

LIEZL CO, PETITIONER, VS. HAROLD LIM Y GO AND AVELINO UY GO, RESPONDENTS.*G.R. Nos. 164669-70. October 30, 2009*

Ponente: CHICO-NAZARIO, J.

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This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the Order,[1] dated 11 February 2004, later upheld in a subsequent Order[2] dated 29 June 2004, both rendered by Branch 45 of the Regional Trial Court (RTC) of Manila, dismissing Criminal Cases No. 01-197839 and No. 03-213403 against respondents Harold Lim y Go (Lim) and Avelino Uy Go (Go), respectively, for violation of Presidential Decree No. 1612, otherwise known as the Anti-Fencing Law.[3]

On 6 December 2001, agents from the National Bureau of Investigation (NBI) raided a commercial establishment named A-K Video Store, located at 1214 Masangkay Street, Manila. They had acted upon the information relayed by complainant Liezl Co (Co) that cell cards that were stolen from her on 26 November 2001 were being sold at A-K Video Store. The store was owned by Go. Lim, who was found administering the store at the time of the raid, was arrested. In all, a total of thirty (30) boxes containing cell cards worth P332,605.00 were seized from the store.[4]

After Inquest proceedings were conducted, the City Prosecutor's Office of Manila issued a Resolution dated 7 December 2001 recommending the prosecution of Lim for violation of Presidential Decree No. 1612.[5] On 7 March 2003, an Information[6] was filed before the RTC of Manila charging Lim with violation of Presidential Decree No. 1612, to wit:

That on or about December 6, 2001, in the City of Manila, Philippines, the said accused, with intent to gain for himself or for another, did then and there willfully and feloniously possess, keep, conceal, receive, acquire, sell, or dispose or buy and sell thirty (30) boxes of P250.00 Globe cell card valued at P332,605.00 and five (5) pcs. Globe cell card valued at P1,105.00, all in the total amount of P333,710.00 belonging to LIEZL CO y CO, which said cell cards, said accused knew or should have known to have been the subject/proceeds of the crime of Theft or Robbery.

Lim moved for a reinvestigation of his case before the Office of the City Prosecutor of Manila, which was granted by the RTC on 25 April 2002.[7] The arraignment that was initially scheduled on 21 November 2002 was rescheduled on 22 January 2003,[8] and further rescheduled thereafter pending the reinvestigation proceedings. Pending the reinvestigation of Lim's case, petitioner filed a complaint against Go before the Office of the City Prosecutor of Manila for the violation of Presidential Decree No. 1612.[9] The reinvestigation of the case against Lim was conducted together with the preliminary investigation of Go.[10] In a Review Resolution,[11] dated 9 April 2003, the Office of the City Prosecutor of Manila reaffirmed its findings of probable cause against Lim and recommended the prosecution of Go. The dispositive part of the Review Resolution reads:

WHEREFORE, it is recommended that Criminal Case No. 01-197839 be remanded back to court for further

proceedings. It is likewise recommended that the attached information for Violation of P.D. 1612 against respondent Avelino Uy Go be approved.[12]

Accordingly, the Information[13] against Go was filed on 25 April 2003. It reads:

That on or about December 6, 2001, in the City of Manila, Philippines, the said accused, with intent to gain for himself or for another, conspiring and confederating with Harold Lim who was already charged in Court of the same offense docketed under Criminal Case No. 01-197839 and mutually helping each other, did then and there willfully and feloniously possess, keep, conceal, receive and acquire, sell, or dispose or buy and sell thirty (30) boxes of P250.00 Globe cell card valued at P332,605.00 and five (5) pcs. P250.00 Globe cell card valued at P1,105.00, all in the total amount of P333,710.00 belonging to LIEZL CO CO, which said cell cards, said accused knew or should have known to have been the subject/proceeds of the crime of Theft or Robbery.

Respondents filed a Petition for Review with the Department of Justice assailing the Review Resolution, dated 9 April 2003.

On 15 July 2003, respondents moved for the consolidation of Criminal Cases No. 01-197839 and No. 03-213403 on the ground that these cases arose from the same series of incidents.[14] During the hearing held on 16 July 2003, the RTC granted the motion and consolidated the criminal cases against respondents.[15]

On 16 January 2004, the Acting Secretary of the Department of Justice, Ma. Merceditas N. Gutierrez, issued a Resolution[16] reversing the Review Resolution dated 9 April 2003 of the Office of the City Prosecutor of Manila. The dispositive part of the Resolution reads:

ACCORDINGLY, the resolution appealed from is hereby REVERSED and SET ASIDE. The City Prosecutor of Manila is directed to withdraw forthwith the informations for violation of PD No. 1612 filed in the court against respondents Harold G. Lim and Avelino Uy Go and to report the action taken hereon within ten days from receipt hereof.[17]

On 27 January 2004, Assistant Prosecutor Yvonne G. Corpuz filed a Motion to Withdraw Informations[18] seeking the dismissal of the cases filed against respondents pursuant to the Resolution of the Acting Secretary of the Department of Justice dated 16 January 2004 directing the prosecutor to move for the withdrawal of the Informations filed against respondents.

On 11 February 2004, the date set by the RTC for the arraignment of the respondents and for pre-trial, the respondents were arraigned, and the prosecution and the defense marked their evidence and submitted their stipulations of facts. Thereafter, the defense counsel orally moved for the dismissal of the case on the ground that the Office of the City Prosecutor of Manila, through Assistant Prosecutor Corpuz, had already filed a Motion to Withdraw Informations on 27 January 2004. Private prosecutor Lodelberto Parungao opposed the motion to dismiss on the ground that the Resolution of the Acting Secretary of Justice dated 16 January 2004 was not binding upon the Court. Nevertheless, in an Order[19] dated 11 February 2004, the RTC ordered the dismissal of Criminal Cases No. 01-197839 and No. 03-213403 on the ground that the Office of the City Prosecutor of Manila and the Department of Justice would not prosecute these cases, to wit:

After considering the respective stands of the prosecution and the defense as well as the records of this case, this Court is of the considered view that the Motion To Dismiss by the accused is meritorious and should be granted. If this Court will proceed with these criminal cases, the prosecution thereof will naturally be under the direct control and supervision of Public Prosecutor Antonio B. Valencia, Jr. However, the said Public Prosecutor will be placed in an awkward, if not precarious situation, since he will be going against the very Orders of his own Office and the Department of Justice which want the Informations withdrawn. If the City Prosecutor's Office of Manila and the Department of Justice will not prosecute these cases for the plaintiff Republic of the Philippines, then the same should be dismissed. As correctly pointed out by counsel for the

accused, what remains is only the civil aspect of these cases.[20] (Emphasis ours.)

The dispositive part of the said Order reads:

WHEREFORE, premises considered, and finding the Motion To Dismiss by the accused through counsel to be meritorious, the same is hereby GRANTED and let the herein Criminal Cases Nos. 01-197839 and 03-213403 be DISMISSED.

As moved by the private prosecutor, he is given the period allowed by the Rules of Court to file the necessary pleading with respect to this Order of the Court from receipt hereof.

As further moved by the private prosecutor, Atty Lodelberto S. Parungao, that the complainant be allowed to present evidence on the civil aspect of these cases on the ground that the civil actions in these cases were deemed instituted with the criminal actions and that there was no reservation made to file a separate civil action and therefore the civil cases remain pending with this court since extinction of the penal action does not carry with it extinction of the civil action, and over the vigorous objection by counsel for the accused Atty. Teresita C. Marbibi who insisted that the dismissal of the herein criminal cases carried with it the dismissal also of the civil aspect thereof, the said motion by the private prosecutor is hereby GRANTED and he may present evidence on the civil aspect of these cases on March 18 and March 25, 2004 both at 8:30 a.m. Considering the manifestation by Atty. Marbibi that she will not participate in said hearings, let the presentation of evidence for the complainant be made ex-parte without objection from the defense counsel.[21]

Petitioner filed a Motion for Reconsideration[22] dated 12 March 2004, which the RTC denied in an Order[23] dated 29 June 2004. The dispositive part of the Order reads:

WHEREFORE, premises considered, the private complainants' subject Motion for Reconsideration is hereby DENIED for lack of merit.[24]

On 2 July 2004, petitioner filed a Petition for Certiorari before the Court of Appeals, docketed as CA-G.R. SP No. 84703, which sought the reversal of the Resolution dated 16 January 2006 of the Acting Secretary of the Department of Justice directing the Office of the City Prosecutor of Manila to withdraw the informations filed against the respondents.[25] This petition was still pending with the Court of Appeals when the petitioner filed the present petition with the Supreme Court assailing the Orders dated 11 February 2004 and 29 June 2004 of the RTC dismissing the criminal complaints against respondents. The present Petition, filed under Rule 45 of the Rules of Court, raises the following questions of law[26]:

I

BY THE PRESENT APPEAL BY CERTIORARI, ARE THE RIGHTS OF THE TWO (2) ACCUSED AGAINST DOUBLE JEOPARDY VIOLATED, CONSIDERING THAT THEY EXPRESSLY MOVED FOR THE DISMISSAL OF THE CRIMINAL CASES AGAINST THEM?

II

WAS THE ORDER OF THE PRESIDING JUDGE OF RTC45-MANILA DISMISSING CRIMINAL CASES NO. 01-197839 AND 03-213403 FOR THE SOLE REASON THAT THE DEPARTMENT OF JUSTICE ORDERED THE WITHDRAWAL OF THE CORRESPONDING INFORMATIONS, AND WITHOUT MAKING AN INDEPENDENT ASSESSMENT AND FINDING OF EVIDENCE, VALID?

The petition is meritorious.

Once a case is filed with the court, any disposition of it rests on the sound discretion of the court. The trial court is not bound to adopt the resolution of the Secretary of Justice, since it is mandated to independently evaluate or assess the merits of the case. Reliance on the resolution of the Secretary of Justice alone would be an abdication

of its duty and jurisdiction to determine a prima facie case. 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 the court; or any evidence already adduced before the court by the accused at the time the motion is filed by the public prosecutor.[27]

The failure of the trial court judge to independently evaluate and assess the merits of the case against the accused violates the complainant's right to due process and constitutes grave abuse of discretion amounting to excess of jurisdiction. This Court must therefore remand the case to the RTC, so that the latter can rule on the merits of the case to determine if a prima facie case exists and consequently resolve the Motion to Withdraw Informations anew.[28]

In dismissing the criminal cases against the respondents, the RTC in this case relied on the unwillingness of the Department of Justice to prosecute these cases and the awkward situation in which the public prosecutor would find himself. The assailed Order dated 11 February 2004 reads:

After considering the respective stands of the prosecution and the defense as well as the records of this case, this Court is of the considered view that the Motion To Dismiss by the accused is meritorious and should be granted. If this Court will proceed with these criminal cases, the prosecution thereof will naturally be under the direct control and supervision of Public Prosecutor Antonio B. Valencia, Jr. However, the said Public Prosecutor will be placed in an awkward, if not precarious situation, since he will be going against the very Orders of his own Office and the Department of Justice which want the Informations withdrawn. If the City Prosecutor's Office of Manila and the Department of Justice will not prosecute these cases for the plaintiff Republic of the Philippines, then the same should be dismissed. As correctly pointed out by counsel for the accused, what remains is only the civil aspect of these cases.[29] (Emphasis ours.)

Moreover, the trial judge did not positively state that the evidence presented against the respondents was insufficient for a prima facie case, nor did the aforequoted Order include a discussion of the merits of the case based on an evaluation or assessment of the evidence on record. In other words, the dismissal of the case was based upon considerations other than the judge's own personal individual conviction that there was no case against the respondents. Thus, the trial judge improperly relinquished the discretion that he was bound to exercise, and the Orders dated 11 February 2004 and 29 June 2004 are invalid for having been issued in grave abuse of discretion.[30]

Section 21, Article III of the Constitution prescribes the rule against double jeopardy:

No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

The following requisites must be complied with for double jeopardy to set in: (1) there is a valid complaint of information; (2) the complaint should be filed before a court of competent jurisdiction; (3) the accused has pleaded to the charge; and (4) the accused has been convicted or acquitted, or the case has been dismissed or terminated without the express consent of the accused.[31]

The Order dated 11 February 2004 of the RTC categorically stated that the defense counsel moved for the dismissal of the cases against the respondents. Verily, respondents, through counsel, had given their express consent to the termination of the case on 11 February 2004. Therefore, the fourth requisite, which necessitates the conviction or acquittal of the accused or the dismissal of the case without his or her approval, was not met. Undoubtedly, the rule on double jeopardy is inapplicable to this case.

It is the conviction or the acquittal of the accused, or dismissal or termination of the case without the approval of

the accused that bars further prosecution for the same offense or any attempt to commit the same or the frustration thereof.[32] At the heart of the policy is the concern that permitting the sovereign freely to subject the citizen to a second judgment for the same offense would arm the government with a potent instrument of oppression. The constitutional provision, therefore, guarantees that the State shall not be permitted to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. Nevertheless, the prosecution is entitled to one opportunity to require the accused to stand trial. Should the prosecution waive this right to a full-blown trial, the defendant has the right to have his or her trial completed by a particular tribunal.[33] If the trial is terminated before it is completed, and it is dismissed with the consent of the defendant, then double jeopardy will not attach.

Respondents alleged that petitioner is guilty of forum shopping since she filed the present petition assailing the Orders dated 11 February 2004 and 29 June 2004 of the RTC after she filed a Petition for Certiorari before the Court of Appeals docketed as CA-G.R. SP No. 84703 questioning the Resolution of the Acting Secretary of Justice dated 16 January 2004. This argument is specious.

Section 5, Rule 7 of the 1997 Rules of Court, which disallows the deplorable practice of forum shopping, provides that:

SEC. 5. Certification against forum shopping.--The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filled therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Forum shopping exists when a party repetitively avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances and all raising substantially the same issues either pending in or already resolved adversely by some other court.[34] The test for determining forum shopping is whether in the two (or more) cases pending, there is an identity of parties, rights or causes of action, and relief sought.[35]

Petitioner in this case is not guilty of forum shopping since there is no identity of relief and cause of action in the present petition and in CA-G.R. SP No. 84703. The Petition for Certiorari filed by petitioners before the Court of Appeals questions the propriety of the Resolution of the Acting Secretary of Justice. The present petition docketed as G.R. Nos. 164669-70 seeks the reversal of the Orders dated 11 February 2004 and 29 June 2004 of the RTC. The determination made by the Acting Secretary of Justice that no prima facie case exists for the prosecution of the case is distinct from the judicial determination of the RTC that there is no probable cause for the continued hearing of the criminal case. These are two very different actions which should be separately assailed. The former is pursuant to the powers and functions of the Department of Justice as provided under Section 2, Chapter 1, Title

III of the Revised Administrative Code:

Section 3. Powers and Functions. To accomplish its mandate, the Department shall have the following powers and functions:

x x x x

(2) Investigate the commission of crimes, prosecute offenders and administer the probation and correction system.

On the other hand, the determination made by the RTC, which is being questioned in the present case, is pursuant to the judicial powers conferred by Section 1, Article VIII of the Constitution:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and 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.

Consequently, a determination by the Court of Appeals that the prosecution of the criminal case must proceed will not affect whether or not this Court may or may not adjudge that the RTC should continue to hear the same criminal case.

Finally, this Court finds the proceedings conducted on 11 February 2004 highly unusual in that the RTC judge had arraigned the respondents before granting the respondent's oral motion to dismiss solely based on the Resolution of the Acting Secretary of Justice dated 16 January 2004, a copy of which was attached to the Motion to Withdraw Informations filed by the public prosecutor on 27 January 2004. The irregularity is even more pronounced when we consider the fact that the public prosecutor, whose office had filed a Motion to Withdraw Informations on 27 January 2004, agreed to have respondents arraigned on 11 February 2004. Added to the fact that the defense was allowed to move for the dismissal of the case even without a written motion, such irregularity arouses suspicions that the arraignment of the respondents after the public prosecutor was already ordered to withdraw the Informations was intended to aid respondents in raising the defense of double jeopardy should another case based on the same incidents be filed against them. While this Court does not make any conclusive findings of bad faith on the part of the RTC judge and the public prosecutor, it deems it proper to issue a reminder to officers of the court to avoid all appearances of suspicious or questionable behavior so as not to unduly strain public trust.

IN VIEW OF THE FOREGOING, the instant Petition is GRANTED. The Orders dated 11 February 2004 and 29 June 2004 of Branch 45 of the Regional Trial Court of the City of Manila dismissing Criminal Cases No. 01-197839 and No. 03-213403, are REVERSED and SET ASIDE. The records of this case shall be remanded to the trial court in order that it may resolve the Motion to Withdraw Informations filed by the public prosecutor based on an independent assessment of the evidence in this case.

SO ORDERED.

Quisumbing,[*] Carpio, (Chairperson), Chico-Nazario, Peralta, and Abad,**] JJ., concur.

[*] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on

official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

[1] Penned by Judge Marcelino Sayo. Rollo, pp. 12-16.

[2] Id. at 18-19.

[3] The Anti Fencing Law reads:

WHEREAS, reports from law enforcement agencies reveal that there is rampant robbery and thievery of government and private properties;

WHEREAS, such robbery and thievery have become profitable on the part of the lawless elements because of the existence of ready buyers, commonly known as fence, of stolen properties;

WHEREAS, under existing law, a fence can be prosecuted only as an accessory after the fact and punished lightly;

WHEREAS, it is imperative to impose heavy penalties on persons who profit by the effects of the crimes of robbery and theft.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree as part of the law of the land, the following:

SECTION 1. Title. - This Decree shall be known as the Anti-Fencing Law.

SEC. 2. Definition of Terms. - The following terms shall mean as follows:

a. "Fencing" is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft.

x x x x

SEC. 5. Presumption of Fencing. - Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing.

[4] Records, p. 110.

[5] Rollo, p. 356.

[6] Records, p. 1.

[7] Id. at 22-23 and 38.

[8] Id. at 41.

[9] Rollo, p. 356.

[10] Id.

[11] Id. at 44-45.

[12] Id. at 45.

- [13] Id. at 46.
- [14] Records, 87-89.
- [15] Id. at 92.
- [16] Id. at 110-112.
- [17] Id. at 112,
- [18] Id. at 121.
- [19] Id. at 146-150.
- [20] Id. at 149.
- [21] Id. at 150.
- [22] Id. at 181-189.
- [23] Id. at 239-240.
- [24] Id. at 240.
- [25] Id. at 247.
- [26] Rollo, pp. 30-31.
- [27] Santos v. Orda, Jr., 481 Phil. 93, 105-106 (2004).
- [28] Summerville General Merchandising & Co. Inc. v. Eugenio, Jr., G.R. No. 163741, 7 August 2007, 529 SCRA 274, 281-282.
- [29] Records, p. 149.
- [30] Martinez v. Court of Appeals, G.R. No. 112387, 13 October 1994, 237 SCRA 575, 585-586.
- [31] Summerville General Merchandising & Co. Inc. v. Eugenio, Jr., supra note 28 at 283.
- [32] Pacoy v. Cajigal, G.R. No. 157472, 28 September 2007, 534 SCRA 338, 352.
- [33] People v. Sandiganbayan, G.R. Nos. 168188-89, 16 June 2006, 491 SCRA 185, 207.
- [34] Feliciano v. Villasin, G.R. No. 174929, 27 June 2008, 556 SCRA 348, 370; Cruz v. Caraos, G.R. No. 138208, 23 April 2007, 521 SCRA 510, 521; SK Realty Inc. v. Uy, G.R. No. 144282, 8 June 2004, 431 SCRA 239, 246.
- [35] Citibank, N.A. v. Sabeniano, G.R. No. 156132, 16 October 2006, 504 SCRA 378, 406.

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