

**SPOUSES BERNYL BALANGAUAN KATHERENE BALANGAUAN,  
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, SPECIAL  
NINETEENTH (19TH) DIVISION, CEBU CITY THE HONGKONG AND  
SHANGHAI BANKING ...**

*G.R. No. 174350. August 13, 2008*

Ponente: CHICO-NAZARIO, J.

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**CHICO-NAZARIO, J.:**

Before Us is a Petition for Certiorari under Rule 65 of the Revised Rules of Court assailing the 28 April 2006 Decision[1] and 29 June 2006 Resolution[2] of the Court of Appeals in CA-G.R. CEB-SP No. 00068, which annulled and set aside the 6 April 2004[3] and 30 August 2004[4] Resolutions of the Department of Justice (DOJ) in I.S. No. 02-9230-I, entitled "The Hongkong and Shanghai Banking Corporation v. Katherine Balangauan, et al." The twin resolutions of the DOJ affirmed, in essence, the Resolution of the Office of the City Prosecutor,[5] Cebu City, which dismissed for lack of probable cause the criminal complaint for Estafa and/or Qualified Estafa, filed against petitioner-Spouses Bernyl Balangauan (Bernyl) and Katherine Balangauan (Katherine) by respondent Hong Kong and Shanghai Banking Corporation, Ltd. (HSBC).

In this Petition for Certiorari, petitioners Bernyl and Katherine urge this Court to "reverse and set aside the Decision of the Court of Appeals, Special nineteenth (sic) [19<sup>th</sup>] division (sic), Cebu City (sic) and accordingly, dismiss the complaint against the [petitioners Bernyl and Katherine] in view of the absence of probable cause to warrant the filing of an information before the Court and for utter lack of merit." [6]

As culled from the records, the antecedents of the present case are as follows:

Petitioner Katherine was a Premier Customer Services Representative (PCSR) of respondent bank, HSBC. As a PCSR, she managed the accounts of HSBC depositors with Premier Status. One such client and/or depositor handled by her was Roger Dwayne York (York).

York maintained several accounts with respondent HSBC. Sometime in April 2002, he went to respondent HSBC's Cebu Branch to transact with petitioner Katherine respecting his Dollar and Peso Accounts. Petitioner Katherine being on vacation at the time, York was attended to by another PCSR. While at the bank, York inquired about the status of his time deposit in the amount of P2,500,000.00. The PCSR representative who attended to him, however, could not find any record of said placement in the bank's data base.

York adamantly insisted, though, that through petitioner Katherine, he made a placement of the aforementioned amount in a higher-earning time deposit. York further elaborated that petitioner Katherine explained to him that the alleged higher-earning time deposit scheme was supposedly being offered to Premier clients only. Upon further scrutiny and examination, respondent HSBC's bank personnel discovered that: (1) on 18 January 2002, York pre-terminated a P1,000,000.00 time deposit; (2) there were cash movement tickets and withdrawal slips all signed by York for the amount of P1,000,000.00; and (3) there were regular movements in York's accounts, i.e.,

beginning in the month of January 2002, monthly deposits in the amount of P12,500.00 and P8,333.33 were made, which York denied ever making, but surmised were the regular interest earnings from the placement of the P2,500,000.00.

It was likewise discovered that the above-mentioned deposits were transacted using petitioner Katherene's computer and work station using the code or personal password "CEO8." The significance of code "CEO8," according to the bank personnel of respondent HSBC, is that, "[i]t is only Ms. Balangauan who can transact from [the] computer in the work station CEO-8, as she is provided with a swipe card which she keeps sole custody of and only she can use, and which she utilizes for purposes of performing bank transactions from that computer." [7]

Bank personnel of respondent HSBC likewise recounted in their affidavits that prior to the filing of the complaint for estafa and/or qualified estafa, they were in contact with petitioners Bernyl and Katherene. Petitioner Bernyl supposedly met with them on two occasions. At first he disavowed any knowledge regarding the whereabouts of York's money but later on admitted that he knew that his wife invested the funds with Shell Company. He likewise admitted that he made the phone banking deposit to credit York's account with the P12,500.00 and the P8,333.33 using their landline telephone. With respect to petitioner Katherene, she allegedly spoke to the bank personnel and York on several occasions and admitted that the funds were indeed invested with Shell Company but that York knew about this.

So as not to ruin its name and goodwill among its clients, respondent HSBC reimbursed York the P2,500,000.00.

Based on the foregoing factual circumstances, respondent HSBC, through its personnel, filed a criminal complaint for Estafa and/or Qualified Estafa before the Office of the City Prosecutor, Cebu City.

Petitioners Bernyl and Katherene submitted their joint counter-affidavit basically denying the allegations contained in the affidavits of the aforementioned employees of respondent HSBC as well as that made by York. They argued that the allegations in the Complaint-Affidavits were pure fabrications. Specifically, petitioner Katherene denied 1) having spoken on the telephone with Dy and York; and 2) having admitted to the personnel of respondent HSBC and York that she took the P2,500,000.00 of York and invested the same with Shell Corporation. Petitioner Bernyl similarly denied 1) having met with Dy, Iñigo, Cortes and Arcuri; and 2) having admitted to them that York knew about petitioner Katherene's move of investing the former's money with Shell Corporation.

Respecting the P12,500.00 and P8,333.33 regular monthly deposits to York's account made using the code "CEO8," petitioners Bernyl and Katherene, in their defense, argued that since it was a deposit, it was her duty to accept the funds for deposit. As regards York's time deposit with respondent HSBC, petitioners Bernyl and Katherene insisted that the funds therein were never entrusted to Katherene in the latter's capacity as PCSR Employee of the former because monies deposited "at any bank would not and will not be entrusted to specific bank employee but to the bank as a whole."

Following the requisite preliminary investigation, Assistant City Prosecutor (ACP) Victor C. Laborte, Prosecutor II of the OCP, Cebu City, in a Resolution[8] dated 21 February 2003, found no probable cause to hold petitioners Bernyl and Katherene liable to stand trial for the criminal complaint of estafa and/or qualified estafa, particularly Article 315 of the Revised Penal Code. Accordingly, the ACP recommended the dismissal of respondent HSBC's complaint.

The ACP explained his finding, viz:

As in any other cases, we may never know the ultimate truth of this controversy. But on balance, the evidence on record tend to be supportive of respondents' contention rather than that of complaint.

x x x x

First of all, it is well to dwell on what Mr. York said in his affidavit. Thus:

`18. For purposes of opening these two time deposits (sic) accounts, Ms. Balangauan asked me to sign several Bank documents on several occasions, the nature of which I was unfamiliar with.'

`20. I discovered later that these were withdrawal slips and cash movement tickets, with which documents Ms. Balangauan apparently was able to withdraw the amount from my accounts, and take the same from the premises of the Bank.'

In determining the credibility of an evidence, it is well to consider the probability or improbability of one's statements for it has been said that there is no test of the truth of human testimony except its conformity to our knowledge, observation and experience.

Mr. York could not have been that unwary and unknowingly innocent to claim unfamiliarity with withdrawal slips and cash movement tickets which Ms. Balangauan made him to sign on several occasions. He is a premier client of HSBC maintaining an account in millions of pesos. A withdrawal slip and cash movement tickets could not have had such intricate wordings or terminology so as to render them non-understandable even to an ordinary account holder. Mr. York admittedly is a long-standing client of the bank. Within the period of 'long-standing' he certainly must have effected some withdrawals. It goes without saying therefore that the occasions that Ms. Balangauan caused him to sign withdrawal slips are not his first encounter with such kinds of documents.

The one ineluctable conclusion therefore that can be drawn from the premises is that Mr. York freely and knowingly knew what was going on with his money, who has in possession of them and where it was invested. These take out the elements of deceit, fraud, abuse of confidence and without the owner's consent in the crimes charged.

The other leg on which complainant's cause of action stands rest on its claim for sum of money against respondents allegedly after it reimbursed Mr. York for his missing account supposedly taken/withdrawn by Ms. Balangauan. The bank's action against respondents would be a civil suit against them which apparently it already did after the bank steps into the shoes of Mr. York and becomes the creditor of Ms. Balangauan.[9]

The ACP then concluded that:

By and large, the evidence on record do (sic) not engender enough bases to establish a probable cause against respondents.[10]

On 1 July 2003, respondent HSBC appealed the above-quoted resolution and foregoing comment to the Secretary of the DOJ by means of a Petition for Review.

In a Resolution dated 6 April 2004, the Chief State Prosecutor, Jovencito R. Zuño, for the Secretary of the DOJ, dismissed the petition. In denying respondent HSBC's recourse, the Chief State Prosecutor held that:

Sec. 12 (c) of Department Circular No. 70 dated July 2, 2000 provides that the Secretary of Justice may, *motu proprio*, dismiss outright the petition if there is no showing of any reversible error in the questioned resolution.

We carefully examined the petition and its attachments and found no reversible error that would justify a reversal of the assailed resolution which is in accord with the law and evidence on the matter.

Respondent HSBC's Motion for Reconsideration was likewise denied with finality by the DOJ in a lengthier Resolution dated 30 August 2004.

The DOJ justified its ruling in this wise:

A perusal of the motion reveals no new matter or argument which was not taken into consideration in our review of the case. Hence, we find no cogent reason to reconsider our resolution. Appellant failed to present any iota of evidence directly showing that respondent Katherene Balangauan took the money and invested it somewhere else. All it tried to establish was that Katherene unlawfully took the money and fraudulently invested it somewhere else x x x, because after the withdrawals were made, the money never reached Roger York as appellant adopted hook, line and sinker the latter's declaration, despite York's signatures on the withdrawal slips covering the total amount of P2,500,000.00 x x x. While appellant has every reason to suspect Katherene for the loss of the P2,500,000.00 as per York's bank statements, the cash deposits were identified by the numerals "CEO8" and it was only Katherene who could transact from the computer in the work station CEO-8, plus alleged photographs showing Katherene "leaving her office at 5:28 p.m. with a bulky plastic bag presumably containing cash" since a portion of the funds was withdrawn, we do not, however, dwell on possibilities, suspicion and speculation. We rule based on hard facts and solid evidence.

Moreover, an examination of the petition for review reveals that appellant failed to append thereto all annexes to respondents' urgent manifestations x x x together with supplemental affidavits of Melanie de Ocampo and Rex B. Balucan x x x, which are pertinent documents required under Section 5 of Department Circular No. 70 dated July 3, 2000.[11]

Respondent HSBC then went to the Court of Appeals by means of a Petition for Certiorari under Rule 65 of the Revised Rules of Court.

On 28 April 2006, the Court of Appeals promulgated its Decision granting respondent HSBC's petition, thereby annulling and setting aside the twin resolutions of the DOJ.

The fallo of the assailed decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case. The assailed Resolutions dated April 6, 2004 and August 30, 2004 are ANNULLED and SET ASIDE.

The City Prosecutor of Cebu City is hereby ORDERED to file the appropriate Information against the private respondents.[12]

Petitioners Bernyl and Katherene's motion for reconsideration proved futile, as it was denied by the appellate court in a Resolution dated 29 June 2006.

Hence, this petition for certiorari filed under Rule 65 of the Revised Rules of Court.

Petitioners Bernyl and Katherene filed the present petition on the argument that the Court of Appeals committed grave abuse of discretion in reversing and setting aside the resolutions of the DOJ when: (1) "[i]t reversed the resolution of the Secretary of Justice, Manila dated August 30, 2004 and correspondingly, gave due course to the Petition for Certiorari filed by HSBC on April 28, 2006 despite want of probable cause to warrant the filing of an information against the herein petitioners"[13]; (2) "[i]t appreciated the dubious evidence adduced by HSBC albeit the absence of legal standing or personality of the latter"[14]; (3) "[i]t denied the motions for reconsideration on June 29, 2006 notwithstanding the glaring evidence proving the innocence of the petitioners"[15]; (4) "[i]t rebuffed the evidence of the herein petitioners in spite of the fact that, examining such evidence alone would establish that the money in question was already withdrawn by Mr. Roger Dwayne York"[16]; and (5) "[i]t failed to dismiss outright the petition by HSBC considering that the required affidavit of service was not made part or attached in the said petition pursuant to Section 13, Rule 13 in relation to Section 3, Rule 46, and Section 2, Rule 56 of the Rules of Court."[17]

Required to comment on the petition, respondent HSBC remarked that the filing of the present petition is

improper and should be dismissed. It argued that the correct remedy is an appeal by certiorari under Rule 45 of the Revised Rules of Court.

Petitioners Bernyl and Katherene, on the other hand, asserted in their Reply[18] that the petition filed under Rule 65 was rightfully filed considering that not only questions of law were raised but questions of fact and error of jurisdiction as well. They insist that the Court of Appeals "clearly usurped into the jurisdiction and authority of the Public Prosecutor/Secretary of justice (sic) x x x." [19]

Given the foregoing arguments, there is need to address, first, the issue of the mode of appeal resorted to by petitioners Bernyl and Katherene. The present petition is one for certiorari under Rule 65 of the Revised Rules of Court. Notice that what is being assailed in this recourse is the decision and resolution of the Court of Appeals dated 28 April 2006 and 29 June 2006, respectively. The Revised Rules of Court, particularly Rule 45 thereof, specifically provides that an appeal by certiorari from the judgments or final orders or resolutions of the appellate court is by verified petition for review on certiorari.[20]

In the present case, there is no question that the 28 April 2006 Decision and 29 June 2006 Resolution of the Court of Appeals granting the respondent HSBC's petition in CA-G.R. CEB. SP No. 00068 is already a disposition on the merits. Therefore, both decision and resolution, issued by the Court of Appeals, are in the nature of a final disposition of the case set before it, and which, under Rule 45, are appealable to this Court via a Petition for Review on Certiorari, viz:

SECTION 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (Emphasis supplied.)

It is elementary in remedial law that a writ of certiorari will not issue where the remedy of appeal is available to an aggrieved party. A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioners from the injurious effects of the judgment and the acts of the lower court or agency.[21] In this case, appeal was not only available but also a speedy and adequate remedy.[22] And while it is true that in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice,[23] this Court has, before,[24] treated a petition for certiorari as a petition for review on certiorari, particularly if the petition for certiorari was filed within the reglementary period within which to file a petition for review on certiorari;[25] this exception is not applicable to the present factual milieu.

Pursuant to Sec. 2, Rule 45 of the Revised Rules of Court:

SEC. 2. Time for filing; extension. - The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. x x x.

a party litigant wishing to file a petition for review on certiorari must do so within 15 days from receipt of the judgment, final order or resolution sought to be appealed. In this case, petitioners Bernyl and Katherene's motion for reconsideration of the appellate court's Resolution was denied by the Court of Appeals in its Resolution dated 29 June 2006, a copy of which was received by petitioners on 4 July 2006. The present petition was filed on 1 September 2006; thus, at the time of the filing of said petition, 59 days had elapsed, way beyond the 15-day period within which to file a petition for review under Rule 45, and even beyond an extended period of 30 days, the maximum period for extension allowed by the rules had petitioners sought to move for such extra time. As the facts stand, petitioners Bernyl and Katherene had lost the right to appeal via Rule 45.

Be that as it may, alternatively, if the decision of the appellate court is attended by grave abuse of discretion amounting to lack or excess of jurisdiction, then such ruling is fatally defective on jurisdictional ground and may be questioned even after the lapse of the period of appeal under Rule 45[26] but still within the period for filing a petition for certiorari under Rule 65.

We have previously ruled that grave abuse of discretion may arise when a lower court or tribunal violates and contravenes the Constitution, the law or existing jurisprudence. 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.[27] The word "capricious," usually used in tandem with the term "arbitrary," conveys the notion of willful and unreasoning action. Thus, when seeking the corrective hand of certiorari, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative.[28]

In reversing and setting aside the resolutions of the DOJ, petitioners Bernyl and Katherine contend that the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Court of Appeals, when it resolved to grant the petition in CA-G.R. CEB. SP No. 00068, did so on two grounds, i.e., 1) that "the public respondent (DOJ) gravely abused his discretion in finding that there was no reversible error on the part of the Cebu City Prosecutor dismissing the case against the private respondent without stating the facts and the law upon which this conclusion was made"[29]; and 2) that "the public respondent (DOJ) made reference to the facts and circumstances of the case leading to his finding that no probable cause exists, x x x (the) very facts and circumstances (which) show that there exists a probable cause to believe that indeed the private respondents committed the crimes x x x charged against them."[30]

It explained that:

In refusing to file the appropriate information against the private respondents because he 'does not dwell on possibilities, suspicion and speculation' and that he rules 'based on hard facts and solid evidence', (sic) the public respondent exceeded his authority and gravely abused his discretion. It must be remembered that a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. The term does not mean 'actual or positive cause;' (sic) nor does it import absolute certainty. It is merely based on opinion and reasonable belief. [Citation omitted.] A trial is there precisely for the reception of evidence of the prosecution in support of the charge.

In this case, the petitioner had amply established that it has a prima facie case against the private respondents. As observed by the public respondent in his second assailed resolution, petitioner was able to present photographs of private respondent Ms. Balangauan leaving her office carrying a bulky plastic bag. There was also the fact that the transactions in Mr. York's account used the code 'CEO8' which presumably point to the private respondent Ms. Balangauan as the author thereof for she is the one assigned to such work station.

Furthermore, petitioner was able to establish that it was Ms. Balangauan who handled Mr. York's account and she was the one authorized to make the placement of the sum of P2,500,000.00. Since said sum is nowhere to be found in the records of the bank, then, apparently, Ms. Balangauan must be made to account for the same.[31]

The appellate court then concluded that:

These facts engender a well-founded belief that that (sic) a crime has been committed and that the private

respondents are probably guilty thereof. In refusing to file the corresponding information against the private respondents despite the presence of the circumstances making out a prima facie case against them, the public respondent gravely abused his discretion amounting to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[32]

The Court of Appeals found fault in the DOJ's failure to identify and discuss the issues raised by the respondent HSBC in its Petition for Review filed therewith. And, in support thereof, respondent HSBC maintains that it is incorrect to argue that "it was not necessary for the Secretary of Justice to have his resolution recite the facts and the law on which it was based," because courts and quasi-judicial bodies should faithfully comply with Section 14, Article VIII of the Constitution requiring that decisions rendered by them should state clearly and distinctly the facts of the case and the law on which the decision is based.[33]

Petitioners Bernyl and Katherine, joined by the Office of the Solicitor General, on the other hand, defends the DOJ and assert that the questioned resolution was complete in that it stated the legal basis for denying respondent HSBC's petition for review - "that (after) an examination (of) the petition and its attachment [it] found no reversible error that would justify a reversal of the assailed resolution which is in accord with the law and evidence on the matter."

It must be remembered that a preliminary investigation is not a quasi-judicial proceeding, and that the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause. In *Bautista v. Court of Appeals*,[34] this Court held that a preliminary investigation is not a quasi-judicial proceeding, thus:

[T]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.

Though some cases[35] describe the public prosecutor's power to conduct a preliminary investigation as quasi-judicial in nature, this is true only to the extent that, like quasi-judicial bodies, the prosecutor is an officer of the executive department exercising powers akin to those of a court, and the similarity ends at this point.[36] A quasi-judicial body is an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making.[37] A quasi-judicial agency performs adjudicatory functions such that its awards, determine the rights of parties, and their decisions have the same effect as judgments of a court. Such is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an Information against a person charged with a criminal offense, or when the Secretary of Justice is reviewing the former's order or resolutions. In this case, since the DOJ is not a quasi-judicial body, Section 14, Article VIII of the Constitution finds no application. Be that as it may, the DOJ rectified the shortness of its first resolution by issuing a lengthier one when it resolved respondent HSBC's motion for reconsideration.

Anent the substantial merit of the case, whether or not the Court of Appeals' decision and resolution are tainted with grave abuse of discretion in finding probable cause, this Court finds the petition dismissible.

The Court of Appeals cannot be said to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction in reversing and setting aside the resolutions of the DOJ. In the resolutions of the DOJ, it affirmed the recommendation of ACP Laborte that no probable cause existed to warrant the filing in court of an Information

for estafa and/or qualified estafa against petitioners Bernyl and Katherene. It was the reasoning of the DOJ that "[w]hile appellant has every reason to suspect Katherene for the loss of the P2,500,000.00 as per York's bank statements, the cash deposits were identified by the numerals 'CEO8' and it was only Katherene who could transact from the computer in the work station CEO-8, plus alleged photographs showing Katherene 'leaving her office at 5:28 p.m. with a bulky plastic bag presumably containing cash' since a portion of the funds was withdrawn, we do not, however, dwell on possibilities, suspicion and speculation. We rule based on hard facts and solid evidence." [38]

We do not agree.

Probable cause has been defined as the existence of such facts and circumstances as would excite 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. [39] A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt. [40]

The executive department of the government is accountable for the prosecution of crimes, its principal obligation being the faithful execution of the laws of the land. A necessary component of the power to execute the laws is the right to prosecute their violators, [41] the responsibility for which is thrust upon the DOJ. Hence, the determination of whether or not probable cause exists to warrant the prosecution in court of an accused is consigned and entrusted to the DOJ. And by the nature of his office, a public prosecutor is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up the averments thereof, or that the evidence at hand points to a different conclusion.

But this is not to discount the possibility of the commission of abuses on the part of the prosecutor. It is entirely possible that the investigating prosecutor has erroneously exercised the discretion lodged in him by law. This, however, does not render his act amenable to correction and annulment by the extraordinary remedy of certiorari, absent any showing of grave abuse of discretion amounting to excess of jurisdiction. [42]

And while it is this Court's general policy not to interfere in the conduct of preliminary investigations, leaving the investigating officers sufficient discretion to determine probable cause, [43] we have nonetheless made some exceptions to the general rule, such as when the acts of the officer are without or in excess of authority, [44] resulting from a grave abuse of discretion. Although there is no general formula or fixed rule for the determination of probable cause, since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge (public prosecutor) or run counter to the clear dictates of reason. [45]

Applying the foregoing disquisition to the present petition, the reasons of DOJ for affirming the dismissal of the criminal complaints for estafa and/or qualified estafa are determinative of whether or not it committed grave abuse of discretion amounting to lack or excess of jurisdiction. In requiring "hard facts and solid evidence" as the basis for a finding of probable cause to hold petitioners Bernyl and Katherene liable to stand trial for the crime complained of, the DOJ disregards the definition of probable cause - that it is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. [46] The term does not mean "actual and positive cause" nor does it import absolute certainty. [47] It is merely based on opinion and reasonable belief; [48] that is, the belief that the act or omission complained of constitutes the offense charged. While probable cause demands more than "bare suspicion," it requires "less than evidence which would justify conviction." Herein, the DOJ reasoned as if no evidence was actually presented by respondent HSBC when

in fact the records of the case were teeming; or it discounted the value of such substantiation when in fact the evidence presented was adequate to excite in a reasonable mind the probability that petitioners Bernyl and Katherene committed the crime/s complained of. In so doing, the DOJ whimsically and capriciously exercised its discretion, amounting to grave abuse of discretion, which rendered its resolutions amenable to correction and annulment by the extraordinary remedy of certiorari.

From the records of the case, it is clear that a prima facie case for estafa/qualified estafa exists against petitioners Bernyl and Katherene. A perusal of the records, i.e., the affidavits of respondent HSBC's witnesses, the documentary evidence presented, as well as the analysis of the factual milieu of the case, leads this Court to agree with the Court of Appeals that, taken together, they are enough to excite the belief, in a reasonable mind, that the Spouses Bernyl Balangauan and Katherene Balangauan are guilty of the crime complained of. Whether or not they will be convicted by a trial court based on the same evidence is not a consideration. It is enough that acts or omissions complained of by respondent HSBC constitute the crime of estafa and/or qualified estafa.

Collectively, the photographs of petitioner Katherene leaving the premises of respondent HSBC carrying a bulky plastic bag and the affidavits of respondent HSBC's witnesses sufficiently establish acts adequate to constitute the crime of estafa and/or qualified estafa. What the affidavits bear out are the following: that York was a Premier Client of respondent HSBC; that petitioner Katherene handled all the accounts of York; that not one of York's accounts reflect the P2,500,000.00 allegedly deposited in a higher yielding account; that prior to the discovery of her alleged acts and omissions, petitioner Katherene supposedly persuaded York to invest in a "new product" of respondent HSBC, i.e., a higher interest yielding time deposit; that York made a total of P2,500,000.00 investment in the "new product" by authorizing petitioner Balangauan to transfer said funds to it; that petitioner Katherene supposedly asked York to sign several transaction documents in order to transfer the funds to the "new product"; that said documents turned out to be withdrawal slips and cash movement tickets; that at no time did York receive the cash as a result of signing the documents that turned out to be withdrawal slips/cash movement tickets; that York's account was regularly credited "loose change" in the amounts of P12,500.00 and P8,333.33 beginning in the month after the alleged "transfer" of York's funds to the "new product"; that the regular deposits of loose change were transacted with the use of petitioner Katherene's work terminal accessed by her password "CEO8"; that the "CEO8" password was keyed in with the use of a swipe card always in the possession of petitioner Katherene; that one of the loose-change deposits was transacted via the phone banking feature of respondent HSBC and that when traced, the phone number used was the landline number of the house of petitioners Bernyl and Katherene; that respondent HSBC's bank personnel, as well as York, supposedly a) talked with petitioner Katherene on the phone, and that she allegedly admitted that the missing funds were invested with Shell Company, of which York approved, and that it was only for one year; and b) met with petitioner Bernyl, and that the latter at first denied having knowledge of his wife's complicity, but later on admitted that he knew of the investment with Shell Company, and that he supposedly made the loose-change deposit via phone banking; that after 23 April 2002, York was told that respondent HSBC had no "new product" or that it was promoting investment with Shell Company; that York denied having any knowledge that his money was invested outside of respondent HSBC; and that petitioner Katherene would not have been able to facilitate the alleged acts or omissions without taking advantage of her position or office, as a consequence of which, HSBC had to reimburse York the missing P2,500,000.00.

From the above, the alleged circumstances of the case at bar make up the elements of abuse of confidence, deceit or fraudulent means, and damage under Art. 315 of the Revised Penal Code on estafa and/or qualified estafa. They give rise to the presumption or reasonable belief that the offense of estafa has been committed; and, thus, the filing of an Information against petitioners Bernyl and Katherene is warranted. That respondent HSBC is supposed to have no personality to file any criminal complaint against petitioners Bernyl and Katherene does not

ipso facto clear them of prima facie guilt. The same goes for their basic denial of the acts or omissions complained of; or their attempt at shifting the doubt to the person of York; and their claim that witnesses of respondent HSBC are guilty of fabricating the whole scenario. These are matters of defense; their validity needs to be tested in the crucible of a full-blown trial. Lest it be forgotten, the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense, the truth of which can best be passed upon after a full-blown trial on the merits. Litigation will prove petitioners Bernyl and Katherene's innocence if their defense be true.

In fine, the relaxation of procedural rules may be allowed only when there are exceptional circumstances to justify the same. Try as we might, this Court cannot find grave abuse of discretion on the part of the Court of Appeals, when it reversed and set aside the resolutions of the DOJ. There is no showing that the appellate court acted in an arbitrary and despotic manner, so patent or gross as to amount to an evasion or unilateral refusal to perform its legally mandated duty. On the contrary, we find the assailed decision and resolution of the Court of Appeals to be more in accordance with the evidence on record and relevant laws and jurisprudence than the resolutions of the DOJ.

Considering the allegations, issues and arguments adduced and our disquisition above, we hereby dismiss the instant petition for being the wrong remedy under the Revised Rules of Court, as well as for petitioner Bernyl and Katherene's failure to sufficiently show that the challenged Decision and Resolution of the Court of Appeals were rendered in grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, premises considered, the instant Petition for Certiorari is DISMISSED for lack of merit. The 28 April 2006 Decision and the 29 June 2006 Resolution of the Court of Appeals in CA-G.R. CEB- SP No. 00068, are hereby AFFIRMED. With costs against petitioners -- Spouses Bernyl Balangauan and Katherene Balangauan.

**SO ORDERED.**

Ynares-Santiago, (Chairperson), Austria-Martinez, Tinga, and Reyes, JJ., concur.

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\* Designated as an additional member in place of Justice Antonio Eduardo B. Nachura who was then the Solicitor General.

[1] Annex "L" of the Petition; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Arsenio J. Magpale and Ramon M. Bato, Jr.; rollo, pp. 199-205.

[2] Annex "O" of the Petition; id. at 178 - 179.

[3] Annex "G" of the Petition; id. at 122-123.

[4] Annex "H" of the Petition; id. at 125-127.

[5] By Assistant City Prosecutor Victor C. Laborte, Prosecutor II, Office of the City Prosecutor, Cebu City; id. at 68-72.

[6] Id. at 34.

[7] Affidavit of Debbie Marie Dy, Assistant Vice-President of respondent HSBC's Cebu Branch; id. at 44.

[8] Id. at 68-72.

[9] Id. at 70-71.

- [10] Id. at 72.
- [11] Id. at 125-126.
- [12] Id. at 204.
- [13] Id. at 16.
- [14] Id.
- [15] Id.
- [16] Id.
- [17] Id.
- [18] Id. at 226.
- [19] Id. at 227.
- [20] Section 1, Rule 45, Revised Rules of Court.
- [21] Chua v. Santos, G.R. No. 132467, 18 October 2004, 440 SCRA 365, 374.
- [22] National Irrigation Administration v. Court of Appeals, 376 Phil. 362, 372 (1999).
- [23] Oaminal v. Castillo, 459 Phil. 542, 556 (2003).
- [24] Id.
- [25] Republic v. Court of Appeals, 379 Phil. 92, 98 (2000); Eternal Gardens Memorial Park Corp. v. Court of Appeals, 347 Phil. 232, 256 (1997).
- [26] People v. Romualdez, G.R. No. 166510, 15 July 2008.
- [27] Banal III v. Panganiban, G.R. No. 167474, 15 November 2005, 475 SCRA 164, 174.
- [28] Olanolan v. Commission on Elections, G.R. No. 165491, 31 March 2005, 454 SCRA 807, 814.
- [29] CA decision, p. 3; rollo, p. 201.
- [30] Id. at 202.
- [31] Id. at 203.
- [32] Id.
- [33] Id. at 160-161.
- [34] Bautista v. Court of Appeals, 413 Phil. 159, 168-169 (2001).
- [35] Cojuangco, Jr. v. Presidential Commission on Good Government, G.R. Nos. 92319-20, 2 October 1990, 190 SCRA 226, 244; Crespo v. Mogul, G.R. No. L-53373, 30 June 1987, 151 SCRA 462, 469-470; Andaya v. Provincial Fiscal of Surigao del Norte, 165 Phil. 134, 139 (1976).
- [36] Bautista v. Court of Appeals, supra note 34 at 167.
- [37] Id. at 168.
- [38] Rollo, pp. 125-126.

- [39] R.R. Paredes v. Calilung, G.R. No. 156055, 5 March 2007, 517 SCRA 369, 394.
- [40] Webb v. Hon. De Leon, 317 Phil. 758, 789 (1995).
- [41] R.R. Paredes v. Calilung, supra note 39 at 394-395.
- [42] D.M. Consunji, Inc. v. Esguerra, 328 Phil. 1168, 1185 (1996).
- [43] Mendoza-Arce v. Office of the Ombudsman (Visayas), 430 Phil. 101, 113 (2002), citing Sebastian, Sr. v. Garchitorena, 397 Phil. 519, 525 (2000).
- [44] Filadams Pharma, Inc. v. Court of Appeals, G.R. No. 132422, 30 March 2004, 426 SCRA 460, 470.
- [45] Sales v. Sandiganbayan, 421 Phil. 176, 192-193 (2001).
- [46] Pilapil v. Sandiganbayan, G.R. No. 101978, 7 April 1993, 221 SCRA 349, 360.
- [47] R.R. Paredes v. Calilung, supra note 39 at 394.
- [48] Id.

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