

**LEONARDO U. FLORES, PETITIONER, VS. HON. RAUL S. GONZALEZ,
IN HIS CAPACITY AS SECRETARY OF JUSTICE, AND EUGENE LIM,
RESPONDENTS.**

G.R. No. 188197. August 03, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition[1] for review on certiorari under Rule 45 of the Rules of Court assailing the Decision[2] dated March 6, 2008 and the Resolution[3] dated May 28, 2009 of the Court of Appeals (CA) in CA G.R. CEB SP No. 02726.

The antecedent facts and proceedings follow:

On June 24, 2004, petitioner Leonardo U. Flores (Flores) filed a complaint-affidavit[4] against private respondent Eugene Lim (Lim) for estafa before the City Prosecutor of Cebu City, docketed as I.S. No. 04-5228-F.

Briefly, the complaint alleged that, during the pre-incorporation stage of Enviroboard Manufacturing, Inc. (EMI) in October 1996, Lim tricked Flores and the other EMI's incorporators (Flores, et al.) to purchase two compact processing equipments, CP15 and CP14, from Compak System Limited, Inc. (Compak) in Great Britain for the manufacture of "Fiber Boards." Unknown to Flores, Lim was connected with Bendez International Corporation (Bendez), the exclusive distributor of Compak. Flores executed an agreement to purchase only a CP15. After the execution of the sales contract and due to some delay in the delivery of the CP15, Lim, through insidious words and deliberate bad faith, was able to convince Flores, et al. to purchase instead an unused but later model of the compact processing equipment, CP14, for £1,466,000.00 or P60,106,000.00, with the assurance that Lim could effect the cancellation of the purchase for the CP15. Flores, et al. agreed and purchased the CP14, using their funds allotted for the CP15. Later, however, Lim told them that the purchase of the CP15 could not be cancelled. Out of fear of lawsuits and acting upon the advice of Lim, Flores, et al. raised the necessary funds through bank loans to pay for the CP15. Then in 2001, Flores, et al. discovered the distributorship agreement between Bendez and Compak. Upon further investigation, they learned that the purchase price of the CP14 was only £908,140.00 or P38,174,618.16 (at the conversion of P41.80) per the Letter of Credit (LC) No. 263-C-6-00073[5], Proforma Invoice No. CP627A dated June 18, 1996[6] and the Ocean Bill of Lading[7] relative to these documents.

Lim filed his counter-affidavit[8] denying all the accusations against him. Among others, he insisted that the CP14 was actually priced at P60,106,000.00, and LC No. 263-C-6-00073 represented only part of the payment for the purchase price. To support his refutations, he submitted a Contract Payment Receipt[9] dated August 20, 1996 showing that the full price of a CP14, in reference to Proforma Invoice No. CP627B dated March 4, 1996, was actually £1,466,000.00 or P60,106,000.00. He also submitted documents showing that a CP10, an older model of the CP14 was already priced at £1,031,585.00.[10]

After further exchange of pleadings and the case was submitted for resolution, the City Prosecutor of Cebu City issued a Resolution[11] dated January 16, 2005 dismissing the complaint for lack of probable cause. The motion

for reconsideration[12] filed by Flores was denied in a Resolution[13] dated June 2, 2005.

On July 12, 2005, Flores filed a petition for review[14] with the Secretary of Justice questioning the January 16, 2005 and the June 2, 2005 Resolutions. Lim opposed this petition.[15]

In a Resolution[16] dated March 2, 2006, the Secretary of Justice dismissed the petition on the ground that there was no showing of any reversible error on the part of the handling prosecutors, and for Flores' failure to append several documents to his petition.

Flores moved for a reconsideration of this Resolution.[17] Lim opposed,[18] to which Flores replied.[19]

In his Resolution[20] dated May 31, 2006, the Secretary of Justice reconsidered, disposing thus--

WHEREFORE, premises considered, the assailed resolution is hereby REVERSED and SET ASIDE. The City Prosecutor of Cebu City is hereby directed to file an information for other deceits defined and penalized under Article 318 of the Revised Penal Code before the Municipal Trial Court in Cities, Cebu City, and to report the action taken thereon within ten (10) days from receipt hereof.

SO ORDERED.[21]

Pursuant to the said directive, the Cebu City Prosecutor filed with the Municipal Trial Court in Cities (MTCC), Cebu City an Information[22] against Lim for the crime of Other Deceits under Article 318 of the Revised Penal Code. The case was docketed as Criminal Case No. 135467-R and was raffled to Branch 4.

Lim thus filed a motion for reconsideration[23] of the May 31, 2006 Resolution. Flores opposed.[24] Lim replied.[25] Flores filed a rejoinder.[26]

On March 22, 2007, the Secretary of Justice reconsidered anew and issued another Resolution,[27] disposing as follows--

WHEREFORE, finding respondent's motion for reconsideration to be meritorious, the Resolution dated May 31, 2006 is REVERSED. The instant petition for review is hereby DISMISSED WITH FINALITY.

Consequently, the Office of the City Prosecutor is hereby directed to withdraw the information, if any had been filed in Court, and report the action taken thereon within ten (10) days from receipt hereof.

SO ORDERED.[28]

Accordingly, on May 3, 2007, the Cebu City Prosecutor filed with the MTCC a Motion to Withdraw Information.[29]

Seeking to nullify the March 22, 2007 Resolution, Flores filed a petition for certiorari[30] with the Court of Appeals on May 22, 2007.

Meanwhile, on June 20, 2007, the MTCC issued its Resolution[31] denying the Motion to Withdraw Information. Ratiocinating on the denial of the motion, it declared--

The Court notes the flip-flopping of the Public Prosecutors, notably the Secretary of Justice in the instant case. On January 16, 2005, the Investigating Prosecutor dismissed the case for lack of probable cause. After his Motion for Reconsideration was denied, the private complainant appealed to the Secretary of Justice who, however, dismissed the same on a technicality. Private complainant filed a Motion for Reconsideration which the Secretary of Justice granted on May 31, 2006. In that Resolution, the City Prosecutor of Cebu was directed to file within ten (10) days from receipt, an Information charging Accused with the crime of "Other Deceits" under Article 318 of the Revised Penal Code. Now the same Secretary of Justice has reversed himself again and, through his subordinates, is asking the Court to withdraw the Information.

The Court has conformably to the doctrine laid down in *Crespo* and other cases made its own independent assessment of the evidence thus far submitted and is convinced that there exists probable cause to hold accused to trial where the parties can better ventilate their respective claims and defense[s].^[32] (Emphasis supplied.)

On June 29, 2007, Flores filed a Manifestation^[33] with the Court of Appeals, attaching the June 20, 2007 Resolution of the MTCC.

Meanwhile, Lim, on July 20, 2007, moved to reconsider the June 20, 2007 MTCC Resolution.^[34]

On August 20, 2007, the Office of the Solicitor General (OSG) filed with the Court of Appeals its Manifestation and Motion in lieu of Comment.^[35] The OSG's position was that the Secretary of Justice acted with grave abuse of discretion in dismissing the complaint and directing the withdrawal of the Information. Lim filed his Comment^[36] on September 28, 2007. Flores filed his Reply^[37] to Lim's Comment on November 8, 2007.

In the meantime, on November 26, 2007, the MTCC issued an Order^[38] holding in abeyance the proceedings pending before it, including the resolution of Lim's motion for reconsideration of the denial of the Motion to Withdraw Information. It held--

In a manner of speaking, the subject incident is straddling on two horses. The ardent desire of the private complainant to prosecute the accused is evident when he filed the petition before the Hon. Court of Appeals to question the Resolution of the Hon. Secretary of Justice. There is nothing wrong to be zealous in prosecuting an accused except that his chosen approach coupled with the fact that this court chose to disregard the subject Resolution and insists on its jurisdiction over the case result in a procedural disorder or confusion. This is taking into account the unquestionable primacy of the Hon. Court of Appeals over this court by virtue of which any action or resolution by this court on the issue can be negated or voided by the former. By reason of such primacy, this court ought to defer to the Hon. Court of Appeals and observe judicial courtesy to a superior court.

The outcome of the pending case before the Hon. Court of Appeals questioning the resolution and order of the Hon. Secretary of Justice will eventually determine the merit of the resolution of this court in denying the motion to withdraw filed by the prosecution acting on the order of the Hon. Secretary of Justice.

Hypothetically, if the Hon. Court of Appeals will sustain the Hon. Secretary of Justice, how can this court take a posture different from that of a superior court and insist[s] on hearing this case. Conversely, if the Hon. Court of Appeals will sustain the private complainant, it will, in effect, sustain the resolution of this court denying the motion to withdraw Information, and render the motion for reconsideration of the public prosecution moot and academic. In such a case, the prosecution of the accused will have to proceed.

If the court will proceed with this case but the Hon. Secretary of Justice will be eventually upheld by the Hon. Court of Appeals, all the proceeding[s] already had in this court would become useless and wasted, including the time and efforts of all parties concerned.

Furthermore, to continue with the proceedings in this case while a case that matters is pending in the Hon. Court of Appeals will constitute discourtesy and disrespect to a superior court. That there is no injunction or restraint on this court to proceed with this case is not an issue since in the first place it was the private complainant and not the public prosecutor or the accused who initiated the petition for certiorari in the Hon. Court of Appeals. In fact, judicial courtesy and respect dictate that the private complainant ought to initiate the suspension of the proceedings of the case in this court while the petition is pending, or if he wants the proceedings herein to continue, then he should have initiated the withdrawal or termination of the case he filed in the Hon. Court of Appeals.^[39]

On March 8, 2008, the Court of Appeals promulgated the questioned Decision finding no grave abuse of discretion on the part of the Secretary of Justice in issuing his March 22, 2007 Resolution.

Flores filed a motion for reconsideration of the March 8, 2008 Decision. The Court of Appeals denied it in its Resolution dated May 28, 2009. Hence, this petition anchored on the following issues:

- WHETHER OR NOT THE JUNE 20, 2007 RESOLUTION OF THE MUNICIPAL TRIAL COURT, DENYING RESPONDENT LIM'S MOTION TO WITHDRAW INFORMATION AND FINDING PROBABLE CAUSE, RENDERED THE DISPOSITION OF THE PETITION BEFORE [THE] COURT OF APPEALS ACADEMIC?
- WHETHER OR NOT THE HON. SECRETARY OF JUSTICE COULD RULE IN A PRELIMINARY INVESTIGATION ON THE VALIDITY, WEIGHT, ADMISSIBILITY, AND MERITS OF PARTIES' DEFENSES, EVIDENCE, AND ACCUSATION?

In gist, Flores asserts in his petition that the June 20, 2007 Resolution of the MTCC denying the Motion to Withdraw filed by the prosecution and finding probable cause to hold Lim for trial for the crime of Other Deceits under Article 318 of the Revised Penal Code rendered his petition for certiorari before the Court of Appeals moot and academic. He says that this is pursuant to the ruling in the landmark case of *Crespo v. Mogul*[40] that once a complaint or information is filed in court, any disposition of the case resulting either in the conviction or acquittal of the accused rests in the sound discretion of the court, who is the best and sole judge on what action to take in the case before it.

Flores further argues that the Secretary of Justice overstepped his jurisdiction in the determination of probable cause when he ruled during the preliminary investigation on the validity, weight, admissibility and merits of the parties' evidence. According to him, these matters are better ventilated before the court during the trial proper.

Our Ruling

With respect to the first issue, we rule in the affirmative. Indeed, as *Crespo* declared--

[O]nce a complaint or information is filed in Court, any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the 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 on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.

In order therefor to avoid such a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court. The matter should be left entirely for the determination of the Court.[41]

In this case, on a petition for review, the Secretary of Justice found probable cause for Other Deceits against Lim; thus, the proper Information was filed in Court pursuant to the directive of the Secretary of Justice. Upon filing of the Information, the MTCC acquired jurisdiction over the case.

Lim filed a motion for reconsideration of the May 31, 2006 Resolution of the Secretary of Justice. There was nothing procedurally infirm in this course of action inasmuch as there is nothing in *Crespo* that bars the Secretary of Justice from reviewing resolutions of his subordinates in an appeal or petition for review in criminal cases. The Secretary of Justice was merely advised in *Crespo* that, as far as practicable, he should not take cognizance of an appeal when the complaint or information is already filed in court.[42]

This is also true with respect to a motion for reconsideration before the Secretary of Justice. Review, whether on appeal or on motion for reconsideration, as an act of supervision and control by the Secretary of Justice over the prosecutors, finds basis in the doctrine of exhaustion of administrative remedies which holds that mistakes, abuses or negligence committed in the initial steps of an administrative activity or by an administrative agency may be corrected by higher administrative authorities, and not directly by courts. As a rule, only after administrative remedies are exhausted may judicial recourse be allowed.[43] In any case, the grant of a motion to dismiss or a motion to withdraw the information, which the prosecution may file after the Secretary of Justice reverses the finding of probable cause, is subject to the discretion of the court.[44]

In this case, the Secretary of Justice, reversed himself in his March 22, 2007 Resolution, and directed the withdrawal of the Information against Lim. In compliance with this directive, the prosecutor filed a Motion to Withdraw Information on May 3, 2007. Flores, on the other hand, filed on May 22, 2007 a petition for certiorari before the Court of Appeals to assail the March 22, 2007 Resolution of the Secretary of Justice. Then, on June 20, 2007, the MTCC denied the Motion to Withdraw Information on the ground that, based on its own assessment, there exists probable cause to hold Lim for trial for the crime of Other Deceits. In view of the June 20, 2007 MTCC Resolution, Flores manifested before the Court of Appeals this disposition, attaching a copy of the said Resolution to his pleading. Meanwhile, Lim filed a motion for reconsideration with the MTCC. Cognizant of the pending petition for certiorari in the Court of Appeals and Lim's motion for reconsideration of the June 20, 2007 Resolution, the MTCC suspended the proceedings before it, and deferred the arraignment of Lim until the resolution of Flores' certiorari petition of the Court of Appeals.

We wish to point out that, notwithstanding the pendency of the Information before the MTCC, especially considering the reversal by the Secretary of Justice of his May 31, 2006 Resolution, a petition for certiorari under Rule 65 of the Rules of Court, anchored on the alleged grave abuse of discretion amounting to excess or lack of jurisdiction on the part of Secretary of Justice, was an available remedy to Flores as an aggrieved party.[45]

In the petition for certiorari, the Court of Appeals is not being asked to cause the dismissal of the case in the trial court, but only to resolve the issue of whether the Secretary of Justice acted with grave abuse of discretion in either affirming or reversing the finding of probable cause against the accused. But still the rule stands--the decision whether to dismiss the case or not rests on the sound discretion of the trial court where the Information was filed.[46] As jurisdiction was already acquired by the MTCC, this jurisdiction is not lost despite a resolution by the Secretary of Justice to withdraw the information or to dismiss the case, notwithstanding the deferment or suspension of the arraignment of the accused and further proceedings, and not even if the Secretary of Justice is affirmed by the higher courts.[47]

Verily, it bears stressing that the trial court is not bound to adopt the resolution of the Secretary of Justice, in spite of being affirmed by the appellate courts, since it is mandated to independently evaluate or assess the merits of the case and it may either agree or disagree with the recommendation of the Secretary of Justice. Reliance on the resolution of the Secretary of Justice alone would be an abdication of the trial court's duty and jurisdiction to determine a prima facie case.[48] Thus, the trial court may make an independent assessment of the merits of the case based on the affidavits and counter-affidavits, documents, or evidence appended to the Information; the records of the public prosecutor which the court may order the latter to produce before it; or any evidence already adduced before the court by the accused at the time the motion is filed by the public prosecutor.[49] The trial court should make its assessment separately and independently of the evaluation of the prosecution or of the Secretary of Justice. This assessment should be embodied in the written order disposing of the motion to dismiss or the motion to withdraw the information.[50]

This was precisely what the MTCC did when it denied the Motion to Withdraw Information in its June 20, 2007

Resolution, and it correctly did so. In view of the above disquisitions, and while the disposition of the issue of whether or not the Secretary of Justice acted with grave abuse of discretion in not finding probable cause against Lim may be persuasive, the MTCC is not bound to dismiss the case or to withdraw the Information. For these reasons, the petition for certiorari before the Court of Appeals has effectively become moot and academic upon the issuance by the MTCC of its June 20, 2007 Resolution. The March 6, 2008 Decision and the May 28, 2009 Resolution of the Court of Appeals affirming the Secretary of Justice will really make no difference anymore.

As held in *Auto Prominence Corporation v. Winterkorn*,^[51] pursuant to our ruling in *Crespo* and in the subsequent related cases, this Court held--

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, 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.

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 of the accused, rests on the sound discretion of the Court. 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 the motion to withdraw an Information, not out of subservience to the (Special) Prosecutor, but in faithful exercise of judicial discretion and prerogative. 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. 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.[52]

Anent the second issue, suffice it to state that these matters are best addressed to the MTCC, where they will be thoroughly ventilated and threshed out in the resolution of Lim's motion for reconsideration of the MTCC June 20, 2007 Resolution, and eventually, if the trial court denies the motion, during the trial on the merits before it.

WHEREFORE, the petition is GRANTED. The petition for certiorari before the Court of Appeals in CA-G.R. SP No. 02726 is declared MOOT AND ACADEMIC. Consequently, the assailed Decision dated March 6, 2008 and the Resolution dated May 28, 2009 of the Court of Appeals in the said case are SET ASIDE. No costs.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Rollo, pp. 3-33.

[2] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Priscilla Baltazar-Padilla and Franchito N. Diamante, concurring; id. at 35-45.

[3] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Edgardo L. delos Santos and Rodil V. Zalameda, concurring; id. at 47-48.

[4] Id. at 83-84.

[5] See Peso Debit Memo; id. at 92.

[6] See Compak Invoice No. 4520 dated June 30, 1996; id. at 94.

[7] Id. at 96.

[8] Id. at 97-104.

[9] Id. at 112.

[10] Id. at 115-117.

[11] Id. at 163-165.

[12] Id. at 166-172.

[13] Id. at 174.

[14] Id. at 175-187.

[15] Id. at 276-286.

[16] Id. at 297-298.

[17] Motion for Reconsideration; id. at 299-306.

[18] Comments/Opposition to Motion for Reconsideration; id. at 361-366.

- [19] Reply; id. at 372-375.
- [20] Id. at 376-380.
- [21] Id. at 380.
- [22] Id. at 382.
- [23] Id. at 383-389.
- [24] Id. at 395-398.
- [25] Id. at 399-402.
- [26] Id. at 413-416.
- [27] Id. at 78-81.
- [28] Id. at 81.
- [29] Id. at 417.
- [30] Id. at 49-77.
- [31] Id. at 423-424.
- [32] Id. at 423.
- [33] Id. at 421-422.
- [34] Id. at 521-532.
- [35] Id. at 426-443.
- [36] Id. at 444-493.
- [37] Id. at 494-516.
- [38] Id. at 863-865.
- [39] Id. at 864-865.
- [40] L-53373, June 30, 1987, 235 Phil. 465, 476 (1987).
- [41] Id. at 471-472.
- [42] Roberts, Jr. v. Court of Appeals, 324 Phil. 568, 598 (1996), citing Marcelo v. Court of Appeals, G.R. No. 106695, August 4, 1994, 235 SCRA 39, 48-49.
- [43] Ledesma v. Court of Appeals, 344 Phil. 207, 230 (1997).
- [44] Caoili v. Court of Appeals, 347 Phil. 791, 796 (1997).
- [45] Chan v. Secretary of Justice, G.R. No. 147065, March 14, 2008, 548 SCRA 337, 350.
- [46] Id. at 351.
- [47] Ledesma v. Court of Appeals, supra note 43, at 232; Caoili v. Court of Appeals, supra note 44, at 796.
- [48] People of the Philippines v. Odilao, Jr., 471 Phil. 623, 635 (2004).

[49] Santos v. Orda, Jr., 481 Phil. 93, 108 (2004).

[50] Ledesma v. Court of Appeals, supra note 43, at 235.

[51] G.R. No. 178104, January 27, 2009, 577 SCRA 51.

[52] Id. at 61-63.

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