PUBLIC UTILITIES DEPARTMENT, OLONGAPO CITY, PETITIONER, VS. HON. TEOFISTO T. GUINGONA, JR., SECRETARY OF THE DEPARTMENT OF JUSTICE, AND CONRADO L. TIU, RESPONDENTS.

G.R. No. 130399. September 20, 2001

Ponente: BUENA, J.

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BUENA, J.:

This is a petition for review of the Decision of the Court of Appeals[1] promulgated on August 22, 1997 in CA-G.R. SP No. 39689, which affirmed the Resolution dated November 6, 1995 of respondent Secretary of Justice Teofisto Guingona which directed the Acting City Prosecutor of Olongapo City to "move for the withdrawal of the informations against the respondent for theft of electricity in relation to P.D. 401, if the same were already filed in court, xxx."

The antecedent facts of the case are undisputed:

Private respondent Conrado L. Tiu is the owner and manager of Conti's Plaza, a supermarket located at Rizal Avenue corner 21[st] Street, Olongapo City, and another establishment located at No. 46 Fendler Street, East Tapinac, Olongapo City. The electric power consumption of private respondent is supplied by petitioner Public Utilities Department.

Petitioner claimed that pursuant to its Power Loss Reduction Program, implemented with the assistance of Meralco, a digital recording ammeter, or load logger, was installed on November 25, 1992 at the primary line of Conti's Plaza to monitor its actual power utilization. It was later discovered that the KWH electric meter of Conti's Plaza failed to register the actual amount of its power consumption. The power loss to petitioner was computed at 86.08%. For the purpose of pinpointing the source of the power loss, private respondent was informed by petitioner that the KWH electric meter, current transformers and metering facilities of Conti's Plaza would be inspected.

The inspection was done on March 3, 1993 in the presence of private respondent Tiu's operations manager and lawyer. Meralco meter test crew checked the two (2) current transformers installed outside of Conti's Plaza using state-of-the-art phase angle test apparatus. The test showed that the polarity markings on the terminals of one of the two (2) current transformers were reversed or interchanged. This would counter-act the current of the other transformer. Consequently, the effective registration of the KWH electric meter of Conti's Plaza was only 10.71% with the corresponding power loss to the herein petitioner of 89.29%. When corrections were made, the KWH electric meter reflected the correct amount of electric consumption at Conti's Plaza. The unregistered consumption at Conti's Plaza for the billing period from November 8, 1988 until February, 1993, was pegged and valued in the amount of P9,364,267.00. Despite repeated demands to pay the said amount, respondent Tiu failed and refused to pay the same.

On March 17, 1993, the KWH electric meter installed at respondent Tiu's building located at No. 46 Fendler Street, East Tapinac, Olongapo City, was found to register 0-0 consumption. After a thorough inspection, it was

discovered that the potential link of the KWH meter installed at the second floor of the said building was disengaged. The KWH meter thus did not register any consumption.

Subsequently, petitioner filed a complaint for violation of City Ordinance No. 23, Series of 1989, and of Presidential Decree No. 401 for theft of electricity against private respondent.

After preliminary investigation, the office of the State Prosecutor dismissed the complaint.

On appeal, then Acting Secretary of the Department of Justice Demetrio Demetria concurred with the office of the State Prosecutor's findings that the violation of City Ordinance No. 23 had prescribed but found sufficient evidence to hold private respondent liable for theft of electricity.[2] Upon private respondent's filing of a motion for reconsideration, respondent Secretary of Justice reversed[3] the said ruling and directed the withdrawal of the information against private respondent for theft of electricity. This prompted petitioner to file a petition for certiorari with the Court of Appeals.

On August 22, 1997, the Court of Appeals promulgated its decision dismissing the petition for lack of merit. Hence, the present petition.

The only issue in this case is whether or not the Court of Appeals erred in ruling that the respondent Secretary of Justice did not commit grave abuse of discretion in issuing the Resolution of November 6, 1995.

Petitioner alleges that the Court of Appeals committed grave and serious reversible error in dismissing the petition for certiorari since the petitioner has established a prima facie case to prosecute private respondent for two (2) counts of theft of electricity.

Petitioner argues that the purpose of a preliminary investigation is not to determine whether the accused is guilty beyond reasonable doubt of the crime charged, but merely whether there existed a probable cause for his prosecution, i.e., whether there is sufficient ground to engender a well-founded belief that a crime has been committed; that the respondent is probably guilty thereof and should be held for trial. Petitioner submits that it is sufficient to adduce evidence which inclines the mind to believe, without necessarily leaving room for doubt, that the accused is guilty of a crime and should be held for trial.

In support of its petition, petitioner cites then Acting Secretary of Justice Demetrio G. Demetria's resolution, to wit:

> "Assuming there is no direct proof that respondent caused the tampering of the electric meters either by disengaging the polarity thereof or causing the unauthorized electrical connections, there is ample circumstantial evidence to prove his culpability. Thus, `circumstantial evidence is sufficient for conviction if: (a) there is more than one circumstance; (b) the facts from which the inference are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.' (Section 5, Rule 133, Revised Rules of Court).
>
> "The following circumstances have been shown, to wit:
>
> "In I.S. No. 339 -
>
> "1. That respondent provided the required electric meters and current transformers (CTs) installed at his business premises;
>
> "2. That complainant's installation crew simply followed the standard metering principle in connecting the current transformers to the KWH meter as respondent's technicians prepared all electrical connections;
>
> "3. That it was discovered by the MERALCO meter test crew that the two CTs had their polarity markings

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> tampered, resulting in that the tampered marking of the polarity of the CTs led to a wrong connection of the KWH meter which, consequently, registered a 10.71% electric consumption only, with a power loss of 89.29% to complainant;
>
> "4. That after the wiring connection was reversed, the rotation pace of the meter increased to almost 675%;
>
> "In I.S. No. 506, aside from the first and second circumstances above-mentioned, additional circumstances were also noted, thus:
> "1. That when inspected by complainant's team, meter No. 26439328 reflected zero consumption;
>
> "2. That the potential link in the said electric meter at the second floor was disengaged resulting in the meter not registering any electric consumption;
>
> "3. That respondent transferred the load of his appliances and equipment from the first floor of the building to the second floor where the tampered meter is located;
>
> "4. That when complainant's team disconnected the loadside of the meter, a spark was produced, indicating that there were loads attached to the tampered meter;
>
> "5. That an inventory of the electrical connections to the tampered meter revealed that respondent installed electrical connections without the consent of complainant, the electrical consumption of the connections thereby not being reflected in the tampered meter.

"The above-enumerated unbroken chain of events leads to the unmistakable conclusion that respondent, to the exclusion of others, was the author of the crime."[4]

Petitioner further argues that it is not necessary to prove directly that respondent Tiu did the tampering himself for a contrary rule would make the prosecution of power theft and pilferage next to impossible.

After a careful examination of the assailed decision and resolutions, and the pleadings filed by both parties, the Court finds the instant petition to be without merit.

The holding of a preliminary investigation is a function of the Executive Department and not of the Judiciary.[5] The primary objective of a preliminary investigation is to free a respondent from the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt has been passed upon in a more or less summary proceeding by a competent officer designated by law for that purpose. Secondly, such summary proceeding also protects the state from the burden of unnecessary expense and effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges.[6] The decision whether or not to dismiss the complaint against private respondent is necessarily dependent on the sound discretion of the prosecuting fiscal and, ultimately, that of the Secretary of Justice.[7]

Decisions or resolutions of prosecutors are subject to appeal to the Secretary of Justice who, under the Revised Administrative Code, exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, nullify, reverse or modify their rulings.[8]

When the respondent Secretary of Justice, in his Resolution of November 6, 1995, reversed the findings of Acting Secretary of Justice Demetria, in the Resolution dated May 18, 1995, it was done in the exercise of his power of review, which rests upon his sound discretion.

The Resolution of the Secretary of Justice may be reviewed by the court. However, the court is without power to directly decide matters over which full discretionary authority has been delegated to the legislative or executive branch of the government. It is not empowered to substitute its judgment for that of the Congress or of the President when they did not act in grave abuse of discretion.

Thus, although it is entirely possible that the investigating fiscal may erroneously exercise the discretion lodged in him by law, this does not render his act amenable to correction and annulment by the extraordinary remedy of certiorari, absent any showing of grave abuse of discretion amounting to excess of jurisdiction.[9]

This Court finds that the Court of Appeals did not err in ruling that the respondent Secretary of Justice did not act in grave abuse of discretion in directing the Acting City prosecutor of Olongapo City to move for the withdrawal of the informations against the private respondent for theft of electricity.

Findings of the Secretary of Justice are not subject to review unless shown to have been made with grave abuse.[10]

In its Resolution, respondent Secretary of Justice made the following ratiocination:

> "We could not lend credence to the claim of the complainant that respondent stole electricity in view of the findings of the Meralco meter test crew that the polarity markings of the terminals of one of the current transformers were reversed or interchanged. The assumption derived from this finding is hardly persuasive. Even after the correction of the perceived defect in the current transformers, there was no material and substantial increase in the KWH consumption of the respondent.
>
> "xxx the respondent cannot be faulted for the reversed or interchanged polarity markings. The current transformers, prior to their installation, were duly verified, tested and examined by authorized personnel of the complainant. They were installed after they were verified to be fit for service and were approved for connection on 4 October 1988 by the complainant. The respondent, therefore, could not have caused the reversal or the interchange of the markings. In fact, the witness for the complainant, Mr. Jose Ricky V. Tan, even stated that since the current transformer were old, he could not determine if the polarity markings were changed or not."
>
> "xxx Thus, we affirmed your findings that:
> `x x x. As correctly pointed out by respondent, it is not possible for him to disconnect the potential link after its installation because there would be some initial reading that will be registered. Since the reading is 0-0 from the time of its installation up to the time it was discovered on March 17, 1993, the only logical explanation for the 0-0 reading is that the potential link was never engaged/connected when the new meter was installed. This is buttressed by the fact that when the subject electric meter was inspected on March 17, 1993, the seal was still intact and there is no evidence of tampering. Whoever initially installed said electric meter failed to connect the potential link before covering or sealing the meter. Certainly, we cannot blame respondent for the inefficiency or incompetence of others. The fact that it was respondent who informed the PUD (complainant) that one of his electric meters has a 0-0 reading after receiving his monthly billing negates bad faith or deliberate intent on the part of the respondent to violate P.D. 401.'"[11]

Comparing the alleged circumstantial evidence enumerated by the petitioner and the ratiocination made by the respondent Secretary of Justice, the Court finds that no sufficient evidence of guilt and no prima facie case has been presented by petitioner to compel the fiscal to prosecute the case of theft of electricity against private respondent.

In Quiso vs. Sandiganbayan,[12] this Court pointed out that:

> "x x x[A] fiscal by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to support the allegations thereof. Although this power and prerogative xxx is not absolute and subject to judicial review, it would be embarrassing for the prosecuting attorney to be compelled to prosecute a case when he is in no position to do so, because in his opinion he does not have the necessary evidence to secure a conviction, or he is not convinced of the merits of the case."

We reiterate the ruling of this Court in Quiso vs. Sandiganbayan[13] and in Jacob vs. Puno,[14] that certiorari will

not lie to compel the respondent Secretary of Justice to file a case if he thinks the evidence does not warrant it. Otherwise, he will be committing a dereliction of duty.

WHEREFORE, there being no showing of grave abuse of discretion on the part of public respondent which would warrant the overturning of its decision, the instant petition is DISMISSED and the assailed Decision of the Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

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[1] Per Justice Antonio M. Martinez, concurred in by Justices Lourdes K. Tayao-Jaguros and Salvador J. Valdez, Jr.

[2] Resolution dated May 18, 1995, Annex "B" of Petition, Rollo, pp. 33-37.

[3] Resolution dated November 6, 1995, Annex "C" of Petition, Rollo, pp. 38-40.

[4] Resolution dated May 18, 1995, pp. 4-5; Rollo, pp. 36-37.

[5] Larranaga vs. Court of Appeals, 287 SCRA 581 [1998].

[6] Ledesma vs. Court of Appeals, 278 SCRA 656 [1997].

[7] DM Consunji, Inc. vs. Esguerra, 260 SCRA 74 [1996].

[8] Ledesma vs. Court of Appeals, 278 SCRA 656 [1997].

[9] DM Consunji, Inc. vs. Esguerra, 260 SCRA 74 [1996].

[10] Joaquin, Jr. vs. Drilon, et al., 302 SCRA 225 [1999].

[11] Resolution dated November 6, 1995 of the respondent Secretary of Justice.

[12] 149 SCRA 108 [1987].

[13] Ibid.

[14] 131 SCRA 145 [1984].

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