

THIRD DIVISION

[G.R. No. 175091, July 13, 2011]

P/CHIEF INSPECTOR FERNANDO BILLED0, SPO3 RODRIGO DOMINGO, PO3 JORGE LOPEZ, FERDINAND CRUZ, AND MARIANO CRUZ, PETITIONERS, VS. WILHELMINA WAGAN, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF BRANCH III, PASAY CITY, PUBLIC RESPONDENT. ALBERTO MINA, NILO JAY MINA AND FERDINAND CAASI, PRIVATE RESPONDENTS.

DECISION

MENDOZA, J.:

At bench is a petition for certiorari under Rule 65 as petitioners Police Chief Inspector (*PCI*) Fernando Billedo, Senior Police Officer 3 (*SPO3*) Rodrigo Domingo, Police Officer 3 (*PO3*) Jorge Lopez, Ferdinand Cruz, and Mariano Cruz (*petitioners*), allege grave abuse of discretion on the part of the Judge Wilhelmina Wagan (*public respondent*) of the Regional Trial Court, Branch 111, Pasay City (*RTC*), in issuing the Orders dated: **(1)** May 8, 2006; ^[1] **(2)** July 12, 2006, ^[2] and **(3)** August 26, 2006, ^[3] in Civil Case No. 00-0089, entitled "*Nilo Jay Mina, et al. v. Mariano Cruz, et al.*" for damages. The assailed orders denied the Motion to Dismiss filed by one of the petitioners, Ferdinand Cruz.

The Facts:

The case stemmed from the arrest of complainants Alberto Mina, Nilo Jay Mina and Ferdinand Caasi on February 27, 2000 along an alley, Interior 332, Edang Street, Pasay City, by petitioners-police officers. They were reported to have been caught *in flagrante delicto* drinking liquor in a public place. The complainants alleged that their arrest was unlawful and was only upon the inducement and unjustifiable accusation of Ferdinand Cruz and Mariano Cruz (*the Cruzes*). ^[4] Thereafter, they were charged before the Metropolitan Trial Court of Pasay City (*MeTC*) with a violation of City Ordinance No. 265 (Drinking Liquor in Public Places), which was docketed as Criminal Case No. 00-621.

On March 20, 2000, after the said incident, the complainants filed Civil Case No. 00-0089 against the petitioners for damages.

Subsequently, criminal complaints were also filed against the petitioners before the City Prosecution Office (*CPO*) and the Office of the Ombudsman (*Ombudsman*) for Unlawful Arrest and Violation of R.A. No. 7438 (Act Defining Rights of Person Under Custodial Investigation). The CPO *dismissed* the case for lack of merit while the Ombudsman, in its Joint Resolution dated October 13, 2000, ^[5] *dismissed* both complaints for lack of probable cause, but recommended the filing of 3 corresponding criminal informations for Violation of Section 3(e), R.A. No. 3019.

Thus:

WHEREFORE, premises considered, it is hereby recommended that an Information of **VIOLATION OF R.A. 3019, SEC. 3 (e)**, for three (3) counts be **FILED** in court against **SPO3 RODRIGO DOMINGO, PO3 JORGE LOPEZ, MARIANO CRUZ** and **FERDINAND CRUZ**. While the other respondents, **P/CINSP. FERNANDO BILLED** and **SPOI DANIEL OCAMPO** be **ABSOLVED** from any criminal liability for lack of sufficient evidence. Further, there being an administrative case filed before the PLEB-Pasay City against police respondents, let the said forum continue its proceedings, and that the same be considered **CLOSED** and **TERMINATED**, insofar as this Office is concerned.

SO RESOLVED.

After the criminal informations for Violation of R.A. No. 3019 were filed, the cases were remanded to the CPO for the conduct of the new preliminary investigation on motion of the accused.

On July 27, 2001, the CPO recommended the *dismissal* of the cases for lack of merit. [6] Pertinently, 2nd Assistant City Prosecutor Joselito Vibandor explained that there was no fault on the part of the Cruzes when they reported a group of individuals drinking along an alley which prompted the police officers to respond to a call of duty. The facts and circumstances surrounding their arrest were clearly spelled out in the Affidavit of Arrest of the police officers. While it may be argued that the Cruzes may have been biased, there appeared to be a semblance of truth to their report when private respondents were arrested by the police officers. Besides, the subsequent filing of the corresponding information after the inquest investigation for a violation of a city ordinance, is *per se* an imprimatur of the legality of their arrest.

After giving a careful look at the records of the case and the facts and incidents that transpired, the undersigned Ombudsman Prosecutor agrees with prosecutor Vibandor that there is doubtful merit of the offenses filed for Violation of Section 3 (e), RA 3019 against the accused. It appears that the arresting policemen have in fact filed a case for Violation of Ordinance against the three (3) complainants which was indorsed for Inquest Investigation and later filed in court. This shows that there was substantial basis, of their performance of official duty, for otherwise, it would not have passed the inquest. Hence, the presence of manifest partiality or evident bad faith is gravely questionable to warrant filing of Violation of Section 3(e), RA 3019.

PREMISES CONSIDERED, undersigned respectfully recommends for the **APPROVAL** of the instant Resolution of Atty. Vibandor and the **RECALL** of the Informations filed with the Pasay City Regional Trial Court.

Meanwhile, the complainants were found guilty by the MeTC for Violation of City Ordinance No. 265. [8] Their conviction was affirmed by the RTC, Branch 114, Pasay

City. [9] Complainants' Motion for Reconsideration was denied. [10]

Civil Case No. 00-0089, on the other hand, proceeded with the trial with the complainants presenting their first witness. Before cross-examination, Ferdinand A. Cruz, one of the petitioners, filed his Motion to Dismiss, [11] alleging therein that it is the Sandiganbayan which has jurisdiction over the civil case and not the RTC; and that conformably to Section 4 of R.A. No. 8249, [12] the complainants are barred from filing a separate and independent civil action.

Public respondent denied the motion to dismiss in her assailed May 8, 2006 Order stating, among others, that under Article 269 of the Revised Penal Code, the crime of "unlawful arrest" is punishable by *arresto mayor* and a fine not exceeding 500 pesos which, under R.A. No. 7691, falls within the jurisdiction of appropriate Metropolitan Trial Court or Municipal Trial Court, as the case may be, contrary to the movant's claim that it was the Sandiganbayan which has jurisdiction over the ancillary action for damages.

Public respondent further explained that had there been a criminal case for unlawful arrest filed before the MeTC, the civil case for damages should have been transferred to it, but, there was none. She also stated that the movant failed to attach certified copies of resolutions/orders dismissing the complaint for unlawful arrest. Thus, she could not simply rely on bare assertions or conjectures but must resolve the issues raised based on competent proof.

Petitioner Ferdinand Cruz then filed a motion for reconsideration [13] but it was denied in the assailed July 12, 2006 Order. [14] Public respondent wrote that the situation was not within the purview of Section 4 of R.A. No. 8249. The provision suggests of two (2) situations. *First*, a criminal action has been instituted before the Sandiganbayan or the appropriate courts after the requisite preliminary investigation, and the corresponding civil liability must be simultaneously instituted with it. *Second*, the civil case, filed ahead of the criminal case, is still pending upon the filing of the criminal action, in which case, the civil case should be transferred to the court trying the criminal case for consolidation and joint determination.

Considering the circumstances surrounding the case, the public respondent opined that the case did not fall in any of the two cited situations. Thus, she wrote:

By reason of the dismissal of the criminal complaint for unlawful arrest during the preliminary investigation stage, there was no criminal action for unlawful arrest, from which the instant civil case was based, that was ultimately filed with the Metropolitan Trial Court of Pasay City, the appropriate court to hear and try such offense under R.A. 8249. Consequently, there is no appropriate court to which the instant case should be transferred as mandated under Section 4 of R.A. 8294. There should not have been any problem had the criminal case for unlawful arrest prospered or reached the appropriate court as ratiocinated by this Court in its Order dated May 8, 2006. But there was none.