

**TOMASA VDA. DE JACOB, PETITIONER, VS. HON. RICARDO C. PUNO,
IN HIS CAPACITY AS MINISTER OF JUSTICE; AND JORGE
CENTENERA, TEODORO ALARCON, PABLO PAQUEO, JR., AMELIA
LAMIT, ALFRED...**

G.R. Nos. 61554-55. July 31, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

The question raised in the petition is whether respondent Minister of Justice committed grave abuse of discretion in directing the Provincial Fiscal of Camarines Sur "to desist from filing in court the corresponding informations against respondents based on your resolution, or to move for their dismissal if they have already been filed, and to thereafter dismiss the twin complaints filed in your office under I.S. Nos. 1162 and 1163, reporting the action you have taken on this directive within ten days from receipt hereof." (p. 35, Rollo)

The facts of this case are as follows:

Herein petitioner, Tomasa Vda. de Jacob, filed with the Office of the Provincial Fiscal of Camarines Sur two (2) criminal complaints for falsification of public documents which purport to have been executed by her deceased husband, Dr. Alfredo E. Jacob, to wit:

"(1) A Deed of Absolute Sale dated December 2, 1977 over a parcel of residential land situated in the Poblacion, Municipality of Tigaon, Province of Camarines Sur, in favor of Jorge M. Centenera. This deed was ratified on the same date before Notary Public Teodoro Alarcon and had for instrumental witnesses Pablo Paqueo, Jr. and Amelia Lamit. This is the subject of I.S. No. 1162.

"(2) A Deed of Absolute Sale dated October 20, 1976 conveying ownership of 454,987 square meters of agricultural land situated at Barrio Mabalodbalod, Municipality of Tigaon, Province of Camarines Sur to Dr. Daniel Mercado and Dr. Alfredo V. Silva. This deed was ratified on October 25, 1976 before Notary Public Jose Cea and had as instrumental witnesses, Miguel Moll and Olympio Clapis. While this deed is the only one involved in I.S. No. 1163, records show that sometime there-after, on January 24, 1977, Dr. Jacob appears to have executed another deed of sale covering the same parcel of land to Daniel Mercado only. This deed was ratified on the same date before the same Notary Public, Jose Cea." (pp. 32-33, Rollo)

In charging herein private respondents, namely: Jorge Centenera, Teodoro Alarcon, Pablo Paqueo, Jr., Amelia Lamit, Alfredo Silva, Jose Cea, Miguel Moll and Olympio Clapis, with falsification of public documents, petitioner Tomasa Vda. de Jacob who, since January 16, 1979, had been the court-appointed guardian of the then incompetent Dr. Alfredo Jacob, claims that respondents connived and confederated with each other in falsifying the two deeds of absolute sale afore-mentioned by making it appear therein that her husband participated in the execution thereof as seller when in truth and in fact he never did so participate in any manner as he was already seriously ill and practically bed ridden on October 20, 1976 and December 2, 1977 when the said documents appeared to have been executed.

After preliminary investigation, Assistant Provincial Fiscal Ceferino P. Goce, on May 15, 1979, issued separate resolutions in I.S. Nos. 1162 and 1163 recommending the filing in court of the corresponding informations "for falsification of public documents by private individuals as defined and punished under Article 171, par. 2 in relation to Article 172, par. 1 of the Revised Penal Code x x x." (p. 46, Rollo)

The private respondents appealed the aforementioned resolutions to the respondent Minister of Justice, who, on April 15, 1981, directed the Provincial Fiscal to desist from filing in court the corresponding informations against the respondents. Reasons for this directive are -

"While the three medical certificates submitted in evidence tend to indicate that Dr. Alfredo Jacob underwent medical treatment since 1975 for arteriosclerosis and Parkinson's disease, these could not be considered weighty enough to give credence to the claim that Dr. Jacob could not have been at Camarines Sur on December 2, 1977 to execute the Deed of Absolute Sale involved in I.S. No. 1162. There is no showing that he was no longer ambulatory and mobile while undergoing treatment.

"In this regard, it will be noted that the descriptive portion of the Medical Certificate issued by Dr. Rodolfo Talag indicating the weak physical condition of the patient and the uncoordinated movements of his legs has reference to the physical condition of Dr. Jacob at the time of examination immediately prior to the issuance of the medical certificate on March 18, 1978. This observation is amply fortified by the suggestion in the medical certificate that the patient undergo immediate hospitalization. It in no way reflects the patient's state of health on December 2, 1977 when he executed one of the Deeds of Absolute Sale in question.

"Also, there is nothing in the medical certificates issued by three different doctors that would suggest that Dr. Alfredo Jacob could not have been in Camarines Sur on October 20 when he executed the Deed of Absolute Sale subject matter of I.S. No. 1163. The medical certificates do not indicate that he was confined or was under treatment from May 31, 1976 when he was discharged from the hospital after a cardio-vascular clearance to the date when the deed of October 20, 1976 was executed.

"Moreover, the categorical declarations of the instrumental witnesses and Notary Public Teodoro Alarcon who respectively participated in the execution of the deeds in question, to the effect that Dr. Jacob actually and personally executed the Deed of Absolute Sale referred to cannot simply be overcome by the aforementioned medical certificates, most especially in the absence of corroborating evidence tending to show in definite and precise terms that Dr. Jacob was actually not in Camarines Sur on the dates of the execution of the deeds in question. Complainant herself could not qualify to assert this fact considering that on the dates of the execution of the said documents she was not yet married to Dr. Jacob.

"Besides, even without the aforementioned declarations of the instrumental witnesses and notary public, the medical certificates, standing alone, which raise merely assumptions cannot destroy the presumption of regularity in the execution of documents.

"In their totality, we are of the opinion that the evidence on hand cannot sustain a prima facie case of falsification of public documents against respondents in both cases." (pp. 33-34, Rollo)

The first and second motions for reconsideration of the aforementioned order of respondent Minister of Justice were denied. Hence, this appeal by certiorari, petitioner arguing that respondent Minister "has transcended his authority to merely determine the existence of a prima facie case in pursuance of P.D. No. 911 and in so doing arrogated to himself the prerogatives or power vested in the courts." (pp. 28-29, Rollo)

It is apparent from the facts above-stated that certiorari does not lie.

The power of supervision and control by the Minister of Justice over the fiscals cannot be denied. As stated in *Noblejas vs. Salas*, 67 SCRA 47, "Section 79(c) of the Revised Administrative Code defines the extent of a department secretary's power. The power of control therein contemplated 'means (the power of the department

head) to alter, modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.' 'The power of control ... implies the right of the President (and, naturally, of his alter ego) to interfere in the exercise of such discretion as may be vested by law in the officers of the national government, as well as to act in lieu of such officers.'" For, while it is the duty of the fiscal to prosecute persons who, according to evidence received from the complainant, are shown to be guilty of a crime, the Minister of Justice is likewise bound by his oath of office to protect innocent persons from groundless, false or serious prosecution. He would be committing a serious dereliction of duty if he orders or sanctions the filing of an information based upon a complaint where he is not convinced that the evidence would warrant the filing of the action in court. As he has the power of supervision and control over prosecuting officers, the Minister of Justice has the ultimate power to decide which as between conflicting theories of the complainant and the respondents should be believed. "It should be realized that when a man is haled to court on a criminal charge, it brings in its wake problems not only for the accused but for his family as well. Therefore, it behooves a prosecutor to weigh the evidence carefully and to deliberate thereon to determine the existence of prima facie case before filing the information in Court. Anything less would be a dereliction of duty (Bernardo vs. Mendoza, 90 SCRA 214)."

The remedy of complainant in a case where the Minister of Justice would not allow the filing of a criminal complaint against an accused because it is his opinion that the evidence is not sufficient to sustain an information for the complaint with which the respondents are charged of, is to file a civil action as indicated in Article 35 of the Civil Code, which provides:

"Art. 35. When a person, claiming to be injured by a criminal offense, charges another with the same, for which no independent civil action is granted in this Code or any special law, but the justice of the peace finds no reasonable grounds to believe that a crime has been committed, or the prosecuting attorney refuses or fails to institute criminal proceedings, the complainant may bring a civil action for damages against the alleged offender. Such civil action may be supported by a preponderance of evidence. Upon the defendant's motion, the court may require the plaintiff to file a bond to indemnify the defendant in case the complaint should be found to be malicious.

"If during the pendency of the civil action, an information should be presented by the prosecuting attorney, the civil action shall be suspended until the termination of the criminal proceedings."

Further, Presidential Decree No. 911 specifically provides:

" x x x Provided, Finally, That where the resolution of the Provincial or City Fiscal or the Chief State Prosecutor is, upon review, reversed by the Secretary (now Minister) of Justice, the latter may, where he finds that no prima facie case exists, authorize and direct the investigating fiscal concerned or any other fiscal or state prosecutor to cause or move for the dismissal of the case, or, where he finds a prima facie case, to cause the filing of an information in court against the respondent, based on the same sworn statement or evidence submitted, without the necessity of conducting another preliminary investigation."

ACCORDINGLY, the petition is DENIED for lack of merit. SO ORDERED.

Fernando, C.J., Aquino, Concepcion, Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Teehankee, J., reserves his vote.

Makasiar, J., in the result.

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