

NOEL ADVINCULA, PETITIONER, VS. HON. COURT OF APPEALS, HON. SOLICITOR GENERAL, HON. EDELWINA PASTORAL, PRESIDING JUDGE, RTC – BR. 91, BACOR, CAVITE, HON. HERMINIO P. GERVACIO, ...

G.R. No. 131144. October 18, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

NOEL ADVINCULA, in this petition for review, assails the Decision of the Court of Appeals which set aside the resolution of the Secretary of Justice ordering the Provincial Prosecutor of Cavite to file an Information for Illegal Possession of Firearms against private respondents Amando Ocampo and Isagani Ocampo.

As found by the Court of Appeals, on 1 October 1993 at around three o'clock in the afternoon, private respondent Isagani Ocampo was on his way home when petitioner Noel Advincula and two (2) of his drinking companions started shouting invectives at him and challenging him to a fight. Petitioner, armed with a bolo, ran after Isagani who was able to reach home and elude his attackers. Petitioner kept cursing Isagani who eventually left. A certain Enrique Rosas told private respondent Amando Ocampo, father of Isagani, that petitioner had chased his son with a bolo. Amando then got his .22 caliber gun, which he claimed was licensed, and confronted petitioner who continued drinking with his friends. But petitioner threatened to attack Amando with his bolo, thus prompting the latter to aim his gun upwards and fire a warning shot. Cooler heads intervened and Amando was pacified. He left to check on his son. Later, however, he saw petitioner's drinking companions firing at petitioner's house.[1]

Petitioner however has a different version. According to him, on 1 October 1993 he and his friends were having a conversation outside his house when Isagani passed by and shouted at them. This led to a heated argument between him and Isagani. Then Isagani left but returned with his father Amando and brother Jerry. Isagani and Amando were each armed with a gun and started firing at petitioner who ran home to avoid harm but private respondents Isagani and Amando continued shooting, hitting petitioner's residence in the process.[2]

A series of criminal complaints were filed by petitioner on one hand and private respondents on the other. But the controversy in this petition arose from the complaint filed by petitioner on 5 April 1994 for Illegal Possession of Firearms against private respondents before the Provincial Prosecutor of Cavite. Petitioner's complaint was supported by his complaint-affidavit, the affidavit of one Federico San Miguel, photocopies of photographs showing bullet holes on petitioner's residence, and certification of the Firearms and Explosives Unit of the Philippine National Police that private respondents had no records in that office.

After private respondents submitted their counter-affidavits, the Assistant Provincial Prosecutor, with the approval of the Provincial Prosecutor, dismissed on 26 May 1994 petitioner's complaint against private respondents for Illegal Possession of Firearms for lack of evidence. According to the Provincial Prosecutor -

After a close and careful study of the records of the instant case, undersigned finds and so holds that the

evidence presented by the complainant is not sufficient to engender a well founded belief that the crime for Illegal Possession of Firearms has been committed and the respondents are probably guilty thereof. While it is true that respondent Amando Ocampo was possessing a gun on the date of the incident per the allegations in his counter-affidavit that he fired a gun upwards to prevent complainant from further assaulting him yet the possession of said firearm cannot be considered illegal or unlawful as the same is covered by a firearm license duly issued by the chief of the Firearm and Explosives Office.

With respect to respondent Isagani Ocampo, no convincing evidence has been presented by the complainant except the allegations appearing in his affidavit and that of his witness which is not sufficient to establish a prima facie case for charging the former with Illegal Possession of Firearms. Even the slug depicted in the xeroxed photo copies marked as Annex "E" of the complaint do not show that said slugs were fired from different firearms hence it can be presumed that the same were fired from the gun of respondent Amando Ocampo an indication that during the incident, only the latter was in possession of a firearm.[3] On 21 October 1994 petitioner filed a petition for review with the Secretary of Justice insisting that the pieces of evidence he presented before the Provincial Prosecutor were sufficient to make a prima facie case against private respondents and prayed that the dismissal of his complaint be set aside. Private respondents filed their opposition thereto stating in essence that Amando's gun was licensed and that there was no proof other than petitioner's self-serving statement that Isagani had carried a firearm.

In his Resolution of 6 June 1996 the Secretary of Justice granted petitioner's appeal and ordered the Provincial Prosecutor of Cavite to file the corresponding charges of Illegal Possession of Firearms against private respondents. As the Secretary of Justice held - There is no dispute as to the fact that respondent Amando Ocampo, by his own admission, was in possession of a firearm. His defense that it was duly licensed, however, by the records of the Firearms and Explosives Office (FEO). Granting, however, that said firearm was duly licensed by the Philippine National Police, no evidence was submitted to prove that he is possessed of the necessary permit to carry the firearm outside of his residence. In other words, his possession of the firearm, while valid at first, became illegal the moment he carried it out of his place of abode.

With regard to respondent Isagani Ocampo, his bare denial cannot overcome his positive identification by complainant and his witnesses. Physical evidence, such as the bullet marks on the walls of complainant's residence, indeed strengthen the latter's allegation that respondents actually fired at him. The case was nevertheless dismissed on the ground of lack of evidence. This is erroneous. In cases falling under violations of PD 1866, it is not indispensable that the firearm used be presented in evidence as long as the possession and use thereof have been duly established by the testimony of several witnesses. (*People v. Jumanoy*, 221 SCRA 333).[4]

On 25 June 1996, pursuant to the Resolution of the Secretary of Justice, the Provincial Prosecutor of Cavite filed two (2) separate Informations against Amando and Isagani Ocampo for Illegal Possession of Firearms before the Regional Trial Court of Bacoor, Cavite, docketed as Crim. Case No. B-96-141 and B-96-142, respectively. On 17 December 1996, private respondents filed a Petition for Certiorari and Prohibition under Rule 65 of the Rules of Court with a prayer for Preliminary Injunction and Temporary Restraining Order with the Court of Appeals questioning the Resolution of the Secretary of Justice.

In giving due course to private respondents' petition, the Court of Appeals agreed with the position of the Solicitor General -

A judicious examination of the records will show that there is no probable cause to hail petitioners for trial for illegal possession of firearms.

The weakness of the case against petitioners is highlighted by the failure of the Information to allege the identity of the firearms allegedly possessed by petitioners at the time of the incident. No guns were seized or

recovered from them. There is no corpus delicti. It could not therefore be ascertained with verisimilitude that petitioners did not have the license to possess or carry guns. Given the mutual recriminations which were generated by the incident, it would have been facile for any of the protagonists to concoct a charge of illegal possession of firearms against their adversary x x x x In crimes involving illegal possession of firearms, the prosecution has the burden of proving the elements thereof, viz.: The existence of the subject firearm and the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess the same. Negative allegation of the lack of a license is an essential ingredient of the offense which the prosecution must prove. How could the people prove beyond reasonable doubt that petitioners committed the offense of illegal possession of firearms when the firearms are not even identified with certainty x x x x[5]

On the basis of the evidence on record, the Court of Appeals granted private respondents' petition and set aside the disputed Resolution of the Secretary of Justice. Hence, this petition.

The main issue to be resolved is whether the Court of Appeals erred in granting private respondents' petition and in setting aside the Resolution of the Secretary of Justice. In determining this question, we need to address these questions: (a) Was there sufficient evidence to warrant the filing of charges for Illegal Possession of Firearms against private respondents; and (b) May the Court of Appeals set aside the Decision of the Secretary of Justice when the corresponding Information has already been filed with the trial court?

The Court of Appeals found that no charges for Illegal Possession of Firearms could be filed against private respondents for two (2) reasons: First, as to private respondent Amando Ocampo, he had the requisite license to possess the firearm, which was established by sufficient evidence on record. Second, as to private respondent Isagani Ocampo, there was no convincing evidence that he was in possession of a gun during the incident involving him, his father and petitioner, except for the eyewitness account of petitioner and one Federico San Miguel.

Indeed, the rule is well settled that in cases of Illegal Possession of Firearms, two (2) things must be shown to exist: (a) the existence of the firearm, and (b) the fact that it is not licensed.[6] However, it should be noted that in *People v. Ramos*,[7] citing *People v. Gy Gesiong*,[8] this Court ruled: " x x x x Even if he has the license, he cannot carry the firearm outside his residence without legal authority therefor."

This ruling is obviously a reiteration of the last paragraph of Sec. 1 of PD 1866 -

Sec. 1. - Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition x x x x The penalty of prison mayor shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor.

The Secretary of Justice, in his contested Resolution, thus made the following findings: Even if Amando had the requisite license, there was no proof that he had the necessary permit to carry it outside his residence; and Isagani's plain denial could not overcome his positive identification by petitioner that he carried a firearm in assaulting him. These are findings of fact supported by evidence which cannot be disturbed by this Court.

Besides, the rulings relied upon by the Court of Appeals and private respondents deal with the quantum of evidence needed to convict persons for Illegal Possession of Firearms. This petition arose from a case which was still in its preliminary stages, the issue being whether there was probable cause to hold private respondents for trial. And probable cause, for purposes of filing criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The determination of its existence lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party.[9] Their decisions are reviewable by

the Secretary of Justice who may direct the filing of the corresponding information or to move for the dismissal of the case.[10] The procedure is in no wise in the nature of a trial that will finally adjudicate the guilt or innocence of private respondents. The requisite evidence for convicting a person of the crime of Illegal Possession of Firearms is not needed at this point. It is enough that the Secretary of Justice found that the facts, as presented by both petitioner and private respondents, would constitute a violation of PD 1866. Hence, the Secretary of Justice did not commit grave abuse of discretion in directing the filing of criminal Informations against private respondents, and clearly, it was error for the Court of Appeals to grant private respondents' petition for certiorari.

The Court of Appeals also took note of the fact that petitioner's appeal to the Secretary of Justice was filed out of time. Per DOJ Circular No. 7 dated 25 January 1990, the aggrieved party has fifteen (15) days to appeal resolutions of, among others, the Provincial Prosecutor dismissing a criminal complaint. Petitioner filed his appeal four (4) months after receiving the Provincial Prosecutor's decision dismissing his complaint. This notwithstanding, the Secretary of Justice gave due course to the appeal. It can be surmised then that DOJ Circular No. 7, while aimed at facilitating the expeditious resolution of preliminary investigations, does not tie the hands of the Secretary of Justice if he thinks that injustice will result from the dismissal of the criminal complaint when there is a good ground to file it.

Assuming arguendo that the Secretary of Justice was not able to establish probable cause to direct the Provincial Prosecutor to file the charges of Illegal Possession of Firearms against private respondents, the filing of the Petition for Certiorari with the Court of Appeals was not the proper remedy for private respondents. It should be noted that when the Petition was filed, the Information was already filed by the Provincial Prosecutor with the Regional Trial Court of Bacoor, Cavite. The criminal case commenced from that time at its course would now be under the direction of the trial court. As we held in *Crespo v. Mogul* - [11]

The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court x x x x While it is true that the fiscal has the quasi judicial discretion to determine whether or not a criminal case should be filed in court, once the case had already been brought to court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court. The only qualification is that the action of the Court must not impair the substantial rights of the accused, or the right of the People to due process of law.

Whatever irregularity in the proceedings the private parties may raise should be addressed to the sound discretion of the trial court which has already acquired jurisdiction over the case. Certiorari, being an extraordinary writ, cannot be resorted to when there are other remedies available. Private respondents could file a Motion to Quash the Information under Rule 117 of the Rules of Court, or let the trial proceed where they can either file a demurrer to evidence or present their evidence to disprove the charges against them. It is well settled that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final, subject to certain exceptions, e.g., when the determination of probable cause is done with grave abuse of discretion,[12] or where a sham preliminary investigation was hastily conducted,[13] or where it is necessary for the courts to do so for the orderly administration of justice or to prevent the use of the strong arm of the law in an oppressive and vindictive manner.[14] None of these exceptions is present in the instant case. Hence, the Court of Appeals erred in granting private respondents' Petition for Certiorari and, worse, setting aside the Resolution of the Secretary of Justice.

WHEREFORE, the instant petition for review is GRANTED and the assailed Decision of the Court of Appeals is REVERSED. The Resolution dated 6 June 1996 of the Secretary of Justice is REINSTATED.

SO ORDERED.

Mendoza, Quisumbing, and De Leon, Jr., JJ., concur. Buena, J., no part, concurred in CA decision.

[1] See Affidavits of Isagani Ocampo and Amando Ocampo submitted to the police; CA Rollo, pp. 34 and 36.

[2] Rollo, pp. 6-7.

[3] CA Rollo, pp. 79-80.

[4] Rollo, pp. 63-64.

[5] Rollo, pp. 35-36.

[6] *People v. Ramos*, G.R. Nos. 101804-07, 25 May 1993, 222 SCRA 557; *People v. Arce*, G.R. Nos. 101833-34, 26 October 1993, 227 SCRA 406; *People v. Luwalhati*, G.R. Nos. 105289-90, 21 July 1994, 234 SCRA 327, cited by the Court of Appeals in its Decision, Rollo, pp. 38-39.

[7] See Note 6.

[8] 60 Phil. 614 (1934).

[9] Sec. 1, and Sec. 4, par. 1, Rule 112, Rules of Court.

[10] Sec. 4, last par., Rule 112, Rules of Court.

[11] G.R. No. 53373, 30 June 1987, 151 SCRA 462.

[12] *Roberts, Jr. v. Court of Appeals*, G.R. No. 113930, 5 March 1996, 254 SCRA 307.

[13] *Brocka v. Enrile*, G.R. Nos. 69863-65, 10 December 1990, 192 SCRA 183; *Allado v. Diokno*, G.R. No. 113630, 5 May 1994, 232 SCRA 192.

[14] See Note 11. But see also *Allado v. Diokno*, Note 13.

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