RHODA REGINA REYES-RARA AND JOSE EMMANUEL RARA, PETITIONERS, VS. BRENDA CHAN, PEOPLE OF THE PHILIPPINES AND HON. MARCIANO BACALLA, PRESIDING JUDGE, REGIONAL TRIAL COURT OF QUEZO...

G.R. NO. 142961. August 04, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

The instant petition for review seeks to set aside the April 18, 2000 Decision[1] of the Court of Appeals in CA-G.R. SP No. 54111, which held that respondent Judge Marciano I. Bacalla of the Regional Trial Court of Quezon City, Branch 216, did not abuse his discretion in refusing to suspend the proceedings before the trial court and in denying petitioners' motion to defer arraignment.

The facts show that on November 23, 1998, private respondent Brenda Chan filed an affidavit complaint for estafa against petitioner spouses Rhoda Regina Reyes-Rara and Jose Emmanuel Rara. At the scheduled hearing before the investigating prosecutor on December 8, 1998, the petitioners failed to appear. On December 21, 1998, petitioners' counsel manifested that his clients will submit their counter affidavit on January 13, 1999.[2] On the said date, petitioners failed to submit a counter-affidavit. The parties thereafter agreed that the hearing will be reset for the last time on January 22, 1999 and the case will thereafter be submitted for resolution.[3] Later, however, petitioners requested for resetting of the hearing to February 6, 1999 because petitioner Rhoda had to leave for Tokyo on January 10, 1999 and will be back only on February 6, 1999. The request was denied. At the hearing on January 22, 1999, petitioners failed to appear, hence the case was submitted for resolution.[4]

In a Resolution dated February 1, 1999, Assistant City Prosecutor Edgardo T. Paragua found probable cause against petitioners.[5] On March 23, 1999, an Information for the crime of estafa was filed against them.[6] On the same date, petitioner Rhoda filed before the Prosecutor's Office a motion to admit counter-affidavit with attached counter-affidavit.[7] No counter affidavit was filed by petitioner Jose Emmanuel. Petitioners thereafter moved for a reconsideration of the February 1, 1999 Resolution of the Assistant City Prosecutor finding probable cause against them.

Meanwhile, the trial court set the arraignment on June 22, 1999. On June 10, 1999, petitioners filed a motion to defer the arraignment, invoking the pendency of their motion for reconsideration of the City Prosecutor's February 1, 1999 Resolution.[8] This was granted by the trial court and the arraignment was moved to July 27, 1999.[9]

On July 2, 1999, the Prosecutor's Office denied petitioners' motion for reconsideration.[10] However, this was received by petitioners only on August 6, 1999. Hence, on July 19, 1999, they still filed another motion to defer arraignment on the basis of the pendency of the motion for reconsideration with the Prosecutor's Office.[11]

On July 27, 1999, the trial court denied the motion to suspend the arraignment and directed the issuance of warrants for the arrest of petitioners. Pertinent portion thereof, reads:

x x x x

> On account of the objection of the prosecution, the instant Motion to Defer Arraignment in behalf of accused Regina Rhoda Reyes Rara and Jose Emmanuel Rara is hereby DENIED. Considering that the said two (2) accused are notified of their arraignment today but failed to appear despite such notice, let a warrant issue for their arrest and the cash bond posted by them forfeited in favor of the government.
>
> SO ORDERED.[12]

On July 28, 1999, the trial court granted petitioners' motion to lift the warrant of arrest and to reinstate their bond. It also set anew the arraignment on August 10, 1999.[13]

To suspend the arraignment, petitioners filed on August 3, 1999, the instant petition for prohibition with prayer for preliminary injunction and/or temporary restraining order (TRO) with the Court of Appeals.[14] On August 9, 1999, petitioners appealed the July 2, 1999 Resolution of the Prosecutor's Office to the Department of Justice.[15] They claimed that they were denied due process because they were not able to file a counter-affidavit and that the finding of probable cause against them was without basis.

On August 10, 1999, petitioners' counsel orally moved for the deferment of the arraignment in view of the pendency of the appeal with the Secretary of Justice and the petition with the Court of Appeals.[16] This was denied by the trial court which directed the issuance of warrants of arrest against petitioners.[17] Arrested and arraigned on August 13, 1999, petitioners entered pleas of not guilty.[18]

Trial was thereafter set on October 4, 5, & 11, 1999.[19] On September 7, 1999, the Court of Appeals issued a TRO, hence, the trial court suspended the proceedings.[20]

On January 3, 2000, the Secretary of Justice dismissed petitioners appeal on the strength of Department of Justice Order No. 223, authorizing the Secretary to motu propio dismiss the appeal if the accused is arraigned during the pendency of said appeal.[21]

In view of the dismissal of the appeal and the expiration of the TRO issued by the Court of Appeals, the trial court, on motion of the prosecution, issued an Order dated January 26, 2000, setting the trial on the merits on February 21 and 22, 2000, thus –

x x x x

> It appearing that the temporary restraining order issued by the Court of Appeals had already been vacated and that the appeal filed before the Department of Justice had already been dismissed, the Court believes that there are no more legal impediments that would prevent this Court from proceeding with the reception of evidence from the herein parties.
>
> WHEREFORE, premises above considered, the People's Urgent Ex-parte Motion to Resume Proceedings is hereby granted. As prayed for, the trial of this case is set on February 21 and 22, 2000 at 2:00 o'clock in the afternoon.
>
> SO ORDERED.[22]

Consequently, petitioners filed a motion with the Court of Appeals seeking to resolve their pending petition for prohibition with prayer for the issuance of a writ of injunction.

On April 18, 2000, the Court of Appeals denied the petition holding that the trial court did not abuse its discretion in refusing to suspend the proceedings and to defer the arraignment of petitioners.

Hence, the instant petition.

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The sole issue here is whether or not the respondent Judge gravely abused his discretion in denying petitioners' motion to defer the arraignment and to suspend the proceedings. Specifically, abuse of discretion is ascribed to respondent Judge's issuance of the July 27, 1999 and August 10, 1999 Orders denying the motion to defer arraignment and the January 26, 2000 Order setting the case for trial on the merits.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction. The exercise of power must have been done in an arbitrary or a despotic manner by reason of passion or personal hostility. It must have been so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[23]

In the instant case, we find that no grave abuse of discretion was committed by respondent Judge in denying petitioners' motions. The latter's July 19, 1999 motion to defer arraignment was grounded on the pendency of the motion for reconsideration with the Prosecutor's Office. Note that the trial court denied said motion only on July 27, 1999, after the denial of the Prosecutor's Office of petitioners' motion for reconsideration on July 2, 1999. It could not thus be said that he acted arbitrarily and precipitately because the Prosecutor's resolution preceded the July 27, 1999 order of the trial court. Indeed, the setting of the arraignment was deferred until petitioners' motion for reconsideration was disposed of by the Prosecutor's Office.

In the same vein, no abuse of discretion could be ascribed to respondent Judge in denying the counsel of petitioners' August 10, 1999 oral motion to suspend arraignment. The ground invoked by said counsel was the pendency of the petition for prohibition with the Court of Appeals and the appeal with the Secretary of Justice. The petition was filed with the Court of Appeals on August 3, 1999. However, the appellate court did not issue a TRO to suspend the arraignment. Hence, respondent Judge could not be faulted for arraigning the petitioners on August 13, 1999, considering that the appellate court to which the issue of the suspension of the arraignment was submitted, chose not to enjoin their arraignment.

So also, Section 11(c), Rule 116 of the 2000 Rules on Criminal Procedure[24] which mandates that the arraignment shall be suspended for a period of not exceeding 60 days from the filing of a petition for review with the Department of Justice (DOJ), was not yet in effect when respondent Judge denied the motion to defer arraignment in 1999. At that time, suspension of the arraignment was still discretionary on the part of the Judge depending on the circumstances of each case.

The proviso allowing the deferment of arraignment by reason of a petition with the DOJ has its origin[25] in the cases of Roberts, Jr. v. Court of Appeals,[26] and Dimatulac v. Villon.[27] However, said cases find no application in the instant controversy as the circumstances obtaining therein are not extant in the present case.

In Roberts, Jr. v. Court of Appeals,[28] the DOJ expressly took cognizance of the petition and directed the Prosecutor to move for the suspension of the arraignment, thus manifesting the Secretary of Justice's intention to exercise his power of review. This is enough reason for the trial court to take caution and await for the resolution of the Secretary. In Dimatulac v. Villon,[29] the proceedings before the Prosecutor's Office were replete with procedural irregularities which resulted in manifest advantage to the accused and grave prejudice to the State and to the private complainants therein. It was held that under these circumstances, prudence, if not wisdom, or at least, respect for the authority of the prosecution agency, dictates that the Judge should await the resolution of the appeal with the DOJ.[30]

In the instant case, there was no directive from the Secretary of Justice to request for a suspension of the proceedings before the trial court. Neither were petitioners denied due process as they were given ample opportunity to file a counter affidavit before the Prosecutor's Office but failed to submit the same on time through their own fault. In any case, their contentions in their counter affidavit were passed upon by the Court of Appeals

in the petition for review of the January 3, 2000 resolution of the Secretary of Justice in Reyes-Rara v. Tuquero, docketed as CA-G.R. SP No. 61796.[31] Unfortunately, the Court of Appeals dismissed the petition and categorically held that petitioners were not denied due process and that the arguments advanced in the counter affidavit are matters of defense that should be properly ventilated at the trial. Said decision is now final and executory since no motion for reconsideration or appeal was filed by petitioners despite receipt of notice thereof on August 31, 2001.[32] It is thus clear that the circumstances obtaining in this case are different from the factual back drop of Dimatulac v. Villon, considering that there was no irregularity in the proceedings at the prosecutorial stage which could be the basis of respondent Judge's suspension of the arraignment.

Furthermore, petitioners' counsel merely made an oral motion to suspend arraignment on August 10, 1999, and never really gave the trial court a copy of said appeal bearing the stamped date of receipt of the DOJ. Such bare allegation is insufficient to prove the pendency of said appeal with the Secretary, especially so that the records show that even at the time of petitioners' arraignment on August 13, 1999, no copy of said appeal brief was submitted to the trial court.

As to the January 26, 2000 order of the trial court setting the trial on February 21 and 22, 2000, we likewise find that no grave abuse of discretion was committed by respondent Judge in issuing the same. At the time of the issuance of the assailed order, the TRO issued by the Court of Appeals on September 7, 1999 had lapsed and the Secretary of Justice had dismissed petitioners' appeal on January 3, 2000. There was thus no more legal obstacle that would prevent the trial court from setting the case for trial on the merits.

WHEREFORE, the petition is DENIED and the April 18, 2000 Decision of the Court of Appeals in CA-G.R. SP No. 54111, is AFFIRMED.
SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr. and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Candido V. Rivera and concurred in by Associate Justices Ruben T. Reyes and Eriberto U. Rosario, Jr., rollo, vol. I, pp. 10-19.

[2] Minutes of the hearing before investigating prosecutor, rollo, vol. I, p. 736.

[3] Id. at 737.

[4] CA Decision, rollo, vol. I, pp. 51-52.

[5] Rollo, vol. I, pp. 146-149.

[6] Id. at 196-197.

[7] Id. at 120-143.

[8] Id. at 410 -413.

[9] Order dated June 15, 1999, rollo, vol. I, p. 738.

[10] Rollo, vol. I, p. 198.

[11] Id. at 453-456.

[12] Id. at 377.

[13] Id. at 383.

[14] Id. at 464-483.

[15] Id. at 199-221.

[16] Id. at 28.

[17] Id. at 384.

[18] Id. at 385.

[19] Order dated September 6, 1999, rollo, vol. I, p. 746.

[20] Rollo, vol. I., p. 747.

[21] Id. at 748-749.

[22] CA rollo, p. 869.

[23] Villanueva v. Ople, G.R. No. 165125, November 18, 2005, 475 SCRA 539, 551.

[24] SEC. 11. Suspension of arraignment. – Upon motion by the proper party, the arraignment shall be suspended in the following cases:

(a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose;

(b) There exists a prejudicial question; and

(c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; provided, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office.

[25] Herrera, Remedial Law, Book IV, 2001 edition, p. 539.

[26] 324 Phil. 568 (1996).

[27] 358 Phil. 328 (1998).

[28] Supra at 587-588.

[29] Supra at 355.

[30] Id. at 363.

[31] Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Conchita Carpio Morales (who is now a member of this Court) and Bienvenido L. Reyes. Promulgated on August 24, 2001 (rollo, vol. II, pp. 869-878).

[32] Rollo of CA-G.R. SP No. 61796, p. 395.

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