

AUTO PROMINENCE CORPORATION AND PROTON PILIPINAS CORPORATION, PETITIONERS, VS. PROF. DR. MARTIN WINTERKORN, DR. HORST NEUMANN, DR. ANDREAS SCHLEEF, ERICH SCHMITT, RUPERT STADLER...*G.R. No. 178104. January 27, 2009*

Ponente: CHICO-NAZARIO, J.

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In this Petition for Review on Certiorari[1] under Rule 45 of the Revised Rules of Court, petitioners Proton Pilipinas Corporation (PPC) and Auto Prominence Corporation (APC) seek the reversal of the 27 September 2006 Decision[2] and 30 May 2007 Resolution,[3] both of the Court of Appeals in CA-G.R. SP No. 93107 entitled, *Auto Prominence Corp., et al. v. Hon. Raul Gonzales, in his official capacity as Secretary of Justice, et al.* In the assailed decision, the Court of Appeals dismissed the Petition for Certiorari of petitioners PPC and APC on the ground that the Secretary of Justice "did not whimsically and capriciously exercise his discretion when he upheld the resolution of the Chief State Prosecutor dismissing the criminal complaint"[4] for estafa through falsification of public documents against respondents Prof. Dr. Martin Winterkorn, Dr. Horst Neumann, Dr. Andreas Schleeef, Erich Schmitt, Rupert Stadler, Dr. Jochem Heizmann and Ralph Weyler (Audi AG officers).

Petitioners PPC and APC are two (2) different corporations duly organized and existing under the laws of the Philippines engaged in the business of assembling, buying, selling, distributing, importing, marketing and servicing motor vehicles. Respondents are members of the Board of Management and/or key officers of Audi AG, a non-resident foreign corporation organized and existing under the laws of the Federal Republic of Germany engaged in the manufacture of "Audi" brand cars.

In August 1996, petitioner PPC,[5] represented by its Senior Vice-President and Chief Financial Officer Ernesto V. Tan, and Audi AG, entered into several agreements, i.e., Assembly License, Technical Assistance and Spare Parts Supply Agreement (ALTAPS Agreement), License Fee Agreement and Sole Distributorship Contract, for the assembly and distribution of "Audi" brand cars in the Philippines. Said agreements, whereby petitioner PPC was appointed the sole and exclusive assembler and distributor of "Audi" brand cars in the country, were executed in compliance with the Motor Vehicle Development Program[6] (MVDP) of the Philippine government, implemented by the Department of Trade and Industry (DTI) and the Bureau of Investment (BOI).

Petitioners PPC and APC alleged that in the intervening years, despite the latter's fulfillment of their obligation under the abovementioned agreements, AUDI AG did not comply with its commitments equally dictated therein. In particular, they contended that the German car manufacturer (1) failed to establish a full assembly operation of AUDI brand cars and manufacture of spare parts for the same, intended for local distribution and export purposes; (2) failed to include the Philippines in its ASEAN Assembly Strategy program; and (3) prematurely terminated said agreements. Consequently, in March 2005, petitioners PPC and APC, through their representatives,[7] instituted a criminal complaint[8] against respondents AUDI AG officers for the violation of the Revised Penal

Code, particularly Art. 171, par. 4, in relation to Art. 172, i.e., for the falsification of public documents by private individuals, "and/or any other applicable crime." [9] Said complaint was filed with the Office of the City Prosecutor of Alaminos City, Pangasinan.

On 18 April 2005, instead of filing their counter-affidavits, respondents Audi AG officers moved for the (1) endorsement of the preliminary investigation to the Department of Justice (DOJ) - on the allegation that Alaminos City, Pangasinan, was an improper venue, considering that all the elements of the supposed crime were committed either in Makati City or Mandaluyong City; and (2) extension of time to file respondents AUDI AG officers' joint counter-affidavit.

On 26 April 2005, the City Prosecutor denied [10] respondents AUDI AG officers' Motion to Endorse Preliminary Investigation to the Department of Justice and for Extension of Time to File Counter-Affidavit and Manifestation. Further, the City Prosecutor stated that it "will proceed with the Preliminary Investigation until ordered to stop the investigation by the DOJ." [11]

On 4 May 2005, Atty. Jose A. Bernas (Bernas), counsel for respondents AUDI AG officers, filed his Counter-Affidavit to the subject complaint, refuting the allegations made therein. Atty. Bernas argued that (1) his clients were not signatories to any of the subject agreements [12]; (2) all of the three subject agreements were executed either in Germany or in Mandaluyong and/or Makati City; and (3) his clients were never in the Philippines during the dates material to the subject agreements.

On the same date, Chief State Prosecutor Jovencito Zuño (Zuño), for the Secretary of Justice, issued a 1[st] Indorsement, referring to the City Prosecutor, for the latter's immediate action and comment (within ten days), the letter of Atty. Bernas requesting the transfer of the venue of the preliminary investigation in I.S. No. AC-05-89 to the DOJ, Manila.

Without complying with the 1[st] Indorsement of the Secretary of Justice, however, the City Prosecutor, [13] in a Resolution [14] dated 30 May 2005, ruled that there existed probable cause to hold respondents Audi AG officers liable to stand trial for the crime of estafa through falsification of public documents defined and penalized under Art. 315, par. 2(a), as well as Art. 171, par. 4, in relation to Arts. 172 and 48, all of the Revised Penal Code. Accordingly, on 1 June 2005, an Information [15] was filed before the Regional Trial Court (RTC), Branch 54, Alaminos City, Pangasinan, docketed as Criminal Case No. 4824-A, the accusatory part of which reads:

That from August 1, 1996 up to the present in continuing and transitory mode or character of commission in or within Alaminos City, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another and by means of deceit, false pretenses and fraudulent acts, did then and there willfully, unlawfully and feloniously induce, entice and cajole by representing to complainants Proton Pilipinas Corporation and thereafter Auto Prominence Corporation and by making untruthful statements in the narration of facts in the Assembly License, Technical Assistance and Spare Parts Supply Agreement (ALTAPS), Letter of Appointment for the Import and Distribution of AUDI AG Products in the Philippines, and License Fee Agreement that AUDI AG would transfer technical knowledge and know-how to complainants Proton Pilipinas Corp. and Auto Prominence Corp. and establish a full assembly, distributorship and spare parts operations of AUDI Cars in the Philippines in Alaminos City, Pangasinan, for domestic and export purposes in compliance with then President Fidel V. Ramos Car Development Program under Memorandum No. 346, Series of 1996, as in fact the three (3) Agreements were submitted to and admitted by the Board of Investments as a pre-condition to the immediate sale of AUDI Cars in the Philippines and for which Proton Pilipinas Corp. and Auto Prominence Corp. were induced and enticed to incur or spend, as in fact Proton Pilipinas Corp. and Auto Prominence Corp. had incurred and spent moneys and properties in the license fee in the total amount of FIFTY MILLION Philippine Pesos (Php50,000,000.00) more or less that was deceitfully and fraudulently exacted, imposed and collected by

AUDI AG from Proton Pilipinas Corp. or Auto Prominence Corp. from 1996 to 2001; and capital investments and expenditures in the subject Proton Assembly plant, building, tools and equipment that Proton Pilipinas Corp. and Auto Prominence were induced by AUDI AG One (1) Billion Philippine Pesos, more or less, which turned out later however (sic) that the said representations were false, deceitful and fraudulent as AUDI AG had actually no intention of complying with the "ALTAPS" and the accused failed and refused and still fail and refuse to pay, return and/or reimburse despite demands from the complainants the license fees and capital investments and expenditures that Proton Pilipinas Corp. and Auto Prominence were made to incur and spend to the damage and prejudice of Proton Pilipinas Corporation and Auto Prominence Corporation.

Warrants for the arrest of respondents Audi AG officers[16] were issued by the RTC on 9 June 2005.

On 27 June 2005, respondents Audi AG officers filed with the OCP a Joint Motion for Reconsideration of its 30 May 2005 Resolution.

Shortly thereafter, on 30 June 2005, respondents Audi AG officers filed with the RTC, in Criminal Case No. 4824-A, an Urgent Motion for the Determination or Re-determination of Probable Cause and/or Motion to Defer Proceedings, in the alternative, Motion for Re-investigation with Motion to Recall Warrant of Arrest.

On 4 July 2005, Chief State Prosecutor Zuño resolved to direct the transmittal to his office of the entire record of I.S. No. AC-05-89, which included the unresolved Joint Motion for Reconsideration of respondents AUDI AG officers. In a Resolution dated 17 August 2005, the Chief State Prosecutor reversed and set aside the 30 May 2005 Resolution of the City Prosecutor finding probable cause against respondents AUDI AG officers. Based on the determination that petitioners PPC and APC failed to establish respondents AUDI AG officers' criminal culpability for the crime charged,[17] the dispositive part of the Chief State Prosecutor's Resolution reads:

WHEREFORE, premises considered, the assailed resolution dated May 30, 2005 is hereby REVERSED and SET ASIDE. The City Prosecutor of Alaminos City, Pangasinan (sic) is directed to cause the withdrawal, with leave of court, of the information for estafa through falsification of public documents filed against respondents Prof. Dr. Martin Winterkorn, Dr. Horst Neumann, Dr. Andres Schleef, Erich Schmitt, Rupert Stadler, Dr. Jochem Heizmann, Ralph Weyler and Sunil Kaul, and to report the action taken thereon within ten (10) days from receipt hereof.

Undaunted, petitioners PPC and APC filed a Petition for Review before the Office of the DOJ Secretary.

In the meantime, because of the 17 August 2005 Resolution of the Chief State Prosecutor, the City Prosecutor filed on 21 September 2005 before the RTC in Criminal Case No. 4824-A, a Motion to Withdraw Information (with Leave of Court).

On 11 October 2005, the Secretary of Justice denied the petition for review filed by petitioners PPC and APC; thus, affirming the Chief State Prosecutor's reversal of the resolution finding probable cause. The subsequent motion for reconsideration was similarly denied in a Resolution[18] dated 5 December 2005.

Not satisfied, petitioners PPC and APC went to the Court of Appeals via a Petition for Certiorari under Rule 65 of the Revised Rules of Court imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Justice in affirming the finding of the Chief State Prosecutor that there was no probable cause for the filing of criminal charges against respondents AUDI AG officers.

On 27 September 2006, the Court of Appeals promulgated its Decision[19] dismissing the recourse of petitioners PPC and APC for lack of merit. The fallo of the assailed decision of the appellate court states:

WHEREFORE, premises considered, the instant petition is hereby DISMISSED for lack of merit. The assailed resolutions of the Secretary of Justice are hereby AFFIRMED and UPHELD.

The Court of Appeals held that the Secretary of Justice correctly affirmed the finding that no probable cause existed to hold respondents AUDI AG officers liable to stand trial given that (1) upon scrutiny of the subject agreements, it appeared that none of the respondents AUDI AG officers were signatories thereto; and (2) the complaint failed to state with particularity the individual and actual participation of respondents AUDI AG officers in committing the supposed false pretense, fraudulent acts or means. These observations were fatal to the cause of petitioners PPC and APC.

Anent the authority of the Chief State Prosecutor to resolve respondents AUDI AG officers' Joint Motion for Reconsideration of the 30 May 2005 Resolution of the City Prosecutor, the Court of Appeals ruled that it was correctly sustained by the Secretary of Justice. The appellate court cited with approval the 18 August 2005 letter[20] of the Secretary of Justice to the counsel of petitioner PPC and APC in which the former rationalized that "the action of the Office of the Chief State Prosecutor is appropriate and will not cause 'substantial damage and prejudice' to [petitioners PPC and APC], because whatever will be the outcome of [respondents AUDI AG officers'] motion for reconsideration, the remedy of the aggrieved party is to elevate the matter to the Secretary of Justice for review pursuant to the 2000 NPS Rule on Appeal, as amended."

Their subsequent Motion for Reconsideration having been denied by the Court of Appeals in a Resolution dated 30 May 2007, petitioners PPC and APC now lay their cause before this Court via this petition, filed under Rule 45 of the Revised Rules of Court, premised on the following questions[21]:

I.

DID THE COURT OF APPEALS IN THE RENDITION OF ITS QUESTIONED DECISION IN CA-G.R. SP. NO. 93107 DATED SEPTEMBER 27, 2006 DEPARTED (sic) FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS? AND

II.

DID THE COURT OF APPEALS ALSO VIOLATE APPLICABLE RULINGS OF THIS HONORABLE COURT IN THE RENDITION OF ITS SAID DECISION?

While the instant Petition was pending, the RTC decided Criminal Case No. 4824-A. In its Order[22] dated 2 July 2008, the RTC directed the dismissal of the criminal complaint against respondents AUDI AG officers. The RTC reasoned that (1) based on the contracts, i.e., the ALTAPS Agreement, Sole Distributorship Contract and License Fee Agreement, there is no indication that respondents AUDI AG officers participated in either the execution or the implementation of the same or even in making any representations during the negotiations which may have preceded them; and (2) respondents AUDI AG officers claim that they were never in the territory of Alaminos City, Pangasinan; and nothing in the record disproves this, especially considering that no act was attributed to the accused with specificity. Resultantly, the RTC recalled the warrants previously issued for the arrest of respondents AUDI AG officers. The RTC disposed of the case as follows:

WHEREFORE, in view of the foregoing (sic) there is no longer any need to discuss the prosecution's Motion to Withdraw Information as this Court hereby orders that the case against all the accused, Prof. Dr. martin (sic) Winterkorn, Dr. Horst Neumann, Dr. Andreas Schleef, Erich Schmitt, Rupert Stadler, Dr. Jochem Heizmann, Ralph Weyler and Sunil Kaul be dismissed. Accordingly, the Warrant of Arrest issued on February 26, 2008 against them is hereby recalled.

The Motion for Reconsideration of the aforementioned Order filed by petitioners PPC and APC is still pending resolution by the RTC.

Considering this particular development in this case, we discern that the primordial question for this Court's

resolution is: Did the 2 July 2008 Order dismissing the criminal complaint render the disposition of the present petition academic?

Petitioners PPC and APC want us to find error in the dismissal by the Court of Appeals of their Petition for Certiorari and, in effect, find that the Secretary of Justice did commit grave abuse of discretion in affirming the resolution of the State Chief Prosecutor finding no probable cause for holding that respondents AUDI AG officers did commit the crime they were charged with and ordering the withdrawal of the information already filed against them before the RTC in Criminal Case No. 4824-A. However, with the dismissal by the RTC of Criminal Case No. 4824-A, what purpose would it serve us to still determine whether the Secretary of Justice acted beyond the bounds of his jurisdiction in determining and maintaining that there existed no probable cause to hold respondents AUDI AG officers liable to stand trial for the criminal acts they were charged with?

In ascertaining whether the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in his determination of the existence of probable cause, the party seeking the writ of certiorari must be able to establish that the Secretary of Justice exercised his executive power in an arbitrary and despotic manner, by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. Grave abuse of discretion is not enough;^[23] it must amount to lack or excess of jurisdiction. Excess of jurisdiction signifies that he had jurisdiction over the case, but (he) transcended the same or acted without authority.^[24]

There is no escaping the fact that resolving the issue of whether the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction would necessarily entail a review of his finding of lack of probable cause against the respondents AUDI AG officers.

If we should sustain the DOJ Secretary in maintaining that no probable cause exists to hold respondents AUDI AG officers liable to stand trial for the crime they were charged with, our ruling would actually serve no practical or useful purpose, since the RTC had already made such a judicial determination, on the basis of which it dismissed Criminal Case No. 4824-A. Lest it be forgotten, the fact that the Information against respondents AUDI AG officers had already been filed in court, its disposition, i.e., its dismissal or the conviction or acquittal of the accused, rests on the sound discretion of the Court.^[25] And although the fiscal retains 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 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.^[26] For these very same reasons, we must now refrain from resolving the issues raised by petitioners PPC and APC, considering that the information against respondents AUDI AG officers had already been filed before the RTC; the RTC acquired exclusive jurisdiction over Criminal Case No. 4824-A; and it has already rendered judgment dismissing the charges against respondents AUDI AG officers.

This is not to say that we are already affirming the 2 July 2008 Order of the RTC dismissing Criminal Case No. 4824-A. To the contrary, we are much aware that petitioners PPC and APC's Motion for Reconsideration of the said order of dismissal is still pending resolution by the trial court. By refusing to go into the merits of the instant Petition, we are only respecting the exclusive jurisdiction of the RTC over Criminal Case No. 4824-A and avoiding any pronouncement on our part which would preempt its independent assessment of the case. Irrefragably, a determination by us that probable cause against respondents AUDI AG officers does or does not exist would strongly influence, if not directly affect, the resolution by the RTC of the matter still pending before it. In any case, the party that would feel aggrieved by the final judgment or order of the lower court in Criminal

Case No. 4824-A has the option of elevating the same to the higher courts. And if only for the orderly administration of justice, the proceeding in Criminal Case No. 4824-A, that is, the resolution of the pending motion for reconsideration filed by petitioners PPC and APC, should be allowed to continue and take its course.

Under the circumstances, the denial of the present Petition is clearly warranted for being moot. Where a declaration on an issue would have no practical use or value, this Court will refrain from expressing its opinion in a case where no practical relief may be granted in view of a supervening event.[27] Thus, it is unnecessary to indulge in academic discussion of a case presenting a moot question, as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.

Accordingly, in light of the fact that the RTC, in resolving respondents AUDI AG officers' Urgent Motion for a Determination of or a Re-Determination of Probable Cause and/or Motion to Defer Proceedings, in the alternative, Motion for Re-Investigation with Motion to Recall Warrant of Arrest and the City Prosecutor's Motion to Withdraw Information, already issued its 2 July 2008 Order which dismissed the criminal complaint against respondents AUDI AG officers for estafa through falsification of public documents by private individuals, We deny the Petition at bar on the ground of mootness.

WHEREFORE, premises considered, the instant petition is DENIED on the ground of mootness. No cost.

SO ORDERED.

Austria-Martinez, (Acting Chairperson), Tinga,[*] Nachura, and Leonardo-De Castro,[**] JJ., concur.

* Per Raffle dated 21 January 2009, Associate Justice Dante O. Tinga was designated as additional member in place of Associate Justice Consuelo Ynares-Santiago.

** Per Special Order No. 546, Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member in view of the retirement of Associate Justice Ruben T. Reyes dated 5 January 2009.

[1] Rollo, pp. 26-63.

[2] Penned by Associate Justice Sesonando E. Villon with Associate Justices Elvi John S. Asuncion and Jose Catral Mendoza, concurring; rollo, pp. 8-22.

[3] Penned by Associate Justice Sesonando E. Villon with Associate Justices Regalado E. Maambong (vice Associate Justice Elvi John S. Asuncion) and Jose Catral Mendoza, concurring; rollo, p. 23.

[4] Rollo, p. 20.

[5] Eventually succeeded by APC.

[6] Under Memorandum Order No. 346 (1996).

[7] Ernesto V. Tan, PPC's Senior Vice-President and Chief Financial Officer; and Paul Y. Rodriguez, APC's Executive Vice-President and Chief Operating Officer.

[8] Docketed as I.S. No. AC-05-89; rollo, pp. 184-197.

[9] Id. at 194.

[10] Id. at 644.

[11] Id.

- [12] Dr. Herbert Demel, Chairman, AUDI AG Board of Management; and Graham Morris, Member of the Board of Management
- [13] Abraham L. Ramos II
- [14] Rollo, pp. 323-326.
- [15] Id. at 327-328.
- [16] Including an Indian national by the name of Sunil Kaul.
- [17] Rollo, pp. 125-126.
- [18] Id. at 131-133.
- [19] Id. at 8-22.
- [20] Id. at 16.
- [21] Id. at 35.
- [22] Id. at 803-811.
- [23] Id. at 21.
- [24] Sarigumba v. Sandiganbayan, G.R. Nos. 154239-41, 16 February 2005, 451 SCRA 533, 549.
- [25] Crespo v. Mogul, G.R. No. L-53373, 30 June 1987, 151 SCRA 462, 471.
- [26] People v. Court of Appeals, 361 Phil. 401, 410-411 (1999).
- [27] Royal Cargo Corp. v. Civil Aeronautics Board, 465 Phil. 719, 725 (2004).

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