EDGARDO V. QUESADA, PETITIONER, VS. THE DEPARTMENT OF JUSTICE AND CLEMENTE TERUEL, RESPONDENTS.

G.R. NO. 150325. August 31, 2006

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the Petition for Certiorari[1] (with prayer for a temporary restraining order and/or preliminary injunction) assailing the Resolutions dated January 17, 2001 and September 17, 2001 issued by the Secretary of Justice in I.S. No. 00-29780-C, entitled "Clemente M. Teruel, complainant, versus Ramon P. Camacho, Jr., Edgardo V. Quesada and Rodolfo Corgado, respondents."

On March 1, 2000, Clemente M. Teruel, herein respondent, filed with the Office of the City Prosecutor, Mandaluyong City, an affidavit-complaint[2] charging Edgardo V. Quesada (herein petitioner), Ramon P. Camacho, Jr., and Rodolfo Corgado with the crime of estafa under Article 315, paragraphs 2 and 3 of the Revised Penal Code, docketed as I.S. No. 00-29780-C. The affidavit-complaint alleges that on June 13, 1998 at Shangrila Plaza Hotel, EDSA, Mandaluyong City, Quesada, Camacho, and Corgado represented themselves to Teruel as the president, vice-president/treasurer, and managing director, respectively, of VSH Group Corporation; that they offered to him a telecommunication device called Star Consultant Equipment Package which provides the user easy access to the internet via television; that they assured him that after he pays the purchase price of P65,000.00, they will immediately deliver to him two units of the internet access device; that relying on their representations, he paid them P65,000.00 for the two units; and that despite demands, they, did not deliver to him the units.

It was only petitioner Quesada who filed a counter-affidavit.[3] He alleged that he, Camacho, and Corgado are Star Consultant Trainers of F.O.M. Philippines, Inc., a corporation engaged in the business of selling and marketing telecommunication products and technologies; that they formed the VSH Group as a corporation "for the principal purpose of pooling the commissions they will receive as Star Consultant Trainers and then dividing said commissions among themselves according to their agreement"; that while he admitted that the two units of internet access devices purchased by herein respondent Teruel were not delivered to him, however, this was not due to their alleged fraudulent representations since they merely acted as sales agents of F.O.M. Phils., Inc.; and that they found out too late that the said company could not cope with its commitment to them as it ran short of supplies of telecommunication products.

On April 25, 2000, Assistant City Prosecutor Esteban A. Tacla, Jr. issued a Resolution[4] finding probable cause against petitioner Quesada, Camacho, and Corgado, and recommending the filing of the corresponding Information.

Consequently, an Information for estafa against petitioner Quesada, Camacho, and Corgado was filed with the Regional Trial Court (RTC), Mandaluyong City, docketed as Criminal Case No. MC-00-2510. This case was later raffled off to Branch 208.

In the meantime, petitioner filed with the Department of Justice a Petition for Review challenging the April 25, 2000 Resolution of the Investigating Prosecutor. On January 17, 2001, the Secretary of Justice issued a

Resolution[5] dismissing the petition. Petitioner's motion for reconsideration was denied in a Resolution[6] dated September 17, 2001.

While the RTC was hearing Criminal Case No. MC-00-2510, petitioner filed with this Court the instant Petition for Certiorari alleging that the Secretary of Justice, in dismissing his Petition for Review in I.S. No. 00-29780-C, acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner contends that the element of fraud or deceit in the crime of estafa is not present[7] and that there is no evidence which will prove that the accused's promise to deliver the purchased items was false or made in bad faith.[8]

The Solicitor General, in his Comment, maintains that the Secretary of Justice, in finding a probable cause against the three accused, did not act with grave abuse of discretion and prayed for the dismissal of the instant petition for being unmeritorious.

Initially, we observe that the present petition was directly filed with this Court, in utter violation of the rule on hierarchy of courts.

A petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, must be filed with the Court of Appeals whose decision may then be appealed to this Court by way of a petition for review on certiorari under Rule 45 of the same Rules.[9] A direct recourse to this Court is warranted only where there are special and compelling reasons specifically alleged in the petition to justify such action. Such ladder of appeals is in accordance with the rule on hierarchy of courts. In Vergara, Sr. v. Suelto,[10] we stressed that this should be the constant policy that must be observed strictly by the courts and lawyers, thus:

> x x x. The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe. (Underscoring supplied)

We later reaffirmed such policy in People v. Cuaresma[11] after noting that there is "a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometimes even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land." We again emphasized that:

> x x x. This Court's original jurisdiction to issue writs of certiorari (as well as prohibition, mandamus, quo warranto, habeas corpus and injunction) is not exclusive. x x x. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals x x x. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is, after all, a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters

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> within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. x x x. (Underscoring supplied)

Here, we cannot discern any special and compelling reason to justify the direct filing with this Court of the present petition. Clearly, it should be dismissed outright.

Even assuming that the petition can be filed directly with this Court, the same must fail. Petitioner contends that the element of fraud or deceit as an element of the crime of estafa is absent. Consequently, the affirmance by the Secretary of Justice of the Investigating Prosecutor's finding that there exists a probable cause is tainted with grave abuse of discretion.

The issue of whether the element of fraud or deceit is present is both a question of fact and a matter of defense, the determination of which is better left to the trial court after the parties shall have adduced their respective evidence. It bears stressing that a preliminary investigation is merely an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial.[12] It does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits.[13] As implied by the words "probably guilty," the inquiry is concerned merely with probability, not absolute or moral certainty.[14] At this stage, the complainant need not present proof beyond reasonable doubt. A preliminary investigation does not require a full and exhaustive presentation of the parties' evidence.[15] A finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and was committed by petitioner and his co-accused. As ruled by the Investigating Prosecutor and affirmed by the Secretary of Justice, petitioner's representation and assurance to respondent Teruel that the telecommunication equipment would be delivered to him upon payment of its purchase price was the compelling reason why he parted with his money. Such assurance, the Investigating Prosecutor added, is actually a misrepresentation or deceit.

Thus, we hold that the Secretary of Justice did not gravely abuse his discretion. An act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to 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 reason of passion or personal hostility.[16]

WHEREFORE, we DISMISS the instant petition. Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Azcuna and Garcia, JJ., concur.Corona, J., on leave.

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[1] Filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[2] Rollo, pp. 28-29.

[3] Id., pp. 19-22.

[4] Id., pp. 54-55.

[5] Id., pp. 58-59.

[6] Id., pp. 63-64.

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[7] Petition, id., p. 11.

[8] Id., p. 13.

[9] See Filadams Pharma, Inc. v. Court of Appeals, G.R. No. 132422, March 30, 2004, 426 SCRA 460, 466-467; Ching v. Secretary of Justice, G.R. No. 164317, February 6, 2006, 481 SCRA 609, 628-629, citing Nava v. Commission on Audit, 419 Phil. 544; 367 SCRA 263 (2001); Torres, Jr. v. Aguinaldo, G.R. No. 164268, June 28, 2005, 461 SCRA 599, 612.

[10] No. L-74766, December 21, 1987, 156 SCRA 753, 766.

[11] G.R. No. 67787, April 18, 1989, 172 SCRA 415, 423-425. See also Santiago v. Vasquez, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 651-652.

[12] Section 1, Rule 112 of the Revised Rules of Criminal Procedure, effective December 1, 2000, cited in A.M. No. 00-5-03-SC.

[13] Ang v. Lucero, G.R. No. 143169, January 21, 2005, 449 SCRA 157, 168-169, citing People v. Court of Appeals, 301 SCRA 475 (1999); Microsoft Corporation v. Maxicorp, Inc., 438 SCRA 224 (2004).

[14] Id.

[15] Id., citing People v. Court of Appeals, supra note 13; Ledesma v. Court of Appeals, 278 SCRA 656 (1997).

[16] Yee v. Bernabe, G.R. No. 141393, April 19, 2006, 487 SCRA 385, 393.

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