

**HERNANI N. FABIA, PETITIONER, VS. COURT OF APPEALS,
DEPARTMENT OF JUSTICE, OFFICE OF THE CITY PROSECUTOR OF
MANILA, RTC-BR. 22, MANILA AND THE MARITIME TRAINING
CENTER OF...**

G.R. No. 132684. September 11, 2002

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This resolves the 9 October 2001 Motion for Clarification of Judgment filed by private respondent which seeks the elucidation of the 20 August 2001 Decision of this Court by praying that the Regional Trial Court of Manila that will hear Crim. Case No. 98-162570 be directed to arraign petitioner, try the case and render judgment thereon as the facts may warrant.

It will be recalled that in the subject Decision of 20 August 2001 this Court reversed and set aside the Decision of the Court of Appeals of 12 November 1997 as well as its Resolution of 9 February 1998, this Court holding that Crim. Case No. 98-162570 involves an intra-corporate dispute over which the Securities and Exchange Commission (SEC) has jurisdiction and not the regular courts. Cognizant however that The Securities Regulation Code (RA 8799) amending PD 902-A has effectively vested upon the Regional Trial Courts jurisdiction over all cases formerly cognizable by the SEC, this Court ordered that Crim. Case No. 98-162570 be transferred to the appropriate branch of the Regional Trial Court of Manila tasked to handle intra-corporate matters pursuant to A.M. No. 00-11-3-SC.

As the motion for clarification in effect urges the reversal of the questioned Decision of the Court of Appeals, this Court in its Resolution of 12 November 2001 resolved to treat the motion of private respondent MTCP as a motion for reconsideration and required petitioner to file his comment thereon.

In his Comment petitioner Fabia prays for the denial of MTCP's motion, arguing that it does not assign any error on the findings and conclusions of law made by this Court as it in fact even accepted the ratio decidendi behind the resolution of the case. Petitioner likewise insists that there is no ambiguity in the Decision as it clearly mandates the dismissal of the criminal case for estafa filed against him after a finding that the matter involved an intra-corporate dispute within the jurisdiction of the SEC.

In its Reply private respondent MTCP stresses that Crim. Case No. 98-162570 remains to be a criminal proceeding and may not be converted into an administrative action. It reasons that the substance of the assailed Decision of the Court of Appeals that there is probable cause to indict petitioner for the crime of estafa was after all not reversed by the Decision of this Court of 20 August 2001 as only the procedural aspect was modified.

In its Resolution of 17 April 2002 this Court set the case for oral argument on 16 June 2002 during which the principal issue was defined and discussed: Whether the prosecution for violation of PD 902-A as amended by RA 8799 is without prejudice to any liability for violation of The Revised Penal Code.

Petitioner Fabia argues that there is no ambiguity in the Decision as it clearly mandates the dismissal of the criminal case filed before the RTC of Manila upon the Court's finding that the matter involves an intra-corporate dispute within the jurisdiction of the SEC, and not of the regular courts. Petitioner concedes that the dismissal of the criminal action is without prejudice to the filing of an intra-corporate/civil case for violation of PD 902-A as amended by RA 8799 before the RTC which currently exercises jurisdiction over corporate matters. However, invoking the doctrine of primary jurisdiction, petitioner reasons that his corporate/civil prosecution must first be resolved before the criminal action could be filed. Citing *Saavedra v. Securities and Exchange Commission*,^[1] petitioner argues that under the doctrine of primary jurisdiction the public prosecutor in the instant case has no authority to rule in a preliminary investigation on a criminal charge arising from an intra-corporate dispute absent prior resolution of the SEC on the matter. Petitioner notes that *Saavedra* does not deprive the public prosecutors of their jurisdiction to determine the propriety of filing criminal cases, but merely calls for a deferment of the exercise of such criminal jurisdiction pending prior determination by the pertinent administrative agency of the issues involved in the case. Petitioner contends that a violation of the doctrine of primary jurisdiction is jurisdictional in nature and is not rendered moot by RA 8799.

Petitioner also avers that RA 8799 is not a curative statute and hence cannot apply retroactively. He explains that curative statutes are intended to retroactively apply to cases pending before their enactment to supply defects, abridge superfluities in the existing law and curb certain evils, or to correct a situation involving conflicting jurisdictions - curative effects which are not evident under RA 8799 as the legislative intent on the transfer of jurisdiction over SEC cases to the regular courts is merely to enable the SEC to concentrate more on its regulatory functions.

Petitioner stresses that prior to RA 8799 it was the SEC which had primary jurisdiction over the instant controversy as the governing law then was PD 902-A. He argues that a subsequent law cannot apply retroactively so as to confer jurisdiction upon the city prosecutor and/or regular courts to render a decision which under the law applicable at the time of the rendition of the decision was clearly outside the competence of the prosecutor or the courts. He clarifies that RA 8799 has retroactive application only insofar as it applies to cases pending before the SEC and have not yet been submitted for resolution upon its effectivity.

Respondent MTCP does not agree. It maintains that Crim. Case No. 98-162570 subsists, and simultaneously with it, a civil case may be filed for violation of RA 8799. It argues that petitioner is being prosecuted for fraud defined and penalized under The Revised Penal Code which is not a law administered by the SEC; hence, the SEC has no jurisdiction over the criminal case as it lies with the regular courts. It contends however that a civil/intra-corporate case may be filed and prosecuted simultaneously with the criminal case. It argues that the doctrine of primary jurisdiction does not apply as there is no controversy between petitioner and private respondent pending before the SEC or any administrative agency since it filed a criminal complaint.

Respondent further claims that RA 8799 rendered the doctrine of primary jurisdiction moot and academic since the rationale behind the prior referral of intra-corporate controversies to the then SEC before the public prosecutor could act on them for purposes of criminal prosecution, i.e., to implore the special knowledge, experience and services of the administrative agency to ascertain technical and intricate matters, no longer stands since the newly enacted law recognizes that the regular courts now have the legal competence to decide intra-corporate disputes. Respondent also argues that *Saavedra* is not applicable since it involved a pure and simple intra-corporate controversy, i.e., the ownership of stocks in a corporation, which is far different from the criminal nature of the instant case.

MTCP likewise claims that RA 8799 has rendered moot and academic the issue of jurisdiction. It argues that when a case is filed with the court which originally has no jurisdiction over the case but in the meantime a law is

passed vesting that court with jurisdiction to try the case, the jurisdiction of that court will be sustained on the theory that the enabling law is curative in nature and therefore has retroactive effect. It notes that before the jurisdictional issue on the authority of the Office of the Public Prosecutor of Manila to conduct a preliminary investigation of what was claimed to be an intra-corporate controversy was resolved with finality, the criminal case had already been filed with the RTC and, in the meantime, RA 8799 was enacted transferring the intra-corporate jurisdiction of the SEC to the RTC. There is thus no cogent reason to divest the RTC of jurisdiction that it has already acquired over the case.

Section 5 of PD 902-A pertinently provides that the SEC shall have jurisdiction to hear and decide cases involving (a) devices or schemes employed by, or any acts of, the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the Commission, and (b) controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively.

In synthesis, Sec. 5 of PD 902-A mandates that cases involving fraudulent actions and devices which are detrimental to the interest of stockholders, members or associates and directors of the corporation are within the original and exclusive jurisdiction of the SEC. Taken in conjunction with Sec. 6 of the same law, it will be gathered that the fraudulent acts/schemes which the SEC shall exclusively investigate and prosecute are those "in violation of any law or rules and regulations administered and enforced by the Commission" alone. This investigative and prosecutorial powers of the SEC are further "without prejudice to any liability for violation of any provision of The Revised Penal Code."

From the foregoing, it can thus be concluded that the filing of the civil/intra-corporate case before the SEC does not preclude the simultaneous and concomitant filing of a criminal action before the regular courts; such that, a fraudulent act may give rise to liability for violation of the rules and regulations of the SEC cognizable by the SEC itself, as well as criminal liability for violation of the Revised Penal Code cognizable by the regular courts, both charges to be filed and proceeded independently, and may be simultaneously, with the other.

It can be discerned from the affidavit-complaint of MTCP President Exequiel B. Tamayo that he sufficiently alleged acts sufficient to constitute the crime of estafa as well as to give rise to a prosecution for violation of PD 902-A. The affidavit-complaint alleged that petitioner Fabia failed to liquidate his cash advances amounting to P1,291,376.61. These cash advances were drawn by petitioner in his capacity as then president of the corporation and include those which were taken purportedly for the purpose of buying office equipment and appliances which petitioner however failed to deliver despite demands as he apparently had converted or misappropriated it to his own use and benefit to the prejudice and damage of respondent MTCP.

These incidents are cognizable not only by the then intra-corporate jurisdiction of the SEC but could also very well fall within the criminal jurisdiction of the regular courts. The acts charged may be in the nature of an intra-corporate dispute as they involve fraud committed by virtue of the office assumed by petitioner as President, Director and stockholder in MTCP, and committed against the MTCP corporation, and therefore violative of SEC rules and regulations. An intra-corporate controversy involves fraudulent actions and devices which are detrimental to the interest of stockholders, directors and the corporation. It is one which arises between stockholders and the corporation. In *Abejo v. de la Cruz*,^[2] the Court held that there is no distinction, qualification nor any exemption whatsoever, as the provision is broad and covers all kinds of controversies between stockholders and corporations. The alleged failure of petitioner to liquidate and settle his cash advances with respondent MTCP despite demand qualifies as one such controversy.

In the same vein, the alleged fraudulent acts constitute the elements of abuse of confidence, deceit or fraudulent means, and damage under Art. 315 of The Revised Penal Code on estafa. In this case, the relationship of the party-litigants with each other or the position held by petitioner as a corporate officer in respondent MTCP during the time he committed the crime becomes merely incidental and holds no bearing on jurisdiction. What is essential is that the fraudulent acts are likewise of a criminal nature and hence cognizable by the regular courts.

Be that as it may, petitioner argues that a charge of estafa against him cannot prosper. He insists that no finding of probable cause may be made against him during a preliminary investigation as a question of accounting still exists between him and private respondent. Respondent MTCP believes otherwise.

We hold for respondent. Probable cause has been defined as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[3] It has been explained as a reasonable presumption that a matter is, or may be, well founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged, as there is a trial for the reception of evidence of the prosecution in support of the charge.[4]

Respondent MTCP through its President Exequiel B. Tamayo alleges that petitioner Fabia, as then president of the corporation, drew cash advances from the corporation in huge amounts which he failed to liquidate despite demand. Respondent also claims that certain cash vouchers show that cash was received by petitioner for the purpose of procuring office equipment and materials which upon inventory however failed to materialize. These accusations infer that the acquisitions were facilitated through the office or position occupied by petitioner and as a consequence of which respondent was in dire straits to pay its loan of P850,000.00 owing to the Bank of the Philippine Islands (BPI) - circumstances which make up the elements of abuse of confidence and damages and give rise to the presumption or reasonable belief that the offense of estafa has been committed and thus the filing of an Information against petitioner is warranted.

Petitioner disagrees and contends that a proper accounting of the amount owing from him should first be conducted before probable cause for estafa can be established since a discrepancy of the amounts allegedly owed by him exists, i.e., the Information for estafa declares a balance of P1,291,376.61 while the audit report of MTCP's external auditor and its Treasurer's report declare the amounts of P1,333,699.89 and P766,135.05 respectively.

Prior accounting is not an element of the offense and hence its absence would not preclude the finding of probable cause for estafa against petitioner. In fact, accounting does not seem to be inexistent in this case, as the records show that it has been conducted on two (2) occasions by two (2) separate entities - the auditing firm of Mendoza Ignacio Corvera and Company, and MTCP's own Treasurer, only that petitioner deems it defective due to the divergent amounts computed by the two (2) entities as allegedly owed by him.

In his Reply-Affidavit petitioner admits that the auditing firm of Mendoza Ignacio Corvera and Company determined his accountability to MTCP to be P1,291,376.61 but alleges that he was not furnished copy of the audit report thus he doubts that it was ever conducted. MTCP on the other hand claims that petitioner was notified thereof through an audit report, a copy of which petitioner himself had attached in his Comment dated 15 May 1998 and his Petition before the Court of Appeals dated 2 May 1997. Given that the defense mounted by the

petitioner calls for an inquiry into the authenticity of the documents he relies upon, a judicial determination, not a preliminary investigation, would be the proper occasion to ferret out the truth.

Petitioner's reliance on *Perez v. People*,^[5] *U.S. v. Camara*,^[6] and *U.S. v. Berbari*^[7] which held that there can be no estafa where a previous settlement of an account is necessary to determine the balance owing the offended party is misplaced. As correctly discerned by the Department of Justice, the present case involves a determination of probable cause, while the *Perez*, *Camara* and *Berbari* cases delved into an inquiry on guilt beyond reasonable doubt. Therein, the accused had all undergone trial and were found guilty of the offense charged but were acquitted on appeal for lack of proof beyond reasonable doubt. In the present case, the only issue is whether or not there is probable cause to warrant the filing of the Information for estafa, which issue is resolved in the affirmative.

Concededly, the proper case in point is *Cruz v. People*^[8] where the president of the corporation was likewise charged with estafa through falsification of public documents for fraud he committed against the corporation. During preliminary investigation, the president invoked the defense that the cash advances were loans to him that he had already paid - the same line of defense herein petitioner Fabia is pursuing. In that case, the Court ruled that such a defense does not defeat probable cause and such is best ventilated in the trial court. Thus, petitioner's defense of accounting does not ipso facto clear him of prima facie guilt. Being a matter of defense, its validity needs to be tested in the crucible of a full-blown trial.

In that connection, petitioner in his Reply-Affidavit vehemently disclaimed any liability for the amount demanded from him as he had already fully liquidated his cash advances and averred that the complaint was instigated by those who would like to discredit him and tarnish his name, and had attached copies of vouchers and checks to prove his innocence. The presence or absence of the elements of the crime are evidentiary in nature and are matters of defense, the truth of which can best be passed upon after a full-blown trial on the merits. Litigation will prove petitioner's innocence if his defense be true.

The criminal case for estafa currently pending before the RTC can then independently and simultaneously proceed with a civil/intra-corporate case to be filed with the Regional Trial Court vested with special jurisdiction pursuant to The Securities Regulation Code (RA 8799). With RA 8799 signed into law on 19 July 2000, which effectively amended Sec. 5 of PD 902-A, jurisdiction over intra-corporate disputes is now vested in the Regional Trial Courts designated by this Court pursuant to A.M. No. 00-11-03-SC promulgated on 21 November 2000. However, while Sec. 5 of PD No. 902-A was amended by Sec. 5.2 of RA 8799, there is no repeal of Sec. 6 thereof declaring that prosecution under the Decree, or any Act, law, rules and regulations enforced and administered by the SEC shall be without prejudice to any liability for violation of any provision of The Revised Penal Code.

Moreover, as pointed out by the Department of Justice, Sec. 54 on Administrative Sanctions found in RA 8799 itself provides that the imposition of the sanctions shall be without prejudice to the filing of criminal charges against the individuals responsible for the violation.

From the foregoing, it could be concluded that the fraudulent devices, schemes or representations which, originally, the Prosecution and Enforcement Department of the SEC would exclusively investigate and prosecute, are those in violation of any law or rules and regulations administered and enforced by the SEC and shall be without prejudice to any liability for violation of any provision of The Revised Penal Code. Hence, if the fraudulent act is punished under The Revised Penal Code, like estafa under Art. 315, the responsible person may be criminally prosecuted before the regular courts in addition to proceedings before the branches of the RTC designated by this Court to try and decide intra-corporate controversies.

Therefore, since the alleged fraudulent acts committed by petitioner pertaining to the non-liquidation of his cash

advances amounting to P1,291,376.61 constitute the offense of estafa under Art. 315 of The Revised Penal Code, the criminal case may be prosecuted independently and simultaneously with the corporate/civil case that may be filed for violation of Sec. 5 of PD 902-A, as amended by RA 8799.

In light of the amendment brought about by RA 8799, the doctrine of primary jurisdiction no longer precludes the simultaneous filing of the criminal case with the corporate/civil case.

In cases involving specialized disputes, the practice has been to refer the same to an administrative agency of special competence in observance of the doctrine of primary jurisdiction. The Court has ratiocinated that it cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered.[9] The objective of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.[10] It applies where claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, has been placed within the special competence of an administrative body; in such case, the judicial process is suspended pending referral of such issues to the administrative body for its view.[11]

However, as correctly observed by respondent MTCP, the rationale behind the prior referral of intra-corporate controversies to the SEC before the public prosecutor could act on them for purposes of criminal prosecution loses significance since the newly enacted law recognizes that the specially designated RTC branches now have the legal competence to decide intra-corporate disputes.

To support its contention, petitioner cites the landmark case of *Saavedra*. However, the doctrine of primary jurisdiction prevailed therein because the dispute comprehends a pure and simple intra-corporate controversy involving the ownership of stocks of the corporation arising between and among the principal stockholders, while the instant case involves non-liquidation of corporate funds by a corporate officer as he had allegedly misappropriated the same for his own use and benefit. It was the SEC's authority to issue a temporary restraining order enjoining the petitioners therein from disposing of the company assets that was being challenged, not that of the regular courts, and it was upheld as it was clear that the SEC had properly acquired jurisdiction over the subject matter. Resort to the doctrine of primary jurisdiction was essential as the matter of sales of stocks of the corporation, and thus its ownership, necessitates the expertise and competence of the SEC. It is not so in the instant case, as the liability of petitioner for the alleged fraudulent acts is the issue under contention.

WHEREFORE, the Decision of this Court of 20 August 2001 is modified as follows: The Decision of the Court of Appeals of 12 November 1997 annulling and setting aside the Resolution of the Department of Justice of 2 December 1996 and accordingly directing the filing of an Information for estafa against petitioner Hernani N. Fabia in Crim. Case No. 98-162570, "*People of the Philippines v. Hernani N. Fabia*," is AFFIRMED. The Regional Trial Court, Branch 22, Manila, to which this criminal case was previously raffled and assigned, or any branch of the court to which the case may properly be assigned, is directed to immediately arraign petitioner Hernani N. Fabia and try his case until decided and terminated. No costs.

SO ORDERED.

Mendoza, Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] G.R. No. 80879, 21 March 1988, 159 SCRA 57.

[2] G.R. Nos. 63558 & 68450-51, 19 May 1987, 149 SCRA 654.

[3] Pilapil v. Sandiganbayan, G.R. No. 101978, 7 April 1993, 221 SCRA 349, citing *Buchanan v. Vda de Esteban*, 32 Phil. 365 (1915).

[4] *Ibid.*

[5] No. L-43548, 29 June 1981, 105 SCRA 183.

[6] 28 Phil. 238 (1914)

[7] 42 Phil 152 (1921)

[8] G.R. No. 110436, 27 June 1994, 233 SCRA 439.

[9] *Saavedra v. SEC*, citing *Pambujan Sur United Mine Workers v. Samar Mining Co. Inc.*, 94 Phil 932 (1954)

[10] *Quintos ,Jr. v. National Stud Farm*, No. L-37052, 29 November 1973, 54 SCRA 210.

[11] *Industrial Enterprise v. Court of Appeals*, G.R. No. 88550, 18 April 1990, 184 SCRA 426, citing *United States v. Western Pacific Railroad Co.*, 352 US 59.

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