

## SECOND DIVISION

[ G.R. No. 173844, April 11, 2012 ]

**LIGAYA P. CRUZ, PETITIONER, VS. HON. RAUL M. GONZALEZ, ETC., DEVELOPMENT BANK OF THE PHILIPPINES, AND COURT OF APPEALS. RESPONDENTS.**

### DECISION

**PEREZ, J.:**

Before us is a petition for review on certiorari<sup>[1]</sup> under Rule 45 of the Rules of Court seeking to nullify the 17 January 2006 decision of the Court of Appeals (CA) in CA-G.R. SP No. 88828. The CA decision held that petitioner failed to show grave abuse of discretion amounting to lack of or in excess of jurisdiction on the part of the Secretary of Justice in ordering the filing against the petitioner of forty (40) counts of estafa.<sup>[2]</sup>

Culled from the records are the following antecedent facts:

On 27 January 1994, Hermosa Savings and Loans Bank, Inc. (HSLBI) availed of forty (40) loans from the Development Bank of the Philippines (DBP) pursuant to a Subsidiary Loan Agreement.<sup>[3]</sup> In support of the loan agreement and applications, HSLBI, through bank officers Benjamin J. Cruz, Rodolfo C. Buenaventura, Librada Y. Dio, Nilda S. Fajardo, Lelaine V. Fernandez and Atty. Ligaya P. Cruz, herein petitioner, as its legal counsel, submitted the required documents, i.e. project evaluation reports, financial package approval, deeds of undertaking, certificates of registration, promissory notes, supplemental deeds of assignment and Investment Enterprise/sub-borrowers' consent. These documents were submitted to assure DBP that the respective Investment Enterprises were actually existing and duly registered with the government; that the subsidiary loan will be exclusively used for relending to these Investment Enterprises and for the purposes stated in the applications; and that the concerned Investment Enterprises are amenable to the assignment of debt in favor of HSLBI.

On 31 March 2001, the Bangko Sentral ng Pilipinas (BSP) conducted an examination of HSLBI's loan portfolio. The BSP found out that most of HSLBI's loan documents were either forged or inexistent. In particular, the Transfer Certificates of Title (TCTs) of properties submitted as collaterals were found to be inexistent, registered in another person's name, or already foreclosed/mortgaged to another bank. The annotations on the TCTs in favor of HSLBI were also inexistent. Likewise, the signatures of sub-borrowers/Investment Enterprises appearing on documents were all forged. Worst, the BSP discovered that the credit accounts assigned to DBP were in the names of non-existing Investment Enterprises.

Thus, on 19 December 2001, DBP filed a complaint<sup>[4]</sup> for forty (40) counts of estafa through falsification of commercial documents or for large scale fraud or violation of

Articles 315, 316(4) [as amended by Presidential Decree (P.D.) No. 1689] and 318 of the Revised Penal Code (RPC) against the aforementioned officers of HSLBI and herein petitioner Atty. Ligaya P. Cruz (Atty. Cruz).

Atty. Cruz was included in the complaint for the reason that she, as in-house legal counsel of HSLBI, rendered an opinion that all the purported Investment Enterprises were duly organized, validly existing and in good standing under Philippine laws and that they have full legal rights, power and authority to carry on their present business and for notarizing two deeds of assignment utilized as supporting documents.

In a Joint Resolution<sup>[5]</sup> dated 18 November 2002, State Prosecutors Maria Regina Tordilla-Castillo and Melvin J. Abad recommended the filing of informations for forty (40) counts of estafa under Article 315, paragraph 2(a) of the RPC in relation to P.D. 1689 against the respondent bank officers and herein petitioner.

On 11 February 2003, the respondents in the complaint, including herein petitioner, filed a petition for review<sup>[6]</sup> before the Department of Justice (DOJ) assailing the Joint Resolution.

In a Resolution<sup>[7]</sup> dated 30 April 2003, then Undersecretary of the DOJ, Ma. Merceditas N. Gutierrez, dismissed the petition for review.

On 15 May 2003, respondents filed a motion for reconsideration<sup>[8]</sup> of the dismissal of their petition.

On 3 November 2003, then DOJ Secretary Simeon A. Datumanong, issued a resolution<sup>[9]</sup> the dispositive portion of which reads:

WHEREFORE, the motion for reconsideration is GRANTED IN PART and the assailed resolution is MODIFIED accordingly. The complaint against respondent Atty. Ligaya Cruz is hereby DISMISSED for want of probable cause and the Chief State Prosecutor is hereby directed to file an information for violation of Art. 315, par. 2(a), Revised Penal Code, against respondents Benjamin Cruz, Rodolfo Buenaventura, Librada Dio, Nilda Fajardo and Lelaine Fernandez and to report the action taken hereon within ten (10) days from receipt hereof.

DBP, thereafter, filed a motion for reconsideration<sup>[10]</sup> of the 3 November 2003 resolution.

By Resolution<sup>[11]</sup> dated 27 January 2004, Acting Secretary Ma. Merceditas N. Gutierrez ordered the filing of informations for Estafa/Large Scale Fraud under Article 315, par. 2(a) of the RPC, as amended, in relation to P.D. 1689 against respondents. In the same resolution, she ordered the filing of informations against Atty. Cruz. The dispositive portion of the Resolution of 27 January 2004 reads:

WHEREFORE, the motion is hereby GRANTED. The resolution dated November 3, 2003 is hereby SET ASIDE. The Chief State Prosecutor is hereby directed to cause the reinstatement of the forty (40) Informations for estafa under Article 315, paragraph 2(a) of the Revised Penal Code, in relation to P.D. 1689 against respondents **Benjamin J. Cruz, Rodolfo C. Buenaventura, Librada Y. Dio, Nilda S. Farjardo, Lelaine V. Fernandez and Atty. Ligaya P. Cruz**, and to report to this Office the action taken within five (5) days from receipt hereof. (Emphasis in the original)<sup>[12]</sup>

Respondents and herein petitioner moved for reconsideration.<sup>[13]</sup>

In a Resolution<sup>[14]</sup> dated 4 January 2005, Secretary Raul Gonzales partially granted their motion and ordered the filing against all respondents of informations only for forty (40) counts of estafa under Article 315, par. 2(a) of the RPC and not for large scale fraud under P.D. 1689. The dispositive portion reads:

WHEREFORE, given the foregoing, the motion for reconsideration is hereby GRANTED. The Resolution dated January 27, 2004 is SET ASIDE. The Chief State Prosecutor is directed to move for the withdrawal of the forty (40) informations for violation of PD 1689, if already filed, and to file instead separate informations for violation of Art. 315, par. 2(a), RPC against respondents Cruz, et. al. Report the action taken hereon within five (5) days from receipt hereof.<sup>[15]</sup>

Undaunted, Atty. Cruz filed a petition for certiorari<sup>[16]</sup> under Rule 65 of the Rules of Court before the CA seeking to nullify and set aside the 4 January 2005 resolution of the Secretary of Justice.

On 17 January 2006, the CA rendered the assailed decision<sup>[17]</sup> dismissing the petition. Petitioner's motion for reconsideration was denied on 19 July 2006.<sup>[18]</sup>

Hence, this appeal.

Essentially, the issue before us for resolution is whether the CA erred in sustaining the Secretary of Justice in its ruling that there is probable cause to indict petitioner Atty. Cruz.

Petitioner seeks the reversal of the resolution of the Secretary of Justice for allegedly being devoid of supporting evidence. She based her argument on the alleged conflicting resolutions of the Office of the Secretary of Justice. She argues that she should not be held liable for the offense since she only signed a pro-forma opinion prepared by the DBP and merely notarized the documents submitted by HSLBI to DBP. On their face, she found no indication of any irregularity or any taint of illegality on the documents she signed.

She also claims that HSLBI was duly accredited as a participating financial institution of DBP after complying with stringent conditions imposed by the latter. Such

accreditation is allegedly reviewed and renewed annually and project visitations of the accounts of sub-borrowers of HSLBI are regularly conducted by the personnel of the DBP. Hence, if there were any questionable transactions or documents, the DBP, in the exercise of due diligence would have discovered these and taken proper actions thereon. She contends that HSLBI should not be made answerable for the failure of DBP to perform its responsibilities.

She further argues that even if she is held liable, her liability is only civil and not criminal in view of the creditor-debtor relationship between HSLBI and DBP.

The petition is bereft of merit.

Jurisprudence has established rules on the determination of probable cause. In the case of *Galario v. Office of the Ombudsman*,<sup>[19]</sup> this Court held that:

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xxx. [A] finding probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

*The term does not mean "actual and positive cause" nor does it import absolute certainty.* It is merely based on opinion and reasonable belief. x x x. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. (Italics in the original)<sup>[20]</sup>

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We affirm the CA decision in line with the principle of non-interference with the prerogative of the Secretary of Justice to review the resolutions of the public prosecutor in the determination of the existence of probable cause. For reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause for otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations.<sup>[21]</sup> In the absence of any showing that the Secretary of Justice committed manifest error, grave abuse of discretion or prejudice, courts will not disturb its findings. Moreover, this Court will decline to interfere when records show that the findings of probable cause is supported by evidence, law and jurisprudence.

In the instant case, the Secretary of Justice found sufficient evidence to indict petitioner. It was adequately established by DBP and found by the Secretary of Justice that the funds would not have been released pursuant to the subsidiary loan agreement if HSLBI had no sub-borrowers/Investment Enterprises to speak of. As it turned out, not only were the collaterals submitted inexistent, all the purported sub-borrowers/Investment Enterprises were also fictitious and inexistent. In fact, the