

FELIX A. VELASQUEZ, PETITIONER, VS. HON. UNDERSECRETARY OF JUSTICE, HON. ARTEMIO G. TUQUERO AND EDGARDO AVILA, RESPONDENTS.

G.R. No. 88442. February 15, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

Petition for certiorari to annul and/or set aside the resolution/letter dated January 4, 1989 of the public respondent, Undersecretary of Justice Artemio G. Tuquero, ordering a reinvestigation of I.S. No. 86-28751.

Respondent Edgardo Avila was a Cash and Business Development Consultant of the Techtrade Management International Corporation, authorized to follow-up business transactions, including loan applications submitted to the company.

On September 29, 1986, Avila informed the company that he had a borrower (whom he did not identify) for P200,000 with interest of 3%/month for a 30-day term from September 29 to October 29, 1988. This was approved by the company which issued to him a pay-to-cash check for P194,000 after deducting the 3% interest of P6,000. Instead of returning the borrowed amount on due date or giving a satisfactory explanation for the supposed borrower's failure to pay the loan despite written demands, Avila resigned from the company on December 17, 1986 promising that: "x x x I shall set aside the P200,000 upon its subsequent collection (subject of Atty. Caacbay's letter of 12/10/86) to answer for the P100,000 portion of Tony's P700,000 loan to you; please treat the P100,000 — balance, less my unpaid professional fee and gas expenses from November 16 to December 15, 1986, as my separation and compulsory benefit" (p. 6, Rollo).

On December 23, 1986, petitioner Felix A. Velasquez, as Executive Vice-President/Managing Director of Techtrade, filed a complaint for estafa against Avila in the Manila City Fiscal's Office, where it was docketed as I. S. No. 86-28751. Assistant Fiscal Romulo Lopez dismissed the complaint. However, upon review by the Chief, Investigation Division of the City Fiscal's Office, the latter set aside Fiscal Lopez' resolution and ordered the filing of an information for estafa against Avila in the Regional Trial Court.

Avila twice sought a reconsideration of that resolution, but both motions were denied by the City Fiscal (Annexes F & H).

Before arraignment, Avila filed on June 29, 1987 in the Department of Justice a petition for review (Annex I) which the petitioner opposed (Annex J). On February 15, 1988, Justice Undersecretary Silvestre Bello III denied the petition for review (Annex L). A motion for reconsideration (Annex M) of the denial did not prosper (Annex O).

On October 14, 1988, Avila filed a second motion for reconsideration which the Undersecretary of Justice, Honorable Artemio Tuquero, granted on January 4, 1989 (Annex A, Petition). He directed the City Fiscal:

"x x x to conduct a re-investigation of this case to afford respondent to properly present evidence that he was

duly authorized to pay the subject creditors and for complainant to rebut the same with controverting evidence, and thereafter to resolve the case anew on the basis of all the evidence adduced." (p. 15, Rollo.)

The complainant filed a motion for reconsideration (Annex C) of that resolution but it was denied on May 15, 1989 (Annex B, Petition). Hence, this petition for certiorari.

The petition is meritorious. This case is governed by our decision in *Crespo vs. Mogul*, 151 SCRA 462, where we ruled that once the information is filed in court, the court acquires complete jurisdiction over it. A motion for reinvestigation should, after the court had acquired jurisdiction over the case, be addressed to the trial judge and to him alone. Neither the Secretary of Justice, the State Prosecutor, nor the Fiscal may interfere with the judge's disposition of the case, much less impose upon the court their opinion regarding the guilt or innocence of the accused, for the court is the sole judge of that.

"The rule therefore in this jurisdiction is that once 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[e] 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." (*Crespo vs. Mogul*, 151 SCRA 462, 471 & 472.)

Crespo vs. Mogul was reiterated in *Marquez vs. Alejo*, 154 SCRA 302; *Sta. Rosa Mining Co. vs. Asst. Provincial Fiscal Augusto Zabala*, 153 SCRA 367; *Republic vs. Judge Sunga*, G.R. No. 38634, June 20, 1988; *Peralta vs. CFI of La Union*, 157 SCRA 476 and *Almazar vs. Judge Cenzon*, 161 SCRA 454.

The Undersecretary of Justice gravely abused his discretion in ordering the re-investigation of the criminal case against Avila after it had been filed in court. The avowed purpose of the reinvestigation "to give an opportunity to the private respondent to present an authentic copy of the board resolution of the offended party (Techtrade Management International Corporation) which [allegedly] had authorized him to deal and otherwise dispose of the funds of the corporation" (p. 72, Rollo), can also be achieved at the trial in the lower court where that piece of evidence may be presented by the accused as part of his defense.

WHEREFORE, the petition for certiorari is granted. The order dated January 4, 1989 of the public respondent (Annex A, Petition) is hereby annulled and set aside, with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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