

## SECOND DIVISION

[ G.R. No. 150185, May 27, 2004 ]

**TERESITA TANGHAL OKABE, PETITIONER, VS. HON. PEDRO DE LEON GUTIERREZ, IN HIS CAPACITY AS PRESIDING JUDGE OF RTC, PASAY CITY, BRANCH 119; PEOPLE OF THE PHILIPPINES; AND CECILIA MARUYAMA, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

Before us is a petition for review on certiorari, under Rule 45 of the Rules of Court, as amended, that part of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 60732 dismissing her petition for certiorari under Rule 65 of the Rules of Court, as amended, for the nullification of the August 25 and 28, 2000 Orders of the respondent judge in Criminal Case No. 00-0749.

#### The Antecedents

Cecilia Maruyama executed a fifteen-page affidavit-complaint<sup>[2]</sup> and filed the same with the Office of the City Prosecutor of Pasay City, on December 29, 1999, charging Lorna Tanghal and petitioner Teresita Tanghal Okabe, a.k.a. Shiela Okabe, with estafa. In her affidavit, Maruyama alleged, inter alia, that on December 11, 1998, she entrusted Y11,410,000 with the peso equivalent of P3,993,500 to the petitioner, who was engaged in the business of "door-to-door delivery" from Japan to the Philippines. It was alleged that the petitioner failed to deliver the money as agreed upon, and, at first, denied receiving the said amount but later returned only US\$1,000 through Lorna Tanghal.

During the preliminary investigation, the complainant, respondent Maruyama, submitted the affidavit of her witnesses, namely, Hermogena Santiago, Wilma Setsu and Marilette G. Izumiya and other documentary evidence. In her affidavit, Setsu alleged that the money which was entrusted to the petitioner for delivery to the Philippines belonged to her and her sister Annie Hashimoto, and their mother Hermogena Sanchez-Quicho, who joined respondent Maruyama in her complaint against petitioner Okabe and Tanghal. Respondent Maruyama, likewise, submitted a reply<sup>[3]</sup> to the petitioner's counter-affidavit. After the requisite preliminary investigation, 2nd Assistant City Prosecutor Joselito J. Vibandor came out with a resolution dated March 30, 2000, finding probable cause for estafa against the petitioner.<sup>[4]</sup> Attached to the resolution, which was submitted to the city prosecutor for approval, was the Information<sup>[5]</sup> against the petitioner and Maruyama's affidavit-complaint. The city prosecutor approved the resolution and the Information dated March 30, 2000 attached thereto.<sup>[6]</sup>

On May 15, 2000, an Information against the petitioner was filed in the Regional

Trial Court of Pasay City, docketed as Criminal Case No. 00-0749. The case was raffled to Branch 119 of the court presided by Judge Pedro de Leon Gutierrez.<sup>[7]</sup> The accusatory portion of the Information reads:

That on or about December 12, 1998 in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused defrauded Cecilia Maruyama and Conchita Quicho, complainant herein, in the following manner, to wit: said accused received in trust from Cecilia Maruyama the amount of Japanese Yen 1141 (sic) with peso equivalent to P3,839,465.00 under obligation to deliver the money to Conchita Quicho at the NAIA International Airport, Pasay City, immediately upon accused arrival from Japan, but herein accused once in possession of the same, did, then and there willfully, unlawfully and feloniously misappropriate and convert to her own personal benefit the said amount, and despite demands accused failed and refused to do so, to the damage and prejudice of the complainants in the aforesaid amount.

Contrary to law.<sup>[8]</sup>

Appended to the Information was the affidavit-complaint of respondent Maruyama and the resolution of Investigating Prosecutor Vibandor. On May 19, 2000, the trial court issued a warrant for the arrest of the petitioner with a recommended bond of P40,000. On June 15, 2000, the petitioner posted a personal bail bond in the said amount, duly approved by Judge Demetrio B. Macapagal, the Presiding Judge of Branch 79 of the RTC of Quezon City, who forthwith recalled the said warrant. The approved personal bail bond of the petitioner was transmitted to the RTC of Pasig City on June 21, 2000. Upon her request, the petitioner was furnished with a certified copy of the Information, the resolution and the criminal complaint which formed part of the records of the said case. The petitioner left the Philippines for Japan on June 17, 2000 without the trial court's permission, and returned to the Philippines on June 28, 2000. She left the Philippines anew on July 1, 2000, and returned on July 12, 2000.

On July 14, 2000, the trial court issued an Order setting the petitioner's arraignment and pre-trial at 2:00 p.m. of July 16, 2000. On the same day, the private prosecutor filed an urgent ex parte motion for the issuance of the hold departure order, alleging as follows:

3. It has come to the knowledge of private complainant that there is an impending marriage within the Philippines of either the son or daughter of the above-named accused and that the above-named accused—who has businesses in Japan, and is presently in Japan—will soon exit Japan and enter the Philippines to precisely attend said wedding;

4. Given [a] the bail was fixed at merely P40,000.00 and b] the considerable financial capability of the accused, it is a foregone conclusion that the above-named accused will, upon arrest, readily and immediately post bond, and leave for Japan—thereby frustrating and rendering inutile the administration of criminal justice in our country. The speed with which accused Teresita Sheila Tanghal Okabe can post bond and leave for Japan—effectively evading arraignment and plea—thus

necessitates the immediate issuance of a Hold Departure Order even before her arrival here in the Philippines;<sup>[9]</sup>

The trial court issued an order on the same day, granting the motion of the private prosecutor for the issuance of a hold departure order and ordering the Commission on Immigration and Deportation (CID) to hold and prevent any attempt on the part of the petitioner to depart from the Philippines.<sup>[10]</sup> For her part, the petitioner filed on July 17, 2000 a verified motion for judicial determination of probable cause and to defer proceedings/arraignment, alleging that the only documents appended to the Information submitted by the investigating prosecutor were respondent Maruyama's affidavit-complaint for *estafa* and the resolution of the investigating prosecutor; the affidavits of the witnesses of the complainant, the respondent's counter-affidavit and the other evidence adduced by the parties were not attached thereto. The petitioner further alleged that the documents submitted by the investigating prosecutor were not enough on which the trial court could base a finding of probable cause for *estafa* against her. She further averred that conformably to the rulings of this Court in *Lim v. Felix*<sup>[11]</sup> and *Roberts, Jr. v. Court of Appeals*,<sup>[12]</sup> it behooved the investigating prosecutor to submit the following to the trial court to enable it to determine the presence or absence of probable cause: (a) copies of the affidavits of the witnesses of the complainant; (b) the counter-affidavit of Okabe and those of her witnesses; (c) the transcripts of stenographic notes taken during the preliminary investigation; and, (d) other documents presented during the said investigation.

On July 19, 2000, the petitioner filed a Very Urgent Motion To Lift/Recall Hold Departure Order dated July 17, 2000 and/or allow her to regularly travel to Japan alleging, thus:

3. Accused is (sic) widow and the legitimate mother of three (3) children, two (2) of whom are still minors, namely:

3.1. Okabe, Jeffrey-18 years old born on 13 August 1981.

3.2. Okabe, Masatoshi-14 years old and born on 16 October 1985, 3rd year High School student at Hoshikuki, Chiba City, Matsugaoka, High School, residing at Chiba City, Chuo-Ku, Yahagi-cho, 205, Telephone No. 043-224-5804.

3.3. Okabe, Tomoki-13 years old and born on 13 March 1986, 2nd year High School student at Hoshikuki, Chiba City, Matsugaoka, High School, residing at Chiba City, Chuo-Ku, Yahagi-cho, 205, Telephone No. 043-224-5804.

3.4. The accused has to attend the Parents Teachers Association (PTA) at the Hoshikuki High School where her two (2) minor sons aforesaid are presently enrolled and studying because Okabe, Masatoshi's graduation will take place on 26 July 2000.

3.5. The two (2) minor children of the accused absolutely depend their support (basic necessities) for foods, clothings, medicines, rentals, schooling and all other expenses for their survival to their legitimate mother who is the accused herein.

3.6. The issuance of the hold departure order (HDO) will impair the inherent custodial rights of the accused as the legitimate mother over these two (2) minor children which is repugnant to law.

3.7. The issuance of the hold departure order (HDO) will unduly restrict the accused to her custodial rights and visitation over her aforesaid minor children who are permanently living in Japan.

3.8. The issuance of the hold departure order (HDO) will unduly deprived (*sic*) these minor children to their right to obtain education and survival.

4. Accused's only source of income and livelihood is door-to-door delivery from Japan to the Philippines and vice versa which has been taking place for a very long period of time and in the process she has been constantly departing from the Philippines on a weekly basis and arriving in Japan on the same frequency, as evidenced by xerox copies of the pages of her Philippine Passports which are hereto attached as Annexes "A," "A-1," "A-2" up to "A-30," respectively. To deprive her of this only source of her livelihood to which the aforesaid two (2) minor children are deriving their very survival in a foreign land will (*sic*) tantamount to oppression rather than prosecution and depriving the said minor sons of their right to live even before trial on the merits of this case that will (*sic*) tantamount to the destruction of the future of these minor children.<sup>[13]</sup>

The private prosecutor opposed the petitioner's motions during the hearing on July 21, 2000 which was also the date set for her arraignment. The hearing of the motions as well as the arraignment was reset to 2:00 p.m. of July 26, 2000. On the said date, the petitioner filed a manifestation objecting to her arraignment prior to the resolution of her pending motions. She alleged that her arraignment for the crime charged should not be made a condition for the granting of her motion to recall the hold departure order issued against her. The arraignment of the petitioner was again reset to 2:00 p.m. of August 28, 2000, pending the resolution of her two motions. On August 25, 2000, the petitioner filed a motion for the postponement of her arraignment alleging that, in case the trial court ruled adversely thereon, she would refuse to enter a plea and seek relief from the appellate court. The court denied the petitioner's motions on the following grounds:

(a) Based on its personal examination and consideration of the Information, the affidavit-complaint of respondent Maruyama and the resolution of the investigating prosecutor duly approved by the city prosecutor, the court found probable cause for the petitioner's arrest. Since the petitioner's motion for a determination of probable cause was made after the court had already found probable cause and issued a warrant for the petitioner's arrest, and after the latter filed a personal bail bond for her provisional liberty, such motion was a mere surplusage;

(b) When the petitioner posted a personal bail bond for her provisional liberty, she thereby waived her right to question the court's finding of the existence of probable cause for her arrest and submitted herself to the jurisdiction of the court, more so

when she filed the motion for the lifting of the hold departure order the court issued, and the motion to defer the proceedings and her arraignment; and

(c) The hold departure order issued by the trial court was in accord with Supreme Court Circular No. 39-97 dated June 19, 1997, as well as the ruling of this Court in *Manotoc, Jr. v. Court of Appeals*.<sup>[14]</sup>

When the case was called for the petitioner's arraignment at 2:00 p.m., on August 28, 2000, she refused to plead.<sup>[15]</sup> Her counsel advised her, in open court, not to enter a plea and, with leave of court, left the courtroom. The court then entered a not guilty plea for the petitioner.<sup>[16]</sup> It also issued an order, on the said date, setting the pre-trial and initial presentation of the evidence of the prosecution at 8:30 a.m. of September 20, 2000.<sup>[17]</sup>

The petitioner then filed with the Court of Appeals a petition for certiorari under Rule 65 of the Rules of Court with a plea for a writ of preliminary injunction. The case was docketed as CA-G.R. SP No. 60732. The petitioner ascribed the following errors to the trial court:

I

RESPONDENT COURT GRAVELY ERRED WHEN IT ISSUED  
WARRANT OF ARREST DESPITE OF (SIC) LACK  
OF PROBABLE CAUSE

II

RESPONDENT COURT HAS VIOLATED THE  
RIGHT OF THE PETITIONER TO DUE PROCESS

III

RESPONDENT COURT HAS ALREADY PRE-JUDGED  
THE CONVICTION OF THE PETITIONER FOR ESTAFA

IV

RESPONDENT COURT HAS EXHIBITED ITS APPARENT  
PARTIALITY TOWARDS THE PROSECUTION AND  
AGAINST THE PETITIONER

V

RESPONDENT COURT GRAVELY ERRED WHEN IT DENIES (SIC) THE  
MOTION FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE  
PURSUANT TO THE DOCTRINE OF ROBERTS, JR.

VI

RESPONDENT COURT GRAVELY ERRED WHEN IT DENIES (SIC)  
THE LIFTING/RECALL OF THE HDO AND/OR ALLOWING THE