

HONORIO SAAVEDRA, JR., PETITIONER, VS. DEPARTMENT OF JUSTICE, REGIONAL TRIAL COURT OF PASIG, BRANCH 67, AND GREGORIO M. RAMOS, RESPONDENTS.

G.R. No. 93173. September 15, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a petition for certiorari and prohibition seeking the nullification of Department of Justice (DOJ) Resolution dated 6 November 1989[1] which dismissed petitioner's Petition for Review of the Provincial Prosecutor's Resolution dated 25 July 1988[2] finding probable cause for perjury against petitioner, and DOJ Resolution dated 7 March 1990[3] denying reconsideration.

On 2 July 1987, the owners of Pine Philippines, Inc. (PPI for brevity), including private respondent Gregorio M. Ramos, sold their shares of stock to petitioner Honorio Saavedra, Jr., for P1.2 million payable in installments. A "Memorandum of Agreement" and a "Deed of Assignment" were executed to evidence the transaction. The former document contained an automatic rescission clause in case any installment was not paid on its due date.

Payments were made in the total amount of P936,380.00, leaving a balance of P263,620.00 payable on 15 September 1987. On said date, however, petitioner withheld payment for the reason that the sellers failed to comply with their warranties. Nevertheless, the balance was deposited in escrow subject to release once the warranties were complied with.

On 5 November 1987, petitioner filed in behalf of PPI a verified civil complaint for damages[4] against private respondent, alleging that he (petitioner) was the President and principal stockholder of the company. By way of answer, respondent Ramos questioned petitioner's capacity to sue in behalf of PPI, claiming that petitioner ceased to be its president when the sale of the PPI shares of stock to him was automatically rescinded on 15 September 1987.

After executing a document entitled "Rescission of Memorandum of Agreement," Ramos and his group filed a case[5] on 20 November 1987 with the Securities and Exchange Commission (SEC) praying that the rescission be declared valid and legal. Petitioner filed a motion to dismiss alleging lack of jurisdiction on the part of the SEC but the same was denied on 11 December 1987. Petitioner went to the Supreme Court which, on 21 March 1988, upheld the jurisdiction of the SEC and ruled that under Sec. 5, par. (b), of P.D. No. 902-A, the SEC has "primary and exclusive" jurisdiction over the twin issues of ownership and automatic rescission, they being intracorporate disputes.[6] Accordingly, proceedings in Civil Case No. 55247 were suspended.

On 7 December 1987, during the pendency of SEC Case No. 3257, private respondent filed a criminal case for perjury against petitioner with the Provincial Prosecutor's Office in Pasig alleging that petitioner perjured himself when he declared in the verification of the complaint in Civil Case No. 55247 that he was the President of PPI.[7] In his answer?affidavit, petitioner contended that since the issues of ownership and automatic rescission were still pending and unresolved in the SEC, there was no basis to the charge that he asserted a falsehood by claiming to be

the President of the company especially when he was such per records extant with the SEC.[8]

By Resolution dated 25 July 1988, the Provincial Prosecutor found a prima facie case for perjury against petitioner and on 26 October 1988 filed the corresponding Information with the Regional Trial Court of Pasig, docketed as Crim. Case No. 74919.[9] The evidence supporting the charge was the Secretary's Certificate dated 5 December 1987 reflecting private respondent's election as President of PPI by the former owners thereof when they convened following the automatic revocation of the "Memorandum of Agreement" and "Deed of Assignment."

Petitioner sought a review of the foregoing Resolution with public respondent DOJ but the latter subsequently came up with the Resolution now under consideration, upholding the finding of probable cause for perjury, ruling as follows:[10]

"There is probable cause against you for prosecution as evidenced by the Secretary's Certificate dated December 5, 1987 extant on record. This evidence is a mute but eloquent witness affirming the claim of Ramos that he is the rightful President of PPI. Indeed, the Secretary's Certificate alluded to readily shows that the original membership of the Board was reconvened and reassembled, proving the fact that the presidency of PPI is lodged with Ramos.

"Moreover, in view of the rescission of the memorandum of agreement, deed of assignment and contract of lease, you lost your rights and interest over the shares of stock previously delivered to you by virtue of the subject agreement. Consequently, you likewise lost your right to assume management over the corporation PPI. When you thus stated in your complaint that you were President of PPI, such assertion constituted a lawful (sic) and deliberate assertion of falsehood" (underscoring supplied).

A Motion for Reconsideration having proved unsuccessful, petitioner took the instant recourse.

Petitioner contends that respondent DOJ gravely abused its discretion when it affirmed the findings of the Provincial Prosecutor that he made a "deliberate assertion of falsehood" on the basis of the conclusion that automatic rescission had set in. For, the jurisdiction to rule on that question of automatic rescission is lodged with the Securities and Exchange Commission. Since the issue has not yet been resolved, the DOJ should have deferred the proceedings.

There is merit in the petition. In *Saavedra, Jr. v. SEC*, we categorically pronounced that:

"x x x the dispute at bar is an intracorporate dispute that has arisen between and among the principal stockholders of the corporation due to the refusal of the defendants (now petitioners) to fully comply with what has been covenanted by the parties. Such dispute involves a controversy 'between and among stockholders,' specifically as to plaintiffs' right, as stockholders, over unpaid assignment of shares and the validity of defendants' acquisition of the same. In other words, the present case involves an intracorporate dispute as to who has the right to remain and act as owners-stockholders of the corporation.

"Pursuant to PD No. 902-A, as amended, particularly Section 5(b) thereof, the primary and exclusive jurisdiction over the present case properly belongs to the SEC x x x" (underscoring supplied).[11]

Under the doctrine of primary jurisdiction, courts cannot and will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal[12] having been so placed within its special competence under a regulatory scheme. In such instances the judicial process is suspended pending referral to the administrative body for its view on the matter in dispute.[13]

Consequently, if the courts cannot resolve a question which is within the legal competence of an administrative body prior to the resolution of that question by the administrative tribunal, especially where the question demands

the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative agency to ascertain technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered,[14] much less can the Provincial Prosecutor arrogate to himself the jurisdiction vested solely with the SEC.

In the case at bar, the applicable regulatory statute is P.D. No. 902-A conferring upon the SEC the legal competence to rule on intracorporate disputes, which competence had already been upheld by us in a number of cases.[15] Considering that it was definitely settled in *Saavedra, Jr. v. SEC* that the issues of ownership and automatic rescission are intracorporate in nature, then the Provincial Prosecutor, clearly, has no authority whatsoever to rule on the same. In fact, if we were to uphold the validity of the DOJ Resolutions brought before us, as respondents suggest, we would be sanctioning a flagrant usurpation or preemption of that primary and exclusive jurisdiction which SEC already enjoys. Obviously, it cannot be done. Thus, the Provincial Prosecutor upon being confronted with the issue of whether the sale of stocks to petitioner was automatically cancelled while in the course of determining probable cause for perjury, should have withheld filing any information against the accused.

Public respondent DOJ in attempting to justify the action of the Provincial Prosecutor avers that the latter is empowered to make a preliminary ruling on the matter for the purpose of finding probable cause against petitioner, and that petitioner may raise the pendency of the issue before the SEC as his defense at the trial proper.

We are not persuaded. The duty of a prosecutor during preliminary investigation is not only to find evidence to warrant continuation of the criminal process against an accused. Of equal importance, and it has been repeated often enough, is his duty to protect the innocent from hasty, expensive and useless trials.[16] This duty, in addition to the "primary and exclusive" jurisdiction of the SEC, demands the outright termination of the criminal prosecution of petitioner which, at the very outset, was already bereft of factual and legal bases. Indeed, the prosecution of petitioner cannot be based on a mere Secretary's Certificate which cannot attest to the validity of the automatic rescission, hence, cannot likewise settle the question as to who between petitioner and private respondent is the lawful President of PPI.

Besides, the Secretary's Certificate is dated 5 December 1987, while the alleged false statement was made on 5 November 1987, or one month before when the verified complaint for damages was filed. Quite obviously, the truthfulness of a statement, or lack of it, cannot be made to depend on a certificate that was not existing yet when the statement in question was made. Even assuming the validity of Ramos' election as President of PPI as reflected in the Secretary's Certificate, it does not prove that petitioner was not President on 5 November 1987 when the civil action was instituted.

Be that as it may, the outcome of SEC Case No. 3257 is not determinative of whether or not the charge for perjury against petitioner can prosper. Even if private respondent Ramos succeeds in proving the validity of the automatic rescission of the sale before the SEC, it does not necessarily mean that the criminal prosecution has basis. There are four (4) elements of the crime of perjury to be taken into account in determining whether there is a *prima facie* case, to wit: (a) that the accused made a statement under oath or executed an affidavit upon a material matter; (b) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath; (c) that in that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and, (d) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.[17]

Clearly, mere assertion of a falsehood is not enough to amount to perjury. The assertion must be deliberate and willful. While there may have been a falsehood asserted, which we are not prepared to accept, no evidence exists to show that the same was done deliberately and willfully. On the contrary, the records tend to show that the

assertion was done in good faith, in the belief that the non-payment of the last installment price was justified by the sellers' non-compliance with their warranties. Besides, petitioner alleges that he has deposited the balance in escrow, which is not disputed. Consequently, a finding of probable cause does not follow as a matter of course even if SEC decides adversely against petitioner, for an essential element of the crime appears to be wanting in the case before us, i.e., that the falsehood is willful and deliberate.

Moreover, as a rule, pleadings need not be verified unless otherwise required by the Rules of Court, and no rule requires complaints for damages, as in the case before us, to be under oath. Since the complaint filed by petitioner against private respondent is not required to be verified, another essential element of the crime of perjury is absent, i.e., that the sworn statement containing the falsity is required by law. Consequently, petitioner cannot be prosecuted on the basis of an alleged falsehood made in a verified pleading which is not mandated by law to be verified.[18]

Verily, there is grave abuse of discretion in the issuance of the Resolution of 25 July 1988 finding a prima facie case for perjury against petitioner. A fortiori, the assailed DOJ Resolutions must be struck down as having been issued without sufficient factual and legal bases. Correspondingly, the Information filed with the Pasig Trial Court pursuant thereto must likewise be dismissed.

WHEREFORE, the petition is GRANTED. The questioned Resolutions dated 6 November 1989 and 7 March 1990 of respondent Department of Justice sustaining the Provincial Prosecutor in finding probable cause for perjury against petitioner are NULLIFIED and SET ASIDE.

Conformably herewith, the Regional Trial Court of Pasig, Branch 67, or whichever branch of the same court Crim. Case No. 74919 entitled "People v. Honorio Saavedra, Jr.," may be assigned, is directed to DISMISS the case. The bailbond posted for the provisional liberty of the accused, if any, is cancelled and released.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Quiason, JJ., concur.
Griño-Aquino, J., on official leave.

[1] Penned by then Undersecretary Artemio G. Tuguerro, Rollo, pp. 26-28.

[2] Rollo, pp. 30-32.

[3] Rollo, p. 29.

[4] Pine Philippines, Inc. v. Gregorio M. Ramos, Civil Case No. 55427, RTC, Br. 166, Pasig.

[5] Ramos v. Saavedra, Jr, SEC Case No. 3257.

[6] Saavedra, Jr. v. SEC, G.R. No. 80879, 21 March 1988, 159 SCRA 57.

[7] I.S. No. 87-10773.

[8] Rollo, p. 19.

[9] Raffled to Branch 67.

[10] Rollo, p. 27.

[11] Note 6, p. 60.

[12] Brett v. Intermediate Appellate Court, G.R. No. 74223, 27 November 1990, 191 SCRA 687, 698.

[13] Industrial Enterprises, Inc. v. Court of Appeals, G.R. No. 88550, 18 April 1990, 184 SCRA 426, 432.

[14] Note 6, pp. 61-62. See also Pambujan Sur United Mine Workers v. Samar Mining Co., Inc., 94 Phil. 932 (1954).

[15] Wack Wack Condominium Corporation v. Court of Appeals, G.R. No. 78490, 23 November 1992, 215 SCRA 850, 855; Rural Bank of Salinas, Inc. v. Court of Appeals, G.R. No. 96674, 26 June 1992, 210 SCRA 510, 514; Securities and Exchange Commission v. Court of Appeals, G.R. No. 93832, 23 August 1991, 201 SCRA 124, 134; Philippine School of Business Administration v. Leano, G.R. No. 58468, 24 February 1984, 127 SCRA 778, 782.

[16] People v. Poculan, G.R. Nos. 70565-67, 9 November 1988, 167 SCRA 176, 192; Rodis, Sr. v. Sandiganbayan, G.R. Nos. 71404-09, 26 October 1988, 166 SCRA 618, 623.

[17] Diaz v. People, G.R. No. 65006, 31 October 1990, 191 SCRA 86, 93.

[18] Flordelis v. Himalaloo, No. L-48088, 31 July 1978, 84 SCRA 477.

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