

ARTEMIO T. TORRES, JR., PETITIONER, VS. SPS. DRS. EDGARDO AGUINALDO & NELIA T. TORRES-AGUINALDO, RESPONDENTS.

G.R. NO. 164268. June 28, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari[1] assails the decision[2] of the Court of Appeals dated March 22, 2004 in CA-G.R. SP No. 77818, and its resolution[3] dated June 28, 2004 denying reconsideration thereof.

The facts are as follows:

Respondent-spouses Edgardo and Nelia Aguinaldo filed before the Office of the City Prosecutor (OCP) of Manila,[4] a complaint against petitioner Artemio T. Torres, Jr. (Torres) for falsification of public document. They alleged that titles to their properties covered by Transfer Certificates of Title Nos. T-93596, T-87764, and T-87765, were transferred without their knowledge and consent in the name of Torres through a forged Deed of Sale[5] dated July 21, 1979.

Torres denied the allegations of forgery and claimed that Aguinaldo sold the subject properties to him[6] as evidenced by the March 10, 1991 Deed of Absolute Sale.[7]

Finding probable cause, the OCP recommended the filing of an information for falsification of public document against Torres,[8] which was filed before the Metropolitan Trial Court of Manila (MTC), Branch 8, on October 3, 2001.

Torres moved for reconsideration[9] but was denied.[10]

On appeal,[11] the Secretary of Justice reversed the findings of the investigating prosecutor and ordered the withdrawal of the information.[12] The motion for reconsideration filed by Aguinaldo was denied.[13]

A Motion to Withdraw Information[14] was filed which the MTC granted on June 11, 2003.[15] It should be noted that petitioner has not been arraigned.

Meanwhile, Aguinaldo filed before the Court of Appeals a petition for certiorari[16] which was granted in the assailed decision dated March 22, 2004.

The dispositive portion of the assailed decision reads:

WHEREFORE, in view of the foregoing, the petition is GRANTED. The resolutions of the Secretary of Justice dated November 12, 2002 and April 30, 2003 in IS No. 01B-05485 are REVERSED and SET ASIDE. The April 30, 2001 Resolution of the City Prosecutor of Manila finding probable cause against private respondent Artemio Torres, Jr. is REINSTATED. No costs.

SO ORDERED.[17]

Torres' motion for reconsideration was denied,[18] hence, the instant petition for review on certiorari[19] on the

following grounds:

I.

WHETHER OR NOT THE ORDER OF THE MTC-MANILA DATED 11 JUNE 2003 RENDERED MOOT AND ACADEMIC THE PETITION FOR CERTIORARI UNDER RULE 65 FILED BY RESPONDENTS BEFORE THE COURT OF APPEALS FOR THE PURPOSE OF REINSTATING THE RESOLUTION OF THE OCP-MANILA DATED 30 APRIL 2001.

II.

WHETHER OR NOT THE ASSAILED DECISION OF THE COURT OF APPEALS REINSTATING THE RESOLUTION OF THE OCP-MANILA DATED 30 APRIL 2001 VIOLATED THE DOCTRINE THAT THE DETERMINATION OF A CRIMINAL CASE IS WITHIN THE EXCLUSIVE JURISDICTION OF THE COURT ONCE THE INFORMATION HAS BEEN FILED THEREIN.

III.

WHETHER OR NOT THE EVIDENCE OF A RESPONDENT IN A CRIMINAL CASE SHOULD BE CONSIDERED DURING THE PRELIMINARY INVESTIGATION IN DETERMINING IF PROBABLE CAUSE EXISTS TO INDICT HIM FOR THE CRIME CHARGED.

IV.

WHETHER OR NOT THE OCP-MANILA HAS ABSOLUTE DISCRETION IN DETERMINING IF PROBABLE CAUSE EXISTS TO INDICT THE PETITIONER FOR THE CRIME CHARGED.

V.

WHETHER OR NOT THE COURT OF APPEALS WENT BEYOND THE OFFICE OF A WRIT OF CERTIORARI WHEN IT SUBSTITUTED ITS OWN JUDGMENT FOR THAT OF THE SECRETARY OF JUSTICE.

VI.

WHETHER OR NOT THE COURT OF APPEALS SANCTIONED THE DELIBERATE DISREGARD OF THE RULES OF PROCEDURE WHEN IT IGNORED THE FINAL ORDER OF THE MTC-MANILA DATED 11 JUNE 2003 AND ORDERED THE REINSTATEMENT OF THE RESOLUTION OF THE OCP-MANILA DATED 30 APRIL 2001.

VII.

WHETHER OR NOT RESPONDENTS ENGAGED IN FORUM SHOPPING WARRANTING THE OUTRIGHT DISMISSAL OF THE PETITIONER (sic) FOR CERTIORARI UNDER RULE 65 WHICH THEY FILED BEFORE THE COURT OF APPEALS.

VIII.

WHETHER OR NOT THE COURT OF APPEALS SANCTIONED THE DISREGARD OF SECTION 3, RULE 46 OF THE 1997 RULES OF CIVIL PROCEDURE WHEN IT ENTERTAINED THE PETITION FOR CERTIORARI UNDER RULE 65 FILED BY RESPONDENTS.[20]

The foregoing assignment of errors may be summarized into three issues:

I. Whether the order of the MTC-Manila dated June 11, 2003 granting the motion to withdraw the information rendered moot the petition for certiorari filed by Aguinaldo for the purpose of reinstating the April 30, 2001 resolution of the OCP of Manila; and in the alternative, whether the rule on provisional dismissal under Section 8, Rule 117 applies.

II. Whether Aguinaldo committed forum shopping.

III. Whether the Court of Appeals erred in finding that the Secretary of Justice gravely abused his discretion in reinstating the April 30, 2001 order of the OCP of Manila finding probable cause against petitioner.

Anent the first issue, Torres contends that the order granting the withdrawal of the information rendered moot the petition for certiorari filed before the Court of Appeals. Citing *Bañares II v. Balising*,^[21] Torres insists that an order dismissing a case without prejudice is final if no motion for reconsideration or appeal therefrom is timely filed.

The contention is untenable. A motion to withdraw information 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 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. In *Bañares II v. Balising*, a motion to dismiss was filed thus putting into place the time-bar rule on provisional dismissal.

In the case at bar, a motion to withdraw information was filed and not a motion to dismiss. Hence, *Bañares II v. Balising* would not apply. Unlike a motion to dismiss, a motion to withdraw information is not time-barred and does not fall within the ambit of Section 8, Rule 117 of the Revised Rules of Criminal Procedure which provides that the law on provisional dismissal becomes operative once the judge dismisses, with the express consent of the accused and with notice to the offended party: (a) a case involving a penalty of imprisonment not exceeding six (6) years or a fine of any amount, or both, where such provisional dismissal shall become permanent one (1) year after issuance of the order without the case having been revived; or (b) a case involving a penalty of imprisonment of more than six (6) years, where such provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

There is provisional dismissal^[22] when a motion filed expressly for that purpose complies with the following requisites, viz.: (1) It must be with the express consent of the accused; and (2) There must be notice to the offended party. Section 8, Rule 117 contemplates the filing of a motion to dismiss, and not a motion to withdraw information. Thus, the law on provisional dismissal does not apply in the present case.

Even assuming that the Motion to Withdraw Information is the same as a Motion to Dismiss, we do not find that it complied with the above requisites. The Motion to Withdraw Information was filed by the Assistant City Prosecutor and approved by the City Prosecutor without the conformity of the accused, herein petitioner Torres. Thus, it cannot be said that the motion was filed with his express consent as required under Section 8, Rule 117.

Respondent-spouses are not guilty of forum shopping. The cases they filed against petitioner are based on distinct causes of action. Besides, a certificate of non-forum shopping is required only in civil complaints under Section 5, Rule 7 of the Revised Rules of Civil Procedure. In *People v. Ferrer*,^[23] we held that such certificate is not even necessary in criminal cases and distinct causes of action.

Be that as it may, what is principally assailed is the Court of Appeals' decision reversing the resolution of the Justice Secretary and reinstating the April 30, 2001 resolution of the OCP of Manila.

The issue, therefore, is whether the Secretary of Justice gravely abused his discretion in reversing the investigating prosecutor's findings on the existence of probable cause.

Section 1, Rule 112 of the Revised Rules of Criminal Procedure defines preliminary investigation as 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. The officers authorized to conduct a preliminary investigation are the: (a) Provincial or city fiscals and their assistants; (b) Municipal Trial Courts and Municipal Circuit Trial Courts Judges; (c) National and Regional state prosecutors; and (d) Such other officers as may be authorized by law.[24]

Preliminary investigation is executive in character. It does not contemplate a judicial function. It is essentially an inquisitorial proceeding, and often, the only means of ascertaining who may be reasonably charged with a crime. It is not a trial on the merits and has no purpose except to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. It does not place the person against whom it is taken in jeopardy.

Generally, preliminary investigation falls under the authority of the prosecutor. However, since there are not enough prosecutors, this function was also assigned to judges of Municipal Trial Courts and Municipal Circuit Trial Courts. Their findings are reviewed by the provincial or city prosecutor whose findings, in turn, may be reviewed by the Secretary of Justice in appropriate cases. After conducting preliminary investigation, the investigating judge must transmit within ten (10) days the resolution of the case together with the entire records to the provincial or city prosecutor.[25]

In *Crespo v. Mogul*,[26] we underscored the cardinal principle that the public prosecutor controls and directs the prosecution of criminal offenses whose resolutions may be reviewed by the Secretary of Justice.[27] We held that where there is a clash of views between a judge who did not investigate and a fiscal who conducted a reinvestigation, those of the prosecutor should normally prevail.[28]

We ruled in *Ledesma v. Court of Appeals*[29] that when a motion to withdraw an information is filed on the ground of lack of probable cause based on a resolution of the Secretary of Justice, the bounden duty of the trial court is to independently assess the merits of the motion. The judge is not bound by the resolution of the Justice Secretary but must evaluate it before proceeding with the trial. While the ruling of the Justice Secretary is persuasive, it is not binding on courts.

In sum, prosecutors control and direct the prosecution of criminal offenses, including the conduct of preliminary investigation, subject to review by the Secretary of Justice. While his resolution is persuasive, it is not binding on the courts. The trial court must at all times make its own independent assessment of the merits of each case.

Thus, it is only where the decision of the Justice Secretary, or the trial court, as the case may be, is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction that the Court of Appeals may take cognizance of the case in a petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure whose decision may then be appealed to this Court by way of a petition for review on certiorari.

The Court of Appeals held that the Justice Secretary committed grave abuse of discretion because he based his findings on the lack of probable cause on the 1991 Deed of Sale when what was assailed was the 1979 Deed of Sale.[30] It ruled that the defenses raised by Torres should not have been considered during the preliminary investigation but should be threshed out only during trial.[31] Only the evidence presented by the complainant should be considered in determining probable cause or the lack thereof.

We are not persuaded.

The Court of Appeals erred in relying solely on the affidavit-complaint and the NBI report[32] and disregarding totally the counter-affidavit and documentary evidence of petitioner.

It is well to note that Section 3, Rule 112 of the Revised Rules of Criminal Procedure not only requires the submission of the complaint and the affidavits of the complainant and his witnesses, as well as other supporting documents, but also directs the respondent to submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. Section 4 thereof also mandates the investigating prosecutor to certify under oath in the information that the accused was informed of the complaint and the evidence against him, and that he was given an opportunity to submit controverting evidence.

Thus, in determining the existence or absence of probable cause, the investigating officer shall examine the complaint and documents in support thereof as well as the controverting evidence presented by the defense. While the validity and merits of a party's defense or accusation and the admissibility of the testimonies and evidence are best ventilated in a full blown trial, still, in a preliminary investigation, a proper consideration of the complaint and supporting evidence as well as the controverting evidence, is warranted to determine the persons who may be reasonably charged with the crime. The determination must be based on the totality of evidence presented by both parties.

Prescinding from these premises, we find that the Justice Secretary did not abuse his discretion in examining both the evidence presented by the complainant and the accused in determining the existence or the lack of probable cause.

There is basis in his finding that no probable cause exists. The complaint and the 1979 Deed of Sale do not connect petitioner with the crime of falsification. While the NBI report showed that the 1979 Deed of Sale was falsified, there is no showing that petitioner was the author thereof. We cannot discern direct and personal participation by the petitioner in the alleged forged deed. While a finding of probable cause rests on evidence showing that, more likely than not, a crime has been committed and was committed by the accused, the existence of such facts and circumstance must be strong enough to create a rational and logical nexus between the acts and omissions and the accused.

The allegation that petitioner effectuated the illicit transfer of the disputed properties in his name is without factual basis. He was not in possession of the alleged forged deed which does not even bore his signature. We find merit in his contention that the subject properties were sold to him on March 10, 1991 considering that the new TCTs were issued in his name only on March 26, 1991. His address mentioned in the 1979 Deed of Sale was non-existent yet in 1979, thus giving the impression that it was executed on a later date. It would be absurd for petitioner to use the 1979 Deed of Sale to facilitate the transfer on March 26, 1991 considering his possession of the March 10, 1991 Deed of Sale.

Respondents never denied the allegation that they assumed the obligation of transferring the Tanza properties in petitioner's name. Considering that they wanted to cancel the sale and that they were in possession of the forged deed, it is not far-fetched to assume that they facilitated the transfer of the properties using the allegedly 1979 forged deed. It appears that the conveyance of the questioned properties in favor of petitioner was made at the instance of the respondents.

Torres has no reason to falsify the 1979 Deed of Sale when he had in his possession the 1991 Deed of Sale which he claims to be authentic. By presenting the alleged forged deed of sale, respondents cast a cloud of doubt on petitioner's title. While motive is not reasonable basis in determining probable cause, the absence thereof further obviates the probability of petitioner's guilt.

Besides, Nelia Aguinaldo admitted in her letter dated November 12, 1998 the sale of the properties although she wanted the sale cancelled. This admission is consistent with petitioner's declaration that the sale took place.

In their complaint, respondents claimed that they discovered the alleged illegal conveyance in November 2000.[33] This was, however, belied by their Adverse Claim dated December 18, 1999 which appeared as Entry No. 5856-115 and annotated on the new titles issued in the name of Torres in February 2000.[34] In November 1998, Nelia was claiming her share in the property that was sold by Torres to Porfirio and Yolanda Dones in 1993.[35]

In *D.M. Consunji, Inc. v. Esguerra*,[36] grave abuse of discretion is defined:

By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

The Secretary of Justice did not whimsically and capriciously exercise his discretion. His findings was grounded on sound statutory and factual basis. Chief Justice Andres Narvasa in his separate opinion in *Roberts, Jr. v. Court of Appeals*[37] declared that the determination of probable cause to warrant the prosecution in court should be consigned and entrusted to the Department of Justice, as reviewer of the findings of the public prosecutors. To do otherwise is to usurp a duty that exclusively pertains to an executive official.

In *Noblejas v. Salas*,[38] we reaffirmed the power of supervision and control of the department secretary over his subordinate. We stated that “the power of control therein contemplated means to alter, modify, or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.” For, while it is the duty of the fiscal to prosecute persons who, according to evidence received from the complainant, are shown to be guilty of a crime, the Secretary of Justice is likewise bound by his oath of office to protect innocent persons from groundless, false or serious prosecution. He would be committing a serious dereliction of duty if he orders or sanctions the filing of an information based upon a complaint where he is not convinced that the evidence warrants the filing of the action in court.

We also find that the trial court independently assessed the merits of the motion to withdraw information. Before it was granted, respondents were allowed to submit their opposition[39] and the petitioner to comment[40] thereon, which were both considered. The trial judge also considered the basis of the Justice Secretary’s resolution before finding that no probable cause exists, thus:

The two DOJ Resolutions absolving the accused from incipient criminal liability were premised on the ground that the herein accused had no participation in the preparation of the alleged falsified Deed of Sale dated July 29, 1979, which deed, in effect, transferred ownership of private complainant’s three parcels of land located in Tanza, Cavite to the accused. This finding was based on the argument that it would be highly irregular for the accused to effect the transfer of the property through a falsified deed when accused had in his possession a valid and genuine Deed of Sale dated March 10, 1991 executed by the spouses-complainants transferring ownership of the aforesaid property to him.

The court is inclined to grant the motion of the public prosecutor.

The issues which the court has to resolve in the instant case had been amply discussed in the aforesaid resolutions of the DOJ and it is convinced that, indeed, no probable cause exists against the accused.[41]

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals dated March 22, 2004 is REVERSED and SET ASIDE. The resolution of the Secretary of Justice dated November 12, 2002 is REINSTATED. No costs.

SO ORDERED.

Davide, Jr. C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 13-70.

[2] Decision penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Delilah Vidallon-Magtolis and Hakim S. Abdulwahid. Rollo, pp. 72-85.

[3] Rollo, p. 87.

[4] Id. at 101-102.

[5] Id. at 109-111.

[6] Id. at 119-123.

[7] Id. at 124-126.

[8] Id. at 178-180.

[9] Id. at 353-380.

[10] Id. at 181.

[11] Id. at 182-219.

[12] Id. at 560-563.

[13] Id. at 573-574.

[14] Id. at 576-577.

[15] Id. at 594-595.

[16] Id. at 596-609.

[17] Id. at 84.

[18] Id. at 87.

[19] Id. at 13-70.

[20] Id. at 26-27.

[21] 384 Phil. 567 (2000).

[22] Section 8, Rule 117 of the Revised Rules of Criminal Procedure, as amended provides:

Sec. 8. Provisional dismissal. – A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

[23] 339 Phil. 80, 88 (1997).

[24] Section 2, Rule 112, Revised Rules of Criminal Procedure.

[25] *Manalastas v. Flores*, A.M. No. MTJ-04-1523, 6 February 2004, 422 SCRA 298, 306-307.

[26] G.R. No. 53373, 30 June 1987, 151 SCRA 462.

[27] *Id.* at 467.

[28] *Id.* at 468.

[29] 344 Phil. 207 (1997).

[30] *Rollo*, pp. 78-79.

[31] *Id.* at 80.

[32] *Id.* at 83.

[33] *Id.* at 102.

[34] *Id.* at 114, 116 and 118.

[35] *Id.* at 127-130.

[36] G.R. No. 118590, 30 July 1996, 260 SCRA 74, 82.

[37] G.R. No. 113930, 5 March 1996, 254 SCRA 307.

[38] G.R. Nos. L-31788 & L-31792, 15 September 1975, 67 SCRA 47, 58, citing *Mondano v. Silvosa, etc., et al.*, 97 Phil. 143 (1955).

[39] *CA Rollo*, pp. 412-413.

[40] *Id.* at 414-419.

[41] *Rollo*, p. 594.

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