

**RAY SHU, PETITIONER, VS. JAIME DEE, ENRIQUETO MAGPANTAY,
RAMON MIRANDA, LARRY MACILLAN, AND EDWIN SO,
RESPONDENTS.**

G.R. No. 182573. April 23, 2014

Ponente: BRION, J.

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BRION, J.:

We resolve the Rule 45 petition for review on certiorari filed by petitioner Ray Shu (petitioner) seeking the reversal of the decision^[1] of the Court of Appeals (CA) dated June 19, 2007 and its resolution dated April 4, 2008. These assailed CA rulings annulled the resolution of the Secretary of Justice finding probable cause for falsification against the respondents.

THE FACTUAL ANTECEDENTS

The petitioner is the President of the 3A Apparel Corporation. He filed a complaint before the National Bureau of Investigation (NBI) charging the respondents of falsification of two deeds of real estate mortgage submitted to the Metropolitan Bank and Trust Company (Metrobank). Both deeds of real estate mortgage were allegedly signed by the petitioner, one in his own name while the other was on behalf of 3A Apparel Corporation.

According to the petitioner, the respondents were employees of Metrobank. Respondents Jaime T. Dee and Edwin So signed the two deeds of real estate mortgage as witnesses; respondents Ramon S. Miranda and Enriqueeto I. Magpantay notarized the deeds of real estate mortgage signed by the petitioner in his own behalf and for the corporation, respectively. The signature of respondent Larry Macillan, on the other hand, appeared in the deeds of real estate mortgage which he submitted to the Office of the Registrar of Deeds for San Juan, Metro Manila. ^[2] Based on these deeds, Metrobank foreclosed the two properties securing the 3A Apparel Corporation's loan.^[3]

After investigation, the NBI filed a complaint with the City Prosecutor of Makati (city prosecutor) charging the respondents of the crime of forgery and falsification of public documents. The NBI supported the complaint with the Questioned Documents Report No. 746-1098 (questioned documents report) issued by its Questioned Documents Division. The questioned documents report states that the signatures of the petitioner which appear on the questioned deeds are not the same as the standard sample signatures he submitted to the NBI.^[4]

The respondents argued in their counter-affidavits that they were denied their right to due process during the NBI investigation because the agency never required them and Metrobank to submit the standard sample signatures of the petitioner for comparison.^[5] The findings contained in the questioned documents report only covered the sample signatures unilaterally submitted by the petitioner as compared with the signatures appearing on the two deeds of real estate mortgage. An examination of the signatures of the petitioner which appear in several documents in Metrobank's possession revealed that his signatures in the questioned deeds are genuine.^[6] The respondents also argued that the examination of the documents was conducted without the original copies of the questioned deeds of real estate mortgage.

The Ruling of the City Prosecutor

In a resolution dated June 25, 1999, the city prosecutor found no probable cause against the respondents and, consequently, dismissed the complaint for lack of merit.

The city prosecutor ruled that the questioned documents report is not conclusive evidence that the respondents committed the crime charged. It only proves that the sample signatures which were submitted solely by the petitioner are different from the signatures appearing on the questioned deeds. The pieces of evidence presented before the city prosecutor, which were not made available to the NBI and which the petitioner does not dispute prove that the same person executed the questioned deeds.[7] The city prosecutor found that the similarities in the sample signatures submitted by the respondents and the signatures on the two deeds of real estate mortgage are so striking that even a layman could see that they were written by one and the same person.

Furthermore, the documents appended to the respondents' counter-affidavit show that the petitioner availed of the credit line and benefited from its proceeds. Sufficient consideration also supported the execution of the two deeds of mortgage.[8] The city prosecutor also concluded that the petitioner used his passport when he executed the questioned deeds before the respondents-notaries public Magpantay and Miranda, without informing these notaries that the passport had already been cancelled. This finding presumed the regularity of the performance of duty of a notary public.[9]

The petitioner appealed the city prosecutor's resolution to the Secretary of Justice.[10]

The Ruling of the Secretary of Justice

The Secretary of Justice reversed the city prosecutor's findings. She ruled that the city prosecutor failed to consider the evidentiary value of the findings of the NBI questioned documents experts. This NBI finding is entitled to full faith and credit in the absence of proof of irregularity in the performance of the experts' duties.[11]

According to the Secretary, the expert evidence, the disclaimer of the petitioner that he did not sign any promissory note, the lack of proof of receipt of the proceeds of the loan, all tended to prove that he did not execute the subject deeds. The complainant's evidence is more credible and suffices to establish probable cause for falsification, as against the respondents' questionable and flawed supporting documents.[12]

In addition, the finding of the city prosecutor that the petitioner's 'credit line' with Metrobank is sufficient consideration for the execution of the questioned deeds, even if not palpably erroneous, is still gratuitous and conjectural.[13]

The Secretary of Justice denied the respondents' motion for reconsideration prompting them to file a petition for certiorari with the CA. The respondents alleged that the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolution.[14]

The ruling of the Court of Appeals

The CA granted the petition and annulled the assailed resolution of the Secretary of Justice.[15]

According to the CA, the respondents were denied their right to due process in the proceedings before the NBI and the Secretary of Justice.[16]

In the proceedings before the NBI, the respondents were not furnished a copy of the complaint and were not likewise required to file their answer or to present countervailing evidence. All the evidence at the NBI level were solely provided by the petitioner.[17]

In the proceedings before the Secretary of Justice, the respondents were not furnished with the petition for review that the petitioner filed. They were not even required to file their answer nor to comment.[18]

The CA also found that the persons who had been directly and personally involved in the investigation of the case,

like the NBI investigating agent and the city prosecutor, were convinced that the evidence were not sufficient for purposes of filing charges against the respondents. The recommendation for the filing of the complaint came from the NBI chiefs and the Secretary of Justice who did not personally investigate the case.[19]

The CA affirmed the findings of the city prosecutor as he had the opportunity to examine the documents submitted by the parties, including the respondents' evidence which the NBI did not consider. The CA denied the petitioner's motion for reconsideration; [20] hence, the present petition.

The Petitioner's Position

The petitioner assigned the following errors:

First, the CA sweepingly relied on the respondents' allegation that they had been denied due process in the proceedings before the Secretary of Justice despite their active participation in the proceedings through the filing of a motion for reconsideration.[21]

Second, the CA erred in giving credence to the findings of the investigating NBI agent and the city prosecutor. The Secretary of Justice is the ultimate authority who decides which of the conflicting theories of the complainant and the respondents should be given weight.[22]

Third, an NBI expert's examination of certain contested documents at the request of a private litigant does not necessarily nullify the examination made. Its purpose is to assist the court exercising jurisdiction over the case in the performance of its duty to correctly settle the issue related to the documents.[23]

The Respondents' Position

In the respondents' Comment and Memorandum, they reiterated their argument that they were prevented from participating in the proceedings before the NBI and the Secretary of Justice, resulting in the denial of their right to due process.[24] Moreover, the questioned documents report issued by the NBI was one-sided, thus, casting doubt on its veracity and reliability; thus, it deserves no weight and credence.[25] The Secretary of Justice erred in giving more weight to the questioned documents report and the petitioner's self-serving denials.[26]

In addition, the respondents argued that there was no evidence pointing to them as the perpetrators of the forgery, if indeed there had been any. The expert opinion, disclaimer of the petitioner and the alleged lack of proof of receipt of the proceeds of the loan could only support a finding that the petitioner did not execute the questioned deeds or obtain loans from the bank. Too, there was no evidence that the respondents would gain pecuniary benefits from the commission of the crime.[27]

The Court's ruling

We find the petition meritorious.

The respondents were not denied their right to due process

We find no merit in the respondent's claim that they were denied due process when they were not informed by the Secretary of Justice of the pendency of the petitioner's appeal.

The essence of due process is simply the opportunity to be heard. What the law prohibits is not the absence of previous notice but its absolute absence and lack of opportunity to be heard. Sufficient compliance with the requirements of due process exists when a party is given a chance to be heard through his motion for reconsideration.[28]

In the present case, we do not find it disputed that the respondents filed with the Secretary of Justice a motion for reconsideration of her resolution. Therefore, any initial defect in due process, if any, was cured by the remedy the respondents availed of.

On the respondents' allegation that they were denied due process during the NBI investigation, we stress that the functions of this agency are merely investigatory and informational in nature. It has no judicial or quasi-judicial powers and is incapable of granting any relief to any party. It cannot even determine probable cause. The NBI is an investigative agency whose findings are merely recommendatory. It undertakes investigation of crimes upon its own initiative or as public welfare may require in accordance with its mandate. It also renders assistance when requested in the investigation or detection of crimes in order to prosecute the persons responsible.[29]

Since the NBI's findings were merely recommendatory, we find that no denial of the respondents' due process right could have taken place; the NBI's findings were still subject to the prosecutor's and the Secretary of Justice's actions for purposes of finding the existence of probable cause. We find it significant that the specimen signatures in the possession of Metrobank were submitted by the respondents for the consideration of the city prosecutor and eventually of the Secretary of Justice during the preliminary investigation proceedings. Thus, these officers had the opportunity to examine these signatures.

The respondents were not likewise denied their right to due process when the NBI issued the questioned documents report. We note that this report merely stated that the signatures appearing on the two deeds and in the petitioner's submitted sample signatures were not written by one and the same person.[30] Notably, there was no categorical finding in the questioned documents report that the respondents falsified the documents. This report, too, was procured during the conduct of the NBI's investigation at the petitioner's request for assistance in the investigation of the alleged crime of falsification. The report is inconclusive and does not prevent the respondents from securing a separate documents examination by handwriting experts based on their own evidence. On its own, the NBI's questioned documents report does not directly point to the respondents' involvement in the crime charged. Its significance is that, taken together with the other pieces of evidence submitted by the parties during the preliminary investigation, these evidence could be sufficient for purposes of finding probable cause – the action that the Secretary of Justice undertook in the present case.

The Secretary of Justice did not commit grave abuse of discretion

Probable cause pertains to facts and circumstances sufficient to support a well-founded belief that a crime has been committed and the accused is probably guilty thereof.[31]

It is well-settled that in order to arrive at a finding of probable cause, the elements of the crime charged should be present. In determining these elements for purposes of preliminary investigation, only facts sufficient to support a prima facie case against the respondent are required, not absolute certainty. Thus, probable cause implies mere probability of guilt, i.e., a finding based on more than bare suspicion but less than evidence that would justify a conviction. [32]

The elements of falsification of public documents are as follows: (1) the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) he committed any of the acts of falsification enumerated in Article 171 of the RPC; and (3) the falsification was committed in a public, official or commercial document.[33]

In light of the discussion above, we rule that the findings of the Secretary of Justice are more in accord with the duty to determine the existence of probable cause than the findings of the city prosecutor.

Contrary to the respondents' assertions, the Secretary of Justice did not just merely give credence to the questioned documents report and the petitioner's self-serving allegations. The Secretary of Justice made a holistic review of the parties' submitted pieces of evidence in ruling that "the expert evidence, the disclaimer of the petitioner that he did not sign any promissory note, the lack of proof of receipt of the proceeds of the loan, all tend

to prove that he did not execute the subject deeds. Also, the finding in the assailed resolution that the ‘credit line’ of the petitioner with Metrobank is sufficient consideration for him to have executed the deeds is gratuitous and conjectural.”

From the evidence submitted by the parties, the petitioner offered sufficient evidence showing that falsification might have been committed and that the respondents might have been responsible therefor. The NBI’s questioned documents report states that the questioned deeds of mortgage and the sample signatures submitted by the petitioner were not written by one and the same person. It was also shown that the respondents Dee, So, Magpantay and Miranda signed and participated in the execution of the two deeds of real estate mortgage and the respondent Macillan signed and submitted these documents to the Office of the Registrar of Deeds for San Juan, Metro Manila. The petitioner also submitted evidence that the passport used in notarizing the documents was a cancelled passport. Furthermore, as the Secretary of Justice found, the respondents did not show that the petitioner received the proceeds of the loan.

The findings of the city prosecutor are not proper in a preliminary investigation but should be threshed out in a full-blown trial

In contrast, the city prosecutor negated the questioned documents report issued by the NBI. He concluded that the documents submitted by the respondents showed that even a layman could see the striking similarities of the alleged signatures of the petitioner in the questioned deeds and in the documents submitted by the respondents. He also concluded that the petitioner misrepresented to the respondents-notaries public Miranda and Magpantay that the passport used in notarizing the questioned deeds was not yet cancelled.

In arriving at these conclusions, the city prosecutor already delved into the merits of the respondents’ defense. This is contrary to the well-settled rule that the validity and merits of a party’s defense and accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[34] The allegations adduced by the prosecution will be put to test in a full-blown trial in which evidence shall be analyzed, weighed, given credence or disproved.[35] The preliminary investigation is not the occasion for the full and exhaustive display of the parties’ evidence.[36] Simply put, in determining probable cause, the average man weighs facts and circumstances without resorting to the rules of evidence that, as a rule, is outside his technical knowledge.[37]

That the findings of the city prosecutor should be ventilated in a full-blown trial is highlighted by the reality that the authenticity of a questioned signature cannot be determined solely upon its general characteristics, or its similarities or dissimilarities with the genuine signature.[38] The duty to determine the authenticity of a signature rests on the judge who must conduct an independent examination of the signature itself in order to arrive at a reasonable conclusion as to its authenticity. Thus, Section 22 of Rule 132 of the Rules of Court explicitly authorizes the court, by itself, to make a comparison of the disputed handwriting “with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine.”[39]

Read in this light, the respondents’ defense that there are striking similarities in the specimen signatures they submitted and those of the questioned deeds is a matter of evidence whose consideration is proper only in a full-blown trial. In that proper forum, the respondents can present evidence to prove their defense and controvert the questioned documents report; they can raise as issue the alleged irregularities in the conduct of the examination.

The Secretary of Justice has the power to review the findings of the city prosecutor

We also find that the CA erred in ruling that the city prosecutor’s findings should be given more weight than the

findings of the Secretary of Justice.

The determination of probable cause is essentially an executive function, lodged in the first place on the prosecutor who conducted the preliminary investigation. The prosecutor's ruling is reviewable by the Secretary who, as the final determinative authority on the matter, has the power to reverse, modify or affirm the prosecutor's determination.[40]

It is well-settled that the findings of the Secretary of Justice are not subject to interference by the courts, save only when he acts with grave abuse of discretion amounting to lack or excess of jurisdiction; when he grossly misapprehends facts; when he acts in a manner so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by law; or when he acts outside the contemplation of law.[41]

Contrary to the findings of the CA, we find that the Secretary of Justice did not gravely abuse the exercise of her discretion in reversing the findings of the city prosecutor.

WHEREFORE, we GRANT the petition and REVERSE and SET ASIDE the decision of the Court of Appeals dated June 19, 2007 and its resolution dated April 4, 2008.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

[1] Penned by Associate Justice Josefina Guevara-Salonga; concurred in by Associate Justice Vicente Q. Roxas and Ramon R. Garcia, Rollo, pp. 46.

[2] Id. at p. 37

[3] Id. at pp. 36, 69

[4] Id. at p. 37.

[5] Id. at pp. 37-38

[6] Id.. at p. 38

[7] Id. at p. 38.

[8] The Inter Office Letter of Metrobank submitted by the respondents show the bank's approval in favor of 3A an increased Credit Line amounting to US\$1.5 million;

[9] Rollo at pp. 38-39

[10] Id at. p. 39

[11] Id. at p. 71

[12] Id. at pp. 71-72

[13] Id at p. 72

[14] Id. at p. 39

[15] Id. at p. 40

[16] Id. at p. 42

- [17] Id
- [18] Id.
- [19] Id. at p. 44
- [20] Id at. p. 48.
- [21] Id. at pp. 12, 15-15
- [22] Id. at pp. 17-18
- [23] Id at 19
- [24] Id at. pp. 367-369
- [25] Id at p. 371
- [26] Id. at 377.
- [27] Id at pp. 374, 377
- [28] P/Insp. Ariel S. Artillero v. Orlando Casimiro, et al., G.R. No. 190569, April 25, 2012;
- [29] Cabarrus Jr. v. Bernas, A.C. No. 4634. September 24, 1997.
- [30] Rollo, p. 320
- [31] Villanueva et al. v. Caparas, G.R. No. 190969, January 30, 2013.
- [32] Id.
- [33] Panuncio v. People of the Philippines, G.R. No. 165678, July 17, 2009.
- [34] Ricaforte v. Jurado, G.R. No. 154438, September 5, 2007; United Coconut Planters Bank vs. Looyuko et al., G.R. No. 156337, September 28, 2007.
- [35] Ricaforte v. Jurado, G.R. No. 154438, September 5, 2007
- [36] Lee et al. v. KBC Bank N.V., G.R. No. 164673, January 15, 2010.
- [37] Kalalo v. Office of the Ombudsman et al., G.R. No. 158189, April 23, 2010.
- [38] Jimenez et al. v. Commission on Ecumenical Mission and Relations of the United Presbiterian Church in the United States of America et al. G.R. No. 140472. June 10, 2002.
- [39] Id.
- [40] Villanueva and the Secretary of Justice v. Caparas, G.R. No. 190969 : January 30, 2013; This is embodied in Section 38, paragraph 1, Chapter 7, Book IV of the Revised Administrative Code.
- [41] Villanueva et al v. Caparas, supra.

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