CATHERINE A. YEE, PETITIONER, VS. HON. ESTRELLITA P. BERNABE, ACTING PROVINCIAL PROSECUTOR OF BENGUET, RESPONDENT.

G.R. NO. 141393. April 19, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court against the order[1] dated December 10, 1999 of the Regional Trial Court (RTC), Branch 62, of La Trinidad, Benguet as well as its subsequent order dated December 28, 1999 denying the motion for reconsideration filed by petitioner Catherine Yee in Criminal Case No. 99-CR-3603 entitled "People of the Philippines v. Catherine Yee."

The facts are undisputed.

On October 20, 1999, an information[2] for violation of Republic Act No. 6539 was filed with the RTC in La Trinidad, Benguet against petitioner, stating as follows:

> The undersigned accuses CATHERINE A. YEE for VIOLATION OF REPUBLIC ACT NO. 6539, OTHERWISE KNOWN AS ANTI-CARNAPPING ACT OF 1972, AS AMENDED, committed as follows:
>
> That on or about the 25[th] day of March, 1998, in the Municipality of La Trinidad, Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain and without the knowledge and consent of the owner thereof, by means of force and intimidation, did then and there willfully, unlawfully and feloniously take, steal and carry away an Isuzu Elf chiller van with Plate No. USA 359 belonging to PRICINIA ESGUERRA, to the damage and prejudice of the owner thereof.
>
> CONTRARY TO LAW.

Because the offense charged is classified as a heinous crime, the information was automatically assigned to RTC, Branch 62 which is specifically designated to hear and decide heinous offenses and crimes within the region.

On October 29, 1999, petitioner filed a motion for reduction of bail bond and voluntary surrender with the RTC. The trial court granted the motion on the same day and required petitioner to deposit cash in the amount of P100,000 for her provisional liberty. Thereafter, on November 10, 1999, petitioner filed a motion to conduct preliminary reinvestigation[3] which was treated by the trial court as a motion for preliminary investigation. Petitioner claimed that she was never informed or notified of the preliminary investigation and submitted, in support thereof, a certification to the effect that the subpoena for the proceedings had not been served upon her. Despite admitting the fact that there was lack of notice upon petitioner, the motion was denied by the RTC in the challenged order dated December 10, 1999, the dispositive portion of which reads:

> Acting on the "motion to conduct preliminary re-investigation" which is truly a motion for preliminary investigation, the Court hereby denies the same.
>
> Set the arraignment of the accused on 16 December 1999 at 8:30 o'clock in the morning. Issue subpoena to the accused to be served through Counsel.

SO ORDERED.[4]

The trial court likewise denied petitioner's subsequent motion for reconsideration[5] in the Order dated December 28, 1999.

Aggrieved, petitioner invokes the jurisdiction of this Court, arguing principally that the denial of her motion for preliminary reinvestigation was improper because (1) Section 7, Rule 112 of the Rules of Court which requires that a motion for preliminary investigation be filed within five (5) days from the time the accused learns of the filing of the information is not applicable to her case; and, (2) petitioner's acts of filing a motion to reduce bail, voluntarily surrendering herself, and posting bail before her arraignment do not constitute a waiver of her right to preliminary investigation.[6]

Thereafter, respondent Estrellita P. Bernabe, the Acting Provincial Prosecutor of Benguet, submitted her comment[7] and contended that petitioner had not been deprived of her right to a preliminary investigation as one had, in fact, been conducted. In any event, respondent Bernabe averred that petitioner's failure to seasonably claim her right to demand a preliminary investigation when she moved for the reduction of her bail bond and when she subsequently posted bail evinced her intent to waive such right. Respondent Bernabe likewise pointed out that the petition is fatally flawed because it did not comply with Section 1, Rule 65 of the Rules of Court, there being no allegation that the orders of the trial court were tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

In a separate comment,[8] the Hon. Fernando P. Cabato, Presiding Judge of the RTC, Branch 62, of La Trinidad, Benguet, put in issue the propriety of the remedy taken by petitioner, asserting that the challenged orders are not the final orders that can be subject of an appeal by certiorari to the Supreme Court under Rule 45. Similarly, Judge Cabato also maintained that the denial of petitioner's motion was justified considering that petitioner had already posted bail to secure her provisional release.

For its part, the Office of the Solicitor General (OSG), in its Comment[9] dated July 23, 2000, contended that the trial court did not commit any reversible error in denying petitioner's motion for preliminary reinvestigation, considering that such denial was authorized by the last paragraph of Section 7, Rule 112[10] of the Rules of Court. The OSG was likewise of the view that petitioner's act of posting bail constituted a waiver of her right to question any irregularity in, or even the absence of, a preliminary investigation relative to the filing of an information against her.

The threshold issue in this case involves a determination of the propriety of the mode adopted by petitioner to seek relief against the orders of the RTC. On this score, it must be kept in mind that an aggrieved party is permitted to apply for relief by way of two distinctly different modes, that is, either through an appeal by certiorari under Rule 45, or through a special civil action for certiorari under Rule 65.

The remedy taken by petitioner, that is, an appeal by certiorari under Rule 45, brings up for review errors committed by the court in the exercise of its jurisdiction amounting to nothing more than errors of judgment.[11] Specifically, this mode of appeal involves the review of judgments, awards or final orders on the merits where only questions of law are raised.[12] It must be stressed, however, that only judgments or final orders that completely dispose of the case or a particular matter can be the subject of such review.[13] Hence, appeal is not allowed against interlocutory orders which are merely provisional and decide some point or matter but are not a final decision of the whole controversy.[14] The rationale for this rule was stated in Rudecon Management Corporation v. Singson,[15] which quoted Sitchon v. Sheriff of Occidental Negros,[16] to wit:

> The reason of the law in permitting appeal only from a final order or judgment, and not from interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the

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> hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed, the trial on the merits of the case should necessarily be delayed for a considerable length of time, and compel the adverse party to incur unnecessary expenses; for one of the parties may interpose as many appeals as incidental questions may be raised by him and interlocutory orders rendered or issued by the lower court.

It is noteworthy that the assailed orders denying petitioner's motion for preliminary reinvestigation are merely interlocutory and may be questioned not at this stage of the proceedings but rather as part of an appeal that may eventually be taken from the final judgment rendered in the case. Stated otherwise, the orders do not finally dispose of the proceeding or of any independent offshoot of it and there has been no adjudication on the merits nor any definitive pronouncement as to the guilt or innocence of petitioner with respect to the crime with which she is charged.

Granting, for the sake of argument, that the prosecutor would maintain the finding of probable cause against petitioner after the reinvestigation of the case, and, thereafter, the RTC would sustain the finding of probable cause against petitioner and issue a warrant for her arrest, the trial court would subsequently have to proceed to trial, receive the evidence of the parties and render judgment on the basis thereof. Petitioner would then have the following options: (a) to proceed to trial, and, if convicted, file a petition for review under Rule 45; or (b) to file a petition for certiorari under Rule 65, to nullify the resolutions of the RTC on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the said resolutions and decision.[17]

Neither can the petition be treated as a special civil action for certiorari under Rule 65 of the Rules of Court. As pointed out by respondent Fiscal, the petition does not allege grave abuse of discretion tantamount to lack or excess of jurisdiction, which is the ground for a petition for certiorari under Rule 65 of the Rules of Court. An act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[18] In this connection, it is only upon showing that the court acted without or in excess of jurisdiction or with grave abuse of discretion that an interlocutory order such as that involved in this case may be impugned. Be that as it may, it must be emphasized that this practice is applied only under certain exceptional circumstances to prevent unnecessary delay in the administration of justice and so as not to unduly burden the courts. [19]

Furthermore, such a petition should be filed with the Court of Appeals and not with this Court, following the rule on the hierarchy of courts. As a matter of policy, direct resort to this Court will not be entertained unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances, such as in cases involving national interest and those of serious implications, justify the availment of the extraordinary remedy of the writ of certiorari, calling for the exercise of its primary jurisdiction.[20]

In Ouano v. PGTT Int'l. Corp.,[21] the policy was restated in this wise:

> We need to reiterate, for the guidance of petitioner, that this Court's original jurisdiction to issue a writ of certiorari (as well as prohibition, mandamus, quo warranto, habeas corpus and injunction) is concurrent with the Court of Appeals (CA), as in the present case, and with the RTCs in proper cases within their respective regions. However, this concurrence of jurisdiction does not grant a party seeking any of the extraordinary writs the absolute freedom to file his petition with the court of his choice. This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition. The hierarchy of courts determines the appropriate forum for such petitions. Thus, petitions for the issuance of such extraordinary writs against the first level ("inferior") courts should be filed with the RTC, and those against the latter, with the CA. A direct invocation of this Court's original jurisdiction to issue these writs

> should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is the established policy. It is a policy that is necessary to prevent inordinate demands upon this Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of its docket. x x x

In sum, the petition does not raise any special and important reason or exceptional and compelling circumstance that would justify direct recourse to this Court. Consequently, the failure of petitioner to strictly adhere to the doctrine on the hierarchy of courts constitutes sufficient cause for the dismissal of the present petition.[22]

WHEREFORE, the petition is DENIED.

No costs.

SO ORDERED.

Sandoval-Gutierrez, (Acting Chairperson), Corona, and Garcia, JJ., concur.
Puno, (Chairperson), J., on leave.

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[1] Rollo, pp. 13-15.

[2] Rollo, p. 28.

[3] Id. at 20-22.

[4] Rollo, p. 15.

[5] Id. at 23-26.

[6] Id. at 5.

[7] Id. at 28-41.

[8] Rollo, pp. 43-53.

[9] Id. at 84-94.

[10] RULES OF COURT, Rule 112, Section 7. When accused lawfully arrested without warrant - x x x If the case has been filed in court without a preliminary investigation having been first conducted, the accused may, within five (5) days from the time he learns of the filing of the information, ask for a preliminary investigation with the same right to adduce evidence in his favor in the manner prescribed in this rule. x x x

[11] Silverio v. CA, G.R. No. L-39861, March 17, 1986, 141 SCRA 527.

[12] RULES OF COURT, Rule 41, Section 2 (c).

[13] Vide Bitong v. CA, G.R. No. 123553, July 13, 1998, 292 SCRA 503.

[14] Rivera v. CA, G.R. No. 141863, June 26, 2003, 405 SCRA 61.

[15] G.R. No. 150798, March 31, 2005, 454 SCRA 612.

[16] 80 Phil. 397 (1948).

[17] Ramsical v. Sandiganbayan, G.R. Nos. 140576-99, December 13, 2004, 446 SCRA 166.

[18] Intestate Estate of Carmen de Luna v. Intermediate Appellate Court, G.R. No. 72424, February 13, 1989, 170

SCRA 246.

[19] Lalican v. Vergara, G.R. No. 108619, July 31, 1997, 276 SCRA518.

[20] Hinog v. Melicor, G.R. No. 140954, April 12, 2005, 455 SCRA 460.

[21] G.R. No. 134230, July 17, 2002, 384 SCRA 589.

[22] Hinog v. Melicor, supra note 20.

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