

ERNESTO DURLAO, JR., VIOLETA BALBA, MARIA MOLINA, DELIA CASTILLO, VENTURADA ARELLANO, ROMEO CABILDO AND HEIRS OF ROMULO LANGCAY, PETITIONERS, VS. HON. RODOLFO PONFERRADA, JUDGE ...

G.R. NO. 146707. November 29, 2006

Ponente: CORONA, J.

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CORONA, J.:

This petition for certiorari under Rule 65 of the Rules of Court seeks to annul the order of Judge Rodolfo Ponferrada of the Regional Trial Court (RTC) of Manila, Branch 41, dated September 18, 2000, approving the withdrawal of the Informations charging private respondents with multiple murder in Criminal Case Nos. 00-184244-50.

The precursors of this petition are as follows:

On the night of May 8, 1995, just after the local elections, seven of petitioners' relatives[1] were murdered in Brgy. Pattao, Buguey, Cagayan. Two witnesses, Ernesto Mendoza and Mario Gascon, executed affidavits stating that they were riding in a jeepney with the victims when armed men in fatigue uniforms flagged them down. On instruction of ex-Army Major Romulo Langcay (one of the passengers), the jeepney did not stop. The armed men, however, fired at the jeepney, forcing it to stop. The witnesses later identified three of these men to be private respondents Roy Flores, Godofredo Flores and Quirino Cabeza.

In the same affidavits, Mendoza and Gascon stated that when they saw Roy Flores and his men approaching the vehicle, they jumped out and hid behind a guava tree. From there, they noticed private respondent Roy Flores returning to his house about 41 meters away. He talked to private respondents Atty. Franklin Tamargo and Atty. Manuel Molina. Mendoza and Gascon allegedly overheard Tamargo and Molina giving orders to Roy Flores to kill all the passengers of the jeepney. Thereafter, Roy Flores went back to the jeepney and ordered all the passengers to lie flat on the ground. After a few seconds, Flores and his companions fired at them.

Private respondents denied the accusations. They contended that they were inside Roy Flores' house when the killings occurred. Although they heard the gunshots, they claimed no knowledge of what precipitated the incident. According to private respondents, Mendoza and Gascon were known loyal supporters of Mayor Licerio Antiporda Jr.[2] and they merely fabricated the whole story to pin down liability on Tamargo who was then Antiporda's closest political rival. They added that it was impossible for Mendoza and Gascon to have heard any order from Tamargo and Molina 41 meters away from the guava tree where they were hiding.

Apolinario and Leonardo Time corroborated private respondents' statements, saying that they were inside Roy Flores' house during the shooting incident.

After the preliminary investigation, State Prosecutor Emmanuel Velasco issued a resolution stating that there was probable cause to hold private respondents liable for multiple murder.[3] He then recommended the filing of the

necessary Informations in court and private respondents were subsequently charged for multiple murder in the RTC of Aparri, Cagayan, Branch 6.[4]

In the interim, private respondents filed a petition for review with the Department of Justice (DOJ). Then acting DOJ Secretary Ricardo G. Nepomuceno, Jr. issued an order reversing the findings of State Prosecutor Velasco and directing the withdrawal of the criminal charges against private respondents. The order read:

In this automatic review, it is incumbent upon us to evaluate the conflicting declarations of witnesses presented by the complainant, namely, Ernesto Mendoza and Mario Gascon, on one hand, and Apolinario and Leonardo Time, on the other hand, in order to determine which are to be accorded faith and credence... Indeed, the Rules provide that in determining where the superior weight of evidence on the issues involved lies, the court may consider the witnesses['] means and opportunit[ies] of knowing the facts to which they are testifying, the probability or improbability of their testimony, and their interest and want of interest... In keeping therewith, and as borne out by the evidence thus adduced, we find and so hold that the sworn statements of Mario Gascon and Ernesto Mendoza do not engender a well-founded belief that the respondents are probably guilty of the crime charged.

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Wherefore, [State Prosecutor Velasco's] resolution is hereby reversed and set aside and [he is] directed to cause the withdrawal of the informations for multiple murder against respondents Atty. Franklin V. Tamargo, et al...[5]

Later, the new DOJ Secretary, Serafin Cuevas (Nepomuceno's successor), also ordered the withdrawal of said Informations. Hence, a motion to withdraw them were filed in the RTC-Manila, Branch 41 where the cases were transferred and re-docketed as Criminal Case Nos. 00-184244-50.

Public respondent Judge Rodolfo Ponferrada, presiding judge of the trial court, granted the motion and dismissed the cases filed against private respondents. The order read:

...[A]fter Its own assessment and evaluation of the evidence of the prosecution, the Court is inclined to grant the motion as [I]t finds...the sworn statements of Mario Gascon and Ernesto Mendoza... to be incredible and tainted with bias and prejudice.

Parenthetically, it may be stated that the authority or power to prosecute is lodged with the Secretary of Justice, his prosecutors and assistants and undeniably[,] he has absolute control and supervision over them in the sense that he can reverse, alter or modify their actions and that no complaint or information in cases cognizable by the Regional Trial Court as in these cases shall be filed...without the resolution or decision of which lies with the Secretary of Justice.

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In fine, the Court believes and so holds that the evidence of the prosecution, as assailed by the prosecution itself, does not constitute probable cause against herein accused.

WHEREFORE, the motion is granted and the subject Informations are considered/ordered withdrawn and/or the cases dismissed.(italics supplied) [6]

In their bid to reverse Judge Ponferrada's order, petitioners essentially insist in this petition for certiorari that the Secretary of Justice could no longer review the resolution of the public prosecutor after the cases had been filed in court.

In support of their position, petitioners cite the case of Crespo v. Mogul.[7] According to them, Crespo enunciated that once a complaint or information has been filed in court, any disposition of the case or dismissal, conviction or

acquittal of the accused rests on the sound discretion of the court. The Secretary of Justice should thus by then no longer entertain any petition for review or appeal assailing the action of the public prosecutor.

We find no merit in the petition.

Petitioners seek to annul the order of Judge Ponferrada approving the withdrawal of the criminal charges against private respondents and/or the dismissal of the cases for want of probable cause to hold them for trial. It is, however, noteworthy that nowhere in their petition do they impugn the validity of said order. Instead, the thrust of their arguments is directed against the Justice Secretary's power to review the findings of the public prosecutor and his directive to withdraw the Informations already filed in court.

Under RA 5180,[8] in connection with Rule 112, Section 4 of the Rules of Court,[9] and as further implemented by Department Circular No. 70 (otherwise known as the "2000 National Prosecution Service Rule on Appeal"),[10] the Justice Secretary is vested with the power to review resolutions of the provincial, city prosecutor or chief state prosecutor. He has the power to re-evaluate the position taken by his subordinates in a case. Corollary to this power, he may also direct the public prosecutor to dismiss or cause the dismissal of the complaint or information.[11]

Contrary to the theory of petitioners, the filing of a complaint or information in court does not prevent the Justice Secretary from exercising his review power. Neither can such complaint or information deter him from ordering the withdrawal of the case. As a matter of fact, in *Crespo*, we declared that the public prosecutor (as the Justice Secretary's subordinate) may still opt to withdraw the Information either upon instruction of the Justice Secretary or for purposes of reinvestigation.

Furthermore, *Crespo* merely laid down the rule that, while the Secretary of Justice has the power to alter or modify the resolution of his subordinate and thereafter direct the withdrawal of a case, he cannot, however, impose his will on the court. Thus, the rule is –

[O]nce a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests [on] the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of the criminal cases even while the case is already in Court[,] he cannot impose his opinion on the trial court. The determination of the case is within [the court's] exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the sound discretion of the Court [that] has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.

Petitioners likewise claim that public respondent Judge Ponferrada committed grave abuse of discretion when, in blind obeisance to the Justice Secretary's order, he granted the state prosecutor's motion to withdraw the charges against private respondents. The claim is belied by the records.

The records without doubt reveal that before the motion was granted, Judge Ponferrada required petitioners and private respondents to file their respective memoranda or comments. He made his own assessment and evaluation of the evidence on record.[12] Thus, it is not correct to say that Judge Ponferrada had absolutely nothing before him or that he blindly adopted the position of the Justice Secretary.

In the absence of any showing that Judge Ponferrada exercised his discretion in a whimsical and capricious manner, this petition must fail.

WHEREFORE, the petition is hereby DISMISSED.

No costs.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

[1]Ex-Army Major Romulo Langcay, Gilbert S. Cabildo, Rodrigo Baras, Ernesto A. Dumlao, Jr., Roberto C. Arellano, Danilo B. Castillo and Jessie Molina.

[2] Both Tamargo and Antiporda ran for mayor of Buguey, Cagayan.

[3]Dated August 17, 1996, rollo, pp. 38-45.

[4]Criminal Case Nos. 08-949-955.

[5]Order dated May 2, 1997, rollo, pp. 48-53.

[6]Order dated September 18, 2000, id., pp. 28-37.

[7]No. L-53373, 30 June 1987, 151 SCRA 462.

[8] An Act Prescribing a Uniform System of Preliminary Investigation by Provincial and City Fiscals and their Assistants and by State Attorneys or their Assistants.

[9]SECTION 4. Duty of the investigating fiscal. If the investigating fiscal finds cause to hold the respondent for trial, he shall certify under oath that he, or as shown by the record....has personally examined the complainant and his witnesses, that there is reasonable ground to believe that a crime has been committed and the accused is probably guilty thereof...

No complaint or information may be filed by the fiscal without the prior written authority or approval of the provincial or city fiscal or chief state prosecutor.

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If, upon petition by a proper party, the Secretary of Justice reverses the resolution of the provincial or city fiscal or chief state prosecutor, he shall direct the fiscal concerned to file the corresponding information... or to dismiss or move for the dismissal of the complaint or information. (The Revised Rules of Criminal Procedure as amended by A.M. 00-5-03-SC and took effect on December 1, 2000.)

[10]SECTION 7. Action on the petition.

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If an information has been filed in court pursuant to the appealed resolution, the petition shall not be given due course if the accused had already been arraigned. Any arraignment made after the filing of the petition shall not bar the Secretary of Justice from exercising his power of review.

[11] Supra note 9.

[12] Supra note 6.

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