

## SECOND DIVISION

[ G.R. No. 137010, August 29, 2003 ]

**ARK TRAVEL EXPRESS, INC., PETITIONER, VS. THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI, BRANCH 150, HON. ZEUS ABROGAR, VIOLETA BAGUIO AND LORELEI IRA, RESPONDENTS.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

Before us is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to nullify the Order dated October 2, 1998 issued by the Regional Trial Court (RTC) of Makati City (Branch 150) in Civil Case No. 98-2125<sup>[1]</sup> which considered Criminal Cases Nos. 200894 and 200895 pending before the Metropolitan Trial Court (MTC) of Makati (Branch 67) as withdrawn; and, the Order dated November 23, 1998 which denied petitioner's Motion for Reconsideration.

The facts of the case:

Herein petitioner Ark Travel Express, Inc. (Ark Travel for brevity) filed with the City Prosecutor of Makati a criminal complaint for False Testimony in a Civil Case under Article 182 of the Revised Penal Code against herein private respondents Violeta Baguio and Lorelei Ira. In a resolution dated November 20, 1996, the City Prosecutor found probable cause to indict private respondents for violation of said law and accordingly filed the respective Informations against each of them before the MTC, docketed as Criminal Cases Nos. 200894 and 200895, which, except for the names of the accused, uniformly read as follows:

The undersigned 2<sup>nd</sup> Assistant Prosecutor accuses VIOLETA S. BAGUIO of the crime of Violation of Article 182 of the Revised Penal Code (False Testimony), committed as follows:

That on or about the 19<sup>th</sup> day of February, 1996, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously give false testimony upon a material fact in Civil Case No. 95-1542, relative to a complaint for Collection of sum of money, torts and damages filed by Ark Travel Express, Inc. (Ark Inc. for short) against New Filipino Maritime Agencies, Inc. (NFMA, Inc. for short) in the following manner, to wit: during the trial of the aforesaid civil case on aforesaid date before Branch 137 of the Regional Trial Court of Makati City, Metro Manila, in which one of the principal issues was whether or not payment of the claim of ARK, Inc. has been made by NFMA, Inc., the said accused while

testifying for NFMA, Inc., with malicious intent, did, then and there willfully, unlawfully and feloniously and knowingly testified on direct testimony, by way of a sworn statement, and while under oath on the witness stand, that the claims of ARK, Inc. supported by a statements of accounts (Exhibit "E" to "GG") sent to and received by defendant-corporation NFMA, Inc. is baseless and/or been paid, which testimony as accused very well knew and ought to know, by reason of accused's position as cashier, was false inasmuch as the claim based on the statement of accounts of ARK, Inc. (Exhibits "E" to "GG" are, in truth and in fact, valid, legal and unpaid accounts of NFMA, Inc. with ARK Travel Inc., herein represented by private complainant MA. PAZ ALBERTO, to the damage and prejudice of the latter.

CONTRARY TO LAW.<sup>[2]</sup>

Private respondents filed a petition for review of the City Prosecutor's resolution dated November 20, 1996 with the Department of Justice (DOJ). In a resolution dated March 9, 1998,<sup>[3]</sup> Chief State Prosecutor Jovencito P. Zuño reversed the City Prosecutor's resolution dated November 20, 1996. The prosecution office of Makati then filed with the MTC a Motion to Withdraw Information.<sup>[4]</sup>

However, on May 15, 1998, Ark Travel filed an "Urgent Petition for Automatic Review" with the DOJ. In a letter dated May 27, 1998, Secretary Silvestre H. Bello III resolved to treat the urgent petition as a motion for reconsideration, reversed its resolution dated March 9, 1998 and directed the City Prosecutor to proceed with the prosecution of Criminal Cases Nos. 200894 and 200895.<sup>[5]</sup> For this reason, the MTC issued an Order dated June 10, 1998, denying the aforesaid Motion to Withdraw Information filed by the prosecution, to wit:

It appearing that the Department of Justice had reconsidered its previous ruling directing the City Prosecutor of Makati City to withdraw the information filed against the accused in the above-entitled cases, the Motion to Withdraw Information filed by the prosecution is hereby DENIED.

Set these cases therefore for arraignment on July 30, 1998 at 8:30 in the morning.

SO ORDERED.<sup>[6]</sup>

In the meanwhile, private respondents Baguio and Ira filed a Motion for Reconsideration<sup>[7]</sup> of the May 27, 1998 resolution of then Secretary Bello III, alleging that: (1) the March 9, 1998 resolution of Chief State Prosecutor Zuño finding no probable cause to indict them has become final and executory because the Urgent Petition for Automatic Review was filed way beyond the 10-day reglementary period; and (2) the said resolution of May 27, 1998 did not reverse the finding of the March 9, 1998 resolution that respondents did not really act with malice/criminal intent because the resolution of the Secretary merely stated that there was false testimony.

DOJ Undersecretary Jesus A. Zozobrado, Jr., signing "For the Secretary", granted the Motion for Reconsideration in a resolution dated June 26, 1998, disposing thus:

WHEREFORE, our resolution dated May 27, 1998 is reconsidered and set aside; and consequently, our resolution dated March 9, 1998 is reinstated. You are accordingly, directed to immediately cause, with leave of court, the withdrawal of the informations for false testimony in a civil case filed against Violeta S. Baguio and Lorelei Ira. Report to us the action taken within ten (10) days from receipt hereof.

Consequently, private respondents filed with the MTC a Motion for Reconsideration of its June 10, 1998 Order alleging that there is no longer any obstacle, legal or otherwise, to the granting of the Motion to Withdraw Information previously filed by the prosecution. The MTC denied the motion in an Order, dated July 21, 1998, which we quote verbatim, as follows:

Submitted for resolution is a Motion for Reconsideration filed by the accused through counsel which seeks a reversal of the court's order denying the Motion to Withdraw filed by the prosecution.

In the Crespo Mogul case, it was held by the Supreme Court that once an information is filed in court, such filing sets in motion the criminal action against the accused before the court, and any motion to dismiss or withdraw information is always addressed to the discretion of the court. The denial or grant of any motion is done by the court not out of subservience to the secretary of justice but in faithful exercise of its judicial prerogative. This is the ruling in the case of Robert Jr. et al. vs. CH et al. vs. CA G.R. No. 113930 promulgated on March 5, 1996.

A reading of the information sufficiently alleges the facts which make out the offense charged and in keeping with the above ruling of the Supreme Court, this court hereby denies the Motion for Reconsideration.

Set this case for arraignment of both accused on July 30, 1998 at 8:30 in the morning.

SO ORDERED.<sup>[8]</sup>

Private respondents questioned the MTC Orders dated June 10, 1998 and July 21, 1998 via a petition for certiorari under Rule 65 with the respondent RTC of Makati.

The RTC issued herein assailed Order dated October 2, 1998, portions of which read:

. . .

As aptly stated in *Ledesma vs. CA* (Supra) and *Marcelo vs. CA* (Aug. 4, 1994) the trial Court nonetheless should make its own study and evaluation of the said motion and not reply merely on the awaited action of the secretary.

No such evaluation was ever conducted by the respondent Court before it issued the two (2) questioned orders.

In view hereof, it is this Court's opinion and stand that the respondent Court may have indeed acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the Motion to Withdraw and the motion for reconsideration based solely on its bare and ambiguous reliance on the Crespo Doctrine, since an independent evaluation and assessment of the existence of a probable cause is necessary before such orders denying the said motions could be issued.

Foregoing Premises Considered, the petition for Certiorari is hereby granted. The questioned orders dated June 10 and July 21, 1998 are hereby set aside and **the Informations in Criminal Cases Nos. 200894 and 200895 are hereby considered withdrawn.**<sup>[9]</sup> (Emphasis ours)

SO ORDERED.

The RTC denied Ark Travel's motion for reconsideration in its Order dated November 23, 1998,<sup>[10]</sup> to wit:

This resolves the motion for reconsideration filed by private respondent which was temporarily held in abeyance on account of the manifestation of movant's counsel that they intend to file a motion to inhibit; however, despite the lapse of the 10-day period given to them to do so, the intended motion has not been filed.

After an extensive study of the motion as well as the opposition thereto, and with careful consideration and assessment of the circumstances which led to its earlier order, the Court finds no compelling reason to alter, amend and/or reconsider its order dated October 2, 1998.

Wherefore, the above-mentioned motion is hereby DENIED for lack of merit.

SO ORDERED.

Hence, the present petition for *certiorari* which raises the following issue:

WHETHER OR NOT THE RESPONDENT COURT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION, WHEN IT NULLIFIED THE ORDERS OF THE COURT A QUO, ENJOINED THE SAID COURT A QUO FROM HEARING CRIMINAL CASES NOS. 200894 AND 200895, AND THEREAFTER, ORDERED THE OUTRIGHT DISMISSAL OF SAID CRIMINAL CASES.<sup>[11]</sup>

Ark Travel argues that the ruling of the RTC contravenes the doctrine laid down by this Court in the case of *Crespo vs. Mogul*<sup>[12]</sup> which enunciated that once a complaint or information is filed in court any disposition of the case such as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court. Ark Travel likewise insists that criminal prosecutions cannot be enjoined.

In their Comment, private respondents counter: (1) Appeal and not *certiorari* under Rule 65 of the Rules of Court is the appropriate remedy. But even if the petition at bar is treated as an appeal, the filing thereof way beyond the 15-day reglementary period within which to appeal, renders the instant petition outrightly dismissable; (2) Assuming arguendo that petition for certiorari under Rule 65 is the correct remedy, the petition should still be denied and/or dismissed outright for having been filed beyond the 60-day reglementary period provided by Rule 65 of the Rules of Court; (3) The RTC's Orders have become final and executory, and consequently may no longer be disturbed; (4) The filing of the petition with this Court is grossly violative of the principle of hierarchy of courts; (5) There is no ground to reverse public respondent RTC's Orders which considered the criminal cases as withdrawn because the petition does not rebut the validity of the ruling of the DOJ that there is no probable cause to charge herein private respondents with the crime of false testimony.

In its Reply, Ark Travel argues that herein petition for certiorari is the proper remedy and not appeal because what is being questioned is not the correctness of the subject Orders but the jurisdiction of the RTC in considering the criminal cases as withdrawn when said cases are not pending with it but the MTC; that appeal is not a speedy and/or adequate remedy; and that herein petition does not violate the principle of hierarchy of court because it presents a question of law.

We shall first address the procedural aspect.

The issue raised in the present petition concerns the jurisdiction of the RTC in ordering the dismissal of the criminal cases pending before the MTC and therefore, the proper remedy is certiorari. As such, the present petition for certiorari ought to have been dismissed for late filing. The assailed Order dated October 2, 1998 was received by Ark Travel on October 16, 1998. Ark Travel filed the Motion for Reconsideration fourteen days later or on October 30, 1998. On November 27, 1998, Ark Travel received the Order of the denial of the Motion for Reconsideration. Pursuant to Rule 65 of the 1997 Rules on Civil Procedure, then prevailing, the petition should have been filed on the forty-sixth day (60 days minus 14 days) from November 27, 1998 or on January 12, 1999, the last day of the 60-day reglementary period; instead, the petition was filed on January 26, 1999.

However, during the pendency of herein petition, the Court promulgated A.M. No. 00-2-03, amending Section 4, Rule 65 of the 1997 Rules on Civil Procedure, effective September 1, 2000, to wit:

SEC. 4. *When and where petition filed.* - The petition shall be filed not later than sixty (60) days from notice of judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

in which case, the filing of the petition on January 26, 1999 was filed on the 60<sup>th</sup> day from November 27, 1998, Ark Travel's date of receipt of notice of the order denying Ark Travel's motion for reconsideration.

We have consistently held that statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their