

FERDINAND T. SANTOS, ROBERT JOHN SOBREPEÑA, AND RAFAEL PEREZ DE TAGLE, JR., PETITIONERS, VS. WILSON GO, RESPONDENT.*G.R. NO. 156081. October 19, 2005*

Ponente: QUISUMBING, J.

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For our review on certiorari is the Decision[1] dated September 2, 2002 of the Court of Appeals in CA-G.R. SP No. 67388, as well as its Resolution[2] dated November 12, 2002, denying petitioners' motion for reconsideration. The appellate court dismissed the petition for review under Rule 43[3] of the 1997 Rules of Civil Procedure for being an erroneous mode of appeal from the Resolution[4] of the Secretary of Justice. The Secretary had modified the Resolution[5] of the Office of the City Prosecutor of Pasig City in I.S. No. PSG 00-04-10205 and directed the latter to file an information for estafa against petitioners.

The petitioners are corporate directors and officers of Fil-Estate Properties, Inc. (FEPI).

On October 17, 1995, FEPI allegedly entered into a Project Agreement with Manila Southcoast Development Corporation (MSDC), whereby FEPI undertook to develop several parcels of land in Nasugbu, Batangas allegedly owned by MSDC. Under the terms of the Agreement, FEPI was to convert an approximate area of 1,269 hectares into a first-class residential, commercial, resort, leisure, and recreational complex. The said Project Agreement clothed FEPI with authority to market and sell the subdivision lots to the public.

Respondent Wilson Go offered to buy Lot 17, Block 38 from FEPI. Lot 17 measured approximately 1,079 square meters and the purchase price agreed upon was P4,304,000. The Contract to Sell signed by the parties was the standard, printed form prepared by FEPI. Under the terms of said contract of adhesion, Go agreed to pay a downpayment of P1,291,200 and a last installment of P840,000 on the balance due on April 7, 1997. In turn, FEPI would execute a final Deed of Sale in favor of Go and deliver to Go the owner's duplicate copy of Transfer Certificate of Title (TCT) upon complete payment of the purchase price.

Go fully complied with the terms of the Contract. FEPI, however, failed to develop the property. Neither did it release the TCT to Go. The latter demanded fulfillment of the terms and conditions of their agreement. FEPI balked. In several letters to its clients, including respondent Go, FEPI explained that the project was temporarily halted due to some claimants who opposed FEPI's application for exclusion of the subject properties from the coverage of the Comprehensive Agrarian Reform Law (CARL). Further, FEPI's hands were tied by a cease and desist order issued by the Department of Agrarian Reform (DAR). Said order was the subject of several appeals now pending before this Court. FEPI assured its clients that it had no intention to abandon the project and would resume developing the properties once the disputes had been settled in its favor.

Go was neither satisfied nor assured by FEPI's statements and he made several demands upon FEPI to return his payment of the purchase price in full. FEPI failed to heed his demands. Go then filed a complaint before the Housing and Land Use Regulatory Board (HLURB). He likewise filed a separate Complaint-Affidavit for estafa under Articles 316[6] and 318[7] of the Revised Penal Code before the Office of the City Prosecutor of Pasig City

against petitioners as officers of FEPI. The complaint for estafa averred that the Contract to Sell categorically stated that FEPI was the owner of the property. However, before the HLURB, FEPI denied ownership of the realty. Go alleged that the petitioners committed estafa when they offered the subject property for sale since they knew fully well that the development of the property and issuance of its corresponding title were impossible to accomplish, as the ownership and title thereto had not yet been acquired and registered under the name of FEPI at the time of sale. Thus, FEPI had grossly misrepresented itself as owner at the time of the sale of the subject property to him and when it received from him the full payment, despite being aware that it was not yet the owner.

Petitioners challenged the jurisdiction of the City Prosecutor of Pasig City to conduct the preliminary investigation on the ground that the complainant was not from Pasig City, the contract was not executed nor were the payments made in Pasig City. Besides, countered petitioners, none of the elements of estafa under Articles 316 and 318 were present. They averred that FEPI was not the owner of the project but the developer with authority to sell under a joint venture with MSDC, who is the real owner. They further denied that FEPI ever made any written nor oral representation to Go that it is the owner, pointing out that Go failed to positively identify who made such misrepresentation to him nor did Go say where the misrepresentation was made. According to petitioner, there being neither deceit nor misrepresentation, there could be no damage nor prejudice to respondent, and no probable cause exists to indict the petitioners. Petitioners likewise insisted that they could not be held criminally liable for abiding with a cease-and-desist order of the DAR.

In his reply, Go stressed that the City Prosecutor of Pasig City had jurisdiction over the case. He argued that the Contract to Sell specifically provided that payment be made at FEPI's office at Pasig City and the demand letters bore the Pasig City address. He averred that FEPI could not disclaim ownership of the project since the contract described FEPI as owner without mentioning MSDC. Additionally, the acts executed by FEPI appearing in the contract were the acts of an owner and not a mere developer.

After the preliminary investigation, the City Prosecutor resolved to dismiss the complaint for estafa, thus:

Wherefore, the case for estafa, under Articles 316 and 318 of the Revised Penal Code, filed against the respondents Ferdinand Santos, Robert [John] Sobrepeña, Federico Campos, Polo Pantaleon and Rafael Perez de Tagle, Jr. is dismissed for insufficiency of evidence.[8]

The City Prosecutor found no misrepresentation stating that, (1) the Contract to Sell did not mention FEPI as the owner of the property; (2) since no Deed of Sale had been executed by the parties, then petitioners are not yet bound to deliver the certificate of title since under both the Contract to Sell and Section 25[9] of Presidential Decree No. 957,[10] FEPI was bound to deliver the certificate of title only upon the execution of a contract of sale; and (3) the City Prosecutor disavowed any jurisdiction since it is the HLURB, which has exclusive jurisdiction over disputes and controversies involving the sale of lots in commercial subdivision including claims involving refunds under P.D. No. 1344.[11]

Go appealed the City Prosecutor's Resolution to the Department of Justice (DOJ), which, in turn reversed the City Prosecutor's findings, and held, to wit:

WHEREFORE, the questioned resolution is hereby MODIFIED. The City Prosecutor of Pasig City is directed to file an information for estafa defined and penalized under Art. 316, par. 1 of the Revised Penal Code against respondents Ferdinand Santos, Robert [John] Sobrepeña, Federico Campos, Polo Pantaleon and Rafael Perez De Tagle, Jr. and report the action taken within ten (10) days from receipt hereof.

SO ORDERED.[12]

The DOJ found that there was a prima facie basis to hold petitioners liable for estafa under Article 316 (1) of the Revised Penal Code, pointing out that the elements of the offense were present as evidenced by the terms of the Contract to Sell. It ruled that under the Contract, the petitioners sold the property to Go despite full knowledge that FEPI was not its owner. The DOJ noted that petitioners did not deny the due execution of the contract and had accepted payments of the purchase price as evidenced by the receipts. Thus, FEPI was exercising acts of ownership when it conveyed the property to respondent Go. Acts to convey, sell, encumber or mortgage real property are acts of strict ownership. Furthermore, nowhere did FEPI mention that it had a joint venture with MSDC, the alleged true owner of the property. Clearly, petitioners committed acts of misrepresentation when FEPI denied ownership after the perfection of the contract and the payment of the purchase price. Since a corporation can only act through its agents or officers, then all the participants in a fraudulent transaction are deemed liable.

Accordingly, an Information for estafa was filed against petitioners and Federico Campos and Polo Pantaleon before the MTC of Pasig City. However, the arraignment was deferred since Campos and Pantaleon filed a Motion for Judicial Determination of Probable Cause, which was granted by the trial court. Meanwhile petitioners herein filed with the Court of Appeals, a petition for review docketed as CA-G.R. SP No. 67388. Accordingly, the trial court deferred the arraignment of petitioners until the petition for review was resolved.

On September 2, 2002, the appellate court disposed of CA-G.R. SP No. 67388 in this wise:

WHEREFORE, foregoing premises considered, the Petition, HAVING NO MERIT, is hereby DENIED DUE COURSE AND ORDERED DISMISSED, with cost to Petitioners.

SO ORDERED.[13]

The appellate court opined that a petition for review pursuant to Rule 43 cannot be availed of as a mode of appeal from the ruling of the Secretary of Justice because the Rule applies only to agencies or officers exercising quasi-judicial functions. The decision to file an information or not is an executive and not a quasi-judicial function.

Herein petitioners seasonably moved for reconsideration, but the motion was likewise denied by the Court of Appeals.

Hence, this petition based on the following grounds:

(1) THE COURT OF APPEALS ERRED IN RULING THAT RULE 43 OF THE 1997 RULES OF CIVIL PROCEDURE CANNOT BE AVAILED OF TO APPEAL THE RESOLUTIONS OF THE SECRETARY OF JUSTICE.[14]

(2) THE DOJ SECRETARY ERRED WHEN IT FOUND PROBABLE CAUSE AND RESOLVED TO FILE AN INFORMATION FOR ESTAFA UNDER ART. 316, SEC. 1 OF THE REVISED PENAL CODE AGAINST PETITIONERS, CONSIDERING THAT: (A) Petitioners did not pretend that they, or FEPI, were the owners of the subject property; (B) FEPI need not have been the owner at the time the Contract to Sell was furnished to respondent Go; (C) There was no prejudice caused to respondent Go; (D) There is no personal act or omission constituting a crime ascribed to any of the Petitioners, therefore, there can be no probable cause against them; and (E) There was no deceit or even intent to deceive.[15]

To our mind, the sole issue for resolution is whether a petition for review under Rule 43 is a proper mode of appeal from a resolution of the Secretary of Justice directing the prosecutor to file an information in a criminal case. In the course of this determination, we must also consider whether the conduct of preliminary investigation by the prosecutor is a quasi-judicial function.

Petitioners submit that there is jurisprudence to the effect that Rule 43 covers rulings of the Secretary of Justice since during preliminary investigations, the DOJ's decisions are deemed as "awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions", and its prosecutorial offices are considered quasi-judicial bodies/officers performing quasi-judicial functions.

Respondent counters that the herein petition is a dilatory tactic and emphasizes that "injunction will not lie to restrain criminal prosecution."

Rule 43 of the 1997 Rules of Civil Procedure clearly shows that it governs appeals to the Court of Appeals from decisions and final orders or resolutions of the Court of Tax Appeals or quasi-judicial agencies in the exercise of their quasi-judicial functions. The Department of Justice is not among the agencies[16] enumerated in Section 1 of Rule 43. *Inclusio unius est exclusio alterius*.

We cannot agree with petitioners' submission that a preliminary investigation is a quasi-judicial proceeding, and that the DOJ is a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause.

In *Bautista v. Court of Appeals*,[17] we held that a preliminary investigation is not a quasi-judicial proceeding, thus:

[t]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.[18]

Though some cases[19] describe the public prosecutor's power to conduct a preliminary investigation as quasi-judicial in nature, this is true only to the extent that, like quasi-judicial bodies, the prosecutor is an officer of the executive department exercising powers akin to those of a court, and the similarity ends at this point.[20] A quasi-judicial body is as an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making.[21] A quasi-judicial agency performs adjudicatory functions such that its awards, determine the rights of parties, and their decisions have the same effect as judgments of a court. Such is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an information against a person charged with a criminal offense, or when the Secretary of Justice is reviewing the former's order or resolutions.

Since the DOJ is not a quasi-judicial body and it is not one of those agencies whose decisions, orders or resolutions are appealable to the Court of Appeals under Rule 43, the resolution of the Secretary of Justice finding probable cause to indict petitioners for estafa is, therefore, not appealable to the Court of Appeals via a petition for review under Rule 43. Accordingly, the Court of Appeals correctly dismissed petitioners' petition for review.

Notwithstanding that theirs is a petition for review properly under Rule 45, petitioners want us to reverse the findings of probable cause by the DOJ after their petition for review under Rule 43 from the court a quo failed. This much we are not inclined to do, for we have no basis to review the DOJ's factual findings and its determination of probable cause.

First, Rule 45 is explicit. This mode of appeal to the Supreme Court covers the judgments, orders or resolutions of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or any authorized court and should raise only pure question of law. The Department of Justice is not a court.

Also, in this petition are raised factual matters for our resolution, e.g. the ownership of the subject property, the existence of deceit committed by petitioners on respondent, and petitioners' knowledge or direct participation in the Contract to Sell. These are factual issues and are outside the scope of a petition for review on certiorari. The cited questions require evaluation and examination of evidence, which is the province of a full-blown trial on the merits.

Second, courts cannot interfere with the discretion of the public prosecutor in evaluating the offense charged. He may dismiss the complaint forthwith, if he finds the charge insufficient in form or substance, or without any ground. Or, he may proceed with the investigation if the complaint in his view is sufficient and in proper form.[22] The decision whether to dismiss a complaint or not, is dependent upon the sound discretion of the prosecuting fiscal and, ultimately, that of the Secretary of Justice.[23] Findings of the Secretary of Justice are not subject to review unless made with grave abuse of discretion.[24] In this case, petitioners have not shown sufficient nor convincing reason for us to deviate from prevailing jurisprudence.

WHEREFORE, the instant petition is DENIED for lack of merit. The Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 67388, dated September 2, 2002 and November 12, 2002, respectively, are AFFIRMED.

Costs against petitioners.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 67-76. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Romeo A. Brawner, and Mario L. Guariña III concurring.

[2] Id. at 78.

[3] The Rule is entitled "Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals."

[4] Rollo, pp. 240-250.

[5] Id. at 154-161.

[6] ART. 316. Other forms of swindling. - The penalty of *arresto mayor* in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

1. Any person who, pretending to be the owner of any real property, shall convey, sell, encumber or mortgage the same.
2. Any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded.
3. The owner of any personal property who shall wrongfully take it from its lawful possessor, to the prejudice of the latter or any third person.
4. Any person who, to the prejudice of another, shall execute any fictitious contract.
5. Any person who shall accept any compensation given him under the belief that it was in payment of services rendered or labor performed by him, when in fact he did not actually perform such services or labor.

6. Any person who, while being a surety in a bond given in a criminal or civil action, without express authority from the court or before the cancellation of his bond or before being relieved from the obligation contracted by him, shall sell, mortgage, or, in any other manner, encumber the real property or properties with which he guaranteed the fulfillment of such obligation.

[7] ART. 318. Other deceits. - The penalty of *arresto mayor* and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.

Any person who, for profit or gain, shall interpret dreams, make forecasts, tell fortunes, or take advantage of the credulity of the public in any other similar manner, shall suffer the penalty of *arresto menor* or a fine not exceeding 200 pesos.

[8] Rollo, p. 160.

[9] SEC. 25. Issuance of Title. - The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith.

[10] SECTION 1. Title-This Decree shall be known as The Subdivision and Condominium Buyers' Protective Decree.

[11] EMPOWERING THE NATIONAL HOUSING AUTHORITY TO ISSUE WRIT OF EXECUTION IN THE ENFORCEMENT OF ITS DECISION UNDER PRESIDENTIAL DECREE NO. 957.

...

SECTION 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:

A. Unsound real estate business practices;

B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and

C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

[12] Rollo, p. 249.

[13] *Id.* at 76.

[14] *Id.* at 23.

[15] *Id.* at 35-36.

[16] Among these agencies are: Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian

Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

[17] G.R. No. 143375, 6 July 2001, 413 Phil. 159.

[18] Id. at 168-169.

[19] Cojuangco, Jr. v. Presidential Commission on Good Government, G.R. Nos. 92319-20, 2 October 1990, 190 SCRA 226, 244; Koh v. Court of Appeals, No. L-40428, 17 December 1975, 70 SCRA 298, 307; Andaya v. Provincial Fiscal of Surigao del Norte, No. L-29826, 30 September 1976, 73 SCRA 131, 135; Crespo v. Mogul, No. L-53373, 30 June 1987, 151 SCRA 462, 469-470.

[20] Supra, note 17 at 167.

[21] Id. at 168.

[22] Id. at 169.

[23] Public Utilities Department v. Hon. Guingona, Jr., G.R. No. 130399, 20 September 2001, 417 Phil. 798, 804.

[24] Id. at 805.

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