitioners' application for a writ of preliminary injunction to restrain respondent Judge Asuncion from issuing warrants of arrest, the Court of Appeals justified its action in this wise:

The Joint Resolution was sufficient in itself to have been relied upon by respondent Judge in convincing himself that probable cause indeed exists for the purpose of issuing the corresponding warrants of arrest. The mere silence of the records or the absence of any express declaration in the questioned Order of May 17, 1993 as to where the respondent Judge based his finding of probable cause does not give rise to any adverse inference on his part. The fact remains that the Joint Resolution was at respondent Judge's disposal at the time he issued the Order for the issuance of the warrants of arrest. After all, respondent Judge enjoys in his favor the presumption of regularity in the performance of official actuations. And this presumption prevails until it is overcome by clear and convincing evidence to the contrary. Every reasonable intendment will be made in support of the presumption, and in case of doubt as to an officer's act being lawful or unlawful it should be construed to be lawful. (31 C.J.S., 808-810. See also *Mahilum, et al. vs. Court of Appeals*, 17 SCRA 482; *People vs. Cortez*, 21 SCRA 1228; *Government of the P.I. vs. Galarosa*, 36 Phil. 338).

We are unable to agree with this disquisition, for it merely assumes at least two things: (1) that respondent Judge Asuncion had read and relied on the Joint Resolution and (2) he was convinced that probable cause exists for the issuance of the warrants of arrest against the petitioners. Nothing in the records provides reasonable basis for these assumptions. In his assailed order, the respondent Judge made no mention of the Joint Resolution, which was attached to the records of Criminal Case No. Q-93-43198 on 22 April 1993. Neither did he state that he found probable cause for the issuance of warrants of arrest. And, for an undividable reason, he directed the issuance of warrants of arrest only "after June 21, 1993." If he did read the Joint Resolution and, in so reading, found probable cause, there was absolutely no reason at all to delay for more than one month the issuance of warrants of arrest. The most probable explanation for such delay could be that the respondent Judge had actually wanted to wait for a little while for the DOJ to resolve the petition for review.

It is, nevertheless, contended in the dissenting opinion of Mr. Justice Reynato S. Puno that whatever doubts may have lingered on the issue of probable cause was dissolved when no less than the Court of Appeals sustained the finding of probable cause made by the respondent Judge after an evaluation of the Joint Resolution. We are not

persuaded with that opinion. It is anchored on erroneous premises. In its 1 July 1993 resolution, the Court of Appeals does not at all state that it either sustained respondent Judge Asuncion's finding of probable cause, or found by itself probable cause. As discussed above, it merely presumed that Judge Asuncion might have read the Joint Resolution and found probable cause from a reading thereof. Then too, that statement in the dissenting opinion erroneously assumes that the Joint Resolution can validly serve as sufficient basis for determining probable cause. As stated above, it is not.

V.

In criminal prosecutions, the determination of probable cause may either be an executive or a judicial prerogative. In *People vs. Inting*,<sup>[73]</sup> this Court aptly stated:

And third, 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. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper - whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial- is the function of the Prosecutor.

xxx xxx xxx

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 prosecution'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 x x x.

Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule. Among the exceptions are enumerated in *Brocka vs. Enrile*<sup>[74]</sup> as follows:

- a. To afford adequate protection to the constitutional rights of the accused (*Hernandez vs. Albano, et al.*, L-19272, January 25, 1967, 19 SCRA 95);
- b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (*Dimayuga, et al. vs. Fernandez*, 43 Phil. 304; *Hernandez vs. Albano, supra*; *Fortun vs. Labang, et al.*, L-38383, May 27, 1981, 104 SCRA 607);
- c. When there is a pre-judicial question which is sub judice (*De Leon vs. Mabanag*, 70 Phil. 202);
- d. When the acts of the officer are without or in excess of authority (*Planas vs. Gil*, 67 Phil. 62);
- e. Where the prosecution is under an invalid law, ordinance or regulation (*Young vs. Rafferty*, 33 Phil. 556; *Yu Cong Eng vs. Trinidad*, 47 Phil. 385, 389);
- f. When double jeopardy is clearly apparent (*Sangalang vs. People and Avendia*, 109 Phil. 1140);
- g. Where the court has no jurisdiction over the offense (*Lopez vs. City Judge*, L-25795, October 29, 1966, 18 SCRA 616);

h. Where it is a case of persecution rather than prosecution (*Rustia vs. Ocampo*, CA-G.R. No. 4760, March 25, 1960);

i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto vs. Castelo*, 18 L.J., [1953], cited in *Rañoa vs. Alvendia*, CA-G.R. No. 30720-R, October 8, 1962; Cf. *Guingona, et al. vs. City Fiscal*, L-60033, April 4, 1984, 128 SCRA 577); and

j. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied (*Salonga vs. Paño, et al.*, L-59524, February 18, 1985, 134 SCRA 438).

7. Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners (*Rodriguez vs. Castelo*, L-6374, August 1, 1953). (cited in *Regalado*, Remedial Law Compendium, p. 188, 1988 Ed.)

In these exceptional cases, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation, as it did in *Salonga vs. Paño*,<sup>[75]</sup> *Allado*, and *Webb*.

There can be no doubt that, in light of the several thousand private complainants in Criminal Case No. Q-93-43198 and several thousands more in different parts of the country who are similarly situated as the former for being holders of "349" Pepsi crowns, any affirmative holding of probable cause in the said case may cause or provoke, as justly feared by the petitioners, the filing of several thousand cases in various courts throughout the country. Inevitably, the petitioners would be exposed to the harassments of warrants of arrest issued by such courts and to huge expenditures for premiums on bailbonds and for travels from one court to another throughout the length and breadth of the archipelago for their arraignments and trials in such cases. Worse, the filing of these staggering number of cases would necessarily affect the trial calendar of our overburdened judges and take much of their attention, time, and energy, which they could devote to other equally, if not more, important cases. Such a frightful scenario would seriously affect the orderly administration of justice, or cause oppression or multiplicity of actions - a situation already long conceded by this Court to be an exception to the general rule that criminal prosecutions may not be restrained or stayed by injunction.<sup>[76]</sup>

We shall not, however, reevaluate the evidence to determine if indeed there is probable cause for the issuance of warrants of arrest in Criminal Case No. Q-93-43298. For, as earlier stated, the respondent Judge did not, in fact, find that probable cause exists, and if he did he did not have the basis therefor as mandated by *Soliven*, *Inting*, *Lim*, *Allado*, and even *Webb*. Moreover, the records of the preliminary investigation in Criminal Case No. Q-93-43198 are not with this Court. They were forwarded by the Office of the City Prosecutor of Quezon City to the DOJ in compliance with the latter's 1st Indorsement of 21 April 1993. The trial court and the DOJ must be required to perform their duty.

WHEREFORE, the instant petition is GRANTED and the following are hereby

**SET ASIDE:**

(a) Decision of 28 September 1993 and Resolution of 9 February 1994 of respondent Court of Appeals in CA-G.R. SP No. 31226;

(b) The Resolution of the "349" Committee of the Department of Justice of 23 July 1993 dismissing the petitioners' petition for review and of 3 February 1994 denying the motion to reconsider the dismissal; and

(c) The Order of respondent Judge Maximiano C. Asuncion of 17 May 1993 in Criminal Case No. Q-93-43198.

The Department of Justice is DIRECTED to resolve on the merits, within sixty (60) days from notice of this decision, the petitioners' petition for the review of the Joint Resolution of Investigating Prosecutor Ramon

Gerona and thereafter to file the appropriate motion or pleading in Criminal Case No. Q-93-43198, which respondent Judge Asuncion shall then resolve in light of Crespo vs. Mogul, Soliven vs. Makasiar, People vs. Inting, Lim vs. Felix, Allado vs. Diokno, and Webb vs. De Leon.

In the meantime, respondent Judge Asuncion is DIRECTED to cease and desist from further proceeding with Criminal Case No. Q-93-43198 and to defer the issuance of warrants of arrest against the petitioners.

No pronouncement as to costs.

**SO ORDERED.**

Padilla, Bellosillo, and Hermosisima, Jr., JJ., concur.

Narvasa, C.J. (Chairman), see separate concurring opinion.

Regalado, J., joins the dissent of J. Puno, pro hac vice.

Romero, Melo and Mendoza, JJ., join in the dissent of Justice Puno.

Puno, J., dissents.

Vitug, J., concurs in the opinions of the ponente and the Chief Justice.

Kapunan, J., in the result.

Francisco, J., No part. Ponente of the assailed decision.

Panganiban, J, No Part. Daughter is a management officer of Pepsi Cola, Head Office, NY, USA.

[1] Annex "A" of Petition; Rollo, 64-68. Per Justice, now Associate Justice of this Court, Francisco, R., with Tayao-Jaguros, L. and Verzola, E., JJ., concurring.

[2] Annex "B" of Petition; Rollo, 69-72.

[3] Annex "C", Id.; Id., 3-74.

[4] Annexes "D" and "E", Id.; Id., 75-78.

[5] Rollo, 19.

[6] Those represented alone by Atty. Bonifacio Manansala are enumerated, single space, in 91 pages of legal size bond paper, with an average of 55 names, more or less, per page (Id., Vol.2, 913-1003) and in his Memorandum-Explanation dated 16 February 1995, he discloses that he is "presently representing more than 7,000 claimants" (Id., Vol. 1, 648). Atty. Jose Espinas revealed in his Comment that he represents "700 INDIVIDUAL COMPLAINANTS, MORE OR LESS" (Id., Vol. 1, 567). Atty. Julio Contreras claims in his Compliance of 10 September 1995 to represent "4,406" (Id., Vol.2, unpaginated).

[7] Originally held from 17 February to 8 May 1992, but later extended from 11 May to 12 June 1992.

[8] Entitled, "Strengthening the Rule-Making and Adjudicatory Powers of the Minister of Trade and Industry in order to further Protect Consumers."

[9] Entitled, "An Act to Penalize Fraudulent Advertising, Mislabeling or Misbranding of Any Product, Stocks, Bonds, Etc.."

[10] Rollo, Vol. 1, 152-168; 191-212.

[11] id., 209-210.

[12] Rollo, Vol. 1, 210.

[13] Records (OR), Criminal Case No. Q-93-43198, Vol. 1 (hereinafter referred to as OR-RTC, Vol. 1), 1-3.

- [14] OR-RTC, Vol. 1, 4-24.
- [15] OR-RTC, Vol. 1, 28-49.
- [16] Id. 25-27, 67-68.
- [17] OR-RTC, Vol. 1, 291.
- [18] See stamped entry on top of page 1 of the Information; Id., 1.
- [19] Id., 299.
- [20] Id., 232-240.
- [21] OR-RTC Vol. 1, 288.
- [22] Id., 289-290.
- [23] Id., Vol. 2, 1-3.
- [24] Id., 4.
- [25] Id., 5.
- [26] Id., 6-11.
- [27] Id., 12-17, 48-54.
- [28] OR-RTC, Vol. 1, 55-64.
- [29] Id., Vol. 2, 65-66.
- [30] Rollo, CA-G.R. SP No. 31226 (hereinafter referred to as Rollo-CA), 1-39; see also OR-RTC, Vol. 2, 79-116.
- [31] Id., 157; Id., 229.
- [32] OR-RTC, Vol. 2, 233.
- [33] Rollo-CA, 193-194.
- [34] Id., 196-201.
- [35] Rollo-CA, 288.
- [36] Id., 296.
- [37] Id., 334-335.
- [38] Id., 336-337.
- [39] Id., 488-493.
- [40] Rollo-CA, 336-337; 490-491.
- [41] Per Justice, now Associate Justice of this Court, Francisco, R., with Tayao-Jaguros, L. and Verzola, E., JJ., concurring.
- [42] Should be "petitioners."
- [43] Rollo, Vol. 1, 77-78.

[44] Rollo-CA, 500-507.

[45] Id., 575-577.

[46] Rollo, Vol. 1, 425-431.

[47] Id., 456-484.

[48] Id., 533-539.

[49] Id., 526-530.

[50] Id., 555.

**[51] 151 SCRA 462 [1987].**

[52] Supra note 51, at 471-472.

**[53] 235 SCRA 39 [1994].**

[54] The said paragraph reads as follows:

If upon petition by a proper party, the Minister 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 the dismissal of the complaint or information. (*italics supplied*)

[55] The said section reads:

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, said 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.

[56] Revised Rules on Appeals from Resolutions in Preliminary Investigations/Reinvestigations.

[57] Supra note 51, at 471

[58] 237 SCRA 575, 585-586 [1994]. See also *Dee vs. Court of Appeals*, 238 SCRA 254 [1994].

[59] Third paragraph, Section 87, The Judiciary Act of 1948 (R.A. No. 269), as amended by R.A. Nos. 2613 and 3828, which provides:

No warrant of arrest shall be issued by any municipal judge in any criminal case filed with him unless he first examines the witness or witnesses personally, and the examination shall be under oath and reduced to writing in the form of searching questions and answers.

[60] Second paragraph, Section 10, 1983 Rule on Summary Procedure, which provides:

Failure on the part of the defendant to appear wherever required shall cause the issuance of a warrant for his arrest

if the court shall find that a probable cause exists after an examination in writing and under oath or affirmation of the complainant and his witnesses.

Section 16, 1991 Revised Rule on Summary Procedure, which provides:

The court shall not order the arrest of the accused except for failure to appear whenever required. Release of the person arrested shall either be on bail or on recognizance by a responsible citizen acceptable to the court.

[61] Section 6(b), Rule 112, Rules of Court, which reads:

If the municipal trial judge conducting the preliminary investigation is satisfied after an examination in writing and under oath of the complainant and his witnesses, in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.

Section 37, The Judiciary Reorganization Act of 1980 (B.P. Blg. 129), which reads in part as follows:

No warrant of arrest shall be issued by the Judge in connection with any criminal complaint filed with him for preliminary investigation, unless after an examination in writing and under oath or affirmation of the complainant and his witnesses he finds that probable cause exists.

[62] 62 Section 6(a), Rule 112, Rules of Court, which reads:

Section 6. When warrant of arrest may issue. "

(a) By the Regional Trial Court. - Upon the filing of an information, the Regional Trial Court may issue a warrant for the arrest of the accused.

**[63] 167 SCRA 393 [1988].**

[64] Id., 398.

**[65] 187 SCRA 788, 792 [1990].**

**[66] 189 SCRA 715 [1990].**

**[67] 194 SCRA 292, 305 [1991].**

**[68] 232 SCRA 192,201 [1994].**

[69] G.R. No. 121234 and companion cases, 23 August 1995.

[70] Supra, note 63.

[71] OR-RTC, Vol. 2, 68

[72] See for instance the resolutions of 12 January 1993 in the case filed by Merelita Napuran in the Office of the Provincial Prosecutor of Palo, Leyte (Rollo, Vol. 1, 223); and 14 January 1993 in cases filed with the office of the City Prosecutor of Lucena City (Id., 227). It did likewise on 8 November 1993 in cases filed before the Provincial Prosecutor of Pangasinan (Id., 236); and 10 November 1993 in cases filed with the City Prosecutor of Ozamiz City (Id., 245).

[73] Supra note 65.

[74] 192 SCRA 183, 188-189 [1990].

[75] 134 SCRA 438 [1985].

[76] *Dimayuga vs. Fernandez*, 43 Phil. 304 [1922], and *Fortun vs. Labang*, 104 SCRA 607 [1981], cited in *Brocka vs. Enrile*, *supra* note 75.

### SEPARATE OPINION

**NARVASA, C.J.:**

I agree with the disposition of the case proposed by Mr. Justice Hilario G. Davide in his dissenting opinion, that the determination of whether or not probable cause exists to warrant the prosecution in court of the petitioners should be consigned and entrusted to the Department of Justice, as reviewer of the findings of the public prosecutors concerned.

In this special civil action, this Court is being asked to assume the function of a public prosecutor. It is being asked to determine whether probable cause exists as regards petitioners. More concretely, the Court is being asked to examine and assess such evidence as has thus far been submitted by the parties and, on the basis thereof, make a conclusion as to whether or not it suffices "to engender a well founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial."<sup>[1]</sup>

It is a function that this Court should not be called upon to perform. It is a function that properly pertains to the public prosecutor,<sup>[2]</sup> one that, as far as crimes cognizable by a Regional Trial Court are concerned, and notwithstanding that it involves an adjudicative process of a sort,<sup>[3]</sup> exclusively pertains, by law, to said executive officer, the public prosecutor.<sup>[4]</sup> It is moreover a function that in the established scheme of things, is supposed to be performed at the very genesis of, indeed, prefatorily to, the formal commencement of a criminal action.<sup>[5]</sup> The proceedings before a public prosecutor, it may well be stressed, are essentially preliminary, prefatory, and cannot lead to a final, definite and authoritative adjudgment of the guilt or innocence of the persons charged with a felony or crime.<sup>[6]</sup>

Whether or not that function has been correctly discharged by the public prosecutor - i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case - is a matter that the trial court itself does not and may not be compelled to pass upon.<sup>[7]</sup> There is no provision of law authorizing an aggrieved party to petition for such a determination. It is not for instance permitted for an accused, upon the filing of an information against him by the public prosecutor, to preempt trial by filing a motion with the Trial Court praying for the quashal or dismissal of the indictment on the ground that the evidence upon which the same is based is inadequate. Nor is it permitted, on the antipodal theory that the evidence is in truth adequate, for the complaining party to present a petition before the Court praying that the public prosecutor be compelled to file the corresponding information against the accused.<sup>[8]</sup>

Besides, the function that this Court is asked to perform is that of a trier of facts which it does not generally do,<sup>[9]</sup> and if at all, only exceptionally, as in an appeal in a criminal action where the penalty of life imprisonment, reclusion perpetua, or death has been imposed by a lower court (after due trial, of course),<sup>[10]</sup> or upon a convincing showing of palpable error as regards a particular factual conclusion in the judgment of such lower court.<sup>[11]</sup>

What, in sum, is being attempted in this Court is to reverse the established and permanent order of things - for the Court to act before trial and judgment by a lower tribunal; to require it to perform the role of trier of facts - which,

to repeat, it does not generally do, the issues properly cognizable by it being normally limited exclusively to questions of law;<sup>[12]</sup> to make it do something that even the trial court may not do at this stage of the proceedings - itself to determine the existence of probable cause, to usurp a duty that exclusively pertains to an executive official<sup>[13]</sup> to conduct a preliminary investigation or review the findings and conclusions of the public prosecutor who conducted one.

The matter is not within the review jurisdiction of the Court as this is clearly specified in the Constitution<sup>[14]</sup> a jurisdiction which even the Congress may not increase "without \*\* (the Court's) advice and concurrence."<sup>[15]</sup>

From the pragmatic aspect, it is also an undesirable thing, for the result could well be an increase to the already considerable work load of the Court.

Furthermore, any judgment of this Court in this action would be inconclusive, as above intimated. It would not necessarily end the case. It would not, for instance, prevent the complaining witnesses from presenting additional evidence in an effort to have the information ultimately filed in the proper court against the accused, or the respondents from asking for a reinvestigation and presenting additional or other evidence warranting the dropping of the case. The Court would thus have wielded judicial power without a definite settlement of rights and liabilities.

There are set rules, and procedural mechanisms in place for the determination of probable cause at the level of the public prosecutor, the Department of Justice and, to a certain extent, the Regional Trial Court. No recourse to this Court should normally be allowed to challenge their determinations and dispositions. I therefore vote to refer to the Department of Justice for resolution, the petition for the review of the Joint Resolution issued by Investigating Prosecutor Ramon Gerona.

[1] Sec. 1, Rule 112, Rules of Court

[2] *Castillo v. Villaluz*, 171 SCRA 39(1989); *People v. Inting*, 187 SCRA 788 (1990); *Allado v. Diokno*, 232 SCRA 192 (1994); *Cruz, Jr. v. People*, 233 SCRA 439.

[3] *Crespo v. Mogul*, 151 SCRA 462

[4] *Lim v. Felix*, 194 SCRA 292, citing *Castillo v. Villaluz*, 171 SCRA 39 and *Salta v. CA*, 143 SCRA 228; SEE Sec. 2, Rule 112; Sec. 11(b), PD No. 1275

[5] § 1 Rule 112; Rules of Court

[6] *Cojuangco v. PCCG*, 190 SCRA 226, cited in *Herrera, Remedial Law*, Vol. IV (1992 ed., p. 164); SEE *Reyes v. Camilon*, 192 SCRA 444 (1990); *Cruz, Jr v. People*, 233 SCRA 439 (1994) citing *Paderanga v. Drilon, et al.*, 196 SCRA 86 (1991).

[7] *Crespo*, supra at note 2; *Kwong Sing v. City of Manila*, 41 Phil. 103

[8] *Paderanga v. Drilon*, 196 SCRA 86; cf *Brocka v. Enrile*, 192 SCRA 183. SEE *Ogburn v. Court of Appeals*, 212 SCRA 483 (1992). N.B. Where, however, the public prosecutor finds that probable cause exists as regards several suspects but unaccountably files the information only against some, but not all of them, mandamus will lie to compel him to include in the indictment those he has excluded.

[9] *Go v. Court of Appeals*, 224 SCRA 145; *PNB v. Court of Appeals*, 187 SCRA 735; *Ongsiako v. IAC*, 152 SCRA 627

[10] Par. 2(D), §5 of Art. VIII, Constitution; Sec. 3 (c) and (e), Rule 122, Rules of Court; SEE Sec. 17(1), Judiciary Act and Sec. 22, Republic Act No. 7659.

[11] See *People v. Jimenez*, 235 SCRA 322; *Geronimo v. Court of Appeals*, 224 SCRA 494, *BPI Credit Corporation v. Court of Appeals*, 204 SCRA 601; *Medina v. Court of Appeals*, 191 SCRA 218; *People v. Nemeria*, 242 SCRA 448(1995), citing *People v. Tidong*, 225 SCRA 324(1993); *People v. Simbulan*, 214 SCRA 537(1992); *People v. Saulo*, 211 SCRA 888 (1992).

[12] Rule 45, Rules of Court; see *Pan Realty Corp v. Court of Appeals*, 167 SCRA 564 and *Del Pozo v. Penaco*, 167 SCRA 577; *Isabelo, Jr. v. Perpetual Help College of Rizal, Inc.*, 227 SCRA (1993), citing *Soriano III v. Yuson*, 164 SCRA 226(1988), etc.

[13] *Supra*, at note 3.

[14] Par. 2, §5 of Art. VIII, Constitution.

[15] §30 of Art. VI, Constitution

## DISSENTING OPINION

**PUNO, J.:**

### I

The constitutional policy of speedy adjudication of cases demand that we now affirm or reverse the judicial finding of probable cause to hold petitioners for trial on the charge of estafa. Pepsi's Number Fever Promotion, the root cause of the case at bar; was held way back in 1992. Since 1993, City Prosecutor Candido Rivera of Quezon City, RTC Judge Maximiano Asuncion and the Court of Appeals have uniformly found the existence of probable cause against petitioners. It is now 1996 and petitioners have yet to be tried in court. Three (3) long years of expensive litigation on the part of private respondents, mostly belonging to the powerless of our people, will go to naught by remanding the case to the Department of Justice for another executive dermination of the issue of probable cause.

To be sure, the case at bar is deeply impressed with public interest. On one hand are some 12,000 people holding "349" Pepsi crowns and who have long been clamoring for payment of their prize money. Their collective claim runs to billions of pesos. On the other hand is petitioners' business integrity which needs a shield from false and malicious charges. We should decide this dispute with dispatch and with little resort to procedural technicalities, otherwise, our people's search for justice will be too wearisome a toil.

### II

Pursuant to this precis, I will skip capillary issues and immediately go to the heart of the case - i.e., determine whether the respondent Court of Appeals committed reversible error in affirming the respondent trial judge who found probable cause to hold petitioners for trial on the charge of estafa. The concept of probable cause is not a high level legal abstraction to be the subject of warring thoughts. It is well established that "a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspects. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt." [1]

On the basis of the evidence presented by the parties in a long and exhaustive preliminary investigation, Quezon City Prosecutor Rivera determined that there is a sufficient ground to engender a well founded belief that petitioners committed estafa. City Prosecutor Rivera approved the findings of First Assistant City Prosecutor

Ramon M. Gerona contained in a 17-page Joint Resolution. I quote in extenso the factual findings relied upon by the prosecutors in finding probable cause, viz:

xxx xxx xxx

"The complaints-affidavits and replies by complainant and counter-affidavits and rejoinder by respondents as well as arguments and counter-arguments from both sides may be summed up to three simple but comprehensive issues, to wit:

1. Was there fraud or deceit committed by Pepsi through respondents prior to or simultaneously with their deliberate act of refusal to pay complainants the prizes indicated in their crown/caps?
2. Did Pepsi officials, herein respondents, comply with the rules and regulations imposed by the DTI especially on the mechanics of the promotion, or deviation, modification, addition or deletion of aforementioned mechanics?
3. Was there a way respondents could have avoided the fraud?

Relative to the first and second issues, respondents insist that they had complied with all the requirements or conditions imposed by the DTI particularly with respect to the prior approval of the latter of the mechanics of the promotion. Respondent likewise contend that the deviation of the duly approved mechanics of the promotion was also approved by the DTI. In this regard, Section 10.1 of the Ministry Order No. 33 reads as follows:

10.1 All advertisements, brochures or any printed material indicating or describing the mechanics of the promotion shall conform with the mechanics approved by this Bureau. Any deviation, modification, addition or deletion shall first be submitted to this Bureau for approval.

Parenthetically, the contention by respondents that the mechanics of the promotion was approved by the DTI is not in question, but, the additional contention that the deviation thereof was likewise approved by the DTI is not supported by or does not jibe with the facts. The report of Task Force DTI, page 14 thereof, says and we quote:

"It appears that after the "349" controversy which came about during the extension period of Pepsi "Number Fever" promo, the significance of the security code as a measure against tampering and faking of the crowns or caps has been modified. For after May 26, 1992, the "349" number surfaced to have both winning and non-winning security codes." (emphasis supplied)

Page 15 of the same Task Force Report reads:

'The DTI-NRC records show that the modification/deviation on the use of security code as explained in the trade posters and other joint advertisements was never submitted for approval in violation of the specific requirements of 10.1 of Memorandum Order No. 33.

As to why only number "349" has both a winning and non-winning security code, Mr. Q.J. Gomez, Jr. could not amplify the same except by testifying that the supplier from Mexico gives them the list of winning numbers and security codes together with the master list of the non-winning number which were done through a computer program.'

Respondents admit that only "349" was given two kinds of security codes, winning and non-winning. This condition was added by respondents while the promo was going on and after "349" had been announced as winner. The modification sans approval by the DTI as shown in the preceding DTI findings to the extent that the holders of the "349" crowns are prejudiced or damaged after said number had been drawn and announced as winner constitutes deceit, commencing from the date of the launching of the promotion sometime in February 1992 up to the present with Pepsi's refusal to honor complainants' demand for payment.

The alteration was found to be factual by the DTI in the last portion of the Task Force Report which says with specificity:

‘3.xxx

‘The TF (Task Force) however noted it was only for No. "349" that a deviation in the use of security code from what was originally approved by the DTI-NCR was made. In all the other winning numbers PPCPI and PCI complied with the approved mechanics.’ (Italics supplied)

Indeed, the mechanics mentioned the use of ‘a 3 digit security code as a measure against tampering or faking the crowns’ and that ‘each and every number has its own unique, matching security code. (counter-affidavit, Rosemarie Vera, p. 13).

It is worth reproducing complainants’ discussion of these two points in their Memorandum.

‘Let us analyze these two rules:

4.2 The first rule defines the purposes of the security code, which is to provide the basis for detecting whether or not a crown containing a winning number is fake, spurious or tampered with. By the wording of this rule, a genuine, true and real Pepsi, Mirinda, 7-up or Mountain Dew crown bearing a winning number, as drawn and announced, could not possibly lose in the promo. The genuineness of the crown will be assured by the security code and the drawn winning number it bears will make it win.

In other words, the certainty about the genuineness of the crown that is, not fake or tampered with is the objective of the security code, not the crown’s number being a winning number. Stated otherwise, the rule, as published makes the security code the determinant of the genuineness of the crown, not the winning quality of the number it bears.

Deliberately, however, Pepsi is now applying this rule - nay, bending it - (see par. 4.6.1. Counter-Affidavit) to make the security code determinant of which, among the crowns bearing the winning number "349," is really a winner! By giving the rule unwarranted and on-second thought’ application, Pepsi has effectively defrauded complainants of their prices. Is this not deceit?

4.3 The second rule above-stated must be tackled in conjunction with par. 4.6 of the Counter-Affidavit which shows the meaning of the ‘term number’ as used in this rule. It means ‘A 3-digit number ranging from 001 to 999’ found under the specially-marked crowns of softdrinks manufactured and sold by Pepsi.

The rule uses the term ‘unique’ which the dictionary defines as ‘Being the only one of its kind’ (Funk and Wagnalls Standard) and ‘without another of the same kind’ (Webster’s). A contextual and syntactical appreciation of the rule would tell us that there is only one security code of each number under the crown for insuring the genuineness of the crown.

It is thus clear under the rule in question that "349" has its own unique 7-digit security code to insure that the crown bearing it is not fake or tampered with, do all the other winning numbers have or should have. But what did Pepsi do after "349" was drawn as a winner on May 25, 1992? Pepsi announced that "349" did not have only one unique security code, but that it had both ‘winning’ and ‘non-winning’ security codes. The security code of "349" was not the one unique, but "349" itself became unique because it became a winning and non-winning number at the same time. Was this unique ‘uniqueness’ of "349" announced at the start of the promo? No! When was the revelation made? Only after "349" was drawn as a winner and numerous-thousands of winning crown holders had stormed the Pepsi plants all over the country, specially along Aurora Boulevard, Quezon City, claiming their prizes.

The actuations of Pepsi vis-a-vis the above-stated two rules are indubitable cases of ‘changing the rules as the game is being played’ to defraud the winners of the prizes. If DECEIT has many faces, this is one of the ugliest among them.’

We also concur with the argument of complainants that additional deceit was committed by respondents when they attempted to substitute number "123" for number "349" as the winning number announced and drawn on May 24, 1992 and the closure of Pepsi Plant along Aurora Boulevard previously announced as redemption center for winning crowns. The acts of respondents were described by complainants as a continuation of their adamant refusal to pay and even hear the claims of complainants who thereby sustained damage not for their expenses for transportation but for the amounts of prizes absolutely denied them, let alone their expense in buying Pepsi softdrinks in quantities beyond their normal needs. There is merit in the description.

The third issue is could Pepsi have remedied the fraud? Definitely, by taking reasonable steps in paying the "349" holders. Pepsi could not have succeeded in requesting approval by DTI of the deviation from and/or modification of the mechanics previously approved as an alternative remedy since sanctioning such deviation or modification could have placed DTI in equal footing with respondents, making them co-conspirators to the fraud.

The pertinent provision of the Revised Penal Code reads as follows:

‘Art. 318: Other Deceits. The penalty of Arresto Mayor and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding Articles of this Chapter.’

As aptly contended by complainants ‘any other kind of conceivable deceit may fall under this Article. As in other cases of estafa, damage to the offended party is required (Reyes, Revised Penal Code, p. 775, Book 2, 11th Ed. 1977)

Fraudulently obtaining a loan on the promise that realty would be mortgaged as security for said loan which promise was not fulfilled because the borrower sold the property would constitute estafa under Article 318 of the Revised Penal Code.

Complainants have, to our mind, succeeded in proving deceit and fraud by respondents to avoid payment of prizes complainants are claiming in the ‘Number Fever Promotion’ for the "349" winning number to hold respondents, whose names we will hereinafter enumerate, liable for estafa (Art. 318 RPC)."

The prosecutors’ finding of probable cause rests on two (2) critical facts established by substantial evidence: one, that petitioners deviated from the Department of Trade and Industry (DTI) rules when they required that only "349" crowns with security codes can win, and two, that petitioners attempted to substitute "134" for "349" as the winning number. These acts were interpreted by the prosecutors as prima facie deceitful and fraudulent. I do not see how the resolution of the prosecutors finding sufficient ground to charge petitioners with estafa can be successfully assailed as grave abuse of discretion.

### III

To be sure, respondent judge Asuncion affirmed the prosecutors’ finding when petitioners challenged its validity. He found probable cause against the petitioners and ordered their arrest. The majority opinion faults the procedure followed by Judge Asuncion in issuing the warrants of arrest against petitioners. It cites two (2) reasons, viz: (1) that Judge Asuncion issued the warrants merely on the basis of the Information, Amended Information and Joint Resolution of the City Prosecutors of Quezon City; he did not check and consult the complete records of the case which include the affidavits of the witnesses, transcripts of stenographic notes and other documents submitted in the preliminary investigation; and (2) Judge Asuncion did not expressly make any finding of probable cause.

The procedure to be followed by a judge in reviewing the finding of probable cause by a prosecutor has long been a quiescent area. In *Soliven vs. Makasiar*,<sup>[2]</sup> we laid down the following procedure viz:

x x x

"The second issue, raised by Beltran, calls for an interpretation of the constitutional provision on the issuance of warrants of arrest. The pertinent provision reads:

‘Art. III, Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.’

The addition of the word ‘personally’ after the word ‘determined’ and the deletion of the grant of authority by the 1973 Constitution to issue warrants to ‘other responsible officers as may be authorized by law, has apparently convinced petitioner Beltran that the Constitution now requires the judge to personally examine the complainant and his witnesses in his determination of probable cause for the issuance of warrants of arrest. This is not an accurate interpretation.

What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal’s report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.

Sound policy dictates this procedure, 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."

Soliven and other related[3] cases did not established the absolute rule that unless a judge has the complete records of the preliminary investigation before him, he cannot lawfully determine probable cause and issue a warrant of arrest. Soliven only held that it is the personal responsibility of the judge to determine probable cause on the basis of the report and supporting documents submitted by the fiscal; and, if he finds no probable cause on the basis thereof, he can require submission of additional supporting affidavits of witnesses. There is nothing in Soliven that requires prosecutors to submit to the judge the complete records of the preliminary investigation especially if they are voluminous. Nor is there anything in Soliven that holds that the omission to physically submit the complete records of the case would constitutionally infirm a finding of probable cause by a judge even if it was made on the basis of an exhaustive prosecutor’s report or resolution. Indeed, in Webb vs. de Leon,[4] we sustained the finding of probable cause made by the trial judge even if the complete records of the preliminary investigation were not elevated to the said judge.

A revisit of our case law will reveal that what we condemned in the past as constitutionally impermissible was the practice of judges of totally relying on pro forma certifications of fiscals that they conducted a preliminary investigation and found probable cause that the accused committed the crime charged in the Information. These pro forma certifications usually consisted of a short sentence. They did not relate the relevant proceedings in the preliminary investigation nor did they calibrate the weight of diverse and dueling evidence submitted by the parties. These bare certifications carried no findings of fact and made no legal analysis which could be used by judges as a rational basis for a determination of probable cause. Thus, we laid down the jurisprudence that a judge

who determines probable cause by relying on such meaningless certifications violates the constitutional provision prohibiting issuance of warrants of arrest "x x x except upon probable cause to be determined personally by the judge x x x."

The case at bar does not involve these outlawed certifications. The respondent Court of Appeals found that the 17-page Joint Resolution of the prosecutors provided the trial judge with sufficient factual basis to find probable cause and to issue warrants of arrest against the petitioners. To repeat, the finding of probable cause against petitioners rests on two (2) critical facts established by evidence: one, that petitioners deviated from the Department of Trade and Industry rules when they required that only "349" crowns with security codes could win, and two, that petitioners attempted to substitute "134" for "349" as the winning number. The finding of deviation is based on the Task Force Report of the DTI, the relevant portion of which was liberally quoted in the prosecutors' Joint Resolution. The finding of attempt at substitution was taken from the affidavits of witness of the private respondents. Petitioners do not charge that the Task Force Report of the DTI and the affidavits of witnesses of the private respondents were incorrectly quoted by the prosecutors in their Joint Resolution. Thus, respondent judge need not be burdened by the duty of ordering the elevation of the complete records of the preliminary investigation to check the accuracy of the critical evidence as stated in the Joint Resolution.

The majority opinion also flays Judge Asuncion allegedly because "x x x he made no finding of probable cause x x x." I am not disposed to make this serious charge. When Judge Asuncion issued the warrants of arrest against petitioners, I assume as did the respondent Court of Appeals, that he had studied the Information and 17-page Resolution of the prosecutors and that he agreed with the prosecutors' finding of probable cause. It is unnecessary for him to issue an Order just to reiterate the findings of the prosecutors. It ought to be likewise underscored that before Judge Asuncion issued the warrants of arrest, the matter of probable cause was the subject of exhaustive pleadings before him. Thus, the parties submitted the following for the respondent judge's consideration: (1) Motions to Suspend Proceedings and to Hold Abeyance Issuance of Warrants of Arrest; (2) Motion for Issuance of Warrants of Arrest; (3) Supplemental Urgent Motion to Hold in Abeyance Issuance of Warrants of Arrest and to Suspend Proceedings; (4) Opposition to Motion to Defer Arraignment; (5) Objection and Opposition to Motion to Suspend Proceedings and to Hold in Abeyance the Issuance of Warrants of Arrest; and (6) Memorandum in Support of the Motion to Suspend Proceedings and to Hold in Abeyance the Issuance of the Warrants of Arrest. In these pleadings, the parties, especially the petitioners, discussed in length and in depth the findings of the prosecutors as contained in their 17-page Joint Resolution. It is, thus, erroneous to assume that the respondent judge had nothing before him when he ruled that there is probable cause to charge petitioners with estafa.

With due respect to the majority, the ruling that a judge should always order the elevation of the complete records of a preliminary investigation before proceeding with the task of reviewing the finding of probable cause made by prosecutors will exacerbate the mischief of delays in the disposition of criminal cases. This will not sit well with our people who are complaining that their continuing calls for speedy justice are only receiving dial tones from courts. The transcription of stenographic notes and the transfer of physical and documentary evidence, especially when voluminous, will consume time, result in loss of valuable evidence and aggravate the burden of litigants. It is my humble submission that the forwarding of complete records is not necessary when the prosecutor's report is exhaustive and accurate as in the case at bar.

#### IV

The majority has deviated from the general rule when it set aside the finding of probable cause made by the respondent Court of Appeals and the respondent trial judge. To be sure, this Court can restrain the prosecution of criminal cases. These exceptional cases are:[5]

- "a. To afford adequate protection to the constitutional rights of the accused (*Hernandez vs. Albano*, et al., L-19272, January 25, 1967, 19 SCRA 95);
  - b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (*Dimayuga, et al. vs. Fernandez*, 43 Phil. 304; *Hernandez vs. Albano*, supra; *Fortun vs. Labang*, et al., L-38383, May 27, 1981, 104 SCRA 607);
  - c. When there is a prejudicial question which is sub judice (*De Leon vs. Mabanag*, 70 Phil. 202);
  - d. When the acts of the officer are without or in excess of authority (*Planas vs. Gil*, 67 Phil. 62);
  - e. Where the prosecution is under an invalid law, ordinance or regulation (*Young vs. Rafferty*, 33 Phil. 556; *Yu Cong Eng vs. Trinidad*, 47 Phil. 385, 389);
  - f. When double jeopardy is clearly apparent (*Sangalang vs. People and Avendia*, 109 Phil. 1140);
  - g. Where the court has no jurisdiction over the offense (*Lopez vs. City Judge*, L-25795, October 29, 1966, 18 SCRA 616);
  - h. Where it is a case of persecution rather than prosecution (*Rustia vs. Ocampo*, CA-G.R. 4760, March 25, 1960);
  - i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto vs. Castelo*, 18 L. J. [1953], cited in *Ranoa vs. Alvendia*, CA-G.R. No. 30720-R, October 8, 1962, cf. *Guingona, et al. vs. City Fiscal*, L-60033, April 4, 1984, 128 SCRA 577); and
  - j. Where there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied (*Salonga vs. Pano, et al.*, L-59524, February 19, 1985, 134 SCRA 438).
7. Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners (*Rodriguez vs. Castelo*, L-6374, August 1, 1953). (cited in *Regalado*, Remedial Law Compendium, p. 188, 1988 Ed.)"

It must be stressed, however, that in these exceptional cases, the Court took the extraordinary step of annulling findings of probable cause either to prevent the misuse of the strong arm of the law or to protect the orderly administration of justice. The constitutional duty of this Court in criminal litigations is not only to acquit the innocent after trial but to insulate, from the start, the innocent from unfounded charges. For the Court is aware of the strains of a criminal accusation and the stresses of litigation which should not be suffered by the clearly innocent. The filing of an unfounded criminal information in court exposes the innocent to severe distress especially when the crime is not bailable. Even an acquittal of the innocent will not fully bleach the dark and deep stains left by a baseless accusation for reputation once tarnished remains tarnished for a long length of time. The expense to establish innocence may also be prohibitive and can be more punishing especially to the poor and the powerless. Innocence ought to be enough and the business of this Court is to shield the innocent from senseless suits right from the start.

I respectfully submit, however, that the peculiar facts obtaining in the case at bar do not warrant us to take the exceptional step of setting aside the finding of probable cause made by the respondent appellate court and the trial court. Their finding is supported by substantial evidence and the issuance of warrants of arrest against the petitioners to hold them for trial for estafa does not constitute misuse of prosecutorial powers. To be sure, petitioners will be exposed to the inconvenience of facing numerous similar criminal suits but so long as the inconvenience is no more than what is necessary to dispense justice, they have no cause to gripe for justice equally belongs to the private respondents. -

## V

It is also respectfully submitted that the Department of Justice did not act with grave abuse of discretion when it refused to review the City Prosecutor's Joint Resolution and dismissed petitioners' appeal. The applicable case law is *Crespo vs. Mogul, et al.*,<sup>[6]</sup> where we held:

"x x x

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.

In order therefore to avoid such a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court. The matter should be left entirely for the determination of the Court."

I concede that respondent judge Asuncion misread *Crespo* when he denied the prosecution's Motion to Defer Further Proceedings on the ground that "x x x to follow whatever opinion the Secretary of Justice may have on the matter would undermine the independence and integrity of this Court." I agree that *Crespo* did not prohibit the Department of Justice from reviewing resolutions of its prosecutors even if the proper informations have already been filed with the courts. *Crespo* merely counselled the Secretary of Justice to refrain from exercising said power of review "as far as practicable" taking into account the broader interest for a more orderly administration of justice. In exceptional instances where it is practicable for the Secretary of Justice to exercise the power of review, courts should not be heard to complain that their independence will be undermined. The dispensation of justice is not the monopoly of courts. It is as much the responsibility of the two other great branches of our government, the Executive and the Legislative.

Nevertheless, the refusal of the respondent Judge Asuncion to defer proceedings based on a misperception of *Crespo* is now of deminimis importance. The initial decision of the DOJ to review petitioners' case was due to its impression that the finding of probable cause made by the prosecutors of Quezon City was, at that time, open to honest contentions. This doubt, however, dissolved when no less than the respondent Court of Appeals sustained the finding of probable cause made by the respondent judge after an evaluation of the Joint Resolution of the Quezon City prosecutors. With the imprimatur of the respondent Court of Appeals on the existence of probable cause and following *Crespo*, it is no longer "practicable" for the DOJ to further review petitioners' case. Contrary to the impression of the majority, the appellate court affirmed the ruling of respondent judge on probable cause only after a long and deliberate study of the issue. The issue of probable cause was the subject of oral arguments and extensive pleadings before the appellate court which even directed the elevation of the original records of Criminal Case No. Q-93-43198. The probability that the DOJ will reach a finding different from the appellate court is nil considering that it will be reviewing the same set of evidence.

Finally, petitioners justify the need for DOJ to review their case in view of the latter's alleged contradictory rulings on cases brought by different parties involving the same controversy. The DOJ has denied the charge that

it has issued contradictory rulings. But if these contradictory rulings were truly rendered by DOJ, there is more reason for DOJ to let the issue be resolved by the courts. As ultimate arbiters of rights in conflict, only the courts can write finis to the controversy between petitioners and private respondents.

I vote to dismiss the petition.

[1] Hubert Webb vs. Hon. Raul E. de Leon, et al., G.R. No. 121234.

[2] 167 SCRA 397-398 [1998]; see also People vs. Inting, 187 SCRA 788 [1990]; Lim, Sr. vs. Felix, 194 SCRA 292 [1991].

[3] Lim, Sr. vs. Felix, 194 SCRA 292 [1991]; People vs. Inting, 187 SCRA 788 [1990]; Allado vs. Diokno, 232 SCRA 192 [1994].

[4] Supra.

[5] Brocka vs. Enrile, 192 SCRA 183,188-189 [1990].

[6] No. L-53373, June 30, 1987,151 SCRA 462, 471.

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