

FIRST DIVISION

[G.R. NO. 164268, June 28, 2005]

ARTEMIO T. TORRES, JR., PETITIONER, VS. SPS. DRS. EDGARDO AGUINALDO & NELIA T. TORRES-AGUINALDO, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

This petition for review on certiorari^[1] assails the decision^[2] of the Court of Appeals dated March 22, 2004 in CA-G.R. SP No. 77818, and its resolution^[3] dated June 28, 2004 denying reconsideration thereof.

The facts are as follows:

Respondent-spouses Edgardo and Nelia Aguinaldo filed before the Office of the City Prosecutor (OCP) of Manila,^[4] a complaint against petitioner Artemio T. Torres, Jr. (Torres) for falsification of public document. They alleged that titles to their properties covered by Transfer Certificates of Title Nos. T-93596, T-87764, and T-87765, were transferred without their knowledge and consent in the name of Torres through a forged Deed of Sale^[5] dated July 21, 1979.

Torres denied the allegations of forgery and claimed that Aguinaldo sold the subject properties to him^[6] as evidenced by the March 10, 1991 Deed of Absolute Sale.^[7]

Finding probable cause, the OCP recommended the filing of an information for falsification of public document against Torres,^[8] which was filed before the Metropolitan Trial Court of Manila (MTC), Branch 8, on October 3, 2001.

Torres moved for reconsideration^[9] but was denied.^[10]

On appeal,^[11] the Secretary of Justice reversed the findings of the investigating prosecutor and ordered the withdrawal of the information.^[12] The motion for reconsideration filed by Aguinaldo was denied.^[13]

A Motion to Withdraw Information^[14] was filed which the MTC granted on June 11, 2003.^[15] It should be noted that petitioner has not been arraigned.

Meanwhile, Aguinaldo filed before the Court of Appeals a petition for certiorari^[16] which was granted in the assailed decision dated March 22, 2004.

The dispositive portion of the assailed decision reads:

WHEREFORE, in view of the foregoing, the petition is GRANTED. The resolutions of the Secretary of Justice dated November 12, 2002 and April 30, 2003 in IS No. 01B-05485 are REVERSED and SET ASIDE. The April 30, 2001 Resolution of the City Prosecutor of Manila finding probable cause against private respondent Artemio Torres, Jr. is REINSTATED. No costs.

SO ORDERED.^[17]

Torres' motion for reconsideration was denied,^[18] hence, the instant petition for review on certiorari^[19] on the following grounds:

I.

WHETHER OR NOT THE ORDER OF THE MTC-MANILA DATED 11 JUNE 2003 RENDERED MOOT AND ACADEMIC THE PETITION FOR CERTIORARI UNDER RULE 65 FILED BY RESPONDENTS BEFORE THE COURT OF APPEALS FOR THE PURPOSE OF REINSTATING THE RESOLUTION OF THE OCP-MANILA DATED 30 APRIL 2001.

II.

WHETHER OR NOT THE ASSAILED DECISION OF THE COURT OF APPEALS REINSTATING THE RESOLUTION OF THE OCP-MANILA DATED 30 APRIL 2001 VIOLATED THE DOCTRINE THAT THE DETERMINATION OF A CRIMINAL CASE IS WITHIN THE EXCLUSIVE JURISDICTION OF THE COURT ONCE THE INFORMATION HAS BEEN FILED THEREIN.

III.

WHETHER OR NOT THE EVIDENCE OF A RESPONDENT IN A CRIMINAL CASE SHOULD BE CONSIDERED DURING THE PRELIMINARY INVESTIGATION IN DETERMINING IF PROBABLE CAUSE EXISTS TO INDICT HIM FOR THE CRIME CHARGED.

IV.

WHETHER OR NOT THE OCP-MANILA HAS ABSOLUTE DISCRETION IN DETERMINING IF PROBABLE CAUSE EXISTS TO INDICT THE PETITIONER FOR THE CRIME CHARGED.

V.

WHETHER OR NOT THE COURT OF APPEALS WENT BEYOND THE OFFICE OF A WRIT OF CERTIORARI WHEN IT SUBSTITUTED ITS OWN JUDGMENT FOR THAT OF THE SECRETARY OF JUSTICE.

VI.

WHETHER OR NOT THE COURT OF APPEALS SANCTIONED THE DELIBERATE DISREGARD OF THE RULES OF PROCEDURE WHEN IT IGNORED THE FINAL ORDER OF THE MTC-MANILA DATED 11 JUNE 2003

AND ORDERED THE REINSTATEMENT OF THE RESOLUTION OF THE OCP-MANILA DATED 30 APRIL 2001.

VII.

WHETHER OR NOT RESPONDENTS ENGAGED IN FORUM SHOPPING WARRANTING THE OUTRIGHT DISMISSAL OF THE PETITIONER (sic) FOR CERTIORARI UNDER RULE 65 WHICH THEY FILED BEFORE THE COURT OF APPEALS.

VIII.

WHETHER OR NOT THE COURT OF APPEALS SANCTIONED THE DISREGARD OF SECTION 3, RULE 46 OF THE 1997 RULES OF CIVIL PROCEDURE WHEN IT ENTERTAINED THE PETITION FOR CERTIORARI UNDER RULE 65 FILED BY RESPONDENTS.^[20]

The foregoing assignment of errors may be summarized into three issues:

I. Whether the order of the MTC-Manila dated June 11, 2003 granting the motion to withdraw the information rendered moot the petition for certiorari filed by Aguinaldo for the purpose of reinstating the April 30, 2001 resolution of the OCP of Manila; and in the alternative, whether the rule on provisional dismissal under Section 8, Rule 117 applies.

II. Whether Aguinaldo committed forum shopping.

III. Whether the Court of Appeals erred in finding that the Secretary of Justice gravely abused his discretion in reinstating the April 30, 2001 order of the OCP of Manila finding probable cause against petitioner.

Anent the first issue, Torres contends that the order granting the withdrawal of the information rendered moot the petition for certiorari filed before the Court of Appeals. Citing *Bañares II v. Balising*,^[21] Torres insists that an order dismissing a case without prejudice is final if no motion for reconsideration or appeal therefrom is timely filed.

The contention is untenable. A motion to withdraw information differs from a motion to dismiss. While both put an end to an action filed in court, **their legal effect varies**. The order granting the withdrawal of the information attains finality after fifteen (15) days from receipt thereof, **without prejudice to the re-filing of the information upon reinvestigation**.

On the other hand, the order granting a motion to dismiss becomes final fifteen (15) days after receipt thereof, **with prejudice to the re-filing of the same case once such order achieves finality**. In *Bañares II v. Balising*, a motion to dismiss was filed thus putting into place the time-bar rule on provisional dismissal.

In the case at bar, a motion to withdraw information was filed and not a motion to dismiss. Hence, *Bañares II v. Balising* would not apply. Unlike a motion to dismiss, a motion to withdraw information is not time-barred and does not fall within the ambit of Section 8, Rule 117 of the Revised Rules of Criminal Procedure which

provides that the law on provisional dismissal becomes operative once the judge dismisses, with the express consent of the accused and with notice to the offended party: (a) a case involving a penalty of imprisonment not exceeding six (6) years or a fine of any amount, or both, where such provisional dismissal shall become permanent one (1) year after issuance of the order without the case having been revived; or (b) a case involving a penalty of imprisonment of more than six (6) years, where such provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

There is provisional dismissal^[22] when a motion filed expressly for that purpose complies with the following requisites, viz.: (1) It must be with the express consent of the accused; and (2) There must be notice to the offended party. Section 8, Rule 117 contemplates the filing of a motion to dismiss, and not a motion to withdraw information. Thus, the law on provisional dismissal does not apply in the present case.

Even assuming that the Motion to Withdraw Information is the same as a Motion to Dismiss, we do not find that it complied with the above requisites. The Motion to Withdraw Information was filed by the Assistant City Prosecutor and approved by the City Prosecutor without the conformity of the accused, herein petitioner Torres. Thus, it cannot be said that the motion was filed with his express consent as required under Section 8, Rule 117.

Respondent-spouses are not guilty of forum shopping. The cases they filed against petitioner are based on distinct causes of action. Besides, a certificate of non-forum shopping is required only in civil complaints under Section 5, Rule 7 of the Revised Rules of Civil Procedure. In *People v. Ferrer*,^[23] we held that such certificate is not even necessary in criminal cases and distinct causes of action.

Be that as it may, what is principally assailed is the Court of Appeals' decision reversing the resolution of the Justice Secretary and reinstating the April 30, 2001 resolution of the OCP of Manila.

The issue, therefore, is whether the Secretary of Justice gravely abused his discretion in reversing the investigating prosecutor's findings on the existence of probable cause.

Section 1, Rule 112 of the Revised Rules of Criminal Procedure defines preliminary investigation as an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial. The officers authorized to conduct a preliminary investigation are the: (a) Provincial or city fiscals and their assistants; (b) Municipal Trial Courts and Municipal Circuit Trial Courts Judges; (c) National and Regional state prosecutors; and (d) Such other officers as may be authorized by law.^[24]

Preliminary investigation is executive in character. It does not contemplate a judicial function. It is essentially an inquisitorial proceeding, and often, the only means of ascertaining who may be reasonably charged with a crime. It is not a trial on the merits and has no purpose except to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty

thereof. It does not place the person against whom it is taken in jeopardy.

Generally, preliminary investigation falls under the authority of the prosecutor. However, since there are not enough prosecutors, this function was also assigned to judges of Municipal Trial Courts and Municipal Circuit Trial Courts. Their findings are reviewed by the provincial or city prosecutor whose findings, in turn, may be reviewed by the Secretary of Justice in appropriate cases. After conducting preliminary investigation, the investigating judge must transmit within ten (10) days the resolution of the case together with the entire records to the provincial or city prosecutor.^[25]

In *Crespo v. Mogul*,^[26] we underscored the cardinal principle that the public prosecutor controls and directs the prosecution of criminal offenses whose resolutions may be reviewed by the Secretary of Justice.^[27] We held that where there is a clash of views between a judge who did not investigate and a fiscal who conducted a reinvestigation, those of the prosecutor should normally prevail.^[28]

We ruled in *Ledesma v. Court of Appeals*^[29] that when a motion to withdraw an information is filed on the ground of lack of probable cause based on a resolution of the Secretary of Justice, the bounden duty of the trial court is to independently assess the merits of the motion. The judge is not bound by the resolution of the Justice Secretary but must evaluate it before proceeding with the trial. While the ruling of the Justice Secretary is persuasive, it is not binding on courts.

In sum, prosecutors control and direct the prosecution of criminal offenses, including the conduct of preliminary investigation, subject to review by the Secretary of Justice. While his resolution is persuasive, it is not binding on the courts. The trial court must at all times make its own independent assessment of the merits of each case.

Thus, it is only where the decision of the Justice Secretary, or the trial court, as the case may be, is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction that the Court of Appeals may take cognizance of the case in a petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure whose decision may then be appealed to this Court by way of a petition for review on certiorari.

The Court of Appeals held that the Justice Secretary committed grave abuse of discretion because he based his findings on the lack of probable cause on the 1991 Deed of Sale when what was assailed was the 1979 Deed of Sale.^[30] It ruled that the defenses raised by Torres should not have been considered during the preliminary investigation but should be threshed out only during trial.^[31] Only the evidence presented by the complainant should be considered in determining probable cause or the lack thereof.

We are not persuaded.

The Court of Appeals erred in relying solely on the affidavit-complaint and the NBI report^[32] and disregarding totally the counter-affidavit and documentary evidence of petitioner.