FIRST DIVISION

[G.R. Nos. 217592-93, July 13, 2020]

BENITO T. KEH AND GAUDENCIO S. QUIBALLO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

PERALTA, C.J.:

Petitioners Benito T. Keh and Gaudencio S. Quiballo assail the April 28, 2014 Decision[1] and the March 23, 2015 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 116798[3] and CA-G.R. CR No. 34411.[4] The assailed decision affirmed the August 25, 2011 Order[5] of the Regional Trial Court *(RTC)* of Valenzuela City, Branch 269, which directed to quash the subject criminal information. As the consequent dismissal is without prejudice, this petition for review on *certiorari*[6] now seeks the penultimate dismissal of the underlying criminal case – one for violation of Section 74, in relation to Section 144, of the Corporation Code.

Petitioners Keh and Quiballo, respectively the chairman/president and the corporate secretary of Ferrotech Steel Corporation, were charged before the Office of the City Prosecutor *(OCP)* of Valenzuela City with violation of Section 74, in relation to Section 144, of the Corporation Code, allegedly for their unjustified refusal to open the corporate books and records to one of their stockholders, Ireneo C. Qudon.[7] The OCP found probable cause, and resolved[8] to file the Information[9] before the RTC of Valenzuela City.

Petitioners filed a motion for reconsideration[10] of the OCP Resolution and, on that ground, filed a motion before the trial court for deferment of arraignment, suspension of proceedings, and quashal of the information; they likewise pleaded the trial court to make its own determination of probable cause. The trial court denied this motion in its June 15, 2010 Order,[11] and set petitioners for arraignment instead.

Before they could be arraigned, petitioners filed Omnibus Motions[12] for inhibition of the presiding judge and for reconsideration of the June 15, 2010 Order on the ground that the information did not contain all the elements of the charge. Partially acting on the motion, the presiding judge voluntarily recused himself from the proceedings. The case was then raffled to Branch 269[13] which, in its November 9, 2010 Order,[14] denied the reconsideration sought on the ground that the proffered arguments related to evidentiary matters which ought to be brought to trial. As to the determination of probable cause, the trial court rightly declared that the trial court judge does determine probable cause but only with respect to the propriety of issuing a warrant of a rest.[15]

As the trial court declined to suspend the proceedings, to postpone the arraignment, and to quash the information and/or determine probable cause on its own, petitioners filed a Petition for *Certiorari* and *Mandamus* before the Court of Appeals against the June 15, 2010 and November 9, 2010 Orders. This petition was docketed as CA-G.R. SP No. 116798.[16]

Petitioners were arraigned and tried in the interim. The prosecution formally offered its evidence after having presented the principal complainant and sole witness, Ireneo Quizon, who openly professed the denial by petitioners of access to the corporate books despite his two written demands.[17]

Petitioners then filed Omnibus Motions *Ex Abundante Ad Cautelam* and Demmurer to Evidence,[18] still insisting on the quashal of the supposed defective Information, as well as on the dismissal of the case on improper venue and insufficiency of evidence. Agreeing with petitioners this time, the trial court, in its August 25, 2011 Order,[19] directed the quashal of the information for being defective. Accordingly, it dismissed the criminal case without prejudice as follows:

> WHEREFORE, the motion to quash the Information is hereby GRANTED. Accordingly, the instant case is hereby DISMISSED without prejudice.
>
> SO ORDERED.[20]

Still feeling aggrieved, petitioners appealed to the Court of Appeals and bid for a dismissal with prejudice on the ground that the eventual refiling of the case would amount to double jeopardy. Here, they reiterated the supposed defective and insufficient allegations contained in the information, and insisted on its quashal, as well as on the dismissal of the criminal case with prejudice. This appeal was docketed as CA-G.R. CR No. 34411.[21]

Disposing the two incidents, the Court of Appeals denied relief from petitioners in the assailed consolidated Decision as follows:

> WHEREFORE, in the light of the foregoing premises, We hereby DENY the appeal in CA-[G.R.] CR No. 34411 and DISMISS the Petition for Certiorari in CA-[G.R.] SP No. 116798.
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> SO ORDERED.[22]

In their present bid to secure the dismissal of the case with prejudice, petitioners ascribe error to the Court of Appeals in (a) upholding the dismissal of the case without prejudice; (b) holding that there was no reason for the trial court to await the resolution of the OCP of the motion for reconsideration since there was no existing motion to impede the arraignment of petitioners; (c) holding that the trial court's order to rebuff the motion to quash was a mere interlocutory order and not subject to an appeal; and (d) ruling that *certiorari* and prohibition were improper

remedies against an order denying a motion to quash.[23]

We deny the petition.

To start with, *certiorari* is ordinarily not a viable remedy for the denial of a motion to quash a criminal information.[24] Be that as it may, the pending petition for *certiorari* and *mandamus* in CA-G.R. SP No. 116798 has been mooted when the trial court eventually quashed the information which, in turn, gave rise to the petition in CA-G.R. CR No. 34411. The Court notes that the propriety of the action of the trial court in quashing the information is the lynchpin that will put to rest petitioners' present recourse. As the Court undertakes to bring such resolve, we declare the quashal of the information and the consequent dismissal of the case without prejudice to be out of order.

The underlying prosecution is for the alleged violation of Section 74[25] of the Corporation Code, in relation to Section 144[26] thereof. Collectively, these provisions create the duty on the part of the corporation to keep and preserve a record of all business transactions and minutes of all meetings of stockholders, members, or the board of directors or trustees, along with the duty to make such record available to its stockholders or members upon written request therefor; a violation of these duties invites criminal prosecution against the erring officers to allow the eventual application of the prescribed penalties.

Jurisprudence cites the elements of the subject offense as follows:

> First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes;
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> Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts;
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> Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and,
>
> Fourth. Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information seemed through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.[27]

Meanwhile, the criminal information filed by the OCP with the trial court alleged that

petitioners –

> being the Chairman/President and Corporate Secretary of Ferrotech Steel Corporation xxx, conspiring together and mutually helping one another, did then and there wil[l]fully, unlawfully and feloniously refuse, without showing any justifiable cause[,] to open to inspection to IRENEO C. QUIZON, a stockholder of said corporation[,] the [corporate] books and records of said corporation.[28]

In its August 25, 2011 Order, the trial court perceived the above allegations to be insufficient to support the charge for which petitioners have thus far been prosecuted. It note the absence in the subject indictment of the first and fourth elements of the offense, and held the same to be a fatal defect that inevitably should void the criminal information.[29] This pronouncement was validated in the assailed April 28, 2014 Decision of the Court of Appeals, where the appellate court went on to say that the information was not merely defective, but rather, it did not charge any offense at all.[30] We differ.

It is, indeed, fundamental that for purposes of a valid indictment, every element of which the offense is composed must be alleged in the information.[31] Be that as it may the criminal information is not meant to contain a detailed resumé of the elements of the charge in verbatim. Section 6,[32] Rule 110 of the Revised Rule of Court only requires, among others, that it must state the acts or omissions so complained of as constitutive of the offense. Thus, the fundamental test in determining the sufficiency of the material averments in an information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential element of the crime defined by law. Evidence *aliunde* or matters extrinsic of the information are not be considered.[33]

Scrutinizing the subject information, the Court finds the allegations therein to be sufficient to propel a prosecution for the crime defined and punished under Section 74, in relation to Section 144, of the Corporation Code. *First*, that the first element of the offense is missing on its face is belied by the specific employment of the phrase "refuse, without showing any justifiable cause[,] to open to inspection x x x the corporate books and records," which reasonably implies that a prior request for access to information has been made upon petitioners. To be sure, refusal is understood quite simply as the act of refusing or denying; a rejection of something demanded, solicited, or offered for acceptance.[34] In some case, refusal is meant as a neglect to perform a duty which the party is required by law or his agreement to do.[35]

Second, that the information, in order to validly charge petitioners, should have alleged as well the fourth element of the offense is, to our mind, an undue exaction on the prosecutor to include extraneous matters that must be properly addressed during the trial proper. The fourth element of the offense unmistakably pertains to a matter of defense – specifically, a justifying circumstance – that must be pleaded by petitioners at the trial in open court rather than at the indictment stage. Thus, as a justifying circumstance which could potentially exonerate the accused from liability,