GLAXOSMITHKLINE PHILIPPINES, INC., PETITIONER, VS. KHALID MEHMOOD MALIK AND MUHAMMAD ATEEQUE, RESPONDENTS.

G.R. NO. 166924. August 17, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner GLAXOSMITHKLINE PHILIPPINES, INC. (Glaxo, hereafter) seeks to nullify and set aside the Decision[1] dated October 28, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 78646, as reiterated in its Resolution[2] of January 24, 2005, affirming an earlier resolution of the Secretary of Justice which dismissed the petition for review taken by the petitioner in I.S. No. 2002-515 (Crim. Case Nos. 02-0699-0701), a prosecution for violation of Republic Acts (RA) No. 3720 and No. 8230, filed against the herein respondents, Khalid Mehmood Malik and Muhammad Ateeque, at the instance of the petitioner and others.

The facts:

Acting on separate letter-complaints filed by Glaxo and two (2) other pharmaceutical companies operating in the country, namely, Pfizer Phil., Inc. (Pfizer) and Roche Phil., Inc. (Roche), to the effect that respondents were illegally engaged in the sale and distribution of unregistered imported pharmaceutical drugs at their business establishments in Parañaque City, namely, the World Traders, Inc. and the Sahar International Trading Center (SITI), the National Bureau of Investigation (NBI) Intellectual Property Rights Division sent NBI agent Rodolfo Ignacio, accompanied by investigators of the IP Manila Associates, a private investigating firm hired by Glaxo, Pfizer and Roche, to the respondents' place of business in Parañaque City. There, respondent Muhammad Ateeque allegedly showed the members of the covert team samples of the medicines he was selling. The samples shown allegedly included imported drugs bearing the brand names of Glaxo, Pfizer and Roche, which the team found to be without the requisite registration numbers from the Bureau of Food and Drugs (BFAD).

On June 9, 2002, NBI operatives, again with members of the same private investigating team, conducted an entrapment operation at the premises of SITI in Parañaque City, during which respondent Malik was allegedly caught receiving marked money from one of the team members as payment for parallel imported pharmaceutical products. Then and there, Malik was placed under arrest and brought to the NBI Headquarters whereat he was found positive for the presence of fluorescent powder. Respondent Ateeque allegedly left before the buy-bust operation could be effected.

After due examination of the confiscated samples of pharmaceutical products and the drugs allegedly sold by Malik, petitioner concluded that the same did not conform to Glaxo's standards.

The next day, June 10, 2002, Inquest Prosecutor Albert R. Fonacier of the Department of Justice (DOJ) conducted an inquest investigation of respondent Malik. Thereafter, Criminal Cases No. 02-0699 to No. 0701 for violation of RA No. 3720, also known as the Food, Drugs and Cosmetic Act and RA No. 8203, otherwise known as the Special Law on Counterfeit Drugs, were filed against Malik before the Regional Trial Court of Parañaque City,

Branch 258. As regards respondent Ateeque who was at large at the time, the court recommended that he too be preliminarily investigated.

State Prosecutor Isagani Rabe commenced the preliminary investigation of respondent Ateeque. Upon motion of respondent Malik that his case be reinvestigated together with that of Ateeque's, the DOJ consolidated the preliminary investigation of the complaints against both respondents and had them docketed as I.S. No. 2002-515.

On January 14, 2003, Senior State Prosecutor Leah C. Tanodra-Armamento issued a resolution[3] dismissing the charges against both respondents. Pertinently, the resolution reads:

> xxx xxx xxx
>
> Consequently, the affidavits filed by complainant failed to sustain any indictment in the light of respondents' evidence. Worse, it is not consistent with the truth.
>
> xxx xxx xxx
>
> WHEREFORE, premises considered, the foregoing charges against respondents Khalid Mehmood Malik and Muhammad Ateeque are hereby dismissed for lack of merit.
>
> SO ORDERED.

Petitioner Glaxo moved for a reconsideration but its motion was denied by the same State Prosecutor in her subsequent resolution of February 18, 2003.

From such denial, petitioner and the other pharmaceutical firms (Pfizer and Roche) went to the Secretary of Justice on separate petitions for review.

In a Resolution[4] dated June 17, 2003, the Justice Secretary dismissed Glaxo's petition, saying: "We have examined the record and found no such error committed by the prosecutor that would justify a reversal of the assailed resolution which is in accord with the law and evidence on the matter."

In yet a similarly worded Resolution[5] dated June 25, 2003, the Secretary of Justice dismissed the other petitions for review of Pfizer and Roche.

Obviously displeased, Glaxo went to the CA on a petition for certiorari in CA-G.R. SP No. 78646, imputing grave abuse of discretion on the part of the DOJ Secretary in denying its petition for review of the dismissal resolution, supra, of Senior State Prosecutor Leah C. Tanodra-Armamento.

As stated at the outset hereof, the CA, in the herein assailed Decision[6] dated October 28, 2004, finding no grave abuse of discretion on the part of the Secretary of Justice, denied due course to Glaxo's petition and accordingly dismissed the same, thus:

> WHEREFORE, premises considered, the instant petition is hereby DENIED DUE COURSE and DISMISSED.
>
> SO ORDERED.

In time, petitioner moved for a reconsideration but its motion was denied by the same court in its Resolution[7] of January 24, 2005.

Undaunted, petitioner is now with this Court via the present recourse, raising substantially the same issue of whether courts may review findings of the prosecutor on the existence of probable cause and substitute their own judgment for that of the latter in determining sufficiency of evidence to establish guilt.

We DENY.

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Well-settled is the rule that the courts will not interfere in the conduct of preliminary investigations or reinvestigations and leave to the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of the corresponding complaint or information against an offender.[8] In fact, the prosecutor's findings on the matter are not subject to review by the courts unless shown to have been made with grave abuse of discretion.[9] And by it is meant that the power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law.[10]

Here, we failed to discern such abuse. For, as found by Senior State Prosecutor Leah C. Tanodra-Armamento in her dismissal Resolution[11] of January 14, 2003, which was duly sustained by the Secretary of Justice in his uniformly worded resolutions of June 17, 2003 and June 25, 2003 which denied the separate petitions for review filed by petitioner Glaxo and others:

> To prove their charge, complainants presented the certification of their employees (sic) alleging that the drugs purchased from respondent on June 9, 2002 do not contain their company's certificate of product registration issued by BFAD. They, however, admitted that respondents are into parallel importation of the drugs sold which is now being encourage by the government to bring down the prices of medicines. In fact, they failed to show that such act is prohibited by law.
>
> Respondents, to prove the legitimacy of their business, presented a certification from BFAD that they are duly licensed drug importer/distributor/wholesaler at the same time that the alleged purchase was made by the complainants. In addition, respondents presented a certification of BFAD LICD Chief Atty. Ireneo M. Galicia that Sahar International Trading, Inc. has no pending violation with BFAD as of July 30, 2002 or after the alleged purchase on June 9, 2002. Clearly, the said transaction was not deemed as violation by BFAD, the government agency mandated to implement R.A. 3720 and R.A. 8203.
>
> Consequently, the affidavits filed by complaint (sic) failed to sustain any indictment in the light of respondents' evidence. Worse, it is not consistent with the truth.
>
> Ateeque presented his passport and the Bureau of Immigration computer print-out of his arrival on May 29, 2002 to disprove that Ms. Legaspi was able to talk to him on May 28, 2002 and placed an order for the drugs to be purchased. He also presented the affidavit of Mr. Sangca, a friend with whom his family had dinner during the alleged entrapment operation on June 9, 2002. Further, the Articles of Incorporation of World Traders, Inc. (WTI) was also attached by respondents to disprove complainant's allegation that they met at WTI premises, and to show incredulity of complainant's accusation as the documents show that the corporation was created even before Ateeque was born with its office located at No. 45 Dallas Street. BF Northwest, Parañaque City, a place Ateeque had never been to. (Emphasis supplied)

By the nature of his office, the investigating prosecutor is under no compulsion to file criminal information where no clear legal justification has been shown and where he is not convinced that he has the quantum of evidence to support the averments.[12] Prosecuting officers have the duty not to prosecute when, after investigation or reinvestigation, they are convinced that the evidence adduced was not sufficient to establish a prima facie case. This is as it should be. For, the determination of the persons to be prosecuted rests primarily with the prosecutor who is vested with discretion in the discharge of this function. Hence, the question of whether or not to dismiss a complaint is within the purview of the functions of the prosecutor and, ultimately, that of the Secretary of Justice.[13]

Absent, as here, of any clear showing of arbitrariness, the Court defers to the authority of the prosecuting arm to determine probable cause in a preliminary investigation and shall give credence to its findings and determination.

For sure, the Court is consistent in its view that the determination of whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be subjected to the expense, rigors and embarrassment of trial is an executive function exclusively of the prosecutor.[14]

IN VIEW WHEREOF, the instant petition is DENIED.
SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez and Corona, JJ., concur.Azcuna, J., on official leave.

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Salvador J. Valdez Jr. and Vicente Q. Roxas, concurring. Rollo, pp. 62-69.

[2] Rollo, p. 71.

[3] Rollo, pp. 225-230.

[4] Rollo, pp. 300-301.

[5] Rollo, pp. 302-303.

[6] Supra note 1.

[7] Supra note 2.

[8] Rosalinda Punzalan, Randall Punzalan and Rainier Punzalan vs. Dencio Dela Peña and Robert Cagara, G.R. No. 158543, July 21, 2004, 434 SCRA 601.

[9] Cabahug vs. People, G.R. No. 132816, February 5, 2002, 376 SCRA 113.

[10] Baylon vs. Office of the Ombudsman and the Sandiganbayan, G.R. No. 142738, December 14, 2001, 372 SCRA 437.

[11] Supra note 3.

[12] Tam Wing vs. Makasiar, G.R. No. 122452, January 29, 2001, 350 SCRA 475.

[13] Supra note 1.

[14] Sistoza vs. Desierto, G.R. No. 144784, September 13, 2002, 388 SCRA 307.

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