FILEMON A. VERZANO, JR., PETITIONER, VS. FRANCIS VICTOR D. PARO, JANET A FLORENCIO, HON. REGIONAL STATE PROSECUTOR, AND HON. CITY PROSECUTOR OF BACOLOD, RESPONDENTS.

G.R. No. 171643. August 08, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a petition for review on certiorari,[1] under Rule 45 of the Rules of Court, seeking to set aside the July 28, 2005 Decision[2] and the February 7, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 86521.

The facts of the case are as follows:

On March 14, 2002, petitioner Filemon A. Verzano, Jr., former District Manager of Wyeth Philippines, Inc. (Wyeth) for the islands of Panay and Negros, was dismissed from service upon an administrative complaint filed against him. Among the individuals who filed the complaint against petitioner were respondents Francis Victor D. Paro (Paro) and Janet A. Florencio (Florencio) who were territory managers under the supervision of petitioner.

The complaint was founded on petitioner's alleged violation of company policy on prohibited sale of drug samples given for free to doctors and for the unauthorized act of "channeling," or the transfer of stocks within the same area falsely creating an impression that there was a sale. After conducting its own investigation and giving petitioner an opportunity to explain his side, Wyeth resolved to dismiss petitioner tendering him a Notice of Termination.[4]

Aggrieved by his termination, petitioner filed a Complaint[5] for illegal dismissal with the Regional Labor Arbitration Board, National Labor Relations Commission (NLRC), Bacolod City against Wyeth. For its part, Wyeth filed its Position Paper to rebut the charges of petitioner. Attached to the position paper of Wyeth were the affidavits[6] of respondents Paro and Florencio.

It was on account of the said affidavits that petitioner filed a criminal complaint[7] against respondents for perjury, false testimony and incriminatory machination. In said complaint, petitioner argued that the affidavits of respondents contained falsehoods against him, particularly on the material date of the alleged sale and the fact that he sold products which are to be given free to doctors. He also argued that the alleged acts of "channeling" by him are false and unfounded.

Subpoenas were issued by the City Prosecutor against respondents for the submission of their respective counter-affidavits; however, the return of the subpoenas showed that respondents could not be located at their given addresses.

In a Resolution[8] dated March 3, 2004, notwithstanding that no counter-affidavits were submitted by respondents, the City Prosecutor resolved to dismiss petitioner's complaint, the dispositive portion of which reads:

> WHEREFORE, finding no probable cause, all the charges are hereby recommended dismissed for insufficiency of evidence.[9]

Petitioner then filed a motion for reconsideration,[10] which was, however, denied by the City Prosecutor in a Resolution[11] dated June 11, 2004.

Petitioner appealed the Resolution of the City Prosecutor to the Office of Regional State Prosecutor via a petition for review.[12] On July 30, 2004, the Regional State Prosecutor issued a Resolution[13] finding merit in petitioner's appeal, the dispositive portion of which reads:

> WHEREFORE, your Resolution dated March 3, 2004 is hereby reversed and you are hereby directed to file the appropriate information for Perjury against Francis Victor D. [Paro] and Janet A. Florencio within (5) days from receipt hereof, furnishing this Office with proof of compliance within the same period.[14]

Aggrieved, respondents filed a motion for reconsideration.[15] In a Resolution[16] dated August 25, 2004, the Regional State Prosecutor denied respondents' motion.

On September 20, 2004 two Informations for perjury were filed against respondents in the Municipal Trial Court in the Cities (MTCC), Bacolod City. The Information against respondent Florencio was docketed as Criminal Case No. 049-8479, whereas, the Information against respondent Paro was docketed as Criminal Case No. 049-8480.

On the same day, September 20, 2004, respondents filed a petition for certiorari before the CA assailing the Resolutions of the Regional State Prosecutor which reversed the earlier Resolution of the City Prosecutor. Respondents likewise prayed for the issuance of a temporary restraining order (TRO) from the CA.

On October 7, 2004, the MTCC issued Warrants of Arrest against respondents. On the same day, respondent Florencio posted bail. Respondent Paro followed suit on October 8, 2004.

In a Resolution dated October 14, 2004, a TRO was issued by the CA, the pertinent portion of which reads:

> x x x x
>
> In order not to render moot and academic the instant petition, a temporary restraining order (TRO) is hereby issued temporarily enjoining the public respondent Chief Prosecutor from acting on the assailed Order issued by the public respondent Regional State Prosecutor for a period of sixty (60) days from receipt hereof.[17]

In light of the issuance of a TRO by the CA, respondents filed with the MTCC a Manifestation and Urgent Motion to Suspend Proceedings[18] on November 2, 2004.

On November 10, 2004, the MTCC issued an Order,[19] granting respondent's motion to suspend the proceedings.

On July 28, 2005, the CA rendered a Decision,[20] ruling in favor of respondents, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition is hereby GRANTED. Accordingly, the assailed Resolutions dated July 30, 2004 and August 25, 2004 are REVERSED and SET ASIDE.
>
> SO ORDERED.[21]

In ruling against petitioner, the CA ruled, among others, that the Regional State Prosecutor committed grave abuse of discretion when he directed the filing of the Informations for perjury on the simple reason that no counter-affidavits were submitted by respondents. In addition, the CA held that even though the Informations had

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already been filed in the MTCC, the same did not bar the CA from reviewing and correcting acts tainted with grave abuse of discretion.

Aggrieved, petitioner filed a motion for reconsideration, which was, however, denied by the CA in a Resolution[22] dated February 7, 2006.

Hence, herein petition, with petitioner raising the following issues for this Court's consideration, to wit:

> I.
>
> THE PETITION FILED BY PRIVATE RESPONDENTS WITH THE COURT OF APPEALS HAD BEEN RENDERED MOOT AND ACADEMIC BY THE FILING OF THE CASES IN COURT.
>
> II.
>
> THE REGIONAL STATE PROSECUTOR DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN REVERSING THE RESOLUTION OF THE CITY PROSECUTOR.
>
> III.
>
> THE PETITION FOR CERTIORARI FILED BY HEREIN PRIVATE RESPONDENTS WITH THE HONORABLE COURT OF APPEALS IS NOT THE PROPER REMEDY.[23]

The petition has no merit.

Anent the first issue, petitioner argues that the filing of the informations in the MTCC had already removed the cases from the power and authority of the prosecution to dismiss the same in accordance with the doctrine laid down in Crespo v. Mogul[24] (Crespo), to wit:

> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[25]

In addition, petitioner points out that warrants of arrest were already issued by the MTCC and that respondents had already individually posted bail. Petitioner thus concludes, that the issue of whether or not the Regional State Prosecutor committed grave abuse of discretion when he directed the filing of Informations for perjury against respondents had already become moot and academic.

Petitioner is not entirely correct. As discussed in Ledesma v. Court of Appeals[26] (Ledesma), Crespo does not foreclose an appeal made to the resolution of a prosecutor in the determination of probable cause notwithstanding that informations had already been filed in court, to wit:

> In Marcelo vs. Court of Appeals, the Court clarified that Crespo did not foreclose the power or authority of the secretary of justice to review resolutions of his subordinates in criminal cases. The Court recognized in Crespo that the action of the investigating fiscal or prosecutor in the preliminary investigation is subject to the approval of the provincial or city fiscal or chief state prosecutor. Thereafter, it may be appealed to the secretary of justice.

The justice secretary's power of review may still be availed of despite the filing of an information in court. x x

x[27]

In the case at bar, while it is generally the Secretary of Justice who has the authority to review the decisions of the prosecutors, this Court agrees with the CA that the same precedential principles apply in full force and effect to the authority of the CA to correct the acts tainted with grave abuse of discretion by the prosecutorial officers notwithstanding the filing of the informations before the MTCC.[28] The authority of the CA is bolstered by the fact that the petition filed before it was one under Rule 65, therefore it has the jurisdiction to determine whether or not the Regional State Prosecutor acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Ledesma[29] adds that where the secretary of justice exercises his power of review only after an Information has been filed, trial courts should defer or suspend arraignment and further proceedings until the appeal is resolved. On this note, the MTCC was thus correct when it suspended the proceedings in view of the appeal taken by respondents to the resolution of the Regional State Prosecutor. As observed by the CA, the suspension of the proceedings by the MTCC was done in the exercise of its jurisdiction, to wit:

> To a certain extent, the respondents' asseverations are correct when they say by the operative act of filing of the informations before it, the MTCC has acquired jurisdiction over the criminal proceedings against petitioners. Indeed, the suspension of said proceedings is one such exercise of jurisdiction, and therefore, respondents' worries of the MTCC being divested of jurisdiction or competence over the proceedings are at best, speculative and illusory.[30]

Anent the second issue raised by petitioner, the same is without merit. Petitioner argues that the Regional State Prosecutor did not commit grave abuse of discretion when it reversed the finding of the city prosecutor that no probable cause existed to warrant the filing of the Informations against respondents.

In finding grave abuse of discretion, the CA opined that the Regional State Prosecutor reversed the finding of the City Prosecutor on the simple reason that respondents failed to submit counter-affidavits. The CA ruled that it would have been different had the Regional State Prosecutor reversed the resolutions of his subordinate upon a positive finding of probable cause.

The pertinent portions of the July 30, 2004 Resolution of the Regional State Prosecutor is hereunder reproduced, to wit:

> Perusal of the affidavits executed by Francis Victor D. [Paro] and Janet A. Florencio reveals the following:
>
> a) The material matter contained in these affidavits refer to the act of selling by Filemon Verzano, Jr. of Tazocin products intended to be distributed as free samples in violation of company policy. The date when the sale was made is not a material issue.
>
> b) The affidavits of the respondent were executed before a Labor Arbiter and a Notary Public who are persons authorized to administer oaths.
>
> c) There is also no question that these affidavits are required by law as they were attached as part of the position paper submitted with the Labor Arbiter handling the labor case.
>
> d) Although there is yet no clear evidence that there was an apparent willful and deliberate assertion of falsehood on their part, the respondents by their failure to file or submit their respective counter-affidavit for their defense, are deemed to have waived the same and in effect, the allegations in the complaint remain uncontroverted.
>
> The case record will show that your Office, in the determination of probable cause vis-à-vis the attending set of facts and circumstances, failed to consider the application of the procedure laid down under Section 3 paragraph (d) of Rule 112 of the Revised Rules of Procedure which provides:

> If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10)-day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

Only a counter-affidavit subscribed and sworn to by the respondent before the Public Prosecutor can dispute or put at issue the allegations in the complaint thus, a respondent who fails to submit his counter-affidavit within the required period is deemed not to have controverted the complainant's evidence.[31]

Contrary to the claim of petitioner that the Regional State Prosecutor found probable cause, the July 30, 2004 Resolution does not show that the latter actually made an independent assessment of the evidence presented in the investigation. As a matter of fact, the clear import of the July 30, 2004 Resolution is that the mere failure of respondents to submit counter-affidavits automatically warrants a finding of probable cause against them. The fallacy in such theory is very apparent and the CA is thus correct when it observed that:

> To follow the public respondent Regional State Prosecutor's skewed premise that only counter-affidavits can dispute or controvert allegations in the Complaint, would be to perpetuate an absurdity wherein a criminal complaint should automatically be resolved in favor of the complainant in the absence of counter-affidavits. x x x[32]

It is not disputed that the Regional State Prosecutor has the authority to reverse the findings of the existence of probable cause on review. However, a perusal of the July 30, 2004 Resolution would show that little attempt was made by the Regional State Prosecutor to discuss the existence or non-existence of probable cause and that much reliance was made on a flawed interpretation of Section 3, paragraph (d) of the Revised Rules of Procedure.

What makes matters worse is that in his August 25, 2004 Resolution which dealt with respondents' Motion for Reconsideration, the Regional State Prosecutor stuck with his theory and even relied on another flawed interpretation of Section 3, paragraph (b) of Rule 112, to wit:

> x x x It would have been a different scenario if it falls within the scope of Rule 112, Section 3, paragraph (b) which provides:
>
> b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.
>
> In the instant case, the Investigating Prosecutor found ground to continue with the inquiry which is why he issued subpoenas to the respondents to submit their counter affidavit within the 10-day period, since he could have dismissed it initially if indeed there was really no evidence to serve as a ground for continuing with the inquiry. For failure of the respondents to file their respective counter-affidavits, they are deemed to have forfeited their right to preliminary investigation as due process only requires that the respondent be given the opportunity to submit counter-affidavit, if he is so minded. x x x[33]

The clear import of Section 3, paragraph (b), of Rule 112 is that the Investigating Prosecutor may issue subpoenas if he finds grounds to continue with the investigation. However, the continuance of the investigation does not necessarily mean that the result will be an automatic conclusion of a finding of probable cause. To subscribe to such a theory would defeat the very purpose of a counter-affidavit which is to honor due process and to provide respondents an opportunity to refute the allegations made against them. Again, the conclusion reached by the Regional State Prosecutor is manifestly wrong as the CA was correct when it observed that the issuance of a subpoena would become unceremoniously clothed with the untoward implication that probable cause is necessarily extant.[34]

Based on the foregoing, because of the manner by which the Regional State Prosecutor resolved the case, this

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Court finds that the same constitutes grave abuse of discretion, as his interpretation and appreciation of the Rules of Court have no legal bases.

Lastly, petitioner argues that the petition for certiorari filed by respondents with the CA was the wrong remedy, considering that the proper procedure was to appeal to the Secretary of Justice under Department Circular No. 70,[35] otherwise known as the "2000 NPS Rule on Appeal."

The same deserves scant consideration.

Time and again, this Court has held that the principle of exhaustion of administrative remedies is not without exception. Based on the previous discussion, the actions of the Regional State Prosecutor, being patently illegal amounting to lack or excess of jurisdiction, the same constitutes an exception to the rule on administrative remedies.[36]

Finally, what is damning to petitioner's cause is the fact that the MTCC had already withdrawn the two Informations filed against respondents. As previously stated, the MTCC suspended the proceedings before it in view of the petition filed by the respondents with the CA. In Ledesma,[37] this Court stated that such deferment or suspension, however, does not signify that the trial court is ipso facto bound by the resolution of the secretary of justice. Jurisdiction, once acquired by the trial court, is not lost despite a resolution by the secretary of justice to withdraw the information or to dismiss the case.[38] Since the Informations for perjury had already been filed in the MTCC, any subsequent action must be addressed to the said court's discretion.

In the case at bar, the CA found that the Regional State Prosecutor acted with grave abuse of discretion when he ordered the City Prosecutor to file the Informations for perjury against respondents. It was because of the CA Decision that the City Prosecutor eventually filed two Motions for Leave to Withdraw Informations[39] with the MTCC. On August 30, 2005, the MTCC issued an Order[40] granting the motion, to wit:

> Acting on the Motion for Leave to Withdraw Informations filed by the prosecution, through 2[nd] Asst. City Prosecutor Arlene Catherine A. Dato, and finding it to be impressed with merit, the same is hereby Granted.
>
> Accordingly, the information against accused Janet Florencio in the above-entitled case is hereby Withdrawn.
>
> SO ORDERED.[41]

The court is the best and sole judge of what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. Thus, the court may deny or grant a motion to withdraw an information, not out of subservience to the (Special) Prosecutor, but in faithful exercise of judicial discretion and prerogative.[42] The dismissal of the two informations against respondents were subject to the MTCC's jurisdiction and discretion in view of the circumstances of the case at bar. Such dismissal ultimately renders the case moot and academic.

WHEREFORE, premises considered, the petition is DENIED. The July 28, 2005 Decision and the February 7, 2006 Resolution of the Court of Appeals, in CA-G.R. SP No. 86521, are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

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[1]Rollo, pp. 10-23.

[2]Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Sesinando E. Villon and Enrico A.

Lanzanas, concurring; id. at 24-35.

[3] Rollo, p. 36.

[4] Id. at 545-546.

[5] Entitled Filemon Verzano, Jr. v. Wyeth Philippines, Inc., docketed as RAB Case No. 06-04-10236-2.

[6] Records (Criminal Case No. 04-9-8480), pp. 17-21; records (Criminal Case No. 04-9-8479), pp. 39-40.

[7] Records (Criminal Case No. 04-9-8480), p. 6.

[8] CA rollo, pp. 48-57.

[9] Id. at 57.

[10] Id. at 58-61.

[11] Id. at 62.

[12] Id. at 65-75.

[13] Id. at 196-198.

[14] Id. at 198.

[15] Id. at 199-208.

[16] Id. at 40-42.

[17] Records (Criminal Case No. 04-9-8480), p. 92.

[18] Id. at 85-88.

[19] Id. at 95.

[20] Rollo, pp. 24-35.

[21] Id. at 35.

[22] Id. at 36.

[23] Id at. 18-21.

[24] G.R. No. L-53373, June 30, 1987, 151 SCRA 462, 467.

[25] Id. at 471.

[26] G.R. No. 113216, September 5, 1997, 278 SCRA 656. See also Marcelo v. Court of Appeals, G.R. No. 106695, August 4, 1994, 235 SCRA 39, 48-49.

[27] Ledesma v. Court of Appeals, supra, at 678.

[28] Rollo, p. 34.

[29] Supra note 26, at 680.

[30] Rollo, p. 35.

[31] CA rollo, pp. 197-198. (Underscoring in the Original).

[32] Rollo, p. 31.

[33] Id. at 179-180. (Emphasis supplied).

[34] Id. at 31.

35 The foregoing delegation of authority notwithstanding, the Secretary of Justice may, pursuant to his power of supervision and control over the entire National Prosecution Service and in the interest of justice, review the resolutions of the Regional State Prosecutors in appealed cases.

[36] Buston-Arendain v. Gil, G.R. No. 172585, June 26, 2008, 555 SCRA 561, 573.

[37] Supra note 26, at 680.

[38] Id.

[39] Records (Criminal Case No. 04-9-8480), pp. 95-97. See also records (Criminal Case No. 04-9-8479), pp. 95-97.

[40] Id. at 98; id. at 98.

[41] Id.

[42] People v. Court of Appeals, 361 Phil. 401, 410-411 (1999).

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