

**DIANA T. LAO, ROWENA O. TAN AND WILSON O. TAN, PETITIONERS,
VS. RAMON G. CO, JIUNN SAN LAY, LI MING-CHIU, MERIAM S.
REPORSADO, MA. THERESA D. BATA, MELVIN P. GUEVARRA, ELENA
MEL...**

G.R. No. 168198. August 22, 2008

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to set aside the August 31, 2004[1] and May 9, 2005[2] resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 85514.

On October 22, 1999, petitioners' sister, Susana Tan Villaviray (Villaviray),[3] filed a criminal complaint against respondents for falsification of public documents in the City Prosecutor's Office of Mandaluyong City. On June 27, 2000, petitioners followed suit. In both complaints, petitioners and Villaviray accused respondents of making it appear that they (Villaviray and petitioners) caused the transfer of their shares (Villaviray's and petitioners' shares) of stock in Leecauc International Group (Leecauc) to respondents' corporation, Moly Chiu, Inc., when they, in fact, did not. They denied having executed any deed of assignment of their shares of stock in Leecauc in respondents' favor. They likewise denied having appeared before notaries public of Manila, Melvin P. Guevara and Elena Melita L. Chica, before whom the assailed deeds were subscribed.

A joint resolution[4] was issued by the City Prosecutor[5] dismissing the complaints for insufficiency of evidence. The resolution declared that:

We agree with respondents that reliance alone on complainants["] claim that the signatures appearing on the subject Deed of Assignment are forgeries[,] should not be given due consideration. The deed is a public document. Without any expert view that indeed the signatures appearing thereon appear to be forgeries, no prima facie case for falsification exists against respondents. The need is absolutely necessary particularly considering the similarity of the signatures appearing on the Deed of Assignment and the Articles of Incorporation.

WHEREFORE, it is respectfully recommended that these cases be DISMISSED for insufficiency of evidence. (Emphasis supplied)

Petitioners appealed to the Department of Justice (DOJ), contending that the City Prosecutor erred in dismissing the case and in ruling that no prima facie case existed. They emphasized that they neither executed the questioned deeds of assignment nor appeared before the notaries public named therein. However, the appeal was denied for lack of merit in a resolution dated November 14, 2002 (first DOJ resolution).[6]

Petitioners then filed a motion for reconsideration with a motion for production and inspection of documents, praying for the referral of the original of the deeds of assignment to the proper agency for expert analysis. In its August 25, 2003 resolution (second DOJ resolution),[7] the DOJ granted the motion for reconsideration:

WHEREFORE, the motion for reconsideration is hereby GRANTED. The City Prosecutor of Mandaluyong City is directed to refer the questioned deeds of assignment to the National Bureau of Investigation (NBI) and thereafter to conduct a reinvestigation, furnishing this Office a copy of his resolution within ten (10) days from the release of the same.

SO ORDERED.

This time, it was respondents who filed a motion for reconsideration averring that unsubstantiated allegations of forgery were not proof and that such allegations could not rebut the presumption of regularity in the execution of the subject deeds. The same was granted by the DOJ in a resolution dated June 2, 2004 (third DOJ resolution):[8]

WHEREFORE, respondents' motion for reconsideration is GRANTED. The resolution dated August 25, 2003 is set aside and the resolution dated November 14, 2002 dismissing the complaints and the appeal is reinstated.

Aggrieved, petitioners filed a petition for certiorari in the CA. The appellate court dismissed the petition outright for being precipitatedly filed as there was no showing that petitioners ever filed a motion for reconsideration of the third DOJ resolution. According to the CA, there was no justification to dispense with the filing of said motion. Moreover, only machine copies of the assailed first and third DOJ resolutions were attached to the petition, in violation of Section 3, Rule 46 of the Rules of Court. The CA likewise denied petitioners' motion for reconsideration. Thus, this petition.

The primary issue before us is whether the CA erred in dismissing the petition for certiorari on the ground of petitioners' failure to file a motion for reconsideration of the third DOJ resolution.

Section 13 of DOJ Circular No. 70 dated July 3, 2000 (2000 National Prosecution Service Rule on Appeal) provides:

Sec. 13. Motion for reconsideration. - The aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal, furnishing the adverse party and the Prosecution Office concerned with copies thereof and submitting proof of such service. No second or further motion for reconsideration shall be entertained. (Emphasis supplied.)

In *Balindong v. CA*, we held that the above provision is a mandatory provision.[9] A second motion for reconsideration is prohibited for being a mere reiteration of the issues assigned and the arguments raised by the parties.[10]

In this case, the issues presented and the grounds relied upon by petitioners (on the sufficiency of their evidence to establish probable cause for falsification) had been previously raised by them in their first motion for reconsideration and fully passed upon in all three DOJ resolutions. Thus, had they filed a subsequent motion for reconsideration of the third DOJ resolution, it would have been properly classified as a second motion for reconsideration.

We note that the third DOJ resolution explicitly stated that: "The resolution dated August 25, 2003 is set aside and the resolution dated November 14, 2002 dismissing the complaints and the appeal is reinstated." Following the CA's ruling, petitioners should have questioned the same. However, in such a case, the subsequent motion for reconsideration would have essentially been a mere reiteration of the same issues and contentions earlier proffered by petitioners for it would have questioned the reinstatement of the first resolution and they would have again insisted on the sufficiency of their evidence to establish probable cause. In fact, petitioners asked the CA to rule on said issue in their petition for certiorari filed therein. Consequently, the CA erred in dismissing the petition for certiorari on the ground that the same was precipitatedly filed because clearly, there was no other plain, speedy and adequate remedy available in the course of law.

Be that as it may, we sustain the CA's dismissal of the petition for certiorari because, contrary to petitioners' assertions that they submitted duplicate original copies of the assailed first and third DOJ resolutions, only machine copies thereof were attached to the petition. This is in violation of Section 3, Rule 46 of the Rules of Court, which explicitly states that:

Sec. 3. Contents and filing of petition; effect of non-compliance with requirements. - The petition shall

x x x

x x x

x x x be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, x x x

x x x

x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied)

Thus, the CA was correct in dismissing their petition for certiorari on this ground.

Moreover, as to petitioners' contention that the DOJ erred in holding that an expert's view of the genuineness of the subject deeds of assignment and their signatures was a condition sine qua non in establishing probable cause^[11] for falsification against respondents, suffice it to say that the prosecutor and the DOJ did not categorically state that they dismissed the complaint solely on the ground that an expert's view was necessary to establish probable cause for forgery. Rather, they dismissed the complaint because they observed that petitioners' evidence did not engender a well-founded belief that respondents were guilty of falsifying said deeds. As correctly argued by respondents, petitioners' complaint-affidavit contained only bare allegations of forgery pointing to respondents as the authors thereof. No corroborating evidence was presented by petitioners to bolster their position. Thus, the investigating prosecutor and the Secretary of Justice had no other recourse but to dismiss the complaint.

The decision whether to dismiss a complaint or not depends upon the sound discretion of the prosecutor and, ultimately, that of the Secretary of Justice. Findings of the Secretary of Justice are not subject to review unless made with grave abuse of discretion.^[12] Thus, courts will not normally interfere with the prosecutor's discretion to file or not to file a criminal case.

WHEREFORE, the petition is hereby DENIED. The August 31, 2004 and May 9, 2005 resolutions of the Court of Appeals in CA-G.R. SP No. 85514 are AFFIRMED.

Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Azcuna, and Leonardo-De Castro, JJ., concur.

[1] Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Josefina Guevara-Salonga of the Former Seventh Division of the Court of Appeals. Rollo, pp.

24-25.

[2] Id., pp. 27-31.

[3] She did not join petitioners in filing a petition for certiorari in the CA and a petition for review on certiorari in this Court.

[4] Rollo, pp. 43-44.

[5] City Prosecutor Pablito A. Gahol approved the resolution prepared by Prosecutor Rodil Zalameda.

[6] Rollo, pp. 45-48.

[7] Id., pp. 49-51.

[8] Id., pp. 52-54.

[9] G.R. No. 159962, 16 December 2004, 447 SCRA 200, 210.

[10] Id.

[11] In *Bautista v. CA*, 413 Phil 159, 175 (2001), citing *Yap v. IAC*, G.R. No. 68464, 22 March 1993, 220 SCRA 245 and *Qui v. IAC*, G.R. No. 66865, 13 January 1989, 169 SCRA 137, we held that "probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted." In *Webb v. De Leon*, 317 Phil 758, 780 (1995), we emphasized that "in determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of our technical rules of evidence of which his knowledge is nil. Rather, he relies on the calculus of common sense of which all reasonable men have an abundance."

[12] *Santos v. Go*, G.R. No. 156081, 19 October 2005, 473 SCRA 350, 362, citing *Public Utilities Department v. Hon. Guingona, Jr.*, 417 Phil 798, 804 and 805 (2001).

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