

## **ARCADIO M. CARANDANG, PETITIONER, EDGAR A. RAGASA, RESPONDENT. RESPONDENT.**

*G.R. NO. 161829. April 13, 2007*

Ponente: CORONA, J.

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### **CORONA, J.:**

This is an appeal by certiorari under Rule 45 of the Rules of Court assailing the decision of the Court of Appeals (CA) dated October 1, 2003<sup>[1]</sup> and its resolution dated January 9, 2004,<sup>[2]</sup> respectively, in CA-G.R. SP No. 57833 entitled *Edgar Ragasa v. The Honorable Secretary Serafin Cuevas and Arcadio Carandang*. The facts follow.

In 1992, petitioner Arcadio Carandang, his wife Ma. Luisa Carandang and respondent Edgar Ragasa were stockholders/officers of Mabuhay Broadcasting System (MBS). In a petition for mandamus filed in the Securities and Exchange Commission (SEC),<sup>[3]</sup> petitioner and his wife sought to be installed as director/vice-president and director, respectively, of MBS. They claimed they were elected as such during a stockholders' meeting held on January 10, 1992. Respondent, however, opposed the petition insisting that no meeting/election took place on that date but on February 8, 1992 during which petitioners were neither elected nor appointed as officers of MBS.

Respondent charged petitioner and his wife in the Office of the City Prosecutor of Mandaluyong City with perjury, falsification of public documents and use of falsified documents. They allegedly lied under oath in their SEC petition that a stockholders' meeting took place on January 10, 1992, attaching thereto falsified minutes of the alleged meeting. This case was docketed as I.S. No. 96-7665.

Petitioner and his wife, in turn, also filed in the same office a complaint for falsification of public documents and/or use of falsified documents against respondent. The Carandang's charged that the February 8, 1992 meeting was merely "trumped-up" and the minutes respondent submitted to the SEC were falsified. The case was docketed I.S. No. 98-7882.

The city prosecutor of Mandaluyong City dismissed petitioner's case against respondent in I.S. No. 98-7882. In I.S. No. 96-7665, however, he found probable cause against petitioner, but only for perjury. His resolution read:

[In] the petition for mandamus being verified by [petitioner] in the [SEC], he made an assertion of falsehood under oath, knowing fully well that there was no annual stockholders' meeting on 10 January 1992, and the 8 February 1992 stockholders' meeting and election results is (sic) the annual stockholders' meeting recognized and on file with the SEC. The assertion of falsehood is material as it is the very basis of the [Sps.] Carandang's Petition to be installed as officer/director of MBS. But the finding for perjury is limited to [petitioner] alone to the exclusion of his wife Ma. Luisa Carandang, who does not appear to have affixed her signature to the subject Petition.

However, insofar as the complaint for falsification is concerned, although there appears to be some alteration as intercalation in the minutes of the "paper meeting" of 10 January 1992, said alteration or intercalation did not in any manner changed (sic) the meaning of the document. As it is, the "paper meeting" of 10 January

1992, which also reflected the elected officers of the Corporation for 1992 was never considered by the SEC as an official document of the Corporation.

WHEREFORE, it is respectfully recommended that the corresponding Information for perjury...against [petitioner] Arcadio Carandang be filed in Court.

All other charges [including those against respondent] are recommended DISMISSED.[4]

Pursuant to the above resolution, the Information for perjury[5] was filed against petitioner in the Metropolitan Trial Court (MeTC), Branch 60, of Mandaluyong City. Presiding Judge Ma. Luisa Quijano thereafter set the case for pre-trial and arraignment.

In the interim, petitioner filed in the Department of Justice (DOJ) a petition for review of the city prosecutor's resolution. The MeTC suspended petitioner's arraignment and pre-trial pending his appeal in the DOJ.

After two years elapsed without any action by the DOJ on petitioner's appeal, respondent filed in the MeTC a motion to lift the order/resolution suspending the proceedings and to re-activate and/or revive the case. The motion was granted and the perjury case against petitioner was set anew for arraignment and pre-trial.[6]

Subsequently, respondent filed in the DOJ a motion to dismiss petitioner's appeal for being moot and academic considering the MeTC had already calendared his arraignment and pre-trial. But before the motion could be resolved, then DOJ Secretary Serafin R. Cuevas directed the city prosecutor to withdraw the perjury case against petitioner. The order read:

The issue as to which meeting should be recognized as valid and regular is a prejudicial question which must first be resolved. This issue is intimately connected with, and determinative of, the central issue in the present complaints, e.g. [.] who among the parties made a false declaration regarding the 1992 annual stockholders meeting of the MBS. [Also] [w]ithout the resolution on the SEC case, there can be no competent proof on who committed perjury or falsification.

Wherefore, [the city prosecutor's] resolution is set aside. [He is] hereby directed to cause the withdrawal of the information against [petitioner] Arcadio M. Carandang, Jr. and report the action taken thereon within five (5) days from receipt hereof.[7]

Accordingly, the city prosecutor moved for the withdrawal of the Information against petitioner which the MeTC granted.

Respondent did not question the MeTC's dismissal of the perjury case against petitioner. Instead, he filed a motion for reconsideration (MR) in the DOJ seeking the reversal of the latter's resolution. The DOJ, however, denied it.

Respondent then went to the CA where he ascribed grave abuse of discretion on the part of the DOJ Secretary[8] for ordering the withdrawal of the perjury case against petitioner and for denying his MR.

In a decision dated October 1, 2003, the CA upheld respondent and ruled that there was grave abuse of discretion on the part of the DOJ Secretary. As a result, the CA directed the latter to order the re-filing of the perjury case against petitioner. The CA reasoned out:

...The action of the Secretary of Justice...appears to have been made with grave abuse of discretion amounting to lack or excess of jurisdiction. A close scrutiny of the assailed [DOJ] resolution...indicates that the only finding of the said Secretary upon which he based his directive for the City Prosecutor of Mandaluyong to withdraw the information is the alleged existence of a prejudicial question...

...[E]ven granting that there is such a prejudicial question, we believe and so hold that the proper action is not to withdraw or ask for the dismissal of the pending criminal case. Rather, the DOJ Secretary should have just

have directed the City Prosecutor to ask for the suspension of the pending criminal case. This is line with the provisions of the Rules on Criminal Procedure, to wit:

"Sec. 6. Suspension by reason of prejudicial question. — A petition for suspension of the criminal action based upon the pendency of a prejudicial question may be filed in the office of the fiscal or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests."

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WHEREFORE, the petition is GRANTED, and the questioned resolutions....of [the] Secretary of Justice are SET ASIDE. The said [DOJ Secretary] is DIRECTED to cause the re-filing of the criminal case for perjury as may be warranted by the resolution of the SEC in the related case.[9]

Petitioner moved for reconsideration of the above decision but the CA denied it. Thus, this petition.

Petitioner assails the CA's annulment of the DOJ Secretary's order. He contends that the CA erred in ordering the DOJ Secretary to re-file the perjury case against him considering that the records yielded no proof of his culpability and that the trial court's order granting the city prosecutor's motion to withdraw the Information had long become final.

Petitioner adds that the CA erred in applying Rule 111, Section 6[10] of the Rules of Criminal Procedure and that it did not acquire jurisdiction over his person due to improper service of respondent's petition on him.[11]

#### Basis of the CA's Ruling

The CA decision was not anchored on the existence of proof that petitioner was indictable for perjury but rather on the DOJ Secretary's abuse of discretion in ordering the city prosecutor to withdraw the case from the MeTC. According to the CA, "the proper action (was) not to withdraw or ask for the dismissal of the pending criminal case...the DOJ Secretary should have directed the city prosecutor to ask for (its) suspension..."[12]

We agree with the CA that the DOJ Secretary's action was unwarranted and not in accord with the exacting provision of Rule 111, Section 6[13] of the Rules. Indeed, if a prejudicial question exists, the rule is that the criminal proceeding should be suspended but not withdrawn, as ordered by the DOJ Secretary in this case.

#### Applicability of Rule 111, Section 6 of the Rules on Criminal Procedure

The CA did not err in applying Rule 111, Section 6. Contrary to petitioner's claim that the provision is relevant only if he files a motion or petition for suspension of the criminal proceedings in the trial court, the provision is actually silent as to who may file the motion or petition.

It is axiomatic in statutory construction that we cannot read into the law something not intended by the legislature.[14] Moreover, well-entrenched is the rule that where the law does not distinguish, neither should we. Ubi lex non distinguit, nec nos distinguere debemus.[15]

While there was no doubt that petitioner (as the accused in the perjury case) was the party who would benefit from the deferment of the criminal proceedings, the right to ask for such suspension was not exclusive to him. A public prosecutor, although tasked to indict or bring an accused to court, is not at all precluded from withdrawing the criminal case if he has no sufficient evidence to hold him for trial.[16] In the same vein, he can also ask that the proceedings be held in abeyance specially if a prejudicial question exists.

At any rate, the issue of whether there is a prejudicial question has now become moot in view of the dismissal by the SEC of petitioner's case for mandamus.[17]

### Finality of the MeTC Order vis-à-vis the CA's Decision

Petitioner further contends that the CA should not have disturbed the MeTC's order granting the city prosecutor's motion to withdraw the perjury case since it had already become final.[18]

The point is whether the perjury case can be re-filed despite the trial court's final order granting the city prosecutor's motion to withdraw the Information for perjury.

We answer in the affirmative.

In *Torres v. Aguinaldo*,[19] we had the opportunity to distinguish between the effects of the orders granting a motion to withdraw an Information and a motion to dismiss:

A motion to withdraw differs from a motion to dismiss. While both put an end to an action filed in court, their legal effect varies. The order granting the withdrawal of the information attains finality after the fifteen (15) days from receipt thereof, without prejudice to the re-filing of the information upon reinvestigation. On the other hand, the order granting a motion to dismiss becomes final fifteen (15) days after receipt thereof, with prejudice to the re-filing of the same case once such order achieves finality. (emphasis supplied)

According to *Torres*, an order granting a motion to withdraw an Information will not bar its subsequent re-filing. The dismissal of the case on this basis is without prejudice to its re-filing.

However, unlike in *Torres*, a reinvestigation of the perjury case against petitioner would not be propitious under the circumstances. First, a preliminary investigation was already conducted by assistant city prosecutor Rodil Zalameda in 1997. Second, if an investigation were to be conducted all over again, it would not be unlikely that either petitioner or respondent would again question the outcome of the prosecutor's reinvestigation and appeal it to the DOJ, the CA and the Supreme Court. In such a case, we will see no end to the dispute between the parties here. The better approach is to allow the re-filing of the perjury case in the MeTC and put an end to this fifteen-year-old controversy once and for all.

### CA's Jurisdiction Over Petitioner

Lastly, we are constrained to strike down petitioner's argument that the CA did not acquire jurisdiction over his person due to respondent's alleged failure to serve him a copy of his petition. An examination of the records of the case shows that petitioner did in fact receive a copy of respondent's CA petition.[20] Moreover, he submitted his pleadings in the CA despite not having allegedly received a copy of the said petition. A party's voluntary appearance (which can be done by filing pleadings through counsel) manifests his submission to the court's authority.[21]

WHEREFORE, the assailed decision of the Court of Appeals dated October 1, 2003 and its resolution dated January 9, 2004, respectively, in CA-G.R. SP No. 57833 are hereby AFFIRMED.

### **SO ORDERED.**

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

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\* Respondent died on October 3, 2005 due to multi-organ failure. In the Court's Resolution dated January 16, 2006, the Court granted the motion filed by respondent's heirs to substitute him in this petition. His widow, Cynthia G. Ragasa, and his children, Jose Edgar, Catherine and Charmaine, were accordingly substituted as respondents.

- [1] Penned by Justice Delilah Vidallon-Magtolis (retired), and concurred in by Justices Jose L. Sabio, Jr. and Hakim Abdulwahid of the Sixth Division of the Court of Appeals. Rollo, p. 43.
- [2] Id., p. 44.
- [3] Pursuant to SC ADM. MEMO NO. 00-11-03 (Resolution Designating Certain Branches of Regional Trial Courts to Try and Decide Cases Formerly Cognizable by the Securities and Exchange Commission), petitioner's case was raffled to the Regional Trial Court of Quezon City, Branch 90.
- [4] The resolution was issued by Asst. City Prosecutor Rodil V. Zalameda. Rollo, pp. 45-48.
- [5] Docketed as Crim. Case No. 63582.
- [6] MeTC Order dated April 14, 1999.
- [7] DOJ Resolution dated May 10, 1999. Rollo, pp. 49-51.
- [8] On petitioner's motion, then DOJ Secretary Cuevas was substituted by his successor-in-office, DOJ Secretary Artemio Tuquero.
- [9] Rollo, pp. 41-42.
- [10] Supra at 6.
- [11] Rollo, pp. 17-18.
- [12] Rollo, p. 41.
- [13] Supra at 6.
- [14] Rizal Commercial Banking Corp. v. Intermediate Appellate Court, 378 Phil. 10 (1999).
- [15] Philippine Free Press v. Court of Appeals, G.R. No. 132864, 24 October 2005, 473 SCRA 639.
- [16] Jimenez v. Jimenez, G.R. No. 158148, 30 June 2005, 462 SCRA 516.
- [17] Order dated September 7, 2001, issued by Judge Reynaldo B. Daway. Rollo, p. 198.
- [18] The CA said in its assailed decision that the "dismissal appears to be undisputed."
- [19] G.R. No. 165268, 28 June 2005, 461 SCRA 599.
- [20] Records, pp. 75-76.
- [21] Gonzales v. Balikatan Kilusang Bayan sa Pananalapi, Inc., G.R. No. 150859, 28 March 2005, 454 SCRA 111; Bank of the Philippine Island v. Spouses Evangelista, 441 Phil. 445 (2002).

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