

TERESITA TANGHAL OKABE, PETITIONER, VS. HON. PEDRO DE LEON GUTIERREZ, IN HIS CAPACITY AS PRESIDING JUDGE OF RTC, PASAY CITY, BRANCH 119; PEOPLE OF THE PHILIPPINES; AND CECILIA M...

G.R. No. 150185. May 27, 2004

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-150185/>

CALLEJO, SR., J.:

Before us is a petition for review on certiorari, under Rule 45 of the Rules of Court, as amended, that part of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 60732 dismissing her petition for certiorari under Rule 65 of the Rules of Court, as amended, for the nullification of the August 25 and 28, 2000 Orders of the respondent judge in Criminal Case No. 00-0749.

The Antecedents

Cecilia Maruyama executed a fifteen-page affidavit-complaint[2] and filed the same with the Office of the City Prosecutor of Pasay City, on December 29, 1999, charging Lorna Tanghal and petitioner Teresita Tanghal Okabe, a.k.a. Shiela Okabe, with estafa. In her affidavit, Maruyama alleged, inter alia, that on December 11, 1998, she entrusted Y11,410,000 with the peso equivalent of P3,993,500 to the petitioner, who was engaged in the business of “door-to-door delivery” from Japan to the Philippines. It was alleged that the petitioner failed to deliver the money as agreed upon, and, at first, denied receiving the said amount but later returned only US\$1,000 through Lorna Tanghal.

During the preliminary investigation, the complainant, respondent Maruyama, submitted the affidavit of her witnesses, namely, Hermogena Santiago, Wilma Setsu and Marilette G. Izumiya and other documentary evidence. In her affidavit, Setsu alleged that the money which was entrusted to the petitioner for delivery to the Philippines belonged to her and her sister Annie Hashimoto, and their mother Hermogena Sanchez-Quicho, who joined respondent Maruyama in her complaint against petitioner Okabe and Tanghal. Respondent Maruyama, likewise, submitted a reply[3] to the petitioner’s counter-affidavit. After the requisite preliminary investigation, 2nd Assistant City Prosecutor Joselito J. Vibandor came out with a resolution dated March 30, 2000, finding probable cause for estafa against the petitioner.[4] Attached to the resolution, which was submitted to the city prosecutor for approval, was the Information[5] against the petitioner and Maruyama’s affidavit-complaint. The city prosecutor approved the resolution and the Information dated March 30, 2000 attached thereto.[6]

On May 15, 2000, an Information against the petitioner was filed in the Regional Trial Court of Pasay City, docketed as Criminal Case No. 00-0749. The case was raffled to Branch 119 of the court presided by Judge Pedro de Leon Gutierrez.[7] The accusatory portion of the Information reads:

That on or about December 12, 1998 in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused defrauded Cecilia Maruyama and Conchita Quicho, complainant herein, in the following manner, to wit: said accused received in trust from Cecilia Maruyama the

amount of Japanese Yen 1141 (sic) with peso equivalent to P3,839,465.00 under obligation to deliver the money to Conchita Quicho at the NAIA International Airport, Pasay City, immediately upon accused arrival from Japan, but herein accused once in possession of the same, did, then and there willfully, unlawfully and feloniously misappropriate and convert to her own personal benefit the said amount, and despite demands accused failed and refused to do so, to the damage and prejudice of the complainants in the aforesaid amount.

Contrary to law.[8]

Appended to the Information was the affidavit-complaint of respondent Maruyama and the resolution of Investigating Prosecutor Vibandor. On May 19, 2000, the trial court issued a warrant for the arrest of the petitioner with a recommended bond of P40,000. On June 15, 2000, the petitioner posted a personal bail bond in the said amount, duly approved by Judge Demetrio B. Macapagal, the Presiding Judge of Branch 79 of the RTC of Quezon City, who forthwith recalled the said warrant. The approved personal bail bond of the petitioner was transmitted to the RTC of Pasig City on June 21, 2000. Upon her request, the petitioner was furnished with a certified copy of the Information, the resolution and the criminal complaint which formed part of the records of the said case. The petitioner left the Philippines for Japan on June 17, 2000 without the trial court's permission, and returned to the Philippines on June 28, 2000. She left the Philippines anew on July 1, 2000, and returned on July 12, 2000.

On July 14, 2000, the trial court issued an Order setting the petitioner's arraignment and pre-trial at 2:00 p.m. of July 16, 2000. On the same day, the private prosecutor filed an urgent ex parte motion for the issuance of the hold departure order, alleging as follows:

3. It has come to the knowledge of private complainant that there is an impending marriage within the Philippines of either the son or daughter of the above-named accused and that the above-named accused—who has businesses in Japan, and is presently in Japan—will soon exit Japan and enter the Philippines to precisely attend said wedding;
4. Given [a] the bail was fixed at merely P40,000.00 and b] the considerable financial capability of the accused, it is a foregone conclusion that the above-named accused will, upon arrest, readily and immediately post bond, and leave for Japan—thereby frustrating and rendering inutile the administration of criminal justice in our country. The speed with which accused Teresita Sheila Tanghal Okabe can post bond and leave for Japan—effectively evading arraignment and plea—thus necessitates the immediate issuance of a Hold Departure Order even before her arrival here in the Philippines;[9]

The trial court issued an order on the same day, granting the motion of the private prosecutor for the issuance of a hold departure order and ordering the Commission on Immigration and Deportation (CID) to hold and prevent any attempt on the part of the petitioner to depart from the Philippines.[10] For her part, the petitioner filed on July 17, 2000 a verified motion for judicial determination of probable cause and to defer proceedings/arraignment, alleging that the only documents appended to the Information submitted by the investigating prosecutor were respondent Maruyama's affidavit-complaint for estafa and the resolution of the investigating prosecutor; the affidavits of the witnesses of the complainant, the respondent's counter-affidavit and the other evidence adduced by the parties were not attached thereto. The petitioner further alleged that the documents submitted by the investigating prosecutor were not enough on which the trial court could base a finding of probable cause for estafa against her. She further averred that conformably to the rulings of this Court in *Lim v. Felix*[11] and *Roberts, Jr. v. Court of Appeals*,[12] it behooved the investigating prosecutor to submit the following to the trial court to enable it to determine the presence or absence of probable cause: (a) copies of the affidavits of the witnesses of the complainant; (b) the counter-affidavit of Okabe and those of her witnesses; (c) the transcripts of stenographic notes taken during the preliminary investigation; and, (d) other documents presented during the said investigation.

On July 19, 2000, the petitioner filed a Very Urgent Motion To Lift/Recall Hold Departure Order dated July 17, 2000 and/or allow her to regularly travel to Japan alleging, thus:

3. Accused is (sic) widow and the legitimate mother of three (3) children, two (2) of whom are still minors, namely:

3.1. Okabe, Jeffrey-18 years old born on 13 August 1981.

3.2. Okabe, Masatoshi-14 years old and born on 16 October 1985, 3rd year High School student at Hoshikuki, Chiba City, Matsugaoka, High School, residing at Chiba City, Chuo-Ku, Yahagi-cho, 205, Telephone No. 043-224-5804.

3.3. Okabe, Tomoki-13 years old and born on 13 March 1986, 2nd year High School student at Hoshikuki, Chiba City, Matsugaoka, High School, residing at Chiba City, Chuo-Ku, Yahagi-cho, 205, Telephone No. 043-224-5804.

3.4. The accused has to attend the Parents Teachers Association (PTA) at the Hoshikuki High School where her two (2) minor sons aforesaid are presently enrolled and studying because Okabe, Masatoshi's graduation will take place on 26 July 2000.

3.5. The two (2) minor children of the accused absolutely depend their support (basic necessities) for foods, clothings, medicines, rentals, schooling and all other expenses for their survival to their legitimate mother who is the accused herein.

3.6. The issuance of the hold departure order (HDO) will impair the inherent custodial rights of the accused as the legitimate mother over these two (2) minor children which is repugnant to law.

3.7. The issuance of the hold departure order (HDO) will unduly restrict the accused to her custodial rights and visitation over her aforesaid minor children who are permanently living in Japan.

3.8. The issuance of the hold departure order (HDO) will unduly deprived (sic) these minor children to their right to obtain education and survival.

4. Accused's only source of income and livelihood is door-to-door delivery from Japan to the Philippines and vice versa which has been taking place for a very long period of time and in the process she has been constantly departing from the Philippines on a weekly basis and arriving in Japan on the same frequency, as evidenced by xerox copies of the pages of her Philippine Passports which are hereto attached as Annexes "A," "A-1," "A-2" up to "A-30," respectively. To deprive her of this only source of her livelihood to which the aforesaid two (2) minor children are deriving their very survival in a foreign land will (sic) tantamount to oppression rather than prosecution and depriving the said minor sons of their right to live even before trial on the merits of this case that will (sic) tantamount to the destruction of the future of these minor children.[13]

The private prosecutor opposed the petitioner's motions during the hearing on July 21, 2000 which was also the date set for her arraignment. The hearing of the motions as well as the arraignment was reset to 2:00 p.m. of July 26, 2000. On the said date, the petitioner filed a manifestation objecting to her arraignment prior to the resolution of her pending motions. She alleged that her arraignment for the crime charged should not be made a condition for the granting of her motion to recall the hold departure order issued against her. The arraignment of the petitioner was again reset to 2:00 p.m. of August 28, 2000, pending the resolution of her two motions. On August 25, 2000, the petitioner filed a motion for the postponement of her arraignment alleging that, in case the trial court ruled adversely thereon, she would refuse to enter a plea and seek relief from the appellate court. The court denied the petitioner's motions on the following grounds:

(a) Based on its personal examination and consideration of the Information, the affidavit-complaint of respondent

Maruyama and the resolution of the investigating prosecutor duly approved by the city prosecutor, the court found probable cause for the petitioner's arrest. Since the petitioner's motion for a determination of probable cause was made after the court had already found probable cause and issued a warrant for the petitioner's arrest, and after the latter filed a personal bail bond for her provisional liberty, such motion was a mere surplusage;

(b) When the petitioner posted a personal bail bond for her provisional liberty, she thereby waived her right to question the court's finding of the existence of probable cause for her arrest and submitted herself to the jurisdiction of the court, more so when she filed the motion for the lifting of the hold departure order the court issued, and the motion to defer the proceedings and her arraignment; and

(c) The hold departure order issued by the trial court was in accord with Supreme Court Circular No. 39-97 dated June 19, 1997, as well as the ruling of this Court in *Manotoc, Jr. v. Court of Appeals*.^[14]

When the case was called for the petitioner's arraignment at 2:00 p.m., on August 28, 2000, she refused to plead.^[15] Her counsel advised her, in open court, not to enter a plea and, with leave of court, left the courtroom. The court then entered a not guilty plea for the petitioner.^[16] It also issued an order, on the said date, setting the pre-trial and initial presentation of the evidence of the prosecution at 8:30 a.m. of September 20, 2000.^[17]

The petitioner then filed with the Court of Appeals a petition for certiorari under Rule 65 of the Rules of Court with a plea for a writ of preliminary injunction. The case was docketed as CA-G.R. SP No. 60732. The petitioner ascribed the following errors to the trial court:

- I
RESPONDENT COURT GRAVELY ERRED WHEN IT ISSUED
WARRANT OF ARREST DESPITE OF (SIC) LACK
OF PROBABLE CAUSE
- II
RESPONDENT COURT HAS VIOLATED THE
RIGHT OF THE PETITIONER TO DUE PROCESS
- III
RESPONDENT COURT HAS ALREADY PRE-JUDGED
THE CONVICTION OF THE PETITIONER FOR ESTAFA
- IV
RESPONDENT COURT HAS EXHIBITED ITS APPARENT
PARTIALITY TOWARDS THE PROSECUTION AND
AGAINST THE PETITIONER
- V
RESPONDENT COURT GRAVELY ERRED WHEN IT DENIES (SIC) THE MOTION FOR JUDICIAL
DETERMINATION OF PROBABLE CAUSE PURSUANT TO THE DOCTRINE OF ROBERTS, JR.
- VI
RESPONDENT COURT GRAVELY ERRED WHEN IT DENIES (SIC)
THE LIFTING/RECALL OF THE HDO AND/OR ALLOWING THE
PETITIONER TO TRAVEL TO JAPAN REGULARLY FOR
HUMANITARIAN CONSIDERATION
- VII
RESPONDENT COURT COMMITTED GRAVE ABUSE OF
DISCRETION AMOUNTING TO LACK OF JURISDICTION
WHEN IT ISSUED THE QUESTIONED ORDERS...^[18]

On January 31, 2001, the CA rendered a Decision^[19] partially granting the petition in that the assailed order of the trial court denying the petitioner's motion to lift/recall the hold departure order was set aside. However, the

petitioner's motion for reconsideration of the trial court's decision was denied and her petition for the nullification of the August 25, 2000 Order of the respondent judge was dismissed. The CA ruled that by posting bail and praying for reliefs from the trial court, the petitioner waived her right to assail the respondent judge's finding of the existence of probable cause. The appellate court cited the ruling of this Court in *Cojuangco, Jr. v. Sandiganbayan*.^[20] Thus, the appellate court affirmed the assailed order of the RTC, based on the respondent judge's personal examination of respondent Maruyama's affidavit-complaint, the resolution of the investigating prosecutor and the Information approved by the city prosecutor, a finding of probable cause was in order. However, the appellate court allowed the petitioner to travel to Japan under the following conditions:

- (1) That petitioner post a bond double the amount of her alleged monetary liability under the Information filed against her, as recommended by the Office of the Solicitor General;
- (2) That petitioner inform respondent Court of each and all of her travel itinerary prior to leaving the country;
- (3) That petitioner make periodic reports with respondent Court;
- (4) That petitioner furnish respondent Court with all the addresses of her possible place of residence, both here and in Japan; and
- (5) Such other reasonable conditions which respondent Court may deem appropriate under the circumstances.^[21]

The appellate court did not resolve the issue of whether the trial court had prejudged the case and was partial to the prosecution. The decretal portion of the decision of the CA reads:

WHEREFORE, premises considered, the instant special civil action for certiorari is hereby PARTIALLY GRANTED insofar as the denial of petitioner's Motion to Lift/Recall Hold Departure Order dated 14 July, 2000 and/or Allow the accused to Regularly Travel to Japan is concerned. In all other respect, the same is hereby DENIED.

SO ORDERED.^[22]

On March 6, 2001, the petitioner filed a motion for a partial reconsideration of the decision of the CA contending that the appellate court erred in applying the ruling of this court in *Cojuangco, Jr. v. Court of Appeals*^[23] instead of Section 26, Rule 114 of the Revised Rules on Criminal Procedure. The petitioner posited that the said rule, which took effect on December 1, 2000, before the court rendered its decision, had superseded the ruling of this Court in the *Cojuangco* case. However, the appellate court held that Section 26, Rule 114 of the Revised Rules on Criminal Procedure cannot be applied retroactively, because the petitioner had posted bail on June 15, 2000 before the Revised Rules on Criminal Procedure took effect.

Hence, the instant petition for review on certiorari for the reversal of the decision and resolution of the CA and praying that after due proceedings, judgment be rendered in her favor, thus:

WHEREFORE, it is respectfully prayed of this Honorable Supreme Court that after due proceedings, judgment be rendered in favor of the petitioner and against the respondents as follows:

- (a) GIVING DUE COURSE to the instant petition;
- (b) ORDERING the REVERSAL and PARTIALLY SETTING ASIDE of the Decision promulgated on 31 January 2001 (Annex "A" hereof) of the Honorable Court of Appeals in CA-G.R. SP No. 60732 as well as its Resolution promulgated on 27 September 2001 (Annex "B" hereof);
- (c) ORDERING the DISMISSAL of Crim. Case No. 00-0749 for lack of probable cause;
- (d) DECLARING the entire proceedings in Crim. Case No. 00-0749 as null and void;

(e) ORDERING the private respondents to pay the petitioners the following amount:

(i) at least P1,000,000.00 as moral damages;

(ii) at least P1,000,000.00 as exemplary damages;

(iii) at least P500,000.00 as attorney's fees and for other expenses of litigation.

(f) ORDERING the private respondent to pay the costs of this suit.

(g) Petitioner further prays for such other reliefs just and equitable under the premises.[24]

The petitioner asserts that the CA committed the following reversible errors:

I

THE HONORABLE COURT OF APPEALS MADE A REVERSIBLE ERROR WHEN IT COMPLETELY DISREGARDED THE APPLICATION OF SECTION 26, RULE 114 OF THE REVISED RULES ON CRIMINAL PROCEDURE WHICH TOOK EFFECT ON 01 DECEMBER 2000 WHICH IS FAVORABLE TO THE PETITIONER/ACCUSED.

II

THE HONORABLE COURT OF APPEALS MADE A REVERSIBLE ERROR IN RULING THAT "WHATEVER INFIRMITY THERE WAS IN THE ISSUANCE OF THE WARRANT OF ARREST, THE SAME WAS CURED WHEN PETITIONER VOLUNTARILY SUBMITTED TO THE RESPONDENT COURT'S JURISDICTION WHEN SHE POSTED BAIL AND FILED MOTIONS SEEKING AFFIRMATIVE RELIEF SUCH AS MOTION TO LIFT/RECALL HOLD DEPARTURE ORDER AND TO ALLOW PETITIONER TO TRAVEL REGULARLY TO JAPAN (Last paragraph, Page 9 DECISION dated 31 January 2001)."

III

THE HONORABLE COURT OF APPEALS MADE A REVERSIBLE ERROR WHEN IT RELIED UPON THE RULING IN THE CASE OF COJUANGCO, JR. VS. SANDIGANBAYAN, [300 SCRA 367 (1998)] WHEN IN FACT SAID RULING IS NOW OBSOLETE AND NO LONGER APPLICABLE.

IV

THE HONORABLE COURT OF APPEALS MADE A REVERSIBLE ERROR IN RULING THAT RESPONDENT COURT COMPLIED WITH THE CONSTITUTIONAL REQUIREMENTS ON THE ISSUANCE OF WARRANT OF ARREST WITHOUT PROBABLE CAUSE, WHEN THE RESPONDENT COURT MERELY RELIED ON [THE] (i) COMPLAINT-AFFIDAVIT OF CECILIA MARUYAMA; (ii) RESOLUTION OF THE INVESTIGATING PROSECUTOR; AND (iii) CRIMINAL INFORMATION.

V

THE HONORABLE COURT OF APPEALS MADE A REVERSIBLE ERROR WHEN IT FAILED TO RULE ON THE PARTIALITY OF THE RESPONDENT JUDGE IN HANDLING THE CASE BELOW WHICH IS VIOLATIVE OF THE PETITIONER'S RIGHT TO DUE PROCESS.

VI

THE FILING OF CRIM. CASE NO. 4297 (MTC, ANGAT, BULACAN) FOR ESTAFA ENTITLED "PEOPLE VS. SHEILA OKABE"; CIVIL CASE NO. 331-M-98 (RTC, MALOLOS, BULACAN) FOR SUM OF MONEY WITH PRELIMINARY ATTACHMENT ENTITLED "CONCHITA SANCHEZ-QUICHO VS. SHEILA TERESITA TANGHAL OKABE"; AND CRIM. CASE NO. 00-07-19 (RTC, PASAY CITY, BRANCH 119) ENTITLED "PEOPLE VS. TERESITA TANGHAL OKABE" CONSTITUTE A VIOLATION OF THE RULE ON NON-FORUM SHOPPING.[25]

By way of comment, the Office of the Solicitor General refuted the petitioner's assigned errors, contending as

follows:

I

The Court of Appeals did not commit a reversible error in not applying Section 26, Rule 114 of the Revised Rules on Criminal Procedure.

II

The Court of Appeals did not commit a reversible error in ruling that the infirmity, if any, in the issuance by the respondent Judge of the warrant of arrest against petitioner was cured when petitioner voluntarily submitted to the trial court's jurisdiction when she posted bail and filed motions seeking for affirmative reliefs from the trial court, such as the motion to lift/recall Hold Departure Order (HDO) and to allow petitioner to travel regularly to Japan.

III

The Court of Appeals did not commit a reversible error in applying the ruling in the Cojuangco case.

IV

The Court of Appeals did not commit a reversible error in finding that respondent Judge complied with the constitutional requirements on the issuance of a warrant of arrest.

V

The Court of Appeals did not commit a reversible error when it did not rule on the partiality of the respondent Judge in handling Criminal Case No. 00-0749.

VI

The Honorable Court of Appeals did not commit a reversible error when it did not rule on petitioner's claim of forum shopping.[26]

The Court shall resolve the assigned errors simultaneously as they are interrelated.

The petitioner asserts that the respondent judge could not have determined the existence of probable cause for her arrest solely on the resolution of the investigating prosecutor and the undated affidavit-complaint of respondent Maruyama. She posits that the respondent judge should have ordered the investigating prosecutor to submit the affidavits of the witnesses of respondent Maruyama and the latter's documentary evidence, as well as the counter-affidavit of the petitioner and the transcripts of the stenographic notes, if any, taken during the preliminary investigation. The petitioner adds that the respondent judge should have personally reviewed the said documents, conformably to the rulings of this Court in *Lim v. Felix*,^[27] *Roberts, Jr. v. Court of Appeals*^[28] and *Ho v. People*,^[29] before determining the presence or absence of probable cause. She posits that the respondent judge acted with grave abuse of discretion amounting to excess or lack of jurisdiction in denying her motion for a determination of probable cause, and the alternative motion for a dismissal of the case against her for lack of probable cause.

The petitioner further asserts that the appellate court erred in affirming the ruling of the respondent judge that, by posting a personal bail bond for her provisional liability and by filing several motions for relief, she thereby voluntarily submitted herself to the jurisdiction of the trial court and waived her right to assail the infirmities that infected the trial court's issuance of the warrant for her arrest. She avers that the appellate court's reliance on the ruling of this Court in *Cojuangco, Jr. v. Sandiganbayan*^[30] is misplaced, and submits that the appellate court should have applied Section 26, Rule 114 of the Revised Rules of Court retroactively, as it rendered the ruling of this Court in the *Cojuangco, Jr.* case obsolete.

The Office of the Solicitor General, on the other hand, asserts that the respondent judge did not commit any grave abuse of discretion when he found probable cause against the petitioner for estafa, and thereafter issued a warrant

for her arrest. It argues that the respondent judge personally determined the existence of probable cause independently of the certification of the investigating prosecutor, and only after examining the Information, the resolution of the investigating prosecutor, as well as the affidavit-complaint of the private complainant. It asserts that such documents are sufficient on which to anchor a finding of probable cause. It insists that the appellate court correctly applied the ruling of this Court in the *Cojuangco, Jr. v. Court of Appeals* case, and that the respondent judge complied with both the requirements of the constitution and those set forth in the Rules of Court before issuing the said warrant.[31]

We agree with the contention of the petitioner that the appellate court erred in not applying Section 26, Rule 114 of the Revised Rules on Criminal Procedure, viz:

SEC. 26. Bail not a bar to objections on illegal arrest, lack of or irregular preliminary investigation. – An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case.

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.[32] The new rule has reverted to the ruling of this Court in *People v. Red*. [33] 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.[34] 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.[35] Before the appellate court rendered its decision on January 31, 2001, the Revised Rules on Criminal Procedure was already in effect. It behooved 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.[36] 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.[37] In this case, the records show that a warrant was issued by the respondent judge in Pasay City for the arrest of the petitioner, a resident of Guiguinto, Bulacan. When the petitioner learned of the issuance of the said warrant, she posted a personal bail bond to avert her arrest and secure her provisional liberty. Judge Demetrio B. Macapagal of the RTC of Quezon City approved the bond and issued an order recalling the warrant of arrest against the petitioner. Thus, the posting of a personal bail bond was a matter of imperative necessity to avert her incarceration; it should not be deemed as a waiver of her right to assail her arrest. So this Court ruled in *People v. Red*: [38]

... 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.[39]

Moreover, the next day, or on June 16, 2000, the petitioner, through counsel, received certified true copies of the Information, the resolution of the investigating prosecutor, the affidavit-complaint of the private complainant, respondent Maruyama, and a certification from the branch clerk of court that only the Information, resolution and affidavit-complaint formed part of the entire records of the case. The next day, June 17, 2000, the petitioner, through counsel, filed a verified motion for judicial determination of probable cause and to defer the proceedings and her arraignment. All the foregoing are inconsistent with a waiver of her right to assail the validity of her arrest and to question the respondent judge's determination of the existence of probable cause for her arrest.

Neither can the petitioner's filing of a motion for the lifting of the hold departure order and for leave to go to Japan be considered a waiver of her right to assail the validity of the arrest warrant issued by the respondent judge. It bears stressing that when the petitioner filed the motion to lift the hold departure order issued against her by the respondent judge, her motion for a determination of probable cause was still unresolved. She sought a lifting of the hold departure order on July 14, 2000 and filed a motion for leave to go to Japan, to give the respondent judge an opportunity to reconsider the said order, preparatory to assailing the same in the appellate court in case her motion was denied.

The issue that now comes to fore is whether or not the respondent judge committed a grave abuse of his discretion amounting to excess or lack of jurisdiction in issuing his August 25, 2000 Order. By grave abuse of discretion is meant such patent and gross abuse of discretion as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reasons of passion or personal hostility.[40] Hence, when the court has jurisdiction over the case, its questioned acts, even if its findings are not correct, would at most constitute errors of law and not abuse of discretion correctible by the extraordinary remedy of certiorari.[41]

We agree with the petitioner that before the RTC judge issues a warrant of arrest under Section 6, Rule 112 of the Rules of Court[42] in relation to Section 2, Article III of the 1987 Constitution, the judge must make a personal determination of the existence or non-existence of probable cause for the arrest of the accused. The duty to make such determination is personal and exclusive to the issuing judge. He cannot abdicate his duty and rely on the certification of the investigating prosecutor that he had conducted a preliminary investigation in accordance with law and the Rules of Court, as amended, and found probable cause for the filing of the Information.

Under Section 1, Rule 112 of the Rules on Criminal Procedure, the investigating prosecutor, in conducting a preliminary investigation of a case cognizable by the RTC, is tasked to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent therein is probably guilty thereof and should be held for trial. A preliminary investigation is for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial.[43]

If the investigating prosecutor finds probable cause for the filing of the Information against the respondent, he executes a certification at the bottom of the Information that from the evidence presented, there is a reasonable ground to believe that the offense charged has been committed and that the accused is probably guilty thereof. Such certification of the investigating prosecutor is, by itself, ineffective. It is not binding on the trial court. Nor

may the RTC rely on the said certification as basis for a finding of the existence of probable cause for the arrest of the accused.[44]

In contrast, 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. Probable cause is meant such set of facts and circumstances which 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.[45] In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense.[46] 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 bare suspicion, it requires less than evidence which would justify conviction.[47]

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 of crimes from the tribulations, expenses and anxiety of a public trial:

It must be stressed, however, that in these exceptional cases, the Court took the extraordinary step of annulling findings of probable cause either to prevent the misuse of the strong arm of the law or to protect the orderly administration of justice. The constitutional duty of this Court in criminal litigations is not only to acquit the innocent after trial but to insulate, from the start, the innocent from unfounded charges. For the Court is aware of the strains of a criminal accusation and the stresses of litigation which should not be suffered by the clearly innocent. The filing of an unfounded criminal information in court exposes the innocent to severe distress especially when the crime is not bailable. Even an acquittal of the innocent will not fully bleach the dark and deep stains left by a baseless accusation for reputation once tarnished remains tarnished for a long length of time. The expense to establish innocence may also be prohibitive and can be more punishing especially to the poor and the powerless. Innocence ought to be enough and the business of this Court is to shield the innocent from senseless suits right from the start.[48]

In determining the existence or non-existence of probable cause for the arrest of the accused, the RTC judge may rely on the findings and conclusions in the resolution of the investigating prosecutor finding probable cause for the filing of the Information. After all, as the Court held in *Webb v. De Leon*,[49] the judge just personally reviews the initial determination of the investigating prosecutor finding a probable cause to see if it is supported by substantial evidence.[50] However, in determining the existence or non-existence of probable cause for the arrest of the accused, the judge should not rely solely on the said report.[51] The judge should consider not only the report of the investigating prosecutor but also the affidavit/affidavits and the documentary evidence of the parties, the counter-affidavit of the accused and his witnesses, as well as the transcript of stenographic notes taken during the preliminary investigation, if any, submitted to the court by the investigating prosecutor upon the filing of the Information.[52] Indeed, in *Ho v. People*,[53] this Court held that:

Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to personally determine

probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer.[54]

The rulings of this Court are now embedded in Section 8(a), Rule 112 of the Revised Rules on Criminal Procedure which provides that an Information or complaint filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence of the resolution:

SEC. 8. Records. – (a) Records supporting the information or complaint. An information or complaint filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence and the resolution on the case.

If the judge is able to determine the existence or non-existence of probable cause on the basis of the records submitted by the investigating prosecutor, there would no longer be a need to order the elevation of the rest of the records of the case. However, if the judge finds the records and/or evidence submitted by the investigating prosecutor to be insufficient, he may order the dismissal of the case, or direct the investigating prosecutor either to submit more evidence or to submit the entire records of the preliminary investigation, to enable him to discharge his duty.[55] The judge may even call the complainant and his witness to themselves answer the court's probing questions to determine the existence of probable cause.[56] The rulings of this Court in *Soliven v. Makasiar*[57] and *Lim v. Felix*[58] are now embodied in Section 6, Rule 112 of the Revised Rules on Criminal Procedure, with modifications, viz:

SEC. 6. When warrant of arrest may issue. – (a) By the Regional Trial Court. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

In this case, the investigating prosecutor submitted to the respondent judge only his resolution after his preliminary investigation of the case and the affidavit-complaint of the private complainant, and failed to include the affidavits of the witnesses of the private complainant, and the latter's reply affidavit, the counter-affidavit of the petitioner, as well as the evidence adduced by the private complainant as required by case law, and now by Section 8(a), Rule 112 of the Revised Rules on Criminal Procedure. The aforesaid affidavits, more specifically the fax message of Lorna Tanghal and the document signed by her covering the amount of US\$1,000, are of vital importance, as they would enable the respondent judge to properly determine the existence or non-existence of probable cause.

First. When respondent Maruyama handed the money to the petitioner, she did not require the latter to sign a document acknowledging receipt of the amount. The petitioner avers that it is incredible that Maruyama would entrust P3,993,500 in Japanese Yen to her without even requiring her to sign a receipt therefor, especially since respondent Maruyama was not even the owner of the money;

Second. The affidavit of Hermogena Santiago, a witness of the respondent, is unreliable, because it is based on information relayed to her by Lorna Tanghal that she (Tanghal) saw the petitioner carrying a Louis Vuitton bag while on board a Mitsubishi L300 van with the petitioner. It appears that Tanghal failed to submit any counter-affidavit to the investigating prosecutor;

Third. The affidavit of Marilette G. Izumiya, another witness of the respondent, is also unreliable, as it was based on information relayed to her by Thelma Barbiran, who used to work for the petitioner as a housemaid, that she (Barbiran) had in her possession a fax message from Lorna Tanghal, implicating the petitioner in the crime charged. Barbiran did not execute any affidavit;

Fourth. There is no indication in the resolution of the investigating prosecutor that the petitioner received the fax message of Lorna Tanghal;

Fifth. The private complainant claims that the petitioner tried to reimburse the P3,993,500 by remitting US\$1,000 to her. However, the latter admitted in her affidavit-complaint that the document evidencing the remittance was signed by Lorna Tanghal, not by the petitioner. The petitioner claimed that Lorna Tanghal had to remit US\$1,000 to respondent Maruyama because the latter made it appear to Tanghal that the police authorities were about to arrest the petitioner, and Tanghal was impelled to give the amount to respondent Maruyama to avert her arrest and incarceration;

Sixth. In her counter-affidavit, the petitioner alleged that respondent Maruyama had no case against her because the crime charged in the latter's affidavit-complaint was the same as that filed against her in the Metropolitan Trial Court of Bulacan, which was withdrawn by the complainant herself;

Seventh. The investigating prosecutor stated in his resolution that the private complainant established the element of deceit. However, the crime charged against the petitioner as alleged in the Information is estafa with abuse of confidence.

In sum, then, we find and so declare that the respondent judge committed a grave abuse of his discretion amounting to excess or lack of jurisdiction in finding probable cause for the petitioner's arrest in the absence of copies of the affidavits of the witnesses of the private complainant and her reply affidavit, the counter-affidavit of the petitioner, and the evidence adduced during the preliminary investigation before the investigating prosecutor.

In view of the foregoing disquisitions, there is no more need to resolve the other issues raised by the petitioner.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed decision of the Court of Appeals is REVERSED and SET ASIDE. The assailed Orders dated August 25 and 28, 2000 and the Warrant of Arrest issued by the respondent judge in Criminal Case No. 00-0749 are SET ASIDE. The records are REMANDED to the Regional Trial Court of Pasay City, Branch 119. The respondent judge is hereby DIRECTED to determine the existence or non-existence of probable cause for the arrest of the petitioner based on the complete records, as required under Section 8(a), Rule 112 of the Revised Rules on Criminal Procedure.

SO ORDERED.

Quisumbing, (Acting Chairman), Austria-Martinez, and Tinga, JJ., concur.
Puno, (Chairman), J., on official leave.

[1] Penned by Associate Justice Ramon A. Barcelona with Associate Justices Rodrigo V. Cosico and Alicia S. Santos concurring.

[2] Annex "O," Rollo, pp. 119-133.

[3] Rollo, p. 136.

[4] Annex "P," Rollo, pp. 134-138.

[5] Annex “Q,” Id. at 139-140.

[6] Id. at 138-139.

[7] Id. at 139-140.

[8] Id. at 139.

[9] Annex “S,” Id. at 142.

[10] Annex “T,” Id. at 144.

[11] 194 SCRA 292 (1991).

[12] 254 SCRA 307 (1996).

[13] Annex “V,” Id. at 163-164.

[14] 142 SCRA 149 (1986).

[15] Rollo, p. 197.

[16] Annex “CC,” id. at 200.

[17] Annex “BB,” id. at 198-199.

[18] Annex “DD,” id. at 223-224.

[19] Penned by Associate Justice Ramon A. Barcelona with Associate Justices Rodrigo V. Cosico and Alicia S. Santos concurring.

[20] 300 SCRA 367 (1998).

[21] Rollo, p. 85.

[22] Id. at 86.

[23] Supra.

[24] Rollo, pp. 70-71.

[25] Id. at 43-44.

[26] Id. at 565-566.

[27] Supra.

[28] Supra.

[29] Supra.

[30] Supra.

[31] Rollo, pp. 604-606.

[32] Herrera, Remedial Law, 2001 ed., Vol. IV, p. 438.

[33] 55 Phil. 706 (1931).

- [34] Narzoles v. NLRC, 341 SCRA 533 (2000).
- [35] Zulueta v. Asia Brewery, Inc., 354 SCRA 100 (2001).
- [36] People v. Compacion, 361 SCRA 540 (2001).
- [37] Thomson v. Court of Appeals, 298 SCRA 280 (1998).
- [38] See note 37.
- [39] Supra, p. 711.
- [40] Ala-Martin v. Judge Sultan, 366 SCRA 316 (2001).
- [41] Lalican v. Vergara, 276 SCRA 518 (1997).
- [42] The assailed orders and warrant of arrest were issued before the Revised Rules on Criminal Procedure took effect.
- [43] People v. Poculan, 167 SCRA 176 (1988).
- [44] People v. Inting, 187 SCRA 788 (1990).
- [45] Webb v. De Leon, 247 SCRA 652 (1995).
- [46] People v. Aruta, 288 SCRA 626 (1998).
- [47] Ibid.
- [48] Dissenting opinion of Mr. Justice Reynato S. Puno in Roberts, Jr. v. Court of Appeals, supra.
- [49] See note 37.
- [50] People v. Inting, supra.
- [51] Ho v. People, 280 SCRA 365 (1997).
- [52] Soliven v. Makasiar, supra.
- [53] See note 49.
- [54] Id. at 381-382.
- [55] See note 42.
- [56] Lim v. Felix, supra.
- [57] See note 51.
- [58] See note 55.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.