

## THIRD DIVISION

[ G.R. No. 206958, November 08, 2017 ]

**PERSONAL COLLECTION DIRECT SELLING, INC., PETITIONER,  
VS. TERESITA L. CARANDANG, RESPONDENT.**

### DECISION

**LEONEN, J.:**

Judges must act with cautious discernment and faithfully exercise their judicial discretion when dismissing cases for lack of probable cause. An order granting the withdrawal of an information based on the prosecutor's findings of lack of probable cause must show that the judge did not rely solely on the prosecution's conclusions but had independently evaluated the evidence on record and the merits of the case.

This is a Petition for Review on Certiorari<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the November 7, 2012 Decision<sup>[2]</sup> and April 22, 2013 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. SP No. 122696. The Decision dismissed Personal Collection Direct Selling, Inc.'s (Personal Collection) Petition for Certiorari,<sup>[4]</sup> which alleged that Branch 221, Regional Trial Court, Quezon City acted with grave abuse of discretion in granting the Motion to Withdraw Information filed by the prosecutor in Criminal Case No. Q-07-148858 entitled *People of the Philippines v. Teresita L. Carandang*.<sup>[5]</sup> Teresita L. Carandang (Carandang) was charged with committing estafa with unfaithfulness and/or abuse of confidence under Article 315 paragraph 1(b) of the Revised Penal Code.<sup>[6]</sup> Personal Collection was the private offended party.<sup>[7]</sup>

On March 30, 2007, Personal Collection filed a Complaint-Affidavit<sup>[8]</sup> for estafa with unfaithfulness and/or abuse of confidence against Carandang before the Office of the City Prosecutor of Quezon City. After the preliminary investigation, Assistant City Prosecutor Job M. Mangente filed an Information against Carandang before the Regional Trial Court of Quezon City:

The undersigned accuses TERESITA L. CARANDANG of the crime of ESTAFA under Art. 315 par. 1(b) of the Revised Penal Code committed as follows:

That on or about the period from July 11, 2005 up to August 30, 2006 in Quezon City, Philippines, the aid accused, did then and there, willfully, unlawfully and feloniously defraud Personal Collection Direct Selling, Inc. herein represented by Marilou Palarca, in the manner as follows[:] said accused who was then an employee of said private complainant company received in trust, cash advances in the total amount of P161,902.80, Philippine currency as company expenses for various projects under the obligation to liquidate the proceeds thereof or return the same if not

used, but said accused once in possession of the said amount far from complying with her obligation as aforesaid, with intent to defraud, unfaithfulness and grave abuse of confidence, failed and refused and still fail and refuse to fulfill her obligation despite repeated demands made upon her to do so and instead misapplied, misappropriated and converted the same to her own personal use and benefit, to the damage and prejudice of the said offended party in the aforesaid amount.

CONTRARY TO LAW.<sup>[9]</sup>

The case was docketed as Criminal Case No. Q-07-148858. On September 20, 2007, Presiding Judge Jocelyn A. Solis-Reyes of Branch 221, Regional Trial Court, Quezon City ordered that an arrest warrant be issued against Carandang:

After an evaluation of the Resolution and the documents attached thereto, the Court believes that a *prima facie* evidence exists to support the charge and the accused is probably guilty thereof.

WHEREFORE, let a Warrant of Arrest be issued against the accused.<sup>[10]</sup>

On July 10, 2009, Carandang filed a Motion for Reinvestigation,<sup>[11]</sup> alleging that she did not appear during the preliminary investigation because she did not receive any subpoena from the Office of the City Prosecutor. She moved for the reinvestigation of Personal Collection's complaint to not deprive her of due process.

Personal Collection filed its Opposition [To: Motion for Reinvestigation Dated 01 July 2009],<sup>[12]</sup> arguing that Carandang was not deprived of due process during the preliminary investigation and that the Regional Trial Court found that there was *prima facie* evidence to support the case. Carandang filed a Manifestation and Motion to Admit Reply (To Opposition to the Motion for Reinvestigation Dated 01 July 2009),<sup>[13]</sup> arguing that her motion was meritorious and not filed to delay the case. The Regional Trial Court granted Carandang's Motion for Reinvestigation in its Order dated August 14, 2009.<sup>[14]</sup>

Carandang filed her Counter Affidavit<sup>[15]</sup> before the Office of the City Prosecutor, claiming that her failure to completely liquidate the cash advances was due to the sudden termination of her employment by Personal Collection. She also claimed that she did not receive any demand letter or any offer from Personal Collection to settle the case. Personal Collection, through its representative Marilou S. Palarca, filed its Reply Affidavit,<sup>[16]</sup> pointing out that Carandang admitted to receiving the cash advances and failing to liquidate the proceeds. It also argued that it had demanded Carandang to return the cash advances or liquidate their proceeds and that prior demand was unnecessary since she admitted that he had received these cash advances. Personal Collection also filed its Compliance,<sup>[17]</sup> claiming that the cash advances to Carandang were not in the form of a contract of simple loan.

On January 29, 2010, the Office of the City Prosecutor, through State Prosecutor Liezel Aquiatan-Morales (Prosecutor Aquiatan-Morales), issued a Resolution<sup>[18]</sup> recommending that the complaint against Carandang be dismissed. After reinvestigation, it found that Personal Collection's cause of action is anchored

primarily on Carandang's failure to liquidate her remaining cash advances.<sup>[19]</sup> However, the Office of the City Prosecutor was unconvinced that Carandang's failure to return the cash advances would be sufficient to hold her liable for estafa. There would be no estafa to speak of so long as there is no demand to return the money under obligation to be returned. The element of demand not being present, the earlier finding that there was probable cause to charge Carandang with estafa was overturned. Carandang's acts could only be a subject of a civil action for sum of money.<sup>[20]</sup>

On June 15, 2010, Prosecutor Aquiatan-Morales filed a Motion to Withdraw Information<sup>[21]</sup> with the Regional Trial Court, stating that the Office of the City Prosecutor found that there was lack of probable cause to hold Carandang liable for estafa. Personal Collection filed its Opposition [To: Motion To Withdraw Information Dated 29 January 2010],<sup>[22]</sup> arguing that demand is not an element of estafa, such that its lack would warrant the withdrawal of the Information. Carandang filed her Reply (Private Complainant's Opposition),<sup>[23]</sup> arguing that the Office of the City Prosecutor has control of the proceedings in a criminal case and that the private offended party or private prosecutor has no right to question its actions and authority.<sup>[24]</sup>

On November 19, 2010, the Regional Trial Court issued an Order<sup>[25]</sup> granting the Motion to Withdraw Information. It found that Carandang used the cash advances to pay for the operational expenses of Personal Collection Iloilo City branch and that her unceremonious termination from employment prevented her from fully liquidating these cash advances,<sup>[26]</sup> Thus, Carandang was able to explain her failure to account for the cash advances she had received in trust. The trial court also noted the general policy of the courts to not interfere in the conduct of preliminary investigations and to give the investigating officers sufficient discretion to determine probable cause, It found that no exception existed in the case that would require the court to intervene in the findings of the preliminary investigation.<sup>[27]</sup> Personal Collection's Motion for Reconsideration<sup>[28]</sup> was denied by the Regional Trial Court in its Order<sup>[29]</sup> dated October 12, 2011. Upon Carandang's motion, the Regional Trial Court, in its Order<sup>[30]</sup> dated November 16, 2011, released the cash bond posted for Carandang's bail.

Personal Collection filed a Petition for Certiorari<sup>[31]</sup> with the Court of Appeals, arguing that the Regional Trial Court acted with grave abuse of discretion when it issued the Orders granting the Motion to Withdraw Information and the Motion to Release Bond. It argued that the trial court failed to make its own evaluation of the merits of the case and only relied on Prosecutor Aquiatan-Morales' recommendation that there was no probable cause to charge Carandang with estafa.<sup>[32]</sup> It alleged that the trial court had already found that there was probable cause to sustain the complaint in its Order dated September 20, 2007, in which a warrant of arrest was issued against Carandang.<sup>[33]</sup>

Moreover, Carandang already admitted in her reply-affidavit that she had received the funds in trust but still had not liquidated the balance. Contrary to the public prosecutor's resolution, all of the elements of estafa were present.<sup>[34]</sup> Personal Collection also alleged that it was deprived of due process when the Regional Trial

Court granted Carandang's Motion to Release Cash Bond, even though Personal Collection did not receive a copy of this motion.<sup>[35]</sup>

On November 7, 2012 the Court of Appeals issued its Decision,<sup>[36]</sup> dismissing the Petition for Certiorari for lack of merit. It found that the Regional Trial Court conducted an independent assessment of the facts of the case, basing its order to withdraw the Information on the pleadings filed by the parties.<sup>[37]</sup> Further, the trial court's determination of probable cause for purposes of preliminary investigation was separate from the probable cause for the issuance of an arrest warrant. In issuing the warrant of arrest against Carandang, the trial court only evaluated the evidence furnished by Personal Collection.<sup>[38]</sup> In contrast, by the time the trial court was deciding whether to permit the withdrawal of the Information or not, Carandang had filed her counter-affidavit and subsequent pleadings.

The Court of Appeals also found that Personal Collection was not deprived of the opportunity to oppose Carandang's Motion to Release Cash Bond. Under Rule 110, Section 16 of the Rules of Court, the accused's bail bond shall be automatically cancelled when the accused was acquitted, the case dismissed, or the judgment of conviction executed.<sup>[39]</sup>

Finally, the Court of Appeals pointed out that the private offended party's interest in a criminal case was limited to its civil aspect. It found that the Petition for Certiorari already involved matters beyond the civil aspect of the estafa case against Carandang. In praying for the annulment of the trial court Orders, Personal Collection was asking for the reinstatement of the criminal case, which only the State, through the Office of the Solicitor General, could do.<sup>[40]</sup>

The Court of Appeals denied Personal Collection's Motion for Reconsideration<sup>[41]</sup> in its Resolution dated April 22, 2013.<sup>[42]</sup>

On June 17, 2013, Personal Collection filed its Petition for Review on Certiorari before this Court. It argues that the Regional Trial Court gravely abused its discretion when it reversed and set aside its earlier finding of probable cause, despite Carandang's express admissions, showing that all elements of the crime of estafa were present.<sup>[43]</sup> It claims that the trial court merely adopted the Resolution of Prosecutor Aquitan-Morales and did not make any independent determination of probable cause.<sup>[44]</sup> Moreover, the basis of Prosecutor Aquitan-Morales' finding that Carandang was willing to fully liquidate her cash advance was Carandang's unsubstantiated and self-serving statements.<sup>[45]</sup>

As regards the grant of the motion to release cash bond, Personal Collection claims that the motion violated Rule 15, Sections 2, 5, and 6 of the Rules of Court, which require that motions be in writing, be set for hearing, and contain proof of service.<sup>[46]</sup> It points out that the trial court did not deny that Personal Collection was not given notice or an opportunity to appear in the hearing on the motion. This was tantamount to a deprivation of due process of law.<sup>[47]</sup>

Finally, Personal Collection argues that the Court of Appeals incorrectly ruled that a private complainant in a criminal suit may file a special civil action for *certiorari* only

in a limited capacity.<sup>[48]</sup> It claims that the Court of Appeals erroneously relied on *Rodriguez v. Gadiane* because this case stated that there was no limitation to the capacity of a private complainant to seek judicial review of assailed orders.<sup>[49]</sup> Here, Personal Collection avers that the Regional Trial Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction. It also contends that its Petition for Review is not an appeal assailing an order dismissing the case, or acquitting the accused, or involving the merits of the case.<sup>[50]</sup> It holds that its interest in the civil aspect of the case is the basis of its standing to file its Petition for Review.<sup>[51]</sup>

On September 2, 2013, this Court issued a Resolution<sup>[52]</sup> requiring Carandang to comment on the Petition for Review.

On November 5, 2013, Carandang tiled her Comment,<sup>[53]</sup> arguing that the Regional Trial Court did not abuse its discretion in granting the Motion to Withdraw Information. She points out that the ruling of the trial court granting the withdrawal was not irregular.<sup>[54]</sup> She also argues that her Motion to Release Cash Bond was granted after notice and hearing. Finally, she claims that in criminal cases, the party in interest is the State and that the private offended party is only a witness for the State. Thus, the Petition for Review should be dismissed for lack of merit.<sup>[55]</sup>

On March 17, 2014, Personal Collection filed its Reply [Re: Comment dated 04 November 2013].<sup>[56]</sup> It argues that the Regional Trial Court did not make its own independent evaluation of the evidence of the case when it granted the Motion to Withdraw Information. In merely relying on the prosecutor's recommendation, the trial court disregarded its prior finding of probable cause and failed to consider that all of the elements of estafa were present.<sup>[57]</sup> It also claims that it became aware of the Motion to Release Cash Bond only when it received the trial court October 12, 2011 Order granting this Motion.<sup>[58]</sup> On its personality to question the trial court Orders, Personal Collection argues that a private offended party may file a special civil action on jurisdictional grounds.<sup>[59]</sup>

On June 2, 2014, this Court issued a Resolution<sup>[60]</sup> noting Personal Collection's reply to Carandang's comment.

The issues to be resolved by this Court are as follows:

First, whether or not the Regional Trial Court correctly allowed the withdrawal of the Information against Teresita L. Carandang upon a finding that there was a lack of probable cause;

Second, whether or not petitioner Personal Collection Direct Selling, Inc. was deprived of due process when it was allegedly not given notice or opportunity to be heard on respondent Teresita L. Carandang's Motion to Release Cash Bond; and

Finally, whether or not the Court of Appeals correctly ruled that the Petition for Certiorari was improper, since it is only the State which may pray for the reinstatement of the criminal case.