

TEODORO C. BORLONGAN, JR., CORAZON M. BEJASA, ARTURO E. MANUEL, JR., ERIC L. LEE, P. SIERVO H. DIZON, BENJAMIN DE LEON, DELFIN C. GONZALES, JR., AND BEN YU LIM, JR., PETITIONERS...

G.R. No. 143591. May 05, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

The pivotal issue in this case is whether or not the Court of Appeals, in its Decision[1] dated 20 June 2000 in CA-G.R. SP No. 49666, is correct when it dismissed the petition for certiorari filed by petitioners Teodoro C. Borlongan, Jr., Corazon M. Bejasa, Arturo E. Manuel, Jr., Benjamin de Leon, P. Siervo H. Dizon, Delfin C. Gonzales, Jr., Eric L. Lee and Ben Yu Lim, Jr., and ruled that the Municipal Trial Court in Cities (MTCC), Bago City, did not gravely abuse its discretion in denying the motion for reinvestigation and recall of the warrants of arrest in Criminal Case Nos. 6683, 6684, 6685, and 6686.

The factual antecedents of the case are as follows:

Respondent Atty. Magdaleno M. Peña (Atty. Peña) instituted a civil case for recovery of agent's compensation and expenses, damages, and attorney's fees[2] against Urban Bank and herein petitioners, before the Regional Trial Court (RTC) of Negros Occidental, Bago City. The case was raffled to Branch 62 and was docketed as Civil Case No. 754. Atty. Peña anchored his claim for compensation on the Contract of Agency[3] allegedly entered into with the petitioners, wherein the former undertook to perform such acts necessary to prevent any intruder and squatter from unlawfully occupying Urban Bank's property located along Roxas Boulevard, Pasay City. Petitioners filed a Motion to Dismiss[4] arguing that they never appointed the respondent as agent or counsel. Attached to the motion were the following documents: 1) a Letter[5] dated 19 December 1994 signed by Herman Ponce and Julie Abad on behalf of Isabela Sugar Company, Inc. (ISCI), the original owner of the subject property; 2) an unsigned Letter[6] dated 7 December 1994 addressed to Corazon Bejasa from Marilyn G. Ong; 3) a Letter[7] dated 9 December 1994 addressed to Teodoro Borlongan, Jr. and signed by Marilyn G. Ong; and 4) a Memorandum[8] dated 20 November 1994 from Enrique Montilla III. Said documents were presented in an attempt to show that the respondent was appointed as agent by ISCI and not by Urban Bank or by the petitioners.

In view of the introduction of the above-mentioned documents, Atty. Peña filed his Complaint-Affidavit[9] with the Office of the City Prosecutor, Bago City.[10] He claimed that said documents were falsified because the alleged signatories did not actually affix their signatures, and the signatories were neither stockholders nor officers and employees of ISCI.[11] Worse, petitioners introduced said documents as evidence before the RTC knowing that they were falsified.

In a Resolution[12] dated 24 September 1998, the City Prosecutor found probable cause for the indictment of petitioners for four (4) counts of the crime of Introducing Falsified Documents, penalized by the second paragraph of Article 172 of the Revised Penal Code. The City Prosecutor concluded that the documents were falsified because the alleged signatories untruthfully stated that ISCI was the principal of the respondent; that petitioners

knew that the documents were falsified considering that the signatories were mere dummies; and that the documents formed part of the record of Civil Case No. 754 where they were used by petitioners as evidence in support of their motion to dismiss, and then adopted in their answer and in their Pre-Trial Brief.[13] Subsequently, the corresponding Informations[14] were filed with the MTCC, Bago City. The cases were docketed as Criminal Case Nos. 6683, 6684, 6685, and 6686. Thereafter, Judge Primitivo Blanca issued the warrants[15] for the arrest of the petitioners.

On 1 October 1998, petitioners filed an Omnibus Motion to Quash, Recall Warrants of Arrest and/or For Reinvestigation.[16] Petitioners insisted that they were denied due process because of the non-observance of the proper procedure on preliminary investigation prescribed in the Rules of Court. Specifically, they claimed that they were not afforded the right to submit their counter-affidavit. Then they argued that since no such counter-affidavit and supporting documents were submitted by the petitioners, the trial judge merely relied on the complaint-affidavit and attachments of the respondent in issuing the warrants of arrest, also in contravention with the Rules of Court. Petitioners further prayed that the information be quashed for lack of probable cause. Moreover, one of the accused, i.e., Ben Lim, Jr., is not even a director of Urban Bank, contrary to what complainant stated. Lastly, petitioners posited that the criminal cases should have been suspended on the ground that the issue being threshed out in the civil case is a prejudicial question.

In an Order[17] dated 13 November 1998, the MTCC denied the omnibus motion primarily on the ground that preliminary investigation was not available in the instant case - which fell within the jurisdiction of the first-level court. The court, likewise, upheld the validity of the warrant of arrest, saying that it was issued in accordance with the Rules of Court. Besides, the court added, petitioners could no longer question the validity of the warrant since they already posted bail. The court also believed that the issue involved in the civil case was not a prejudicial question, and, thus, denied the prayer for suspension of the criminal proceedings. Lastly, the court was convinced that the Informations contained all the facts necessary to constitute an offense.

Petitioners immediately instituted a special civil action for Certiorari and Prohibition with Prayer for Writ of Preliminary Injunction and Temporary Restraining Order (TRO) before the Court of Appeals, ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the MTCC in issuing and not recalling the warrants of arrest, reiterating the arguments in their omnibus motion.[18] They, likewise, questioned the court's conclusion that by posting bail, petitioners already waived their right to assail the validity of the warrants of arrest.

On 20 June 2000, the Court of Appeals dismissed the petition.[19] Thus, petitioners filed the instant petition for review on certiorari under Rule 45 of the Rules of Court, raising the following issues:

A.

Where the offense charged in a criminal complaint is not cognizable by the Regional Trial Court and not covered by the Rule on Summary Procedure, is the finding of probable cause required for the filing of an Information in court?

If the allegations in the complaint-affidavit do not establish probable cause, should not the investigating prosecutor dismiss the complaint, or at the very least, require the respondent to submit his counter-affidavit?

B.

Can a complaint-affidavit containing matters which are not within the personal knowledge of the complainant be sufficient basis for the finding of probable cause?

C.

Where there is offense charged in a criminal complaint is not cognizable by the Regional Trial Court and not covered by the Rule on Summary Procedure, and the record of the preliminary investigation does not show the existence of probable cause, should not the judge refuse to issue a warrant of arrest and dismiss the criminal case, or at the very least, require the accused to submit his counter-affidavit in order to aid the judge in determining the existence of probable cause?

D.

Can a criminal prosecution be restrained?

E.

Can this Honorable Court itself determine the existence of probable cause?[20]

On the other hand, respondent contends that the issues raised by the petitioners had already become moot and academic when the latter posted bail and were already arraigned.

On 2 August 2000, this Court issued a TRO[21] enjoining the judge of the MTCC from proceeding in any manner with Criminal Case Nos. 6683 to 6686, effective during the entire period that the case is pending before, or until further orders of, this Court.

We will first discuss the issue of mootness.

The issues raised by the petitioners have not been mooted by the fact that they had posted bail and were already arraigned.

It appears from the records that upon the issuance of the warrant of arrest, petitioners immediately posted bail as they wanted to avoid embarrassment, being then the officers of Urban Bank. On the scheduled date for the arraignment, despite the petitioners' refusal to enter a plea, the court a quo entered a plea of "Not Guilty" for them.

The erstwhile ruling of this Court was that posting of bail constitutes a waiver of any irregularity in the issuance of a warrant of arrest, that has already been superseded by Section 26, Rule 114 of the Revised Rule of Criminal Procedure. The principle that the accused is precluded from questioning the legality of the arrest after arraignment is true only if he voluntarily enters his plea and participates during trial, without previously invoking his objections thereto.[22]

As held in *Okabe v. Hon. Gutierrez*: [23]

It bears stressing that Section 26, Rule 114 of the Revised Rules on Criminal Procedure is a new one, intended to modify previous rulings of this Court that an application for bail or the admission to bail by the accused shall be considered as a waiver of his right to assail the warrant issued for his arrest on the legalities or irregularities thereon. The new rule has reverted to the ruling of this Court in *People v. Red*. The new rule is curative in nature because precisely, it was designed to supply defects and curb evils in procedural rules. Hence, the rules governing curative statutes are applicable. Curative statutes are by their essence retroactive in application. Besides, procedural rules as a general rule operate retroactively, even without express provisions to that effect, to cases pending at the time of their effectivity, in other words to actions yet undetermined at the time of their effectivity. Before the appellate court rendered its decision on January 31, 2001, the Revised Rules on Criminal Procedure was already in effect. It behoved the appellate court to have applied the same in resolving the petitioner's petition for certiorari and her motion for partial reconsideration.

Moreover, considering the conduct of the petitioner after posting her personal bail bond, it cannot be argued that she waived her right to question the finding of probable cause and to assail the warrant of arrest issued against her by the respondent judge. There must be clear and convincing proof that the petitioner had an actual intention to relinquish her right to question the existence of probable cause. When the only proof of intention

rests on what a party does, his act should be so manifestly consistent with, and indicative of, an intent to voluntarily and unequivocally relinquish the particular right that no other explanation of his conduct is possible. x x x.

Herein petitioners filed the Omnibus Motion to Quash, Recall Warrants of Arrest and/or For Reinvestigation on the same day that they posted bail. Their bail bonds likewise expressly contained a stipulation that they were not waiving their right to question the validity of their arrest.[24] On the date of their arraignment, petitioners refused to enter their plea due to the fact that the issue on the legality of their arrest is still pending with the Court. Thus, when the court a quo entered a plea of not guilty for them, there was no valid waiver of their right to preclude them from raising the same with the Court of Appeals or this Court. The posting of bail bond was a matter of imperative necessity to avert their incarceration; it should not be deemed as a waiver of their right to assail their arrest. The ruling to which we have returned in *People v. Red*[25] stated:

x x x The present defendants were arrested towards the end of January, 1929, on the Island and Province of Marinduque by order of the judge of the Court of First Instance of Lucena, Tayabas, at a time when there were no court sessions being held in Marinduque. In view of these circumstances and the number of the accused, it may properly be held that the furnishing of the bond was prompted by the sheer necessity of not remaining in detention, and in no way implied their waiver of any right, such as the summary examination of the case before their detention. That they had no intention of waiving this right is clear from their motion of January 23, 1929, the same day on which they furnished a bond, and the fact that they renewed this petition on February 23, 1929, praying for the stay of their arrest for lack of the summary examination; the first motion being denied by the court on January 24, 1929 (G.R. No. 33708, page 8), and the second remaining undecided, but with an order to have it presented in Boac, Marinduque.

Therefore, the defendants herein cannot be said to have waived the right granted to them by section 13, General Order No. 58, as amended by Act No. 3042.

The rest of the issues raised by the petitioners may be grouped into two, which are: (1) the procedural aspect, i.e., whether the prosecution and the court a quo properly observed the required procedure in the instant case, and, (2) the substantive aspect, which is whether there was probable cause to pursue the criminal cases to trial.

THE PROCEDURAL ASPECT:

Petitioners contend that they were denied due process as they were unable to submit their counter-affidavits and were not accorded the right to a preliminary investigation. Considering that the complaint of Atty. Peña was filed in September 1998, the rule then applicable was the 1985 Rules of Criminal Procedure.

The provisions of the 1985 Rules of Criminal Procedure relevant to the issue are Sections 1, 3(a) and 9(a) of Rule 112, to wit:

Section 1. Definition. Preliminary investigation is an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial.

Sec. 3. Procedure. Except as provided for in Section 7 hereof, no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted in the following manner:

(a) The complaint shall state the known address of the respondent and be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents, in such number of copies as there are respondents, plus two (2) copies for the official file. The said affidavits shall be sworn to before any fiscal, state prosecutor or government official authorized to administer oath, or, in their absence or unavailability, a

notary public, who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

Sec. 9. Cases not falling under the original jurisdiction of the Regional Trial Courts nor covered by the Rule on Summary Procedure.

(a) Where filed with the fiscal.— If the complaint is filed directly with the fiscal or state prosecutor, the procedure outlined in Section 3(a) of this Rule shall be observed. The fiscal shall take appropriate action based on the affidavits and other supporting documents submitted by the complainant. (underscoring supplied)

The crime to which petitioners were charged was defined and penalized under second paragraph of Article 172 in relation to Article 171 of the Revised Penal Code.

Art. 172. Falsification by private individual and use of falsified documents. — The penalty of prison correccional in its medium and maximum periods and a fine of not more than P5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and
2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

Prison correccional in its medium and maximum periods translates to imprisonment of 2 years, 4 months and 1 day.[26] The next lower in degree to prison correccional is arresto mayor in its maximum period to prison correccional in its minimum period which translates to 4 months and 1 day to 2 years and 4 months[27] of imprisonment. Since the crime committed is not covered by the Rules of Summary Procedure,[28] the case falls within the exclusive jurisdiction of the first level courts but applying the ordinary rules. In such instance, preliminary investigation as defined in Section 1, Rule 112 of the 1985 Rules of Criminal Procedure is not applicable since such section covers only crimes cognizable by the RTC. That which is stated in Section 9(a) is the applicable rule.

Under this Rule, while probable cause should first be determined before an information may be filed in court, the prosecutor is not mandated to require the respondent to submit his counter-affidavits to oppose the complaint. In the determination of probable cause, the prosecutor may solely rely on the complaint, affidavits and other supporting documents submitted by the complainant. If he does not find probable cause, the prosecutor may dismiss outright the complaint or if he finds probable cause or sufficient reason to proceed with the case, he shall issue a resolution and file the corresponding information.

The complaint of respondent, verbatim, is as follows:

COMPLAINT - AFFIDAVIT

I, MAGDALENO M. PEÑA, Filipino, of legal age, with address at Brgy. Ubay, Pulupandan, Negros Occidental, after having been sworn in accordance with law hereby depose and state:

1. I am the Plaintiff in Civil Case No. 754 pending with the Regional Trial Court of Bago City entitled "Atty. Magdaleno M. Peña v. Urban Bank, et al" Impleaded therein as defendants of the board of the bank, namely, Teodoro Borlongan, Delfin Gonzales, Jr., Benjamin De Leon, P. Siervo Dizon, Eric Lee, Ben Lim Jr., Corazon

Bejasa and Arturo Manuel.(underlining ours)

2. I filed the said case to collect my fees as agent of Urban Bank, Inc.(hereinafter referred to as the "bank") in ridding a certain parcel of land in Pasay City of squatters and intruders. A certified true copy of the Complaint in the said case is hereto attached as Annex "A".

3. In the Motion to Dismiss dated 12 March 1996 (a certified true copy of which is attached as Annex "B"), Answer dated 28 October 1996 (Annex "C"), and Pre-Trial Brief dated 28 January 1997 (Annex "D") filed by the bank and the respondent members of the board, the said respondents used as evidence the following documents:

a. Letter dated 19 December 1994 supposedly signed by a certain Herman Ponce and Julie Abad for Isabela Sugar Company (ISC) (a copy of which is attached as Annex "E"), which states:

December 19, 1994

Urban Bank
Urban Avenue, Makati
Metro Manila

Gentlemen:

This has reference to your property located among Roxas Boulevard, Pasay City which you purchased from Isabela Sugar Company under a Deed of Absolute Sale executed on December 1, 1994.

In line with our warranties as the Seller of the said property and our undertaking to deliver to you the full and actual possession and control of said property, free from tenants, occupants or squatters and from any obstruction or impediment to the free use and occupancy of the property and to prevent the former tenants or occupants from entering or returning to the premises. In view of the transfer of ownership of the property to Urban Bank, it may be necessary for Urban Bank to appoint Atty. Peña likewise as its authorized representative for purposes of holding/maintaining continued possession of the said property and to represent Urban Bank in any court action that may be instituted for the abovementioned purposes.

It is understood that any attorney's fees, cost of litigation and any other charges or expenses that may be incurred relative to the exercise by Atty. Peña of his abovementioned duties shall be for the account of Isabela Sugar Company and any loss or damage that may be incurred to third parties shall be answerable by Isabela Sugar Company.

Very truly yours,

Isabela Sugar Company

By:

HERMAN PONCE

JULIE ABAD

b. Memorandum dated 7 December 1994 supposedly executed by a certain Marilyn Ong on behalf of ISC, a copy of which is hereto attached as annex "F", which states:

December 7, 1994

To: ATTY. CORA BEJASA

From: MARILYN G. ONG

RE: ISABELA SUGAR CO., INC.

Atty. Magdaleno M. Peña, who has been assigned by Isabela Sugar Company inc. to take charge of inspecting the tenants would like to request an authority similar to this from the Bank to new owners. Can you please issue something like this today as he (unreadable) this.

b. Letter dated 9 December 1994 supposedly executed by the same Marilyn Ong, a copy of which is hereto attached as Annex "G", which states:

December 9, 1994

Atty. Ted Borlongan

URBAN BANK OF THE PHILIPPINES
MAKATI, METRO MANILA

Attention: Mr. Ted Borlongan

Dear Mr. Borlongan

I would like to request for an authority from Urban Bank per attached immediately - as the tenants are questioning authority of the people who are helping us to take possession of the property.

Marilyn Ong

c. Memorandum dated 20 November 1994, copy of which is attached as annex "H", which states:

MEMORANDUM

To: Atty. Magdaleno M. Peña
Director

From: Enrique C. Montilla III
President

Date: 20 November 1994

You are hereby directed to recover and take possession of the property of the corporation situated at Roxas Boulevard covered by TCT No. 5382 of the Registry of Deeds for Pasay City, immediately upon the expiration of the contract of lease over the said property on 29 November 1994. For this purpose, you are authorized to engage the services of security guards to protect the property against intruders. You may also engage the services of a lawyer in case there is a need to go to court to protect the said property of the corporation. In addition, you may take whatever steps or measures are necessary to ensure our continued possession of the property.

ENRIQUE C. MONTILLA III
President

- 4. The respondent member of the board of the bank used and introduced the aforestated documents as evidence in the civil case knowing that the same are falsified. They used thae said documents to justify their refusal to pay my agent's fees, to my damage and prejudice.

- The 19 December 1994 letter (Annex `E") is a falsified document, in that the person who supposedly executed the letter on behalf of ISC, a certain Herman Ponce and Julie Abad did not actually affix their signatures on the document. The execution of the letter was merely simulated by making it appear that Ponce and Abad executed the letter on behalf of ISC when they did not in fact do so.

- No persons by the name of Herman Ponce and Julie Abad were ever stockholders, officers, employees or

representatives of ISC. In the letter, Herman Ponce was represented to be the President of ISC and Julie Abad, the Corporate Secretary. However, as of 19 December 1994, the real President of plaintiff was Enrique Montilla, III and Cristina Montilla was the Corporate Secretary. A copy of the Minutes of the Regular Meeting of ISC for the year 1994, during which Montilla, et al. Were elected is hereto attached as Annex "I". On the otherhand, a list of the stockholders of ISC on or about the time of the transaction is attached as Annex "J".

- The same holds true with respect to the Memorandum dated 7 December 1994 and the letter dated 9 December 1994 allegedly written by a certain Marilyn Ong. Nobody by the said name was ever a stockholder of ISC.

- Lastly, with respect to the supposed Memorandum issued by Enrique Montilla, III his signature thereon was merely forged by respondents. Enrique Montilla III, did not affix his signature on any such document.

- I am executing this affidavit for the purpose of charging Teodoro C. Borlongan, Corazon M. Bejasa and Arturo E. Manuel, Delfin C. Gonzales Jr., Benjamin L. De Leon, P. Siervo H. Dizon and Eric Lee, with the crime of use of falsified documents under Article 172, paragraph 2, of the Revised Penal Code.(underlining ours)

- I am likewise executing this affidavit for whatever legal purpose it may serve.

FURTHER AFFIANT SAYETH NAUGHT.

Sgd. MAGDALENO M. PEÑA

It is evident that in the affidavit-complaint, specifically in paragraph 1, respondent merely introduced and identified "the board of the bank, namely, Teodoro Borlongan, Jr., Delfin Gonzales, Jr., Benjamin De Leon, P. Siervo Dizon, Eric Lee, Ben Lim, Jr., Corazon Bejasa and Arturo Manuel, Sr." However, in the accusatory portion of the complaint which is paragraph number 9, Mr. Ben Lim, Jr. was not included among those charged with the crime of use of falsified documents under Article 172, paragraph 2, of the Revised Penal Code. The omission indicates that respondent did not intend to criminally implicate Mr. Ben Lim, Jr., even as he was acknowledged to be a member of the board. And there was no explanation in the Resolution and Information by the City Prosecutor why Mr. Ben Lim, Jr. was included. Moreover, as can be gleaned from the body of the complaint and the specific averments therein, Mr. Ben Lim, Jr. was never mentioned.

The City Prosecutor should have cautiously reviewed the complaint to determine whether there were inconsistencies which ought to have been brought to the attention of the respondent or, on his own, considered for due evaluation. It is a big mistake to bring a man to trial for a crime he did not commit.

Prosecutors are endowed with ample powers in order that they may properly fulfill their assigned role in the administration of justice. It should be realized, however, that when a man is hailed to court on a criminal charge, it brings in its wake problems not only for the accused but for his family as well. Therefore, it behooves a prosecutor to weigh the evidence carefully and to deliberate thereon to determine the existence of a prima facie case before filing the information in court. Anything less would be a dereliction of duty.[29]

Atty. Peña, in his Second Manifestation[30] dated 16 June 1999, averred that petitioners, including Mr. Ben Lim, Jr., were already estopped from raising the fact that Mr. Ben Lim, Jr. was not a member of the board of directors of Urban Bank, as the latter participated and appeared through counsel in Civil Case No. 754 without raising any opposition. However, this does not detract from the fact that the City Prosecutor, as previously discussed, did not carefully scrutinize the complaint of Atty. Peña, which did not charge Mr. Ben Lim, Jr. of any crime.

What tainted the procedure further was that the Judge issued a warrant for the arrest of the petitioners, including, Mr. Ben Lim, Jr. despite the filing of the Omnibus Motion to Quash, Recall Warrants of Arrest and/or For

Reinvestigation raising among others the issue that Mr. Ben Lim, Jr., was not even a member of the board of directors. With the filing of the motion, the judge is put on alert that an innocent person may have been included in the complaint. In the Order^[31] dated 13 November 1998, in denying the motion to quash, Judge Primitivo Blanca ruled that:

Courts in resolving a motion to quash cannot consider facts contrary to those alleged in the information or which do not appear on the face of the information because said motion is hypothetical admission of the facts alleged in the information x x x. (citations omitted.)

We cannot accept as mere oversight the mistake of respondent judge since it was at the expense of liberty. This cannot be condoned.

In the issuance of a warrant of arrest, the mandate of the Constitution is for the judge to personally determine the existence of probable cause:

Section 2, Article III of the Constitution provides:

Section 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Corollary thereto, Section 9(b) of the 1985 Rules of Criminal Procedure provides:

Sec. 9. Cases not falling under the original jurisdiction of the Regional Trial Courts nor covered by the Rule on Summary Procedure.

(a) x x x.

(b) Where filed directly with the Municipal Trial Court. — If the complaint or information is filed directly with the Municipal Trial Court, the procedure provided for in Section 3(a) of this Rule shall likewise be observed. If the judge finds no sufficient ground to hold the respondent for trial, he shall dismiss the complaint or information. Otherwise, he shall issue a warrant of arrest after personally examining in writing and under oath the complainant and his witnesses in the form of searching questions and answers.

Enshrined in our Constitution is the rule that "[n]o x x x warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing x x x the persons x x x to be seized."^[32] Interpreting the words "personal determination," we said in *Soliven v. Makasiar*^[33] that it does not thereby mean that judges are obliged to conduct the personal examination of the complainant and his witnesses themselves. To require thus would be to unduly laden them with preliminary examinations and investigations of criminal complaints instead of concentrating on hearing and deciding cases filed before them. Rather, what is emphasized merely is the exclusive and personal responsibility of the issuing judge to satisfy himself as to the existence of probable cause. To this end, he may: (a) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (b) if on the basis thereof he finds no probable cause, disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in determining its existence. What he is never allowed to do is to follow blindly the prosecutor's bare certification as to the existence of probable cause. Much more is required by the constitutional provision. Judges have to go over the report, the affidavits, the transcript of stenographic notes if any, and other documents supporting the prosecutor's certification. Although the extent of the judge's personal examination depends on the circumstances of each case, to be sure, he cannot just rely on the bare certification

alone but must go beyond it. This is because the warrant of arrest issues not on the strength of the certification standing alone but because of the records which sustain it.[34] He should even call for the complainant and the witnesses to answer the court's probing questions when the circumstances warrant.[35]

An arrest without a probable cause is an unreasonable seizure of a person, and violates the privacy of persons which ought not to be intruded by the State.[36]

Measured against the constitutional mandate and established rulings, there was here a clear abdication of the judicial function and a clear indication that the judge blindly followed the certification of a city prosecutor as to the existence of probable cause for the issuance of a warrant of arrest with respect to all of the petitioners. The careless inclusion of Mr. Ben Lim, Jr., in the warrant of arrest gives flesh to the bone of contention of petitioners that the instant case is a matter of persecution rather than prosecution.[37] On this ground, this Court may enjoin the criminal cases against petitioners. As a general rule, criminal prosecutions cannot be enjoined. However, there are recognized exceptions which, as summarized in *Brocka v. Enrile*, [38] are:

- a. To afford adequate protection to the constitutional rights of the accused; [39]
- b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; [40]
- c. When there is a prejudicial question which is sub judice; [41]
- d. When the acts of the officer are without or in excess of authority; [42]
- e. Where the prosecution is under an invalid law, ordinance or regulation; [43]
- f. When double jeopardy is clearly apparent; [44]
- g. Where the court had no jurisdiction over the offense; [45]
- h. Where it is a case of persecution rather than prosecution; [46]
- i. Where the charges are manifestly false and motivated by the lust for vengeance; [47] and
- j. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied. [48]

THE SUBSTANTIVE ASPECT:

Petitioners were charged with violation of par. 2, Article 172 of the Revised Penal Code or Introduction of Falsified Document in a judicial proceeding. The elements of the offense are as follows:

- That the offender knew that a document was falsified by another person.
- That the false document is embraced in Article 171 or in any subdivisions Nos. 1 or 2 of Article 172.
- That he introduced said document in evidence in any judicial proceeding. [49]

The falsity of the document and the defendants' knowledge of its falsity are essential elements of the offense. The Office of the City Prosecutor filed the Informations against the petitioners on the basis of the Complaint-Affidavit of respondent Atty. Peña, attached to which were the documents contained in the Motion to Dismiss filed by the petitioners in Civil Case No. 754. Also included as attachments to the complaint were the Answers, Pre-Trial Brief, the alleged falsified documents, copy of the regular meetings of ISCI during the election of the Board of Directors and the list of ISCI Stockholders. [50] Based on these documents and the complaint-affidavit of Atty. Peña, the City Prosecutor concluded that probable cause for the prosecution of the charges existed. On the

strength of the same documents, the trial court issued the warrants of arrest.

This Court, however, cannot find these documents sufficient to support the existence of probable cause.

Probable cause is such set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without restoring to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.[51]

As enunciated in *Baltazar v. People*,[52] the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.

The purpose of the mandate of the judge to first determine probable cause for the arrest of the accused is to insulate from the very start those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial.[53]

We do not see how it can be concluded that the documents mentioned by respondent in his complaint-affidavit were falsified. In his complaint, Atty. Peña stated that Herman Ponce, Julie Abad and Marilyn Ong, the alleged signatories of the questioned letters, did not actually affix their signatures therein; and that they were not actually officers or stockholders of ISCI.[54] He further claimed that Enrique Montilla's signature appearing in another memorandum addressed to respondent was forged.[55] These averments are mere assertions which are insufficient to warrant the filing of the complaint or worse the issuance of warrants of arrest. These averments cannot be considered as proceeding from the personal knowledge of herein respondent who failed to, basically, allege that he was present at the time of the execution of the documents. Neither was there any mention in the complaint-affidavit that herein respondent was familiar with the signatures of the mentioned signatories to be able to conclude that they were forged. What Atty. Peña actually stated were but sweeping assertions that the signatories are mere dummies of ISCI and that they are not in fact officers, stockholders or representatives of the corporation. Again, there is no indication that the assertion was based on the personal knowledge of the affiant.

The reason for the requirement that affidavits must be based on personal knowledge is to guard against hearsay evidence. A witness, therefore, may not testify as what he merely learned from others either because he was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned.[56] Hearsay is not limited to oral testimony or statements; the general rule that excludes hearsay as evidence applies to written, as well as oral statements.[57]

The requirement of personal knowledge should have been strictly applied considering that herein petitioners were not given the opportunity to rebut the complainant's allegation through counter-affidavits.

Quite noticeable is the fact that in the letter dated 19 December 1994 of Herman Ponce and Julie Abad, neither of the two made the representation that they were the president or secretary of ISCI. It was only Atty. Peña who asserted that the two made such representation. He alleged that Marilyn Ong was never a stockholder of ISCI but he did not present the stock and transfer book of ISCI. And, there was neither allegation nor proof that Marilyn Ong was not connected to ISCI in any other way. Moreover, even if Marilyn Ong was not a stockholder of ISCI, such would not prove that the documents she signed were falsified.

The Court may not be compelled to pass upon the correctness of the exercise of the public prosecutor's function

without any showing of grave abuse of discretion or manifest error in his findings.[58] Considering, however, that the prosecution and the court a quo committed manifest errors in their findings of probable cause, this Court therefore annuls their findings.

Our pronouncement in *Jimenez v. Jimenez*[59] as reiterated in *Baltazar v. People* is apropos:

It is x x x imperative upon the fiscal or the judge as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused. Although there is no general formula or fixed rule for the determination of probable cause since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge nor run counter to the clear dictates of reasons. The judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn up during trial for this would be a flagrant violation of a basic right which the courts are created to uphold. It bears repeating that the judiciary lives up to its mission by visualizing and not denigrating constitutional rights. So it has been before. It should continue to be so.

On the foregoing discussion, we find that the Court of Appeals erred in affirming the findings of the prosecutor as well as the court a quo as to the existence of probable cause. The criminal complaint against the petitioners should be dismissed.

WHEREFORE, the petition is hereby GRANTED. The Decision of the Court of Appeals dated 20 June 2000, in CA-G.R. SP No. 49666, is REVERSED and SET ASIDE. The Temporary Restraining Order dated 2 August 2000 is hereby made permanent. Accordingly, the Municipal Trial Court in Cities, Negros Occidental, Bago City, is hereby DIRECTED to DISMISS Criminal Case Nos. 6683, 6684, 6685 and 6686.

SO ORDERED.

Brion, (Acting Chairperson), Del Castillo, Villarama, Jr.[*], and Mendoza, JJ.[**], concur.

[*] Per Raffle dated 27 April 2010, Associate Justice Martin S. Villarama, Jr., is designated an additional member in place of Associate Justice Roberto A. Abad who inhibited himself due to close association with one of the parties.

[**] Chief Justice Reynato S. Puno was originally designated as an additional member per raffle dated 15 February 2010 in lieu of Associate Justice Antonio T. Carpio who inhibited himself due to a related case. However, per Special Order No. 836 dated 12 April 2010, Associate Justice Jose Catral Mendoza is designated an additional member of the Second Division, whether Regular or Special, relative to cases wherein Chief Justice Reynato S. Puno was designated as additional member in view of the Chief Justice forthcoming retirement.

[1] Penned by Associate Justice Romeo A. Brawner with Associate Justices Quirino D. Abad Santos, Jr. and Andres B. Reyes, Jr. concurring; rollo, pp. 50-60.

[2] Id. at 61-66.

[3] The contract was allegedly confirmed in a letter addressed to the respondent, the pertinent portion of which reads:

x x x x

This is to confirm the engagement of your services as the authorized representative of Urban Bank, specifically to hold and maintain possession of our above [-]captioned property and to protect the same from former

tenants, occupants or any other person who are threatening to return to the said property and/or interfere with your possession of the said property for and in our behalf.

You are likewise authorized to represent Urban Bank in any court action that you may institute to carry out your aforementioned duties, and to prevent any intruder, squatter or any other person not otherwise authorized in writing by Urban Bank from entering or staying in the premises. Id. at 69.

[4] Id. at 72-87.

[5] Id. at 96.

[6] Id. at 97.

[7] Id. at 98.

[8] Id. at 99. Also at CA rollo, p. 304.

[9] Id. at 106-109.

[10] The case was docketed as I.S. Case No. 9248.

[11] Rollo, p. 108.

[12] The dispositive portion of which reads:

Wherefore, In view of all the foregoing, undersigned finds probable cause that the crime of Introducing Falsified Documents in evidence under par. 2, Article 172, Revised Penal Code (4 counts) had been committed and that respondents Teodoro Borlongan, Jr., Delfin Gonzalez, Jr., Benjamin de Leon, P. Siervo Dizon, Eric Lee, Ben Lim, Jr., Corazon Bejasa, and Arturo Manuel are probably guilty.

Let Information be filed with the Municipal Trial Court in Cities, City of Bago, Philippines.

SO RESOLVED. (Id. at 110-114).

[13] Id. at 113-114.

[14] Id. at 115-122.

[15] Id. at 123-126.

[16] Id. at 127-142.

[17] The dispositive portion reads:

WHEREFORE, premises considered, the Omnibus Motion to Quash, Recall Warrants of Arrest and/or For reinvestigation is hereby denied.

Set arraignment of the accused on December 1, 1998 at 8:30 o'clock in the morning.

SO ORDERED. (Id. at 143-150.)

[18] Id. at 151-186.

[19] Id. at 50-60.

[20] Id. at 13-14.

[21] Id. at 518-522.

[22] *People v. Vallejo*, 461 Phil. 672, 686 (2003); *People v. Palijon*, 397 Phil. 545, 556 (2000).

[23] 473 Phil. 758, 776-777 (2004).

[24] CA rollo, pp. 902-903.

[25] 55 Phil. 706, 711 (1931).

[26] Luis B. Reyes, *The Revised Penal Code, Criminal Law, Fourteenth Edition, Revised 1998*, Appendix "A," Table No. 15, p. 1010.

[27] *Id.* at 1008.

[28] (1) Violations of traffic laws, rules and regulations;

(2) Violations of the rental law;

(3) Violations of municipal or city ordinances;

(4) All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six months, or a fine not exceeding one thousand pesos (P1,000.00), or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom: Provided, however, That in offenses involving damage to property through criminal negligence, this Rule shall govern where the imposable fine does not exceed ten thousand pesos (P10,000.00).

This Rule shall not apply to a civil case where the plaintiff's cause of action is pleaded in the same complaint with another cause of action subject to the ordinary procedure; nor to a criminal case where the offense charged is necessarily related to another criminal case subject to the ordinary procedure.

[29] *Sales v. Sandiganbayan*, G.R. No. 143802, 16 November 2001, 369 SCRA 293, 305 citing *Bernardo v. Mendoza*, G.R. No. L-37876, 25 May 1979, 90 SCRA 214, 220; *Vda. De Jacob v. Puno*, G.R. Nos. L-61554-55, 31 July 1984, 131 SCRA 144, 149.

[30] Rollo, pp. 368-372.

[31] *Id.* at 148.

[32] Article III, Section 2, Philippine Constitution.

[33] G.R. No. 82585, 14 November 1988, 167 SCRA 393, 406.

[34] *Lim, Sr. v. Felix*, G.R. Nos. 94054-57, 19 February 1991, 194 SCRA 292, 305.

[35] *Id.* at 306.

[36] *Yee Sue Koy v. Almeda*, 70 Phil. 141, 146-147 (1940).

[37] Rollo, pp. 41-42.

[38] G.R. Nos. 69863-65, 10 December 1990, 192 SCRA 183, 188.

[39] *Hernandez v. Albano*, 125 Phil. 513 (1967).

[40] *Dimayuga v. Fernandez*, 43 Phil. 304, 306-307 (1922); *Hernandez v. Albano*, *id.*; *Fortun v. Labang*, 192 Phil. 125, 133 (1981).

[41] *De Leon v. Mabanag*, 70 Phil. 202 (1940).

- [42] Planas v. Gil, 67 Phil. 62, 75 (1939).
- [43] Young v. Rafferty, 33 Phil. 556, 562 (1916); Yu Cong Eng v. Trinidad, 47 Phil. 385, 389 (1925).
- [44] Sangalang v. People, 109 Phil. 1140, 1142 (1960).
- [45] Lopez v. City Judge, G.R. No. L-25795, 29 October 1966, 18 SCRA 616, 620-621.
- [46] Rustia v. Ocampo, CA G.R. No. 4760, 25 March 1960.
- [47] Recto v. Castelo, 18 L.J. [1953], cited in Rano v. Alvenia, CA-G.R. No. 30720-R, 8 October 1962; Guingona, Jr. v. City Fiscal of Manila, 213 Phil. 516, 524-525 (1984).
- [48] Salonga v. Cruz Paño, G.R. No. L-59524, 18 February 1985, 134 SCRA 438, 448-450.
- [49] JBL Reyes, Revised Penal Code, Criminal Book Two, Fourteenth Edition, Revised, 1998 ed., p. 246.
- [50] Rollo, pp. 110-114.
- [51] People v. Aruta, 351 Phil. 868, 880 (1998).
- [52] G.R. No. 174016, 28 July 2008, 560 SCRA 278, 293-294.
- [53] Baltazar v. People, supra note 52 at 294 citing Okabe v. Gutierrez, supra note 23 at 781.
- [54] Rollo, pp. 108-109.
- [55] Id. at 109.
- [56] Sec. 36, Rule 130, Rules on Evidence. See also D.M. Consunji, Inc. v. Court of Appeals, 409 Phil. 275, 285 (2001).
- [57] 31A C.J.S. Evidence § 194. See also Philippine Home Assurance Corp. v. Court of Appeals, 327 Phil. 255, 267-268 (1996) cited in D.M. Consunji, Inc. v. Court of Appeals, id. at 285.
- [58] Ang v. Lucero, G.R. No. 143169, 21 January 2005, 449 SCRA 157, 168.
- [59] G.R. No. 158148, 30 June 2005, 462 SCRA 516, 528-529.

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