

**JUANITO CHAN y LIM, a.k.a. ZHANG ZHENTING, Petitioner, vs.
SECRETARY OF JUSTICE, PABLO C. FORMARAN III and
PRESIDENTIAL ANTI-ORGANIZED CRIME TASK FORCE, represented by
PO3 DANIL...**

G.R. No. 147065. March 14, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

This petition for review on certiorari under Rule 45 seeks to set aside the Resolution[1] of the Court of Appeals (CA) dated September 21, 2000, which dismissed the petition for certiorari assailing the Resolution of the Secretary of the Department of Justice (DOJ) finding probable cause against the herein petitioner for violation of the Dangerous Drugs Act. The petitioner likewise assails the CA Resolution dated February 9, 2001 which denied his motion for reconsideration.

The case flows from the following antecedents:

On April 23, 1999, the Chief of the Presidential Anti-Organized Crime Task Force (PAOCTF), then Police Director Panfilo M. Lacson, referred to the State Prosecutor for appropriate action the evidence collected by the task force during a buy-bust operation against petitioner Juanito Chan, a Chinese citizen who was a resident of Binondo, Manila. The evidence consisted of —

EXH “A” – One (1) self-sealing transparent plastic bag containing white crystalline substance/granules suspected to be Methamphetamine Hydrochloride “SHABU,” weighing approximately one (1) kilogram with markings “DLS 04/23/99” placed inside a box of HENNESSY V.S.O.P. COGNAC.

EXH “B” – Buy-bust money amounting to six thousand pesos (P6,000.00) in twelve (12) pieces of five hundred peso bill denomination placed at the top of each of the twelve (12) bundles of boodle money (pieces of paper cut in the same size and shape of a genuine money) placed inside a yellow paper bag with markings “HAPPY BIRTHDAY.”

EXH “C” – one (1) green Hyundai van with plate number ULK 815 used in transporting the confiscated SHABU.[2]

The PAOCTF also submitted the following documents to the State Prosecutor: (1) the Joint Affidavit of Arrest executed by PO3 Danilo L. Sumpay, PO3 Rolly S. Ibañez and SPO1 Ronald C. Parreño, the police officers who conducted the buy-bust operation; (2) booking sheet and arrest report; (3) receipt for property seized; (4) request for laboratory examination; (5) result of laboratory examination; (6) request for medical/physical examination; (7) result of medical/physical examination; (8) request for drug dependency test; (9) receipt for buy-bust money; and (10) photocopy of buy-bust money.

In their Joint Affidavit of Arrest,[3] PO3 Danilo L. Sumpay, PO3 Rolly S. Ibañez and SPO1 Ronald C. Parreño narrated that, on April 22, 1999, at about 10:30 p.m., their Confidential Informant (CI) reported to them that a

certain Juanito Chan was engaged in the sale of methamphetamine hydrochloride or shabu in different parts of Metro Manila, and that Chan offered him a handsome commission if he would find a buyer of shabu. According to them, the CI received a phone call from Chan later that evening, and the two made a deal for the sale of one kilogram of shabu worth P600,000.00 at the parking space in front of Fuji Mart Inc., along Timog Avenue, Quezon City between 5:30 and 7:30 a.m. the following day. They said that based on this information, a buy-bust operation was organized by the PAOCTF. Hence, on April 23, 1999, at 6:00 a.m., they apprehended Chan after he turned over to the poseur-buyer a small box containing one self-sealing transparent plastic bag of white crystalline substance in exchange for the 12 bundles of boodle money (cut bond paper with a marked P500.00 peso bill on top) which he received from the poseur-buyer.

Petitioner requested a preliminary investigation and waived his rights under Article 125 of the Revised Penal Code.[4]

Thereafter, Chan submitted his Counter-Affidavit[5] denying the charges against him. He claimed that he was the victim of a frame-up and extortion by the police officers who allegedly demanded P2 million in exchange for his release. He contended that his warrantless arrest was illegal because he was not committing a crime at that time. He insisted that the supposed sale of drugs never took place and that the alleged 1 kilo of shabu was just planted by the arresting officers.

After preliminary investigation, State Prosecutor Pablo C. Formaran III issued a Resolution[6] dated June 17, 1999 recommending the filing of an Information against the petitioner. Prosecutor Formaran did not give credence to petitioner's unsubstantiated claim of frame up and extortion. He said that the defenses and accusation of petitioner were matters of defense that should be threshed out in court. He further averred that —

In the face of the laboratory findings that the white crystalline substance weighing 935.80 grams, which appears to have been taken from the possession of the respondent is positive for methylamphetamine hydrochloride, a regulated drug, and considering the existence of the buy-bust money, the undersigned investigating prosecutor finds sufficient ground to engender a well founded belief that [the] crime charged has been committed and that the herein respondent is probably guilty thereof and should, therefore, be held for trial.

WHEREFORE, it is recommended that an Information for violation of Section 15, Article III of Republic Act No. 6425, as amended by Republic Act No. 7659, be filed in court against respondent Juanito Chan y Lim alias Zhang Zhenting.[7]

Senior State Prosecutor Archimedes V. Manabat recommended the approval of this Resolution. It was then approved by Assistant Chief State Prosecutor Leonardo Guiyab, Jr., in behalf of the Chief State Prosecutor.

On June 30, 1999, State Prosecutor Formaran filed before the Regional Trial Court (RTC) of Quezon City an Information, alleging —

That on or about April 23, 1999, in Timog Avenue, Quezon City and within the jurisdiction of this Honorable Court, the abovenamed accused, with deliberate intent and without authority of law, did then and there, willfully, unlawfully and feloniously sell and deliver to a poseur-buyer nine hundred thirty-five point eight (935.80) grams, more or less, of methylamphetamine hydrochloride (shabu), a regulated drug.

CONTRARY TO LAW.[8]

The case was docketed as Criminal Case No. Q-99-84778, which was raffled to RTC Quezon City, Branch 224.

On July 8, 1999, petitioner filed a petition for review with the Secretary of the Department of Justice (Justice Secretary). In a Resolution dated April 25, 2000, then Secretary of Justice Artemio G. Tuquero denied the petition

for review on the ground that there was no reversible error in the investigating prosecutor's finding of probable cause. Petitioner moved for the reconsideration of the said ruling, but this was likewise denied in the Resolution dated July 19, 2000.

Petitioner filed a Petition for Certiorari with Very Urgent Prayer for Writ of Preliminary Injunction and/or Temporary Restraining Order with the CA, assailing the Resolutions of the Justice Secretary. The petition prayed, among others, that the appellate court nullify said Resolutions and direct the withdrawal of the Information.

On September 21, 2000, the CA dismissed the petition. Noting that the RTC had already assumed jurisdiction over the case, it dismissed the case in accordance with the doctrine laid down in *Crespo v. Mogul*[9] that once a complaint or information is filed in court, any disposition of the case rests on the sound discretion of the court. The CA further held that certiorari will not lie since petitioner may still avail of a motion to quash or dismiss the Information with the trial court.[10]

On February 9, 2001, the CA denied petitioner's motion for reconsideration.[11] Thus, petitioner filed the instant petition for review on certiorari, ascribing the following errors to the CA:

I

THE HONORABLE COURT OF APPEALS ACTED IN A MANNER NOT IN ACCORD WITH THE DECISION OF THE SUPREME COURT WHEN IT DISMISSED THE PETITION FOR CERTIORARI ON THE BASIS OF THIS COURT'S RULING IN THE CASE OF *CRESPO VS. MOGUL* (151 SCRA 462).

II.

THE HONORABLE COURT OF APPEALS ACTED IN A MANNER NOT IN ACCORD WITH THE CONSTITUTION, LAW AND THE APPLICABLE DECISIONS OF THE SUPREME COURT IN NOT NULLIFYING THE PRELIMINARY INVESTIGATION CONDUCTED BY THE RESPONDENT STATE PROSECUTOR IN I.S. NO. 99-587, AS WELL AS THE RESOLUTION/INFORMATION ISSUED PURSUANT THERETO FOR BEING IN VIOLATION OF THE CONSTITUTIONAL RIGHT OF PETITIONER TO DUE PROCESS OF LAW.

III.

THE HONORABLE COURT OF APPEALS ERRED AS A MATTER OF LAW AND DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS IN NOT NULLIFYING THE RESOLUTIONS OF THE SECRETARY OF JUSTICE FOR HAVING BEEN RENDERED WITH GRAVE ABUSE OF DISCRETION.[12]

Petitioner argues that the CA erred in dismissing the petition for certiorari based on the Court's ruling in *Crespo v. Mogul*. [13] He argues that *Crespo* is not applicable to the present case because it involves a different factual setting. He points out that in said case, it was the provincial fiscal who filed a motion to dismiss the criminal case pending before the trial court on the basis of the resolution of the Undersecretary of Justice, whereas here, the issue involves the validity of the preliminary investigation. He avers that *Crespo* was superseded by *Allado v. Diokno*, [14] which recognized the courts' authority to nullify findings of probable cause by the prosecutor or investigating judge when due process is violated. [15]

Petitioner contends that the preliminary investigation was void for being violative of his right to due process, which includes the right to be heard by an impartial authority. He contends that State Prosecutor Formaran could not have been objective and impartial in conducting the preliminary investigation because the latter was a member of the PAOCTF, the agency that initiated the case against him. [16]

Petitioner asserts that the petition for certiorari was his speedy and adequate remedy from the ruling of the Justice

Secretary, and not a motion to quash or dismiss the Information, as suggested by the CA. He insists that the Justice Secretary committed grave abuse of discretion when he affirmed the State Prosecutor's finding of probable cause, which was based solely on the Joint Affidavit of Arrest. He claims that the State Prosecutor ignored certain facts and circumstances which indicate that there was actually no buy-bust operation but an extortion attempt instead, and capriciously relied on the presumption of regularity in the performance of the police officers' duty.[17] He posits that such presumption cannot prevail over the constitutional presumption of innocence of an accused. Citing *People v. Sapal*,[18] petitioner also submits that the police authorities' undue delay in delivering him to the proper authorities effectively destroys the presumption of regularity in the performance of their duties. Petitioner is referring to the 10-hour delay in turning him over to the PNP Crime Laboratory from the time of his arrest. He alleges that this undue delay confirms the attempted extortion against him.

Respondents, through the Office of the Solicitor General, maintain that Allado is an exception to the general rule which may be invoked only if similar circumstances are shown to exist, and such circumstances do not exist in this case. They aver that petitioner cannot feign denial of due process considering that he actively participated in the preliminary investigation and was given the opportunity to present his side. Respondents dispel petitioner's doubt as to the partiality of State Prosecutor Formaran by pointing out that his findings were reviewed by his superiors, even by the respondent Secretary of Justice.

Respondents contend that petitioner's claim that he is the victim of frame-up is not worthy of credence for being unsubstantiated. Likewise, petitioner cannot rely on the failure to deliver him on time to the proper authorities because there was actually no need to do so since the PAOCTF was already a convergence of various law enforcement units, namely, the police, the military and the National Bureau of Investigation.

We deny the petition.

Contrary to petitioner's view, Crespo subsists and was not superseded by Allado.

Allado, which was punctuated by inordinate eagerness in the gathering of evidence and in the preliminary investigation, serves as an exception and may not be invoked unless similar circumstances are clearly shown to exist.[19] No such circumstances were established in the present case.

In Crespo, the Court laid down the rule that once an Information is filed in court, any disposition of the case rests on the sound discretion of the court. In subsequent cases,[20] the Court clarified that Crespo does not bar the Justice Secretary from reviewing the findings of the investigating prosecutor in the exercise of his power of control over his subordinates. The Justice Secretary is merely advised, as far as practicable, to refrain from entertaining a petition for review of the prosecutor's finding when the Information is already filed in court. In other words, the power or authority of the Justice Secretary to review the prosecutor's findings subsists even after the Information is filed in court. The court, however, is not bound by the Resolution of the Justice Secretary, but must evaluate it before proceeding with the trial. While the ruling of the Justice Secretary is persuasive, it is not binding on courts.[21]

Albeit the findings of the Justice Secretary are not absolute and are subject to judicial review, this Court generally adheres to the policy of non-interference in the conduct of preliminary investigations, particularly when the said findings are well-supported by the facts as established by the evidence on record.[22] Absent any showing of arbitrariness on the part of the prosecutor or any other officer authorized to conduct preliminary investigation, courts as a rule must defer to said officer's finding and determination of probable cause, since the determination of the existence of probable cause is the function of the prosecutor.[23] Simply stated, findings of the Secretary of Justice are not subject to review, unless made with grave abuse of discretion.[24] As held in one case:

The general rule is that the courts do not interfere with the discretion of the public prosecutor in determining the specificity and adequacy of the averments in a criminal complaint. The determination of probable cause for the purpose of filing an information in court is an executive function which pertains at the first instance to the public prosecutor and then to the Secretary of Justice. The duty of the Court in appropriate cases is merely to determine whether the executive determination was done without or in excess of jurisdiction or with grave abuse of discretion. Resolutions of the Secretary of Justice are not subject to review unless made with grave abuse.[25]

Thus, the findings of the Justice Secretary may be reviewed through a petition for certiorari under Rule 65 based on the allegation that he acted with grave abuse of discretion.[26] This remedy is available to the aggrieved party.

In dismissing the petition for certiorari, the CA primarily anchored its decision on Crespo, ratiocinating that it is without authority to restrain the lower court from proceeding with the case since the latter had already assumed jurisdiction. Such concern is clearly of no moment.

In the petition for certiorari, the CA is not being asked to cause the dismissal of the case in the trial court, but only to resolve the issue of whether the Justice Secretary acted with grave abuse of discretion in affirming the finding of probable cause by the investigating prosecutor. Should it determine that the Justice Secretary acted with grave abuse of discretion, it could nullify his resolution and direct the State Prosecutor to withdraw the Information by filing the appropriate motion with the trial court. But the rule stands — the decision whether to dismiss the case or not rests on the sound discretion of the trial court where the Information was filed.

The CA, likewise, opined that the filing of the petition for certiorari was improper since petitioner still had an available remedy, that is, to file a motion to dismiss or to quash the Information with the trial court. We do not agree. A petition for certiorari may still be availed of even if there is an available remedy, when such remedy does not appear to be plain, speedy, and adequate in the ordinary course of law. The following excerpt from *Land Bank of the Philippines v. Court of Appeals*[27] is instructive —

The determination as to what exactly constitutes a plain, speedy and adequate remedy rests on judicial discretion and depends on the particular circumstances of each case. There are many authorities that subscribe to the view that it is the inadequacy, and not the mere absence, of all other legal remedies, and the danger of a failure of justice without it, that must usually determine the propriety of the writ. An adequate remedy is a remedy which is equally beneficial, speedy and sufficient, not merely a remedy which at some time in the future will bring about a revival of the judgment of the lower court complained of in the certiorari proceeding, but a remedy which would promptly relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court, tribunal, board or officer.[28]

However, instead of remanding the case to the CA, we deem it more practical to decide the substantive issue raised in this petition so as not to further delay the disposition of this case. On this issue, we hold that the Secretary of Justice did not commit grave abuse of discretion in affirming the finding of probable cause by the State Prosecutor.

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty.[29] Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.[30]

In the case at bench, petitioner is charged with illegal sale of a prohibited drug. A successful prosecution of this offense requires the concurrence of the following elements: (1) the identity of the buyer and the seller, the object

of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[31] To our mind, the documentary and object evidence submitted to the State Prosecutor, particularly the Joint Affidavit of Arrest, the 935.80 grams of shabu, and the buy-bust money sufficiently establish the existence of probable cause against petitioner for the crime charged. After all, a finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspect.[32] Unless there is a clear and convincing evidence that the members of the buy-bust team were impelled by any improper motive, or were not properly performing their duties, their testimonies on the operation deserve full faith and credit.[33]

The allegation that the State Prosecutor was not impartial in conducting the preliminary investigation is merely speculative — a bare allegation unworthy of credence. Such accusation is worthless in light of our finding that there is, indeed, probable cause against petitioner. Moreover, bias and partiality can never be presumed.[34] The mere fact that State Prosecutor Formaran was also a member of the PAOCTF is insignificant. The now defunct PAOCTF was created to investigate and prosecute all crime syndicates. It was a convergence and collaboration of the different agencies of the government, including the Philippine National Police and the DOJ.[35] Unsupported statements of partiality will not suffice in the absence of contrary evidence that will overcome the presumption that the State Prosecutor regularly performed his duty.

Petitioner's allegation of frame-up and extortion is evidentiary in nature, and are matters for his defense. Evidentiary matters must be presented and heard during the trial.[36] They are best left for the trial court to evaluate and resolve after a full-blown trial on the merits.[37] In any case, it is well to note the Court's stance on such defense: "This Court is, of course, aware that in some cases, law enforcers resort to the practice of planting evidence in order to, inter alia, harass. But the defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the police officers performed their duties regularly and that they acted within the bounds of their authority. Besides, the defense of denial or frame-up, like alibi, is viewed with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act." [38]

As a final note, on September 4, 2001, while the case was pending before this Court, petitioner was arraigned, and pleaded not guilty. Thereafter, petitioner filed a motion for bail which was granted by Judge Emilio L. Leachon, Jr., Presiding Judge of RTC Quezon City, Branch 224. The bail bond was fixed at P100,000.00. On March 7, 2003, the RTC ordered the release of petitioner upon payment of such amount.[39]

We recognize the courts' authority to grant bail in cases involving capital offenses after a determination that evidence of guilt is not strong. But we urge them to be circumspect in exercising such discretion. In this case, it is glaring that the bail bond fixed by the RTC was exceedingly low considering that the crime charged is illegal sale of prohibited drug punishable by reclusion perpetua to death and a fine ranging from P500,000.00 to P10 million, with the risk of flight extremely high, the petitioner being a Chinese citizen. However, upon verification from the Office of the Court Administrator, we found out that Judge Leachon, Jr. had already retired on October 13, 2003; hence, he may no longer be called to account disciplinarily for this apparent transgression.

We are, thus, compelled to re-issue a reminder to judges to comply strictly with our guidelines on the grant of bail in capital offenses, to be conscientious in performing their judicial functions and, at all times, to be faithful to the law and the rules. They should maintain professional competence, and abide by the highest standard of integrity and moral uprightness, to ensure the people's confidence in the judicial system. In the exercise of its authority to supervise judges and court personnel, this Court will not hesitate to impose disciplinary sanctions on judges who fail to measure up to these exacting standards of work ethics and morality.

WHEREFORE, premises considered, the petition is DENIED. Subject to our disquisition on the propriety of

certiorari under Rule 65 as an appropriate remedy, the Resolutions of the Court of Appeals, dated September 21, 2000 and February 9, 2001, are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Ramon A. Barcelona, with Associate Justices Wenceslao I. Agnir, Jr. and Bienvenido L. Reyes, concurring; rollo, pp. 55-58.

[2] Rollo, pp. 61-62.

[3] Id. at 63.

[4] Id. at 78.

[5] Id. at 79-83.

[6] Id. at 94-99.

[7] Id. at 99.

[8] Id. at 101-102.

[9] No. L-53373, June 30, 1987, 151 SCRA 462, 470.

[10] Rollo, pp. 55-58.

[11] Id. at 60.

[12] Id. at 25-26.

[13] Supra note 9.

[14] G.R. No. 113630, May 5, 1994, 232 SCRA 192.

[15] Rollo, pp. 28-30.

[16] Id. at 32-33.

[17] Id. at 39-47.

[18] 385 Phil. 109 (2000).

[19] People v. Court of Appeals, 361 Phil. 401, 419 (1999).

[20] Ledesma v. Court of Appeals, 344 Phil. 207, 235 (1997); Roberts, Jr. v. Court of Appeals, 324 Phil. 568, 594 (1996).

[21] Torres, Jr. v. Aguinaldo, G.R. No. 164268, June 28, 2005, 461 SCRA 599, 611.

[22] Marietta K. Ilusorio v. Sylvia K. Ilusorio, et al., G.R. No. 171659, December 13, 2007.

[23] Atty. Serapio v. Sandiganbayan, 444 Phil. 499, 531 (2003).

[24] Santos v. Go, G.R. No. 156081, October 19, 2005, 473 SCRA 350, 362.

[25] Insular Life Assurance Company Limited v. Serrano, G.R. No. 163255, June 22, 2007, 525 SCRA 400,

405-406.

[26] Alcaraz v. Gonzalez, G.R. No. 164715, September 20, 2006, 502 SCRA 518; Preferred Home Specialties, Inc. v. Court of Appeals, G.R. No. 163593, December 16, 2005, 478 SCRA 387.

[27] 456 Phil. 755 (2003).

[28] Landbank of the Philippines v. Court of Appeals, *supra*, at 786. (Emphasis ours.)

[29] Ilusorio v. Ilusorio, *supra* note 22.

[30] Ching v. The Secretary of Justice, G.R. No. 164317, February 6, 2006, 481 SCRA 609, 629.

[31] People v. Garcia, G.R. No. 172975, August 8, 2007, 529 SCRA 519, 532.

[32] Ching v. Secretary of Justice, *supra* note 30.

[33] People v. Sy, G.R. No. 171397, September 27, 2006, 503 SCRA 772, 780.

[34] Republic v. Evangelista, G.R. No. 156015, August 11, 2005, 466 SCRA 544, 555

[35] Executive Order No. 8, July 22, 1998.

[36] People v. Court of Appeals, *supra* note 19, at 415.

[37] Marilyn H. Co, et al. v. Republic of the Philippines, et al., G.R. No. 168811, November 28, 2007.

[38] *Id.*

[39] Rollo, p. 314.

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