

EN BANC

[G.R. No. 113930, March 05, 1996]

PAUL G. ROBERTS, JR., RODOLFO C. SALAZAR, LUIS LORENZO, SR., LUIS LORENZO, JR., AMAURY R. GUTIERREZ, BAYANI N. FABIC, JOSE YULO, JR., ESTEBAN B. PALANNUAYAN, AND WONG FONG FUI, PETITIONERS, VS. THE COURT OF APPEALS, THE HON. MAXIMIANO ASUNCION, IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, QUEZON CITY, BRANCH 104, HON. APOLINARIO G. EXEVEA, HON. HENRICK F. GINGOYON, AND HON. PHILIP A. AGUINALDO, IN THEIR CAPACITIES AS MEMBERS OF THE DEPARTMENT OF JUDGE "349" COMMITTEE, AND THE CITY PROSECUTOR OF QUEZON CITY, RESPONDENTS. ROBERTO DELGADO, PETITIONER INTERVENOR.

DECISION

DAVIDE, JR., J.:

We are urged in this petition to set aside (a) the decision of the Court of Appeals of 28 September 1993 in CA-G.R. SP No. 31226,^[1] which dismissed the petition therein on the ground that it has been "mooted with the release by the Department of Justice of its decision x x x dismissing petitioners' petition for review"; (b) the resolution of the said court of 9 February 1994^[2] denying the petitioners' motion to reconsider the decision; (c) the order of 17 May 1993^[3] of respondent Judge Maximiano C. Asuncion of Branch 104 of the Regional Trial Court (RTC) of Quezon City in Criminal Case No. Q-93-43198 denying petitioners' motion to suspend proceedings and to hold in abeyance the issuance of the warrants of arrest and the public prosecutor's motion to defer arraignment; and (d) the resolution of 23 July 1993 and 3 February 1994^[4] of the Department of Justice, (DOJ) dismissing petitioners' petition for the review of the Joint Resolution of the Assistant City Prosecutor of Quezon City and denying the motion to reconsider the dismissal, respectively.

The petitioners rely on the following grounds for the grant of the reliefs prayed for in this petition:

I

Respondent Judge acted with grave abuse of discretion when he ordered the arrest of the petitioners without examining the record of the preliminary investigation and in determining for himself on the basis thereof the existence of probable cause.

II

The Department of Justice "349" Committee acted with grave abuse of discretion when it refused to review the City Prosecutor's Joint Resolution and dismissed petitioner's appeal therefrom.

III

The Court of Appeals acted with grave abuse of discretion when it upheld the subject order directing the issuance of the warrants of arrest without assessing for itself whether based on such records there is probable cause against petitioners.

IV

The facts on record do not establish prima facie probable cause and Criminal Case No. Q-93-43198 should have been dismissed.^[5]

The antecedents of this petition are not disputed.

Several thousand holders^[6] of "349" Pepsi crowns in connection with the Pepsi Cola Products Phils., Inc.'s (PEPSI's) Number Fever Promotion^[7] filed with the Office of the City Prosecutor of Quezon City complaints against the petitioners in their respective capacities as Presidents or Chief Executive Officers, Chairman of the Board, Vice-Chairman of the Board, and Directors of PEPSI, and also against other officials of PEPSI. The complaints respectively accuse the petitioners and the other PEPSI officials of the following crimes: (a) estafa; (b) violation of R.A. No. 7394, otherwise known as the Consumer Act of the Philippines; (c) violation of E.O. No. 913;^[8] and (d) violation of Act No. 2333, entitled "*An Act Relative to Untrue, Deceptive and Misleading Advertisements*," as amended by Act No. 3740.^[9]

After appropriate proceedings, the investigating prosecutor, Ramon M. Gerona, released on 23 March 1993 a Joint Resolution^[10] where he recommended the filing of an information against the petitioners and others for the violation of Article 318 of the Revised Penal Code and the dismissal of the complaints for the violation of Article 315, 2(d) of the Revised Penal Code; R.A. No. 7394; Act No. 2333, as amended by Act No. 3740; and E.O. No. 913. The dispositive portion thereof reads as follows:

In view of all the foregoing, it is recommended that:

1. The attached information be filed against respondents Paul G. Roberts, Jr., Rodolfo C. Salazar, Rosemarie R. Vera, Luis F. Lorenzo, Sr., Luis P. Lorenzo, Jr., J. Roberto Delgado, Amaury R. Gutierrez, Bayani N. Fabic, Jose Yulo, Jr., Esteban B. Pacannuayan, Jr., Wong Fong Fui, Quintin J. Gomez, Jr. and Chito V. Gutierrez for estafa under Article 318, Revised

Penal Code, while the complaint for violation of Article 315, 2(d), Revised Penal Code against same respondents Juanito R. Ignacio, R. Sobong, R.O. Sinsuan, M.P. Zarsadias, L.G. Dabao, Jr., R.L. Domingo, N.N. Bacsal, Jesus M. Manalastas, Janette P. Pio de Roda, Joaquin W. Sampaico, Winefreda O. Madarang, Jack Gravey, Les G. Ham, Corazon Pineda, Edward S. Serapio, Alex O. Caballes, Sandy Sytangco, Jorge W. Drysdale, Richard Blossom, Pablo de Borja, Edmundo L. Tan, Joseph T. Cohen, Delfin Dator, Zosimo B. San Juan, Joaquin Franco, Primitivo S. Javier, Jr., Luisito Guevarra, Asif H. Adil, Eugenio Muniosguren, James Ditzkoff and Timothy Lane be dismissed;

2. The complaints against all respondents for violation of R.A. 7394 otherwise known as the Consumer Act of the Philippines and violation of Act 2333 as amended by Act 3740 and E.O. 913 be also dismissed for insufficiency of evidence, and

3. I.S. Nos. 92-7833; 92-8710 and 92-P-1065 involving Crowns Nos. 173; 401; and 117, 425, 703 and 373, respectively, alleged to be likewise winning ones be further investigated to afford respondents a chance to submit their counter-evidence.^[11]

On 6 April 1993, City Prosecutor Candido V. Rivera approved the recommendation with the modification that Rosemarie Vera, Quintin Gomez, Jr., and Chito Gonzales be excluded from the charge on the ground of insufficiency of evidence.^[12]

The information for estafa attached to the Joint Resolution was approved (on 7 April 1993) by Ismael P. Casabar, Chief of the Prosecution Division, upon authority of the City Prosecutor of Quezon City, and was filed with the RTC of Quezon City on 12 April 1993. It was docketed as Criminal Case No. Q-93-43198.^[13] The information reads as follows:

The undersigned 1st Assistant City Prosecutor accuses PAUL G. ROBERTS, JR. RODOLFO C. SALAZAR, LUIS F. LORENZO, SR., LUIS P. LORENZO, JR., J. ROBERTO DELGADO, AMAURY R. GUTIERREZ, BAYANI N. FABIC, JOSE YULO, JR., ESTEBAN B. PACANNUAYAN, JR. and WONG FONG FUI, of the crime of ESTAFA, committed as follows:

That in the month of February, 1992, in Quezon City, Philippines and for sometime prior and subsequent thereto, the above-named accused -

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| Paul G. Roberts, Jr.) | being then the Presidents |
| Rodolfo G. Salazar) | and Executive Officers |
| Luis F. Lorenzo, Sr.) | being then the Chairman of the Board of Directors |
| Luis P. Lorenzo, Jr.) | being then the Vice Chairman of the Board |
| J. Roberto | being then Members of the Board |

**Delgado)
Amaury R.
Gutierrez)
Bayani N.
Fabic)
Jose Yulo, Jr.)
Esteban B.
Pacannuayan,
Jr. and
Wong Fong
Fui)**

OF THE PEPSI COLA PRODUCTS PHILIPPINES, INC., CONSPIRING with one another, with intent of gain, by means of deceit, fraudulent acts or false pretenses, executed prior to or simultaneously with the commission of the fraud, did then and there willfully, unlawfully and feloniously defraud the private complainants whose names with their prizes claimed appear in the attached lists marked as Annexes "A" to "A-46"; "B" to "-33"; "C" to "C-281"; "D" to "D-238"; "E" to "E-30" and "F" to "F-244" in the following manner: on the date and in the place aforementioned, said accused pursuant to their conspiracy, launched the Pepsi Cola Products Philippines, Inc. "Number Fever Promotion" from February 17 to May 8, 1992 later extended to May 11-June 12, 1992 and announced and advertised in the media that "all holders of crowns and/or caps of Pepsi, Mirinda, Mountain Dew and Seven-Up bearing the winning 3-digit number will win the full amount of the prize printed on the crowns/caps which are marked with a seven-digit security code as a measure against tampering or faking of crowns and each and every number has its own unique matching security code," enticing the public to buy Pepsi softdrinks with aforestated alluring and attractive advertisements to become millionaires, and by virtue of such representations made by the accused, the said complainants bought Pepsi softdrinks, but, the said accused after their TV announcement on May 25, 1992 that the winning number for the next day was "349," in violation of their aforecited mechanics, refused as they still refuse to redeem/pay the said Pepsi crowns and/or caps presented to them by the complainants, who, among others, were able to buy Pepsi softdrinks with crowns/caps bearing number "349" with security codes L-2560-FQ and L-3560-FQ, despite repeated demands made by the complainants, to their damage and prejudice to the extent of the amount of the prizes respectively due them from their winning "349" crowns/caps, together with such other amounts they spent ingoing to and from the Office of Pepsi to claim their prizes and such other amounts used in buying Pepsi softdrinks which the complainants normally would not have done were it not for the false, fraudulent and deceitful posters of Pepsi Cola Products, Inc.

CONTRARY TO LAW.

On 14 April 1993, the petitioners filed with the Office of the City Prosecutor a motion for the reconsideration of the Joint Resolution^[14] alleging therein that (a) there was

neither fraud in the Number Fever Promotion nor deviation from or modification of the promotional rules approved by the Department of Trade and Industry (DTI), for from the start of the promotion, it had always been clearly explained to the public that for one to be entitled to the cash prize his crown must bear both the winning number and the correct security code as they appear in the DTI list; (b) the complainants failed to allege, much less prove with *prima facie* evidence, the specific overt criminal acts or omissions purportedly committed by each of the petitioners; (c) the compromise agreement entered into by PEPSI is not an admission of guilt; and (d) the evidence establishes that the promo was carried out with utmost good faith and without malicious intent.

On 15 April 1993, the petitioners filed with the DOJ a Petition for Review^[15] wherein, for the same grounds adduced in the aforementioned motion for reconsideration, they prayed that the Joint Resolution be reversed and the complaints dismissed. They further stated that the approval of the Joint Resolution by the City prosecutor was not the result of a careful scrutiny and independent evaluation of the relevant facts and the applicable law but of the grave threats, intimidation, and actual violence which the complainants had inflicted on him and his assistant prosecutors.

On that same date, the petitioners filed in Criminal Case No. Q-93-43198 Motions to Suspend Proceedings and to Hold in Abeyance Issuance of Warrants of Arrest on the ground that they had filed the aforesaid Petition for Review.^[16]

On 21 April 1993, acting on the Petition for Review, Chief State Prosecutor Zenon L. De Guia issued a 1st Indorsement,^[17] directing the City Prosecutor of Quezon City to inform the DOJ whether the petitioners have already been arraigned, and if not, to move in court for the deferment of further proceedings in the case and to elevate to the DOJ the entire records of the case, for the case is being treated as an exception pursuant to Section 4 of Department Circular No. 7 dated 25 January 1990.

On 22 April 1993, Criminal Case no. Q-93-41398 was raffled to Branch 104 of the RTC of Quezon City.^[18]

In the morning of 27 April 1993, private prosecutor Julio Contreras filed an *Ex-Parte Motion* for Issuance of Warrants of Arrest.^[19]

In the afternoon of that same day, petitioner Paul Roberts, Jr., filed a Supplemental Urgent Motion to hold in Abeyance Issuance of Warrant of Arrest and to Suspend Proceedings.^[20] He stressed that the DOJ had taken cognizance of the Petition for Review by directing the City Prosecutor to elevate the records of I.S. No. P-4401 and its related cases and asserted that the petition for review was an essential part of the petitioners' right to a preliminary investigation.

The next day, respondent Judge Asuncion, Presiding Judge of Branch 104 of the RTC of Quezon City, issued an order advising the parties that his court would "be guided by the doctrine laid down by the Supreme Court in the case of Crespo vs. Mogul, 151 SCRA 462 and not by the resolution of the Department of Justice on the petition for review undertaken by the accused."^[21]