BARRY LANIER AND PERLITA LANIER, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 189176. March 19, 2014

Ponente: PEREZ, J.

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PEREZ, J.:

While the determination of probable cause is primarily an executive function, the Court would not hesitate to interfere if there is a clear showing that Secretary of Justice gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached.

Guided by this principle, we shall resolve whether the Court of Appeals erred in reinstating the Information against petitioners.

Assailed in this Petition for Review is the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 85736 reversing the Department of Justice (DOJ) Resolutions dated 6 May 2004 and 17 June 2004 which nullified the provincial prosecutor's Resolution finding probable cause to indict petitioners for illegal possession of prohibited drugs and the Regional Trial Court's (RTC) Order granting the Motion to Withdraw the Information.

First, the factual antecedents.

In their Joint Affidavit of Arrest, SPO1 Juan Gorion (SPO1 Gorion) and PO2 Noemi Remaneses (PO2 Remaneses) attested that Task Force Roulette of the Aklan Police Provincial Office (APPO) and the Philippine Drug Enforcement Agency (PDEA) received information from an asset that petitioners Barry Lanier and Perlita Lanier (Perlita) were engaged in selling illegal drugs in Boracay Island. The police operatives conducted a test-buy at petitioners' residence in Barangay Balabag, Boracay Island where they were able to purchase P5,000.00 worth of shabu and P1,000.00 worth of marijuana from petitioners. On the basis of the test-buy operation, they were able to secure a search warrant from the RTC of Aklan.[3]

SPO1 Gorion and PO2 Remaneses narrated that on 17 December 2003, police operatives proceeded to the house of petitioners to serve the search warrant. After presentment of the warrant, the police operatives, in the presence of the Barangay Captain and some members of the media, conducted the search. In the living room in the second floor, they recovered three (3) sachets of shabu weighing 10.4 grams more or less, inside a jewelry box. They also found one big pack containing dried marijuana leaves weighing 950 grams and two gift packs containing 9 bricks of marijuana with an aggregate weight of 800 grams. A Receipt for Property Seized was prepared by SPO1 Nathaniel A. Tan, but petitioners refused to sign the same. Thereafter, petitioners were placed under arrest.[4]

On 18 December 2003, the Assistant Provincial Prosecutor of Kalibo, Aklan filed an Information charging petitioners of violation of Section 11, Article II of Republic Act No. 9165, which reads:

> That on or about the 17th day of December, 2003, in the morning, at Barangay Balabag, Boracay Island, Municipality of Malay, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this

> Honorable Court, the above-named accused, conspiring, confederating, and mutually helping each other, without authority of law, have in their possession, custody and control one (1) big pack of suspected dried Marijuana leaves weighing more or less NINE HUNDRED FIFTY (950) grams, Nine (9) bricks of suspected dried Marijuana leaves weighing more or less EIGHT HUNDRED (800) grams and Three (3) plastic sachet[s] of suspected shabu weighing more or less 10.4 grams which members of the Task Force Roulette of the Aklan Police Provincial Office, and the joint elements of Philippine Drug Enforcement Agency confiscated from their possession and control in the course of a search by virtue of Search Warrant Number 46-2003 issued by Honorable Judge Marietta J. Homena-Valencia, Executive Judge, Regional Trial Court, Kalibo, Aklan.[5]

On 23 December 2003, petitioners filed a Motion for Preliminary Investigation/Re-investigation.[6]

On 9 January 2004, a Motion to Quash the Information[7] was filed before the RTC of Kalibo, Aklan. Petitioners questioned why the police did not arrest them after allegedly receiving the marked money during the test-buy operation and why the marked money was not presented as evidence. Petitioners cried frame up and accused the police of planting the illegal drugs. In their Counter-Affidavit, petitioners claimed that around 4:00 a.m. on 17 December 2003, several men demanded entry into their house. When Perlita opened the door, two men pointed their guns at her and declared a raid. More than 15 people stormed into their house. She also saw 5 to 6 men, who were carrying backpacks, go into the master's bedroom. The police officers called petitioners to the master's bedroom and showed them sachets of shabu allegedly found inside a box and marijuana leaves found in gift packs. They were forced to sign the inventory receipt but they refused to do so. Petitioners ascribed ill-motives on the part of the police officers on behest of the Barangay Captain against whom the petitioners had filed an administrative complaint.[8]

Petitioners attached to their motion the affidavits of their witnesses and the Home Study Report in Special Proceeding No. 6829 of the RTC of Kalibo, Aklan with 75 pages of character references and a drug-test report showing that they were tested negative for illegal drugs.

On 28 January 2004, the trial court issued an Order denying the Motion to Quash. And on 9 February 2004, the trial court remanded the case to the provincial prosecutor for preliminary investigation.

In a Resolution dated 8 March 2004, the provincial prosecutor upheld the Information and directed the return of the records to the trial court for disposition.

On 28 March 2004, however, petitioners filed a petition for review before the DOJ assailing the 8 March 2004 Resolution of the provincial prosecutor. On 6 May 2004, the Secretary of Justice acted on the petition favorably and directed the withdrawal of the Information which directive the provincial prosecutor heeded by filing a Motion to Withdraw Information before the trial court. The trial court granted the Motion to Withdraw Information on 24 June 2004.

The Secretary of Justice gave more credence to the version of petitioners that the illegal drugs seized were planted. The Secretary of Justice took note of the testimony of SPO1 Gorion during the clarificatory hearing on 20 February 2004 that there were two groups – the raiding team and the search team that entered the house of petitioners. The fact that the raiding team arrived ahead of the search team bolstered petitioners' assertion that the illegal drugs seized were planted by the raiding team.

The Office of the Solicitor General (OSG) filed with the Court of Appeals a petition for certiorari seeking to annul the DOJ Resolutions directing the withdrawal of the Information against petitioners and the RTC's Order granting the Motion to Withdraw filed by the provincial prosecutor.

On 26 September 2008, the Court of Appeals nullified and set aside the DOJ Resolutions and the RTC Order and reinstated the Information against petitioners in Criminal Case No. 6972. The appellate court declared that the

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petition for review was filed within the extension granted by the court; that the People, through the OSG, correctly filed the petition under Rule 65 of the Rules of Court because the Court of Appeals may review the resolution of the Secretary of Justice only in a petition for certiorari under Rule 65 on the ground of grave abuse of discretion; that the Urgent Motion for Reconsideration filed by the provincial prosecutor complied with the condition sine qua non of exhausting all plain, speedy and adequate remedies in the ordinary course of law; and that the petition for certiorari bore the proper verification of the OSG as the People's statutory counsel.

In the main, the appellate court found that there is probable cause to sustain petitioners' indictment.

Petitioners elevated the case to this Court seeking the reversal of the Decision of the Court of Appeals and consequently, the withdrawal of the Information for illegal possession of prohibited drugs filed against them.

Petitioners now proffer essentially the same arguments presented before the Court of Appeals:

- The petition for review before the Court of Appeals assailing the RTC Order is fatally defective because: a) it was filed out of time; b) it substituted a lost appeal; and, c) it was not preceded by a timely motion for reconsideration.

- The petition for review before the Court of Appeals assailing the DOJ Resolutions is fatally defective because: a) it was filed out of time; and, b) it had become moot and academic when the RTC granted the withdrawal of the Information.

- The fact that the police officers were able to move around the house, unescorted by competent witnesses, and were able to predetermine the precise weight of the illegal drugs prior to the arrival of the weighing scale placed in serious doubt the real sources of the alleged illegal drugs.

- The admissions made by the arresting officers during the clarificatory hearings, pointing to the illegality of the search and thereby rendering inadmissible all evidence obtained therefrom, negated the existence of probable cause.

According to petitioners, the Decision of the Court of Appeals is riddled with procedural lapses. First, petitioners point out that the motion for extension of time filed by respondent prior to the filing of the petition for review before the Court of Appeals is patently defective, because, while the motion for extension did not implead the RTC Judge of Kalibo, the latter was made a respondent in the petition for review. Since the RTC Judge was not furnished a copy of the motion for extension, said motion became a mere scrap of paper which did not toll the running of the period to file the petition for review. Hence, the petition for review was filed out of time.

It is not necessary that the contents of a motion for extension should be similar to a petition for certiorari. When the OSG in his motion for extension failed to implead the trial court judge, much less assail his Order, said omission should not limit the pitch and reach of the petition. Otherwise, the prayer for more time would be pointless. It is sufficient that the motion for extension state the material dates, as the Motion of the OSG did, showing the timeliness of its filing. The grant of the Motion for Extension occasioned the timeliness of the review of both the DOJ Resolutions and the RTC Order.

Second, petitioners question the failure of respondent to file a motion for reconsideration from the RTC Order before filing a petition for certiorari before the Court of Appeals.

Well-established is the rule that a motion for reconsideration is a condition sine qua non for the filing of a petition for certiorari. The rule however admits of exceptions,[9] the most relevant of which is where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court. The RTC Order was anchored on the twin Resolutions issued by the DOJ granting the petition for review and directing the provincial

prosecutor to withdraw the Information. Thus, the appellate court correctly treated the Urgent Motion for Reconsideration submitted by the OSG before the DOJ as a substantial compliance with the condition of exhausting all plain, speedy and adequate remedies before filing a certiorari petition. Clearly, the facts, issues and arguments that would have been raised in a motion for reconsideration in the RTC are rooted on the DOJ's finding of the non-existence of probable cause.

Third, petitioners claim that the Urgent Motion for Reconsideration with the DOJ was filed out of time. Petitioners cited paragraph 1 of the Motion which states that the 6 May 2004 Resolution of the Secretary of Justice was received on 7 May 2004. Thus, respondent had until 17 May 2004 to file the Urgent Motion for Reconsideration, but the motion was filed only on 25 May 2004.

A reading of the Motion for Extension indeed reveals that the OSG stated in Paragraph 1 that they received the 6 May 2004 Resolution on 7 May 2004. Differently, the OSG, in its Urgent Motion for Reconsideration, stated that the 6 May 2004 Resolution was received on 18 May 2004. Records show that the OSG erred in indicating in the motion for extension 7 May 2004 as the receipt date. 7 May 2004 was actually the mailing date as recorded in the registry receipt attached to the 6 May 2004 Resolution.[10] Verily, the variance in dates could be attributed to a mere clerical error. The OSG received a copy of the 6 May 2004 Resolution on 18 May 2004. And the OSG complied with the 10-day reglementary period within which to file its Motion for Reconsideration by filing it on 26 May 2004.

Fourth, petitioners maintain that the petition for certiorari had become moot and academic as against the Resolutions of the Secretary of Justice when the RTC Judge assumed jurisdiction over the case and granted the motion to withdraw the information.

In Verzano, Jr. v. Paro,[11] we had the occasion to rule that while generally it is the Secretary of Justice who has the authority to review the decisions of the prosecutors, the Court Appeals has the authority to correct the acts of the prosecutorial officers tainted with grave abuse of discretion notwithstanding the filing of the informations before the trial court. The authority of the Court of Appeals is bolstered by the fact that the petition filed before it was one under Rule 65, such that it has the jurisdiction to determine whether or not the prosecutor and/or the Secretary of Justice acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[12] The filing or withdrawal, as in this case, of an Information before the RTC does not foreclose the review on the basis of grave abuse of discretion the resolution of a prosecutor, or the Secretary of Justice on the issue of probable cause.

On the merits of the case, petitioners defend the Secretary of Justice in ordering the withdrawal of the Information on the ground that the pieces of evidence obtained through an illegal search becomes inadmissible in evidence. Petitioners explain that the search was illegal because it violated Section 8, Rule 126 of the Rules of Criminal Procedure when the search was not made in the presence of the lawful occupants of the house. Petitioners aver that the Secretary of Justice correctly rejected the version of the police officers based on the existing records. Petitioners noted that the time of search recorded on the Receipt for Property Seized is 5:10 a.m., while it as admitted by one police officer that they were about to gain entry in the house only at 5:30 a.m. Petitioners raise doubts on how the police officers were able to determine and record the exact weight of the illegal drugs when the weighing scale, as admitted by the SPO1 Gorio, came at around 8:00 p.m.

It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable

cause for the purpose of indicting a suspect is properly an executive function; while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of certiorari, has been tasked by the present Constitution to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[13]

Judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation. Courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion.[14]

As a requisite to the filing of a criminal complaint, probable cause pertains to facts and circumstances sufficient to incite a well-founded belief that a crime has been committed and the accused is probably guilty thereof. Only such facts sufficient to support a prima facie case against the respondent are required, not absolute certainty. 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. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial.[15]

We quote with approval the appellate court's finding of probable cause based on the following circumstances:

> - Before the police conducted the search in Spouses Lanier's residence, they had a thorough and careful surveillance of their activities in the island of Boracay;
>
> - The police officers conducted a test-buy on Spouses Lanier who themselves sold to SPO1 Juben Vega and his Filipino-American companion shabu and marijuana worth six thousand (P6,000.00) pesos;
>
> - Based on the surveillance and test-buy, Executive Judge Marietta Homena-Valencia found probable cause and issued a search warrant on Spouses Lanier's residence. There, the police officers recovered approximately 1.750 kilograms of dried marijuana leaves and 10.4 grams of shabu in the presence of Barangay Captain Glenn Sacapano, two (2) members of the media and Perlita Lanier herself;
>
> - The testimonies of SPO1 Juan Gorion and SPO1 Juben Vega of the APPO and PO2 Noemi Ramaneses of PDEA were consistent on what transpired from the time they received a tip regarding the illegal drug activities of Spouses Lanier up to the time of the implementation of the search warrant was completed;
>
> - The defense failed to destroy the presumption of regularity in favor of the police officers who conducted the search;
>
> - Spouses Lanier failed to substantiate their claim that Barangay Captain Joel Gelito orchestrated the raid in retaliation to the administrative complaint they allegedly filed against him;
>
> - Failure to use and present marked money during the preliminary investigation in itself does not weaken the existence of probable cause against Spouses Lanier. For "settled is the rule that in the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation. What is material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence."[16]

The elements of illegal possession of prohibited drugs are: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the

accused freely and consciously possessed the drug.[17]

The presence of these elements was attested to by evidence such as the Joint Affidavit of Arrest and the Receipt of the Properties seized. The police officers averred that they recovered 3 sachets of shabu weighing 10.4 grams inside a jewelry box on petitioners' living room. They also seized one (1) big gift pack containing dried marijuana leaves weighing more or less 950 grams and two (2) gift packs containing nine (9) bricks of dried marijuana leaves weighing 800 grams on top of the head board of petitioners' bed. Moreover, the finding of a dangerous drug in the house or within the premises of the house of the accused is prima facie evidence of knowledge or animus possidendi.[18]

When the Secretary of Justice concluded that there was planting of evidence based on the lone fact that the raiding team arrived ahead of the search team, he, in effect went into the merits of the defense. When he made a determination based on his own appreciation of the pieces of evidence for and against the accused, he effectively assumed the function of a trial judge in the evaluation of the pieces of evidence and, thereby, acted outside his jurisdiction.[19]

Regarding the submission of petitioners that the remedy from the RTC's Order to withdraw the filing of the Information should have been an ordinary appeal, we rule that on a finding of grave abuse of discretion, the RTC Order may be elevated to the Court of Appeals on certiorari.

There is, here, a basis for such finding.

When confronted with a motion to withdraw an Information on the ground of lack of probable cause based on a resolution of the Secretary of Justice, the bounden duty of the trial court is to make an independent assessment of the merits of such motion. Having acquired jurisdiction over the case, the trial court is not bound by such resolution but is required to evaluate it before proceeding farther with the trial. While the Secretary's ruling is persuasive, it is not binding on courts.[20] When the trial court's Order rests entirely on the assessment of the DOJ without doing its own independent evaluation, the trial court effectively abdicates its judicial power and refuses to perform a positive duty enjoined by law.

The RTC erroneously held that it has not yet effectively acquired jurisdiction over the person of the accused as no commitment order has yet been issued against them. In Crespo v. Mogul,[21] the Court held that once a criminal complaint or information is filed in court, any disposition of the case or dismissal or acquittal or conviction of the accused rests within the exclusive jurisdiction, competence, and discretion of the trial court. The rule applies to a motion to withdraw the Information or to dismiss the case even before or after arraignment of the accused. When the trial court grants a motion of the public prosecutor to dismiss the case, or to quash the Information, or to withdraw the Information in compliance with the directive of the Secretary of Justice, or to deny the said motion, it does so not out of subservience to or defiance of the directive of the Secretary of Justice but in sound exercise of its judicial prerogative.

The RTC clearly deferred to the finding of probable cause by the Secretary of Justice without doing its own independent evaluation. The trial court even expressed its apprehension that no prosecutor would be willing to prosecute the case should the motion to withdraw be denied. The only matter discussed by the trial court was its concurrence with the DOJ relative to the service and conduct of the search for illegal drugs. The trial court declared that the evidence is inadmissible in view of the manner the search warrant was served. Settled is the rule that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits. In the case at bar, the grounds relied upon by petitioners should be fully explained and threshed out not in a preliminary investigation but during trial as the same are matters of defense involving factual issues.

At the risk of sounding repetitive, we must emphasize that the trial court, having acquired jurisdiction over the case, is not bound by such resolution but is required to evaluate it before proceeding further with the trial. While the Secretary's ruling is persuasive, it is not binding on courts.

All told, the Court of Appeals did not commit any reversible error when it nullified and set aside the Resolutions and Order, rendered by the Secretary of Justice and the RTC, respectively.

WHEREFORE, the petition is DENIED. The Decision dated 26 September 2008 and Resolution dated 31 July 2009 of the Court of Appeals in CA-G.R. SP No. 85736 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Reyes,[*] JJ., concur.

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[*] Per Special Order No. 1650 dated 13 March 2014.

[1] Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Francisco P. Acosta and Edgardo L. De Los Santos, concurring. Rollo, pp. 57-74.

[2] Id. at 75.

[3] Records, p. 4.

[4] Id.

[5] Id. at 1.

[6] Id. at 14.

[7] Id. at 21-27.

[8] Id. at 37-54.

[9] (a) where the order is a patent nullity, as where the court a quo has no jurisdiction; (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were ex parte or in which the petitioner had no opportunity to object; and, (i) where the issue raised is one purely of law or where public interest is involved. See Republic v. Bayao, G.R. No. 179492, 5 June 2013 citing Siok Ping Tang v. Subic Bay Distribution, Inc., G.R. No. 162575, 15 December 2010, 638 SCRA 457, 469-470; Republic v. Pantranco North Express, Inc. (PNEI), G.R. No. 178593, 15 February 2012, 666 SCRA 199, 205-206; Domdom v. Third and Fifth Divisions of the Sandiganbayan, G.R. Nos. 182382-83, 24 February 2010, 613 SCRA 528, 532-533 citing Tan v. Court of Appeals, 341 Phil. 570, 576-578 (1997).

[10] DOJ Records, p. 23. (See back page).

[11] G.R. No. 171643, 9 August 2010, 627 SCRA 209.

[12] Id. at 216.

[13] Balois v. Court of Appeals, G.R. No. 182130 and 182132, 19 June 2013.

[14] United Coconut Planters Bank v. Looyuko, 560 Phil. 581, 591 (2007) citing Metropolitan Bank & Trust Co. v. Tonda, 392 Phil. 797, 814 (2000).

[15] Reyes v. Pearlbank Securities, Inc., 582 Phil. 505, 519 (2008).

[16] Rollo, pp. 70-71.

[17] Asiatico v. People, G.R. No. 195005, 12 September 2011, 657 SCRA 443, 450.

[18] People v. Pambid, G.R. No. 192237, 26 January 2011, 640 SCRA 722, 738; People v. Cruz, G.R. No. 185381, 16 December 2009, 608 SCRA 350, 364; People v. Guiara, G.R. No. 186497, 17 September 2009, 600 SCRA 310, 326.

[19] Villanueva v. Caparas, G.R. No. 190969, 30 January 2013, 689 SCRA 679, 687.

[20] Hipos, Sr. v. Bay, G.R. Nos. 174813-15, 17 March 2009, 581 SCRA 674, 687.

[21] 235 Phil. 465, 476 (1987).

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