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SECOND DIVISION

[G.R. No. 143591, May 05, 2010]

TEODORO C. BORLONGAN, JR., CORAZON M. BEJASA, ARTURO E.MANUEL, JR., ERIC L. LEE, P. SIERVO H. DIZON, BENJAMIN DE LEON, DELFIN C. GONZALES, JR., AND BEN YU LIM, JR., PETITIONERS, VS. MAGDALENO M. PEÑA AND HON. MANUEL Q. LIMSIACO, JR., AS JUDGE DESIGNATE OF THE MUNICIPAL TRIAL COURT IN CITIES, BAGO CITY, RESPONDENTS.

D E C I S I O N

PEREZ, J.:

The pivotal issue in this case is whether or not the Court of Appeals, in its Decision[1] dated 20 June 2000 in CA-G.R. SP No. 49666, is correct when it dismissed the petition for *certiorari* filed by petitioners Teodoro C. Borlongan, Jr., Corazon M. Bejasa, Arturo E. Manuel, Jr., Benjamin de Leon, P. Siervo H. Dizon, Delfin C. Gonzales, Jr., Eric L. Lee and Ben Yu Lim, Jr., and ruled that the Municipal Trial Court in Cities (MTCC), Bago City, did not gravely abuse its discretion in denying the motion for reinvestigation and recall of the warrants of arrest in Criminal Case Nos. 6683, 6684, 6685, and 6686.

The factual antecedents of the case are as follows:

Respondent Atty. Magdaleno M. Peña (Atty. Peña) instituted a civil case for recovery of agent's compensation and expenses, damages, and attorney's fees[2] against Urban Bank and herein petitioners, before the Regional Trial Court (RTC) of Negros Occidental, Bago City. The case was raffled to Branch 62 and was docketed as Civil Case No. 754. Atty. Peña anchored his claim for compensation on the Contract of Agency[3] allegedly entered into with the petitioners, wherein the former undertook to perform such acts necessary to prevent any intruder and squatter from unlawfully occupying Urban Bank's property located along Roxas Boulevard, Pasay City. Petitioners filed a Motion to Dismiss[4] arguing that they never appointed the respondent as agent or counsel. Attached to the motion were the following documents: 1) a Letter[5] dated 19 December 1994 signed by Herman Ponce and Julie Abad on behalf of Isabela Sugar Company, Inc. (ISCI), the original owner of the subject property; 2) an unsigned Letter[6] dated 7 December 1994 addressed to Corazon Bejasa from Marilyn G. Ong; 3) a Letter[7] dated 9 December 1994 addressed to Teodoro Borlongan, Jr. and signed by Marilyn G. Ong; and 4) a Memorandum[8] dated 20 November 1994 from Enrique Montilla III. Said documents were presented in an attempt to show that the respondent was appointed as agent by ISCI and not by Urban Bank or by the petitioners.

In view of the introduction of the above-mentioned documents, Atty. Peña filed his Complaint-Affidavit[9] with the Office of the City Prosecutor, Bago City.[10] He

claimed that said documents were falsified because the alleged signatories did not actually affix their signatures, and the signatories were neither stockholders nor officers and employees of ISCI.[11] Worse, petitioners introduced said documents as evidence before the RTC knowing that they were falsified.

In a Resolution[12] dated 24 September 1998, the City Prosecutor found probable cause for the indictment of petitioners for four (4) counts of the crime of Introducing Falsified Documents, penalized by the second paragraph of Article 172 of the Revised Penal Code. The City Prosecutor concluded that the documents were falsified because the alleged signatories untruthfully stated that ISCI was the principal of the respondent; that petitioners knew that the documents were falsified considering that the signatories were mere dummies; and that the documents formed part of the record of Civil Case No. 754 where they were used by petitioners as evidence in support of their motion to dismiss, and then adopted in their answer and in their Pre-Trial Brief.[13] Subsequently, the corresponding Informations[14] were filed with the MTCC, Bago City. The cases were docketed as Criminal Case Nos. 6683, 6684, 6685, and 6686. Thereafter, Judge Primitivo Blanca issued the warrants[15] for the arrest of the petitioners.

On 1 October 1998, petitioners filed an Omnibus Motion to Quash, Recall Warrants of Arrest and/or For Reinvestigation.[16] Petitioners insisted that they were denied due process because of the non-observance of the proper procedure on preliminary investigation prescribed in the Rules of Court. Specifically, they claimed that they were not afforded the right to submit their counter-affidavit. Then they argued that since no such counter-affidavit and supporting documents were submitted by the petitioners, the trial judge merely relied on the complaint-affidavit and attachments of the respondent in issuing the warrants of arrest, also in contravention with the Rules of Court. Petitioners further prayed that the information be quashed for lack of probable cause. Moreover, one of the accused, *i.e.,* Ben Lim, Jr., is not even a director of Urban Bank, contrary to what complainant stated. Lastly, petitioners posited that the criminal cases should have been suspended on the ground that the issue being threshed out in the civil case is a prejudicial question.

In an Order[17] dated 13 November 1998, the MTCC denied the omnibus motion primarily on the ground that preliminary investigation was not available in the instant case - which fell within the jurisdiction of the first-level court. The court, likewise, upheld the validity of the warrant of arrest, saying that it was issued in accordance with the Rules of Court. Besides, the court added, petitioners could no longer question the validity of the warrant since they already posted bail. The court also believed that the issue involved in the civil case was not a prejudicial question, and, thus, denied the prayer for suspension of the criminal proceedings. Lastly, the court was convinced that the Informations contained all the facts necessary to constitute an offense.

Petitioners immediately instituted a special civil action for *Certiorari* and Prohibition with Prayer for Writ of Preliminary Injunction and Temporary Restraining Order (TRO) before the Court of Appeals, ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the MTCC in issuing and not recalling the warrants of arrest, reiterating the arguments in their omnibus motion.[18] They, likewise, questioned the court's conclusion that by posting bail, petitioners already

waived their right to assail the validity of the warrants of arrest.

On 20 June 2000, the Court of Appeals dismissed the petition.[19] Thus, petitioners filed the instant petition for review on *certiorari* under Rule 45 of the Rules of Court, raising the following issues:

A.

> Where the offense charged in a criminal complaint is not cognizable by the Regional Trial Court and not covered by the Rule on Summary Procedure, is the finding of probable cause required for the filing of an Information in court?
>
> If the allegations in the complaint-affidavit do not establish probable cause, should not the investigating prosecutor dismiss the complaint, or at the very least, require the respondent to submit his counter-affidavit?

B.

> Can a complaint-affidavit containing matters which are not within the personal knowledge of the complainant be sufficient basis for the finding of probable cause?

C.

> Where there is offense charged in a criminal complaint is not cognizable by the Regional Trial Court and not covered by the Rule on Summary Procedure, and the record of the preliminary investigation does not show the existence of probable cause, should not the judge refuse to issue a warrant of arrest and dismiss the criminal case, or at the very least, require the accused to submit his counter-affidavit in order to aid the judge in determining the existence of probable cause?

D.

> Can a criminal prosecution be restrained?

E.

> Can this Honorable Court itself determine the existence of probable cause?[20]

On the other hand, respondent contends that the issues raised by the petitioners had already become moot and academic when the latter posted bail and were already arraigned.

On 2 August 2000, this Court issued a TRO[21] enjoining the judge of the MTCC from proceeding in any manner with Criminal Case Nos. 6683 to 6686, effective during the entire period that the case is pending before, or until further orders of, this Court.

We will first discuss the issue of mootness.

The issues raised by the petitioners have not been mooted by the fact that they had posted bail and were already arraigned.

It appears from the records that upon the issuance of the warrant of arrest, petitioners immediately posted bail as they wanted to avoid embarrassment, being then the officers of Urban Bank. On the scheduled date for the arraignment, despite the petitioners' refusal to enter a plea, the court *a quo* entered a plea of "Not Guilty" for them.

The erstwhile ruling of this Court was that posting of bail constitutes a waiver of any irregularity in the issuance of a warrant of arrest, that has already been superseded by Section 26, Rule 114 of the Revised Rule of Criminal Procedure. The principle that the accused is precluded from questioning the legality of the arrest after arraignment is true only if he voluntarily enters his plea and participates during trial, without previously invoking his objections thereto.[22]

As held in *Okabe v. Hon. Gutierrez*:[23]

> It bears stressing that Section 26, Rule 114 of the Revised Rules on Criminal Procedure is a new one, intended to modify previous rulings of this Court that an application for bail or the admission to bail by the accused shall be considered as a waiver of his right to assail the warrant issued for his arrest on the legalities or irregularities thereon. The new rule has reverted to the ruling of this Court in *People v. Red*. The new rule is curative in nature because precisely, it was designed to supply defects and curb evils in procedural rules. Hence, the rules governing curative statutes are applicable. Curative statutes are by their essence retroactive in application. Besides, procedural rules as a general rule operate retroactively, even without express provisions to that effect, to cases pending at the time of their effectivity, in other words to actions yet undetermined at the time of their effectivity. Before the appellate court rendered its decision on January 31, 2001, the Revised Rules on Criminal Procedure was already in effect. It behoved the appellate court to have applied the same in resolving the petitioner's petition for certiorari and her motion for partial reconsideration.
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> Moreover, considering the conduct of the petitioner after posting her personal bail bond, it cannot be argued that she waived her right to question the finding of probable cause and to assail the warrant of arrest issued against her by the respondent judge. There must be clear and convincing proof that the petitioner had an actual intention to relinquish her right to question the existence of probable cause. When the only proof of intention rests on what a party does, his act should be so manifestly consistent with, and indicative of, an intent to voluntarily and unequivocally relinquish the particular right that no other explanation of his conduct is possible. x x x.

Herein petitioners filed the Omnibus Motion to Quash, Recall Warrants of Arrest and/or For Reinvestigation on the same day that they posted bail. Their bail bonds likewise expressly contained a stipulation that they were not waiving their right to question the validity of their arrest.[24] On the date of their arraignment, petitioners refused to enter their plea due to the fact that the issue on the legality of their arrest is still pending with the Court. Thus, when the court *a quo* entered a plea of not guilty for them, there was no valid waiver of their right to preclude them from raising the same with the Court of Appeals or this Court. The posting of bail bond was a matter of imperative necessity to avert their incarceration; it should not be deemed as a waiver of their right to assail their arrest. The ruling to which we have returned in *People v. Red*[25] stated:

> x x x The present defendants were arrested towards the end of January, 1929, on the Island and Province of Marinduque by order of the judge of the Court of First Instance of Lucena, Tayabas, at a time when there were no court sessions being held in Marinduque. In view of these circumstances and the number of the accused, it may properly be held that the furnishing of the bond was prompted by the sheer necessity of not remaining in detention, and in no way implied their waiver of any right, such as the summary examination of the case before their detention. That they had no intention of waiving this right is clear from their motion of January 23, 1929, the same day on which they furnished a bond, and the fact that they renewed this petition on February 23, 1929, praying for the stay of their arrest for lack of the summary examination; the first motion being denied by the court on January 24, 1929 (G.R. No. 33708, page 8), and the second remaining undecided, but with an order to have it presented in Boac, Marinduque.
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> Therefore, the defendants herein cannot be said to have waived the right granted to them by section 13, General Order No. 58, as amended by Act No. 3042.

The rest of the issues raised by the petitioners may be grouped into two, which are: (1) the procedural aspect, *i.e.,* whether the prosecution and the court *a quo* properly observed the required procedure in the instant case, and, (2) the substantive aspect, which is whether there was probable cause to pursue the criminal cases to trial.

THE PROCEDURAL ASPECT:

Petitioners contend that they were denied due process as they were unable to submit their counter-affidavits and were not accorded the right to a preliminary investigation. Considering that the complaint of Atty. Peña was filed in September 1998, the rule then applicable was the 1985 Rules of Criminal Procedure.

The provisions of the 1985 Rules of Criminal Procedure relevant to the issue are Sections 1, 3(a) and 9(a) of Rule 112, to wit: