

FIRST DIVISION

[G.R. NO. 142961, August 04, 2006]

**RHODA REGINA REYES-RARA AND JOSE EMMANUEL RARA,
PETITIONERS, VS. BRENDA CHAN, PEOPLE OF THE PHILIPPINES
AND HON. MARCIANO BACALLA, PRESIDING JUDGE, REGIONAL
TRIAL COURT OF QUEZON CITY, BRANCH 126, RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

The instant petition for review seeks to set aside the April 18, 2000 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 54111, which held that respondent Judge Marciano I. Bacalla of the Regional Trial Court of Quezon City, Branch 216, did not abuse his discretion in refusing to suspend the proceedings before the trial court and in denying petitioners' motion to defer arraignment.

The facts show that on November 23, 1998, private respondent Brenda Chan filed an affidavit complaint for estafa against petitioner spouses Rhoda Regina Reyes-Rara and Jose Emmanuel Rara. At the scheduled hearing before the investigating prosecutor on December 8, 1998, the petitioners failed to appear. On December 21, 1998, petitioners' counsel manifested that his clients will submit their counter affidavit on January 13, 1999.^[2] On the said date, petitioners failed to submit a counter-affidavit. The parties thereafter agreed that the hearing will be reset for the last time on January 22, 1999 and the case will thereafter be submitted for resolution.^[3] Later, however, petitioners requested for resetting of the hearing to February 6, 1999 because petitioner Rhoda had to leave for Tokyo on January 10, 1999 and will be back only on February 6, 1999. The request was denied. At the hearing on January 22, 1999, petitioners failed to appear, hence the case was submitted for resolution.^[4]

In a Resolution dated February 1, 1999, Assistant City Prosecutor Edgardo T. Paragua found probable cause against petitioners.^[5] On March 23, 1999, an Information for the crime of estafa was filed against them.^[6] On the same date, petitioner Rhoda filed before the Prosecutor's Office a motion to admit counter-affidavit with attached counter-affidavit.^[7] No counter affidavit was filed by petitioner Jose Emmanuel. Petitioners thereafter moved for a reconsideration of the February 1, 1999 Resolution of the Assistant City Prosecutor finding probable cause against them.

Meanwhile, the trial court set the arraignment on June 22, 1999. On June 10, 1999, petitioners filed a motion to defer the arraignment, invoking the pendency of their motion for reconsideration of the City Prosecutor's February 1, 1999 Resolution.^[8] This was granted by the trial court and the arraignment was moved to July 27, 1999.^[9]

On July 2, 1999, the Prosecutor's Office denied petitioners' motion for reconsideration.^[10] However, this was received by petitioners only on August 6, 1999. Hence, on July 19, 1999, they still filed another motion to defer arraignment on the basis of the pendency of the motion for reconsideration with the Prosecutor's Office.^[11]

On July 27, 1999, the trial court denied the motion to suspend the arraignment and directed the issuance of warrants for the arrest of petitioners. Pertinent portion thereof, reads:

x x x x

On account of the objection of the prosecution, the instant Motion to Defer Arraignment in behalf of accused Regina Rhoda Reyes Rara and Jose Emmanuel Rara is hereby DENIED. Considering that the said two (2) accused are notified of their arraignment today but failed to appear despite such notice, let a warrant issue for their arrest and the cash bond posted by them forfeited in favor of the government.

SO ORDERED.^[12]

On July 28, 1999, the trial court granted petitioners' motion to lift the warrant of arrest and to reinstate their bond. It also set anew the arraignment on August 10, 1999.^[13]

To suspend the arraignment, petitioners filed on August 3, 1999, the instant petition for prohibition with prayer for preliminary injunction and/or temporary restraining order (TRO) with the Court of Appeals.^[14] On August 9, 1999, petitioners appealed the July 2, 1999 Resolution of the Prosecutor's Office to the Department of Justice.^[15] They claimed that they were denied due process because they were not able to file a counter-affidavit and that the finding of probable cause against them was without basis.

On August 10, 1999, petitioners' counsel orally moved for the deferment of the arraignment in view of the pendency of the appeal with the Secretary of Justice and the petition with the Court of Appeals.^[16] This was denied by the trial court which directed the issuance of warrants of arrest against petitioners.^[17] Arrested and arraigned on August 13, 1999, petitioners entered pleas of not guilty.^[18]

Trial was thereafter set on October 4, 5, & 11, 1999.^[19] On September 7, 1999, the Court of Appeals issued a TRO, hence, the trial court suspended the proceedings.^[20]

On January 3, 2000, the Secretary of Justice dismissed petitioners appeal on the strength of Department of Justice Order No. 223, authorizing the Secretary to *motu proprio* dismiss the appeal if the accused is arraigned during the pendency of said appeal.^[21]

In view of the dismissal of the appeal and the expiration of the TRO issued by the Court of Appeals, the trial court, on motion of the prosecution, issued an Order

dated January 26, 2000, setting the trial on the merits on February 21 and 22, 2000, thus –

x x x x

It appearing that the temporary restraining order issued by the Court of Appeals had already been vacated and that the appeal filed before the Department of Justice had already been dismissed, the Court believes that there are no more legal impediments that would prevent this Court from proceeding with the reception of evidence from the herein parties.

WHEREFORE, premises above considered, the People's Urgent Ex-parte Motion to Resume Proceedings is hereby granted. As prayed for, the trial of this case is set on February 21 and 22, 2000 at 2:00 o'clock in the afternoon.

SO ORDERED. [22]

Consequently, petitioners filed a motion with the Court of Appeals seeking to resolve their pending petition for prohibition with prayer for the issuance of a writ of injunction.

On April 18, 2000, the Court of Appeals denied the petition holding that the trial court did not abuse its discretion in refusing to suspend the proceedings and to defer the arraignment of petitioners.

Hence, the instant petition.

The sole issue here is whether or not the respondent Judge gravely abused his discretion in denying petitioners' motion to defer the arraignment and to suspend the proceedings. Specifically, abuse of discretion is ascribed to respondent Judge's issuance of the July 27, 1999 and August 10, 1999 Orders denying the motion to defer arraignment and the January 26, 2000 Order setting the case for trial on the merits.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction. The exercise of power must have been done in an arbitrary or a despotic manner by reason of passion or personal hostility. It must have been so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. [23]

In the instant case, we find that no grave abuse of discretion was committed by respondent Judge in denying petitioners' motions. The latter's July 19, 1999 motion to defer arraignment was grounded on the pendency of the motion for reconsideration with the Prosecutor's Office. Note that the trial court denied said motion only on July 27, 1999, after the denial of the Prosecutor's Office of petitioners' motion for reconsideration on July 2, 1999. It could not thus be said that he acted arbitrarily and precipitately because the Prosecutor's resolution preceded the July 27, 1999 order of the trial court. Indeed, the setting of the arraignment was deferred until petitioners' motion for reconsideration was disposed of by the Prosecutor's Office.