

## **SECOND DIVISION**

**[ G.R. No. 130399, September 20, 2001 ]**

**PUBLIC UTILITIES DEPARTMENT, OLONGAPO CITY, PETITIONER,  
VS. HON. TEOFISTO T. GUINGONA, JR., SECRETARY OF THE  
DEPARTMENT OF JUSTICE, AND CONRADO L. TIU,  
RESPONDENTS.**

### **D E C I S I O N**

**BUENA, J.:**

This is a petition for review of the Decision of the Court of Appeals<sup>[1]</sup> promulgated on August 22, 1997 in CA-G.R. SP No. 39689, which affirmed the Resolution dated November 6, 1995 of respondent Secretary of Justice Teofisto Guingona which directed the Acting City Prosecutor of Olongapo City to "move for the withdrawal of the informations against the respondent for theft of electricity in relation to P.D. 401, if the same were already filed in court, xxx."

The antecedent facts of the case are undisputed:

Private respondent Conrado L. Tiu is the owner and manager of Conti's Plaza, a supermarket located at Rizal Avenue corner 21<sup>st</sup> Street, Olongapo City, and another establishment located at No. 46 Fendler Street, East Tapinac, Olongapo City. The electric power consumption of private respondent is supplied by petitioner Public Utilities Department.

Petitioner claimed that pursuant to its Power Loss Reduction Program, implemented with the assistance of Meralco, a digital recording ammeter, or load logger, was installed on November 25, 1992 at the primary line of Conti's Plaza to monitor its actual power utilization. It was later discovered that the KWH electric meter of Conti's Plaza failed to register the actual amount of its power consumption. The power loss to petitioner was computed at 86.08%. For the purpose of pinpointing the source of the power loss, private respondent was informed by petitioner that the KWH electric meter, current transformers and metering facilities of Conti's Plaza would be inspected.

The inspection was done on March 3, 1993 in the presence of private respondent Tiu's operations manager and lawyer. Meralco meter test crew checked the two (2) current transformers installed outside of Conti's Plaza using state-of-the-art phase angle test apparatus. The test showed that the polarity markings on the terminals of one of the two (2) current transformers were reversed or interchanged. This would counter-act the current of the other transformer. Consequently, the effective registration of the KWH electric meter of Conti's Plaza was only 10.71% with the corresponding power loss to the herein petitioner of 89.29%. When corrections were made, the KWH electric meter reflected the correct amount of electric consumption at Conti's Plaza. The unregistered consumption at Conti's Plaza for the billing period

from November 8, 1988 until February, 1993, was pegged and valued in the amount of P9,364,267.00. Despite repeated demands to pay the said amount, respondent Tiu failed and refused to pay the same.

On March 17, 1993, the KWH electric meter installed at respondent Tiu's building located at No. 46 Fendler Street, East Tapinac, Olongapo City, was found to register 0-0 consumption. After a thorough inspection, it was discovered that the potential link of the KWH meter installed at the second floor of the said building was disengaged. The KWH meter thus did not register any consumption.

Subsequently, petitioner filed a complaint for violation of City Ordinance No. 23, Series of 1989, and of Presidential Decree No. 401 for theft of electricity against private respondent.

After preliminary investigation, the office of the State Prosecutor dismissed the complaint.

On appeal, then Acting Secretary of the Department of Justice Demetrio Demetria concurred with the office of the State Prosecutor's findings that the violation of City Ordinance No. 23 had prescribed but found sufficient evidence to hold private respondent liable for theft of electricity.<sup>[2]</sup> Upon private respondent's filing of a motion for reconsideration, respondent Secretary of Justice reversed<sup>[3]</sup> the said ruling and directed the withdrawal of the information against private respondent for theft of electricity. This prompted petitioner to file a petition for certiorari with the Court of Appeals.

On August 22, 1997, the Court of Appeals promulgated its decision dismissing the petition for lack of merit. Hence, the present petition.

The only issue in this case is whether or not the Court of Appeals erred in ruling that the respondent Secretary of Justice did not commit grave abuse of discretion in issuing the Resolution of November 6, 1995.

Petitioner alleges that the Court of Appeals committed grave and serious reversible error in dismissing the petition for certiorari since the petitioner has established a *prima facie* case to prosecute private respondent for two (2) counts of theft of electricity.

Petitioner argues that the purpose of a preliminary investigation is not to determine whether the accused is guilty beyond reasonable doubt of the crime charged, but merely whether there existed a probable cause for his prosecution, i.e., whether there is sufficient ground to engender a well-founded belief that a crime has been committed; that the respondent is probably guilty thereof and should be held for trial. Petitioner submits that it is sufficient to adduce evidence which inclines the mind to believe, without necessarily leaving room for doubt, that the accused is guilty of a crime and should be held for trial.

In support of its petition, petitioner cites then Acting Secretary of Justice Demetrio G. Demetria's resolution, to wit:

"Assuming there is no direct proof that respondent caused the tampering of the electric meters either by disengaging the polarity thereof or

causing the unauthorized electrical connections, there is ample circumstantial evidence to prove his culpability. Thus, 'circumstantial evidence is sufficient for conviction if: (a) there is more than one circumstance; (b) the facts from which the inference are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.' (Section 5, Rule 133, Revised Rules of Court).

"The following circumstances have been shown, to wit:

"In I.S. No. 339 -

"1. That respondent provided the required electric meters and current transformers (CTs) installed at his business premises;

"2. That complainant's installation crew simply followed the standard metering principle in connecting the current transformers to the KWH meter as respondent's technicians prepared all electrical connections;

"3. That it was discovered by the MERALCO meter test crew that the two CTs had their polarity markings tampered, resulting in that the tampered marking of the polarity of the CTs led to a wrong connection of the KWH meter which, consequently, registered a 10.71% electric consumption only, with a power loss of 89.29% to complainant;

"4. That after the wiring connection was reversed, the rotation pace of the meter increased to almost 675%;

"In I.S. No. 506, aside from the first and second circumstances above-mentioned, additional circumstances were also noted, thus:

"1. That when inspected by complainant's team, meter No. 26439328 reflected zero consumption;

"2. That the potential link in the said electric meter at the second floor was disengaged resulting in the meter not registering any electric consumption;

"3. That respondent transferred the load of his appliances and equipment from the first floor of the building to the second floor where the tampered meter is located;

"4. That when complainant's team disconnected the loadside of the meter, a spark was produced, indicating that there were loads attached to the tampered meter;

"5. That an inventory of the electrical connections to the tampered meter revealed that respondent installed electrical connections without the consent of complainant, the electrical consumption of the connections thereby not being reflected in the tampered meter.