LYNDON D. BOISER, Petitioner,vs. PEOPLE OF THE PHILIPPINES, Respondent.

G.R. No. 180299. January 31, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari[2] assailing the Decision of the Court of Appeals (CA), dated June 5, 2007 in CA-G.R. CEB-SP. No. 02368.[3]

The main issue in this case is whether the CA committed reversible error in affirming the decision of the RTC which denied petitioner's omnibus motion to quash the informations filed against him.

Based on the findings of the CA, the pertinent facts of the case are as follows:

On June 4, 2004, three (3) Informations were filed against petitioner, charging him with acts of lasciviousness, other acts of child abuse, and rape[4] of minor AAA before the Regional Trial Court (RTC), Branch 1, Tagbilaran, Bohol.

On June 11, 2004, petitioner filed a Motion praying that a hearing be conducted to determine the existence of probable cause and to hold in abeyance the issuance of a warrant of arrest against him. On June 16, 2004, private respondent filed an Opposition thereto.

On June, 18, 2004, the family court issued three (3) separate Orders in the three (3) criminal cases, directing the prosecution to submit additional evidence on the cases along with the transcript of proceedings during the preliminary investigation. On June 20, 2004, the prosecutor filed a Manifestation saying that the prosecution had no additional evidence to present and that due to the non-availability of a stenographer who could take down notes during the preliminary investigation on April 28, 2004 and May 7, 2004, he personally took down notes, and submitted certified photocopies of the same to the court. On July 2, 2004, the family court directed the City Prosecution Office in Tagbilaran City to complete the preliminary investigation in a regular manner with duly recorded proceedings attended by a stenographer. On August 4, 2004, a Reinvestigation Report was submitted by the prosecutor maintaining the existence of probable cause in the three cases.

On August 9, 2004, petitioner filed an Omnibus Motion for Determination of Probable Cause. On September 10, 2004, the family court issued three (3) separate Orders finding probable cause against petitioner in the three (3) cases, issued a warrant of arrest against him and fixed the corresponding bail for each case. On November 19 and 24, 2004, petitioner filed Motions to Inhibit the judge of Branch 1 from hearing the 3 cases. The judge acceded. Thereafter, the cases were raffled to Branch 2 of the same court. On March 1, 2005, petitioner again filed a Motion to Inhibit the judge of Branch 2. The same was granted and the case was raffled to Branch 4 of the same court. Then again, petitioner filed a Motion to Inhibit the Judge of Branch 4. The three (3) cases were then raffled to Branch 49 of the said court.

On August 19, 2005, petitioner filed an Omnibus Motion to Quash the three (3) Informations to which private

respondent filed an Opposition. On June 30, 2006, Branch 49 issued a Joint Order denying the aforesaid motion. A Motion for Reconsideration was filed by petitioner citing absence of probable cause and lack of jurisdiction over his person as grounds in support of his motion. However, upon the request of private respondent's parents, the Judge of Branch 49 inhibited himself from hearing the three (3) cases. Finally, the cases were raffled to Branch 3 of the RTC of Tagbilaran City, Bohol, presided over by Judge Venancio J. Amila (Judge Amila).

On November 6, 2006, the lower court issued an Omnibus Order denying petitioner's omnibus motion for reconsideration to quash the informations. On November 22, 2006, petitioner filed anew an Urgent Omnibus Motion to Quash. On November 30, 2006, the RTC issued an Order denying the second omnibus motion to quash, and set the arraignment on December 15, 2006. A day before the arraignment, petitioner filed a Second Omnibus Motion for Reconsideration of the order denying his motion to quash.

On December 15, 2006, petitioner reminded Judge Amila of his second omnibus motion for reconsideration. Judge Amila, in open court, denied for lack of merit the second omnibus motion for reconsideration. Upon arraignment, petitioner refused to enter a plea for the 3 cases. Accordingly, a plea of not guilty was entered for petitioner for each of the 3 criminal cases.

On January 2, 2007, petitioner filed a Petition for certiorari[5] before the CA claiming that the family court acted with grave abuse of discretion in issuing the orders denying his omnibus motions to quash the informations.

On June 5, 2007, the CA rendered a Decision[6] affirming the Orders of the RTC. In denying the petition, the CA ratiocinated that it cannot reverse the RTC orders because: (1) an order denying a motion to quash is interlocutory and not appealable; and (2) the petitioner failed to positively prove grave abuse of discretion on the part of the RTC judge in the issuance of the assailed orders. The fallo of the Decision reads:

> WHEREFORE, premises considered, the petition is hereby DENIED. The assailed orders of the respondent judge are hereby AFFIRMED.
>
> Costs against the petitioner.
>
> SO ORDERED.[7]

A motion for reconsideration was filed by petitioner which the CA denied in a Resolution[8] dated September 19, 2007.

On November 16, 2007, petitioner filed the instant case raising the following arguments:

> The Honorable Court of Appeals has decided [a] question of substance, not theretofore determined by the Supreme Court, or has decided it in a way not in accord with law or with the applicable decisions of the Supreme Court:
>
> That the Honorable Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by the lower court.[9]

We resolve to deny the petition.

A petition for certiorari under Rule 65 is not the proper remedy against an order denying a motion to quash. The accused should instead go to trial, without prejudice on his part to present the special defenses he had invoked in his motion and, if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law.[10] Based on the findings of the investigating prosecutor and of the trial judge, probable cause exists to indict petitioner for the 3 offenses. Absent any showing of arbitrariness on the part of the investigating prosecutor or any other officer authorized by law to conduct preliminary investigation, courts as a rule must defer

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to said officer's finding and determination of probable cause, since the determination of the existence of probable cause is the function of the prosecutor.[11]

It is obvious to this Court that petitioner's insistent filing of numerous motions to inhibit the judge hearing the 3 criminal cases and of motions to quash is a ploy to delay the proceedings, a reprehensible tactic that impedes the orderly administration of justice. If he is truly innocent, petitioner should bravely go to trial and prove his defense. After all, the purpose of a preliminary investigation is merely to determine whether a crime has been committed and whether there is probable cause to believe that the person accused of the crime is probably guilty thereof and should be held for trial. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely, not on evidence establishing absolute certainty of guilt.[12]

As to the allegation of petitioner that the RTC has not acquired jurisdiction over his person, this issue has been rendered moot and academic with petitioner's arraignment in the 3 cases and his taking part in the proceedings therein.

WHEREFORE, in view of the foregoing, the petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

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

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[1] The name of the RTC judge is omitted in the title pursuant to Section 4, Rule 45, Rules of Court. Likewise omitted in the title are the names of the minor and his mother pursuant to Republic Act No. 9262 and the ruling of the Court in People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[2] RULES OF COURT, Rule 45.

[3] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Antonio L. Villamor and Stephen C. Cruz, concurring; rollo, pp. 62-70.

[4] Criminal Case Nos. 12252, 12253, 12254, respectively.

[5] RULES OF COURT, Rule 65.

[6] Rollo, pp. 62-70.

[7] Id. at 70.

[8] Id. at 28.

[9] Id. at 46.

[10] Acharon v. Purisima, G.R. No. 23731, February 26, 1965, 13 SCRA 309.

[11] Serapio v. Sandiganbayan, G.R. No. 148468, January 28, 2003, 396 SCRA 443.

[12] Id.

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