ATTY. ALICE ODCHIGUE-BONDOC, PETITIONER, VS. TAN TIONG BIO A.K.A. HENRY TAN, RESPONDENT.

G.R. No. 186652. October 06, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Tan Tiong Bio (respondent) had fully paid the installment payments of a 683-square-meter lot in the Manila Southwoods Residential Estates, a project of Fil-Estate Golf & Development, Inc. (Fil-Estate) in Carmona, Cavite, but Fil-Estate failed to deliver to him the title covering the lot, despite repeated demands. Fil-Estate also failed to heed the demand for the refund of the purchase price.[1]

Respondent, later learning that the lot "sold" to him was inexistent,[2] filed a complaint for Estafa against Fil-Estate officials including its Corporate Secretary Atty. Alice Odchigue-Bondoc (petitioner) and other employees.[3]

In her Counter-Affidavit, petitioner alleged that, inter alia,

> x x x x
>
> 5. I had no participation at all in the acts or transactions alleged in the Complaint-Affidavit. As a Corporate Secretary, I have never been involved in the management and day-to-day operations of [Fil-Estate]. x x x
>
> x x x x.
>
> 7. x x x. [Herein respondent] alleges:
>
> "The letter showed that the request was approved by [herein petitioner], provided that the transfer fee was paid, and that there be payment of full downpayment, with the balance payable in two years."
>
> 8) The handwritten approval and endorsement, however, are not mine. I have never transacted, either directly or indirectly, with Mrs. Ona or [herein respondent]. x x x[4] (emphasis partly in the original, partly supplied; underscoring supplied)

On the basis of petitioner's above-quoted allegations in her Counter-Affidavit, respondent filed a complaint for Perjury against petitioner, docketed as I.S. No. PSG 03-07-11855 before the Pasig City Prosecutor's Office, which dismissed it by Resolution of June 17, 2004[5] for insufficiency of evidence, and denied respondent's Motion for Reconsideration.[6]

On petition for review, the Department of Justice (DOJ), by Resolution of July 20, 2005 signed by the Chief State Prosecutor for the Secretary of Justice,[7] motu proprio dismissed the petition on finding that there was no showing of any reversible error, following Section 12(c) of Department Circular No. 70 dated July 3, 2000 (National Prosecution Service [NPS] Rule on Appeal).

Respondent's motion for reconsideration having been denied[8] by Resolution of January 23, 2006, he filed a

petition for certiorari before the Court of Appeals which, by Decision of September 5, 2008,[9] set aside the DOJ Secretary's Resolution, holding that it committed grave abuse of discretion in issuing its Resolution dismissing respondent's petition for review without therein expressing clearly and distinctly the facts on which the dismissal was based, in violation of Section 14, Article VIII of the Constitution.[10]

The appellate court went on to hold that the matter of disposing the petition outright is clearly delineated, not under Section 12 but, under Section 7 of the NPS Rule on Appeal which categorically directs the Secretary to dismiss outright an appeal or a petition for review filed after arraignment; and that under Section 7, the Secretary may dismiss the petition outright if he finds the same to be patently without merit, or manifestly intended for delay, or when the issues raised are too unsubstantial to require consideration.[11]

Petitioner's Motion for Reconsideration having been denied by the appellate court, she filed the present petition for review on certiorari.

Petitioner asserts that the requirement in Section 14, Article VIII of the Constitution applies only to decisions of "courts of justice"[12]; that, citing Solid Homes, Inc. v. Laserna,[13] the constitutional provision does not extend to decisions or rulings of executive departments such as the DOJ; and that Section 12(c) of the NPS Rule on Appeal allows the DOJ to dismiss a petition for review motu proprio, and the use of the word "outright" in the DOJ Resolution simply means "altogether," "entirely" or "openly."[14]

In his Comment, respondent counters that the constitutional requirement is not limited to courts, citing Presidential Ad hoc Fact-Finding Committee on Behest Loans v. Desierto,[15] as it extends to quasi-judicial and administrative bodies, as well as to preliminary investigations conducted by these tribunals.

Further, respondent, citing Adasa v. Abalos,[16] argues that the DOJ "muddled" the distinction between Sections 7 and 12 of the NPS Rule on Appeal and that an "outright" dismissal is not allowed since the DOJ must set the reasons why it finds no reversible error[17] in an assailed resolution.

The petition is impressed with merit.

A preliminary investigation is not a quasi-judicial proceeding since "the prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused."[18]

> x x x [A prosecutor] 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 [of] a crime and to enable the [prosecutor] 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 [prosecutor] 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 [prosecutor].[19] (emphasis and underscoring supplied)

A preliminary investigation thus partakes of an investigative or inquisitorial power for the sole purpose of obtaining information on what future action of a judicial nature may be taken.[20]

Balangauan v. Court of Appeals[21] in fact iterates that even the action of the Secretary of Justice in reviewing a prosecutor's order or resolution via appeal or petition for review cannot be considered a quasi-judicial proceeding since the "DOJ is not a quasi-judicial body."[22] Section 14, Article VIII of the Constitution does not thus extend to resolutions issued by the DOJ Secretary.

Respondent posits, however, that Balangauan finds no application in the present case for, as the Supreme Court stated, the DOJ "rectified the shortness of its first resolution by issuing a lengthier one when it resolved [the therein] respondent['s] . . . motion for reconsideration."[23] Respondent's position fails.

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Whether the DOJ in Balangauan issued an extended resolution in resolving the therein respondent's motion for reconsideration is immaterial. The extended resolution did not detract from settling that the DOJ is not a quasi-judicial body.

Respondent's citation of Presidential Ad hoc Fact-Finding Committee on Behest Loans is misplaced as the Ombudsman dismissed the therein subject complaint prior to any preliminary investigation. The Ombudsman merely evaluated the complaint pursuant to Section 2, Rule II of the Rules of Procedure of the Office of the Ombudsman which reads:

> SEC. 2. Evaluation.--Upon evaluating the complaint, the investigating officer shall recommend whether it may be:
>
> a) dismissed outright for want of palpable merit;
>
> b) referred to respondent for comment;
>
> c) indorsed to the proper government office or agency which has jurisdiction over the case;
>
> d) forwarded to the appropriate officer or official for fact-finding investigation;
>
> e) referred for administrative adjudication; or
>
> f) subjected to a preliminary investigation. (emphasis supplied)

Respecting the action of the Secretary of Justice on respondent's petition for review under Section 12 of the NPS Rule on Appeal, respondent posits that "outright" dismissal is not sanctioned thereunder but under Section 7. Respondent's position similarly fails.

That the DOJ Secretary used the word "outright" in dismissing respondent's petition for review under Section 12 of the Rule which reads:

> SEC. 12. Disposition of the appeal.--The Secretary may reverse, affirm or modify the appealed resolution. He may, motu proprio or upon motion, dismiss the petition for review on any of the following grounds:
>
> x x x x
>
> (a) That there is no showing of any reversible error;
>
> x x x x (italics in the original; emphasis and underscoring supplied)

does not dent his action. To be sure, the word "outright" was merely used in conjunction with the motu proprio action.

Section 7 has an altogether different set of grounds for the outright dismissal of a petition for review. These are (a) when the petition is patently without merit; (b) when the petition is manifestly intended for delay; (c) when the issues raised therein are too unsubstantial to require consideration; and (d) when the accused has already been arraigned in court.[24]

When the Secretary of Justice is convinced that a petition for review does not suffer any of the infirmities laid down in Section 7, it can decide what action to take (i.e., reverse, modify, affirm or dismiss the appeal altogether), conformably with Section 12. In other words, Sections 7 and 12 are part of a two-step approach in the DOJ Secretary's review power.

As for respondent's reliance on Adasa, it too fails for, unlike in the case of Adasa, herein petitioner has not been arraigned as in fact no Information has been filed against her.

In the absence of grave abuse of discretion on the part of a public prosecutor who alone determines the sufficiency of evidence that will establish probable cause in filing a criminal information,[25] courts will not interfere with his findings; otherwise, courts would be swamped with petitions to review the exercise of discretion on his part each time a criminal complaint is dismissed or given due course.[26]

WHEREFORE, the petition for review on certiorari is GRANTED. The assailed Decision of the Court of Appeals is REVERSED AND SET ASIDE and the Resolutions of July 20, 2005 and January 23, 2006 of the Secretary of Justice are REINSTATED.

SO ORDERED.

Corona, C.J.,[*] Brion, Bersamin, and Sereno, JJ., concur.

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[*] Additional member per raffle dated January 18, 2010 in lieu of Justice Martin S. Villarama, Jr. who took no part due to prior action in the Court of Appeals.

[1] Rollo, p. 12-13.

[2] CA rollo, pp. 102-109.

[3] Ibid.

[4] Id. at 148-151.

[5] Id. at 183-187.

[6] Id. at 201-202.

[7] Id. at 51.

[8] Id. at 67.

[9] Rollo, pp.53-70. Penned by Associate Justice Noel G. Tijam with Associate Justices Martin S. Villarama, Jr. (now a member of the Court) and Arturo G. Tayag concurring.

[10] Section 14. No decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

[11] CA rollo, pp. 60-61.

[12] Rollo, p. 24.

[13] G.R. No. 166051, April 8, 2008, 550 SCRA 613.

[14] Rollo, pp. 32-36.

[15] G.R. No. 135687, July 24, 2007, 528 SCRA 9.

[16] G.R. No. 168617, February 19, 2007, 516 SCRA 261.

[17] Rollo, pp. 451-456.

[18] Bautista v. Court of Appeals, 413 Phil. 159, 168 (2001).

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[19] Id. at 168-169.

[20] Sec. Evangelista v. Judge Jarencio, 160-A Phil. 753, 762 (1975).

[21] G.R. No. 174350, August 13, 2008, 562 SCRA 184. Vide also Santos v. Go, G.R. No. 156081, October 19, 2005, 473 SCRA 350.

[22] Id. at 204.

[23] Rollo, pp. 449.

[24] SEC. 7. Action on the petition.--The Secretary of Justice may dismiss the petition outright if he finds the same to be patently without merit or manifestly intended for delay, or when the issues raised therein are too unsubstantial to require consideration.

If an information has been filed in court pursuant to the appealed resolution, the petition shall not be given due course if the accused has already been arraigned. Any arraignment made after the filing of the petition shall not bar the Secretary of Justice from exercising his power of review.

[25] Sanrio Company Limited v. Lim, G.R. No. 168662, February 19, 2008, 546 SCRA 303, 313.

[26] Dumangcas v. Marcelo, G.R. No. 159949, February 27, 2006, 483 SCRA 301, 314.

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