

NILO HIPOS, SR. REPRESENTING DARRYL HIPOS, BENJAMIN CORSIÑO REPRESENTING JAYCEE CORSIÑO, AND ERLINDA VILLARUEL REPRESENTING ARTHUR VILLARUEL, PETITIONERS, VS. HONORABLE RTC JUDG...

G.R. Nos. 174813-15. March 17, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Mandamus under Rule 65 of the Rules of Court seeking a reversal of the Order dated 2 October 2006 of respondent Judge Teodoro A. Bay of Branch 86 of the Regional Trial Court (RTC) of Quezon City, which denied the Motion to Withdraw Informations of the Office of the City Prosecutor of Quezon City.

The facts of the case are as follows.

On 15 December 2003, two Informations for the crime of rape and one Information for the crime of acts of lasciviousness were filed against petitioners Darryl Hipos, Jaycee Corsiño, Arthur Villaruel and two others before Branch 86 of the Regional Trial Court of Quezon City, acting as a Family Court, presided by respondent Judge Bay. The cases were docketed as Criminal Cases No. Q-03-123284, No. Q-03-123285 and No. Q-03-123286. The Informations were signed by Assistant City Prosecutor Ronald C. Torralba.

On 23 February 2004, private complainants AAA[1] and BBB filed a Motion for Reinvestigation asking Judge Bay to order the City Prosecutor of Quezon City to study if the proper Informations had been filed against petitioners and their co-accused. Judge Bay granted the Motion and ordered a reinvestigation of the cases.

On 19 May 2004, petitioners filed their Joint Memorandum to Dismiss the Case[s] before the City Prosecutor. They claimed that there was no probable cause to hold them liable for the crimes charged.

On 10 August 2004, the Office of the City Prosecutor issued a Resolution on the reinvestigation affirming the Informations filed against petitioners and their co-accused in Criminal Cases No. Q-03-123284-86. The Resolution was signed by Assistant City Prosecutor Raniel S. Cruz and approved by City Prosecutor Claro A. Arellano.

On 3 March 2006, 2[nd] Assistant City Prosecutor Lamberto C. de Vera, treating the Joint Memorandum to Dismiss the Case as an appeal of the 10 August 2004 Resolution, reversed the Resolution dated 10 August 2004, holding that there was lack of probable cause. On the same date, the City Prosecutor filed a Motion to Withdraw Informations before Judge Bay.

On 2 October 2006, Judge Bay denied the Motion to Withdraw Informations in an Order of even date.

Without moving for a reconsideration of the above assailed Order, petitioners filed the present Petition for Mandamus, bringing forth this lone issue for our consideration:

CAN THE HON. SUPREME COURT COMPEL RESPONDENT JUDGE BAY TO DISMISS THE CASE THROUGH A WRIT OF MANDAMUS BY VIRTUE OF THE RESOLUTION OF THE OFFICE OF THE CITY PROSECUTOR OF QUEZON CITY FINDING NO PROBABLE CAUSE AGAINST THE ACCUSED AND SUBSEQUENTLY FILING A MOTION TO WITHDRAW INFORMATION?[2]

Mandamus is an extraordinary writ commanding a tribunal, corporation, board, officer or person, immediately or at some other specified time, to do the act required to be done, when the respondent unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or when the respondent excludes another from the use and enjoyment of a right or office to which the latter is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.[3]

As an extraordinary writ, the remedy of mandamus lies only to compel an officer to perform a ministerial duty, not a discretionary one; mandamus will not issue to control the exercise of discretion by a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court.[4]

In the case at bar, the act which petitioners pray that we compel the trial court to do is to grant the Office of the City Prosecutor's Motion for Withdrawal of Informations against petitioners. In effect, petitioners seek to curb Judge Bay's exercise of judicial discretion.

There is indeed an exception to the rule that matters involving judgment and discretion are beyond the reach of a writ of mandamus, for such writ may be issued to compel action in those matters, when refused.[5] However, mandamus is never available to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either.[6] In other words, while a judge refusing to act on a Motion to Withdraw Informations can be compelled by mandamus to act on the same, he cannot be compelled to act in a certain way, i.e., to grant or deny such Motion. In the case at bar, Judge Bay did not refuse to act on the Motion to Withdraw Informations; he had already acted on it by denying the same. Accordingly, mandamus is not available anymore. If petitioners believed that Judge Bay committed grave abuse of discretion in the issuance of such Order denying the Motion to Withdraw Informations, the proper remedy of petitioners should have been to file a Petition for Certiorari against the assailed Order of Judge Bay.

Petitioners counter that the above conclusion, which has been argued by the Solicitor General, is contrary to a ruling of this Court, which allegedly states that the proper remedy in such cases is a Petition for Mandamus and not Certiorari. Petitioners cite the following excerpt from our ruling in *Sanchez v. Demetriou*[7]:

The appreciation of the evidence involves the use of discretion on the part of the prosecutor, and we do not find in the case at bar a clear showing by the petitioner of a grave abuse of such discretion.

The decision of the prosecutor may be reversed or modified by the Secretary of Justice or in special cases by the President of the Philippines. But even this Court cannot order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a prima facie case. The courts try and absolve or convict the accused but as a rule have no part in the initial decision to prosecute him.

The possible exception is where there is an unmistakable showing of grave abuse of discretion that will justify a judicial intrusion into the precincts of the executive. But in such a case the proper remedy to call for such exception is a petition for mandamus, not certiorari or prohibition.[8] (Emphases supplied.)

Petitioners have taken the above passage way out of its context. In the case of *Sanchez*, Calauan Mayor Antonio Sanchez brought a Petition for Certiorari before this Court, challenging the order of the respondent Judge therein denying his motion to quash the Information filed against him and six other persons for alleged rape and homicide. One of the arguments of Mayor Sanchez was that there was discrimination against him because of the

non-inclusion of two other persons in the Information. We held that even this Court cannot order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a prima facie case. However, if there was an unmistakable showing of grave abuse of discretion on the part of the prosecutors in that case, Mayor Sanchez should have filed a Petition for Mandamus to compel the filing of charges against said two other persons.

In the case at bar, the Petition for Mandamus is directed not against the prosecution, but against the trial court, seeking to compel the trial court to grant the Motion to Withdraw Informations by the City Prosecutor's Office. The prosecution has already filed a case against petitioners. Recently, in *Santos v. Orda, Jr.*,^[9] we reiterated the doctrine we established in the leading case of *Crespo v. Mogul*,^[10] that once a criminal complaint or an information is filed in court, any disposition or dismissal of the case or acquittal or conviction of the accused rests within the jurisdiction, competence, and discretion of the trial court. Thus, we held:

In *Crespo v. Mogul*, 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 trial court is the best and sole judge on what to do with the case before it. A motion to dismiss the case filed by the public prosecutor should be addressed to the court who has the option to grant or deny the same. Contrary to the contention of the petitioner, the rule applies to a motion to withdraw the Information or to dismiss the case even before or after arraignment of the accused. The only qualification is that the action of the court must not impair the substantial rights of the accused or the right of the People or the private complainant to due process of law. 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.

Petitioners also claim that since Judge Bay granted a Motion for Reinvestigation, he should have "deferred to the Resolution of Asst. City Prosecutor De Vera withdrawing the case."^[11] Petitioners cite the following portion of our Decision in *People v. Montesa, Jr.*^[12]:

In the instant case, the respondent Judge granted the motion for reinvestigation and directed the Office of the Provincial Prosecutor of Bulacan to conduct the reinvestigation. The former was, therefore, deemed to have deferred to the authority of the prosecution arm of the Government to consider the so-called new relevant and material evidence and determine whether the information it had filed should stand.^[13]

Like what was done to our ruling in *Sanchez*, petitioners took specific statements from our Decision, carefully cutting off the portions which would expose the real import of our pronouncements. The Petition for Certiorari in *Montesa, Jr.* was directed against a judge who, after granting the Petition for Reinvestigation filed by the accused, proceeded nonetheless to arraign the accused; and, shortly thereafter, the judge decided to dismiss the case on the basis of a Resolution of the Assistant Provincial Prosecutor recommending the dismissal of the case. The dismissal of the case in *Montesa, Jr.* was done despite the disapproval of the Assistant Provincial Prosecutor's Resolution by the Provincial Prosecutor (annotated in the same Resolution), and despite the fact that the reinvestigation the latter ordered was still ongoing, since the Resolution of the Assistant Provincial Prosecutor had not yet attained finality. We held that the judge should have waited for the conclusion of the Petition for Reinvestigation he ordered, before acting on whether or not the case should be dismissed for lack of probable cause, and before proceeding with the arraignment. Thus, the continuation of the above paragraph of our Decision in *Montesa, Jr.* reads:

Having done so, it behooved the respondent Judge to wait for a final resolution of the incident. In *Marcelo vs. Court of Appeals*, this Court ruled:

Accordingly, we rule that the trial court in a criminal case which takes cognizance of an accused's motion for review of the resolution of the investigating prosecutor or for reinvestigation and defers the arraignment until resolution of the said motion must act on the resolution reversing the investigating prosecutor's finding or on a motion to dismiss based thereon only upon proof that such resolution is already final in that no appeal was taken thereon to the Department of Justice.

The resolution of Assistant Provincial Prosecutor Rutor recommending the dismissal of the case never became final, for it was not approved by the Provincial Prosecutor. On the contrary, the latter disapproved it. As a consequence, the final resolution with respect to the reinvestigation is that of the Provincial Prosecutor, for under Section 4, Rule 112 of the Rules of Court, no complaint or information may be filed or dismissed by an investigating fiscal without the prior written authority or approval of the provincial or city fiscal or chief state prosecutor. Also, under Section l(d) of R.A. No. 5180, as amended by P.D. No. 77 and P.D. No. 911.[14]

As can be clearly seen, the statement quoted by petitioners from Montesa, Jr. is not meant to establish a doctrine that the judge should just follow the determination by the prosecutor of whether or not there is probable cause. On the contrary, Montesa, Jr. states:

The rule is settled that once a criminal complaint or information is filed in court, any disposition thereof, such as its dismissal or the conviction or acquittal of the accused, rests in the sound discretion of the court. While the prosecutor retains the discretion and control of the prosecution of the case, he cannot impose his opinion on the court. The court is the best and sole judge on what to do with the case. Accordingly, a motion to dismiss the case filed by the prosecutor before or after the arraignment, or after a reinvestigation, or upon instructions of the Secretary of Justice who reviewed the records upon reinvestigation, should be addressed to the discretion of the court. The action of the court must not, however, impair the substantial rights of the accused or the right of the People to due process of law.[15]

In a seemingly desperate attempt on the part of petitioners' counsel, he tries to convince us that a judge is allowed to deny a Motion to Withdraw Informations from the prosecution only when there is grave abuse of discretion on the part of the prosecutors moving for such withdrawal; and that, where there is no grave abuse of discretion on the part of the prosecutors, the denial of the Motion to Withdraw Informations is void. Petitioners' counsel states in the Memorandum:

6.10. Furthermore, the ORDER dated October 2, 2006 of the Respondent Judge BAY consisting of 9 pages which was attached to the URGENT PETITION did not point out any iota of grave abuse of discretion committed by Asst. City Prosecutor De Vera in issuing his Resolution in favor of the sons of the Petitioners. Hence, the ORDER issued by RJBAY is NULL and VOID in view of the recent ruling of the Hon. Supreme Court in Ledesma vs. Court of Appeals, G.R. No. 113216, September 5, 1997, 86 SCAD 695, 278 SCRA 657 which states that:

"In the absence of a finding of grave abuse of discretion, the court's bare denial of a motion to withdraw information pursuant to the Secretary's resolution is void." (Underscoring ours).

6.11. It is therefore respectfully submitted that the Hon. Supreme Court disregard the argument of the OSG because of its falsity.[16]

This statement of petitioners' counsel is utterly misleading. There is no such statement in our Decision in Ledesma.[17] The excerpt from Ledesma, which appears to have a resemblance to the statement allegedly quoted from said case, provides:

No Grave Abuse of Discretion in the
Resolution of the Secretary of Justice

In the light of recent holdings in Marcelo and Martinez; and considering that the issue of the correctness of the

justice secretary's resolution has been amply threshed out in petitioner's letter, the information, the resolution of the secretary of justice, the motion to dismiss, and even the exhaustive discussion in the motion for reconsideration - all of which were submitted to the court - the trial judge committed grave abuse of discretion when it denied the motion to withdraw the information, based solely on his bare and ambiguous reliance on Crespo. The trial court's order is inconsistent with our repetitive calls for an independent and competent assessment of the issue(s) presented in the motion to dismiss. The trial judge was tasked to evaluate the secretary's recommendation finding the absence of probable cause to hold petitioner criminally liable for libel. He failed to do so. He merely ruled to proceed with the trial without stating his reasons for disregarding the secretary's recommendation.[18] (Emphasis supplied.)

It very much appears that the counsel of petitioners is purposely misleading this Court, in violation of Rule 10.02 of the Code of Professional Responsibility, which provides:

Rule 10.02 - A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

Counsel's use of block quotation and quotation marks signifies that he intends to make it appear that the passages are the exact words of the Court. Furthermore, putting the words "Underscoring ours" after the text implies that, except for the underscoring, the text is a faithful reproduction of the original. Accordingly, we are ordering Atty. Procopio S. Beltran, Jr. to show cause why he should not be disciplined as a member of the Bar.

To clarify, we never stated in *Ledesma* that a judge is allowed to deny a Motion to Withdraw Information from the prosecution only when there is grave abuse of discretion on the part of the prosecutors moving for such withdrawal. Neither did we rule therein that where there is no grave abuse of discretion on the part of the prosecutors, the denial of the Motion to Withdraw Information is void. What we held therein is that a trial judge commits grave abuse of discretion if he denies a Motion to Withdraw Information without an independent and complete assessment of the issues presented in such Motion. Thus, the opening paragraph of *Ledesma* states:

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 further with the trial. While the secretary's ruling is persuasive, it is not binding on courts. A trial court, however, commits reversible error or even grave abuse of discretion if it refuses/neglects to evaluate such recommendation and simply insists on proceeding with the trial on the mere pretext of having already acquired jurisdiction over the criminal action.[19] (Emphases supplied.)

Petitioners also try to capitalize on the fact that the dispositive portion of the assailed Order apparently states that there was no probable cause against petitioners:

WHEREFORE, finding no probable cause against the herein accused for the crimes of rapes and acts of lasciviousness, the motion to withdraw informations is DENIED.

Let the case be set for arraignment and pre-trial on October 24, 2006 at 8:30 o'clock in the morning.[20] (Underscoring ours.)

Thus, petitioners claim that since even the respondent judge himself found no probable cause against them, the Motion to Withdraw Informations by the Office of the City Prosecutor should be granted.[21]

Even a cursory reading of the assailed Order, however, clearly shows that the insertion of the word "no" in the above dispositive portion was a mere clerical error. The assailed Order states in full:

After a careful study of the sworn statements of the complainants and the resolution dated March 3, 2006 of 2[nd] Assistant City Prosecutor Lamberto C. de Vera, the Court finds that there was probable cause against the herein accused. The actuations of the complainants after the alleged rapes and acts of lasciviousness cannot be the basis of dismissal or withdrawal of the herein cases. Failure to shout or offer tenacious resistance did not make voluntary the complainants' submission to the criminal acts of the accused (*People v. Velasquez*, 377 SCRA 214, 2002). The complainants' affidavits indicate that the accused helped one another in committing the acts complained of. Considering that the attackers were not strangers but their trusted classmates who enticed them to go to the house where they were molested, the complainants cannot be expected to react forcefully or violently in protecting themselves from the unexpected turn of events. Considering also that both complainants were fifteen (15) years of age and considered children under our laws, the ruling of the Supreme Court in *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004 becomes very relevant. The Supreme Court ruled as follows:

Rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation. It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances. The range of emotions shown by rape victim is yet to be captured even by calculus. It is, thus, unrealistic to expect uniform reactions from rape victims (*People v. Malones*, G.R. Nos. 124388-90, March 11, 2004).

The Court finds no need to discuss in detail the alleged actuations of the complainants after the alleged rapes and acts of lasciviousness. The alleged actuations are evidentiary in nature and should be evaluated after full blown trial on the merits. This is necessary to avoid a suspicion of prejudgment against the accused.[22]

As can be seen, the body of the assailed Order not only plainly stated that the court found probable cause against the petitioners, but likewise provided an adequate discussion of the reasons for such finding. Indeed, the general rule is that where there is a conflict between the dispositive portion or the *fallo* and the body of the decision, the *fallo* controls. However, where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail.[23]

In sum, petitioners' resort to a Petition for Mandamus to compel the trial judge to grant their Motion to Withdraw Informations is improper. While mandamus is available to compel action on matters involving judgment and discretion when refused, it is never available to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either.[24] The trial court, when confronted with a Motion to Withdraw an Information on the ground of lack of probable cause, is not bound by the resolution of the prosecuting arm of the government, but is required to make an independent assessment of the merits of such motion, a requirement satisfied by the respondent judge in the case at bar.[25]

Finally, if only to appease petitioners who came to this Court seeking a review of the finding of probable cause by the trial court, we nevertheless carefully reviewed the records of the case. After going through the same, we find that we are in agreement with the trial court that there is indeed probable cause against the petitioners sufficient to hold them for trial. We decided to omit a detailed discussion of the merits of the case, as we are not unmindful of the undue influence that might result should this Court do so, even if such discussion is only intended to focus on the finding of probable cause.

WHEREFORE, the instant Petition for Mandamus is DISMISSED. Let the records of this case be remanded to the Regional Trial Court of Quezon City for the resumption of the proceedings therein. The Regional Trial Court is directed to act on the case with dispatch.

Atty. Procopio S. Beltran, Jr. is ORDERED to SHOW CAUSE why he should not be disciplined as a member of the Bar for his disquieting conduct as herein discussed.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio[*], Nachura, and Peralta, JJ., concur.

* Per Special Order No. 568, dated 12 February 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave under the Court's Wellness Program.

[1] The real name of the alleged victim is withheld per Republic Act No. 7610 and Republic Act No. 9262, as held in *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[2] *Rollo*, pp. 346-347.

[3] Section 3, Rule 65, Rules of Court.

[4] *Akbayan-Youth v. Commission on Elections*, 407 Phil. 619, 646 (2001).

[5] *Angchangco v. The Honorable Ombudsman*, 335 Phil. 766, 772 (1997).

[6] *Id.* at 771-772

[7] G.R. Nos. 111771-77, 9 November 1993, 227 SCRA 627.

[8] *Id.* at 643.

[9] G.R. No. 158236, 1 September 2004, 437 SCRA 504, 514-515.

[10] G.R. No. L-53373, 30 June 1987, 151 SCRA 462.

[11] *Rollo*, pp. 369-370.

[12] G.R. No. 114302, 29 September 1995, 248 SCRA 641.

[13] *Id.* at 650-651.

[14] *Id.* at 651.

[15] *Id.* at 650.

[16] *Rollo*, p. 370.

[17] *Ledesma v. Court of Appeals*, 344 Phil. 207 (1997).

[18] *Id.* at 235-236.

[19] *Id.* at 217.

[20] *Rollo*, p. 41.

[21] *Id.* at 13.

[22] *Id.* at 40-41.

[23] *Olac v. Court of Appeals*, G.R. No. 84256, 2 September 1992, 213 SCRA 321, 328; *Aguirre v. Aguirre*, 157 Phil. 449, 455 (1974); *Magdalena Estate, Inc. v. Hon. Calauag*, 120 Phil. 338, 342-343 (1964).

[24] *Angchangco v. The Honorable Ombudsman*, *supra* note 5 at 771-772.

[25] Ledesma v. Court of Appeals, supra note 17 at 235-236.

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