

**ERNESTO MARCELO, JR. AND LAURO LLAMES, PETITIONERS, VS.
RAFAEL R. VILLORDON, ASSISTANT CITY PROSECUTOR OF QUEZON
CITY, RESPONDENT.**

G.R. No. 173081. December 15, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review on certiorari[1] assailing the Orders dated 5 January 2006[2] and 30 May 2006[3] of the Regional Trial Court (RTC) of Quezon City, Branch 105, in Civil Case No. Q-05-56367.

The Facts

On 2 April 2004, petitioners Ernesto Marcelo, Jr. and Lauro Llames, together with two others, filed with the Office of the City Prosecutor of Quezon City a criminal complaint[4] against their former employer Eduardo R. Dee, Sr. (Dee). The criminal complaint stemmed from Dee's non-payment of their wages as President and General Manager of New Sampaguita Builders Construction Incorporated.[5]

On 28 April 2004, respondent Assistant City Prosecutor of Quezon City Rafael R. Villordon (Villordon) issued a subpoena against Dee to appear at the preliminary investigation of the case set on 18 May 2004. Dee failed to appear. The case was again set for preliminary investigation on several dates but Dee failed to appear in all of them. Each time the case was reset, petitioners asked that the case be declared submitted for resolution.

On 29 July 2004, Villordon declared the case submitted for resolution.

On 5 November 2004, Dee filed a motion to reopen the case and attached his Counter-Affidavit. Assistant City Prosecutor Rogelio Velasco, Villordon's Division Chief, approved the motion on 8 December 2004. Villordon then called the parties to a hearing on 28 December 2004. At the hearing, Dee failed to appear but petitioners were present and signed the minutes of the hearing confirming that they would appear and submit their Reply-Affidavit on 18 January 2005. Another hearing was also scheduled on 3 February 2005. On both dates, Dee failed to appear and petitioners did not submit their Reply-Affidavit.

On 22 March 2005, petitioners filed a proceeding for grievance/request for assistance with the Office of the Ombudsman (OMB). After several follow-ups for the early resolution of the case without receiving any action on the matter, petitioners later filed a case for violation of Section 3(f)[6] of Republic Act No. 3019[7] against Villordon with the OMB.[8] On 31 July 2007, the OMB dismissed the case.

Meanwhile, on 19 September 2005, petitioners filed a petition for mandamus[9] against Villordon with the Regional Trial Court (RTC) of Quezon City, Branch 105. Petitioners prayed that Villordon be ordered to resolve the criminal complaint and pay petitioners (1) moral damages in the amount of P25,000 each; (2) exemplary

damages in the amount of P25,000; (3) attorney's fees in the amount of P10,000, plus P2,000 per court appearance; and (4) cost of suit.[10]

In an Order dated 5 January 2006, the RTC dismissed the case for lack of merit. The RTC explained that petitioners failed to exhaust available administrative remedies before resorting to the court. The RTC stated that petitioners should have first referred the matter to the Chief City Prosecutor, being Villordon's superior, to correct Villordon's error, if any. The RTC added that petitioners filed an administrative charge against Villordon with the OMB for neglect of duty without waiting for the final determination of the case.[11] The RTC explained further:

While the rule on exhaustion of administrative remedies is not an iron clad rule, the circumstances availing in this case does not categorized as an exception. The pending case for Estafa and violation of Article 116 of the Labor Code before the respondent, assuming they raise only legal questions, will not justify the petitioners to compel the former to make an immediate resolution of the same. As the record of preliminary investigation will show, a Motion to Re-open Case was granted as per notation of his Division Chief and was scheduled for preliminary investigation on 18 January 2005 and 3 February 2005, respectively, which the petitioners themselves conformed with. On [the] 18 January 2005 hearing, petitioners appeared and signed the minutes giving [chance] for the last time to Eduardo Dee, Sr. to show up on the next hearing which was 3 February 2005. However, came the 3 February 2005 hearing, none of the parties appeared. This development has led the respondent to wait for the petitioners to file any pleading on account of the Counter-Affidavit filed by Eduardo Dee, Sr.[.] a copy of which was furnished the petitioners. As respondent reasoned out, he waited for a move from the petitioners to enable him to dispose [of] the cases accordingly. Until and after the case is submitted for resolution, any motion asking for immediate resolution to that sort is still unavailing. Thus, from the foregoing circumstances, the petitioners have not shown [any] legal right to compel the respondent to perform the relief they are suing for.

WHEREFORE, in the light of the foregoing considerations, the petition is DISMISSED for lack of merit.

SO ORDERED.[12]

Petitioners filed a motion for reconsideration which the RTC denied for lack of merit in an Order dated 30 May 2006.

Hence, this petition.

The Issue

The main issue is whether petitioners are entitled to the extraordinary writ of mandamus.

The Court's Ruling

The petition lacks merit.

Petitioners submit that the petition for mandamus was not prematurely filed with the RTC. Petitioners insist that under the Rules of Court it is the assistant city prosecutor's function as investigating prosecutor in a preliminary investigation to make his resolution, while it is the chief city prosecutor's function to either approve or disapprove the same. The chief city prosecutor then will get the chance to correct the errors committed by the investigating prosecutor only after the latter's resolution is submitted to him. In the present case, Villordon, as the investigating prosecutor, has not yet made any resolution. Thus, petitioners assert that Villordon committed grave abuse of discretion by unreasonably refusing to file an information despite the fact that the evidence clearly warrants such action.

On the other hand, respondent Villordon maintains that mandamus is a premature remedy since the case was not yet submitted for resolution when petitioners filed an action with the RTC. Villordon contends that after the

hearing on 3 February 2005 which none of the parties attended, he was left hanging as to whether the case should be submitted for resolution. Petitioners failed to submit a Reply-Affidavit which should have rebutted the Counter-Affidavit filed by Dee. Villordon states that petitioners opted to just engage in forum-shopping and filed several cases against him in the RTC and the OMB.

Sections 1 and 2 of Rule 112 of the Revised Rules of Criminal Procedure state:

Section 1. Preliminary investigation defined; when required. - Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. x x x

Sec. 2. Officers authorized to conduct preliminary investigations. - The following may conduct preliminary investigations:

(a) Provincial or City Prosecutors and their assistants; x x x

A preliminary investigation is conducted before an accused is placed on trial to secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial. It is also intended to protect the State from having to conduct useless and expensive trials. Thus, a preliminary investigation is not a mere formal or technical right but is a substantive right.[13]

The function of determining whether there is sufficient ground for the filing of the information is executive in nature and rests with the prosecutor. It is the prosecutor alone who has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court.

In the present case, petitioners filed a criminal complaint against Dee with the Office of the City Prosecutor. After several hearings where Dee did not appear, Villordon declared the case submitted for resolution. After three months, Dee showed up and filed a motion to reopen the case and simultaneously submitted his counter-affidavit. Villordon's superior approved the motion. Thereafter, two hearings were scheduled on different dates. On the first hearing, Dee did not appear but petitioners were present. Villordon then directed petitioners to file their reply-affidavit on the next hearing to controvert the counter-affidavit submitted by Dee. However, on the second hearing, Dee and petitioners failed to appear. Since then, no other action was taken on the matter. Due to the long delay, petitioners filed an anti-graft and corruption case against Villordon with the OMB and a petition for mandamus with the RTC. The OMB dismissed the case and the RTC denied the petition. Petitioners now seek that we reverse the RTC's decision and grant the extraordinary writ of mandamus to compel Villordon to resolve the preliminary investigation and file a criminal information against Dee.

Section 3, Rule 65 of the Rules of Court states:

Sec. 3. Petition for Mandamus. - When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. x x x

The provision clearly defines that mandamus will lie if (1) any tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or

station; or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled; and (2) there is no plain, speedy and adequate remedy in the ordinary course of law other than the remedy of mandamus being invoked.

In the present case, petitioners insist that mandamus is proper since Villordon committed grave abuse of discretion by unreasonably refusing to file an information despite the fact that the evidence indicates otherwise.

We disagree with petitioners. As mentioned earlier, the matter of deciding who to prosecute is a prerogative of the prosecutor. In *Hipos v. Judge Bay*,^[14] we held that the remedy of mandamus, as an extraordinary writ, lies only to compel an officer to perform a ministerial duty, not a discretionary one. Mandamus will not issue to control the exercise of discretion by a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court. The only time the discretion of the prosecutor will stand review by mandamus is when the prosecutor gravely abuses his discretion.^[15]

Here, due to the non-appearance of Dee on several hearings and the non-submission of the reply-affidavit by petitioners, Villordon cannot be faulted if he is still not convinced that a criminal information should be filed against Dee. Villordon may need to consider more evidence material to the complaint and is giving both parties the chance to submit their supporting documents.

Also, the assertion of petitioners that the evidence against Dee is strong, amounting to grave abuse of discretion on Villordon's part in not filing the criminal information, has not been clearly established. The records show that aside from petitioners' bare declarations, no other proof was submitted.

Moreover, petitioners were not able to sufficiently demonstrate that they had no other plain, speedy and adequate remedy in order to be entitled to mandamus. A more expeditious and effective recourse could have been simply to submit their reply-affidavit in order for Villordon to make the proper determination whether there was sufficient ground to hold Dee for trial. Instead, petitioners resorted to filing cases in different fora like the OMB and the RTC to compel Villordon to file the criminal information against Dee immediately.

In sum, since the institution of a criminal action involves the exercise of sound discretion by the prosecutor and there being other plain, speedy and adequate remedies available to petitioners, the resort to the extraordinary writ of mandamus must fail.

WHEREFORE, we DENY the petition. We AFFIRM the Orders dated 5 January 2006 and 30 May 2006 of the Regional Trial Court of Quezon City, Branch 105, in Civil Case No. Q-05-56367.

SO ORDERED.

Nachura, Peralta, Abad, and Mendoza, JJ., concur.

^[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

^[2] Rollo, pp. 35-38. Penned by Presiding Judge Rosa Samson-Tatad.

^[3] Id. at 48-49.

^[4] Docketed as I.S. No. 04-4682.

^[5] Petitioners filed a case for estafa and violation of Article 116 of the Labor Code (withholding of wages and kickbacks); see rollo, p. 37.

6Sec. 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(f) Neglecting or refusing, after due demand or request, without sufficient justification to act within a reasonable time on any matter pending before him for the purpose of obtaining directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

[7] Anti-Graft and Corrupt Practices Act which took effect on 17 August 1960.

[8] See Comment; rollo p. 57.

[9] Id. at 11-15.

[10] Id. at 14.

[11] Id. at 37.

[12] Id. at 37-38.

[13] Uy v. Office of the Ombudsman, G.R. Nos. 156399-400, 27 June 2008, 556 SCRA 73, citing Duterte v. Sandiganbayan, 352 Phil. 557 (1998).

[14] G.R. Nos. 174813-15, 17 March 2009, 581 SCRA 674, citing Akbayan-Youth v. Commission on Elections, 407 Phil. 619 (2001). See also Knecht v. Hon. Desierto, 353 Phil. 494 (1998) and Lim v. Court of Appeals, G.R. No. 100311, 18 May 1993, 222 SCRA 279.

[15] Knecht v. Hon. Desierto, supra note 14. See also D.M. Consunji, Inc. v. Esguerra, 328 Phil. 1168 (1996).

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