328 Phil. 1168

THIRD DIVISION

[G.R. No. 118590, July 30, 1996]

D.M. CONSUNJI, INC., PETITIONER, VS. RAMON S. ESGUERRA, IN HIS CAPACITY AS UNDERSECRETARY OF THE DEPARTMENT OF JUSTICE, PROSPERO B. SEMANA, IN HIS CAPACITY AS THE INVESTIGATING ASST. CITY PROSECUTOR OF QUEZON CITY, EDUARDO L. CHING, AND SPOUSES ANTHONY AND CECILIA C. SAY, RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

Will the writ of certiorari issue to reverse the dismissal of a complaint by the Investigating Prosecutor, which dismissal was upheld by the Undersecretary of Justice? Corollarily, is mandamus available to compel said prosecutor to file an information against private respondents?

These questions were answered by this Court in resolving the instant petition for certiorari and mandamus under Rule 65 of the Rules of Court seeking to set aside the Order[1] dated October 18, 1994 issued by respondent Undersecretary of Justice, denying the appeal of petitioner and upholding the Resolution[2] of respondent Prosecutor dismissing the criminal complaint docketed as I.S. No. 91-2012 for "Violation of P.D. 1612 (Anti-Fencing Law of 1979)" against private respondents.

After receipt of and judicious deliberation on the Comments by respondents and the Consolidated Reply, the Court considered the case submitted for resolution without need of memoranda by the parties.

The Facts

As a result of conducting an inventory, petitioner discovered that there was systematic pilferage of company properties by stock clerks and drivers for almost a year. Losses occasioned thereby amounted to "not less than" six million five hundred thousand pesos (P6,500,000.00).[3] The pilfered materials were diverted and sold to hardware stores in Cubao, Quezon City, identified as the MC Industrial Sales and the Seato Trading Company, Inc., owned by private respondents, Ching and Spouses Say, respectively.[4]

Petitioner sought the assistance of the National Bureau of Investigation (NBI) to further investigate the pilferages in order for it to take the appropriate legal action against the persons responsible.

In the afternoon of August 28, 1991, pursuant to search warrants[5] issued by Judge Felix M. de Guzman, Branch 99, Regional Trial Court, Quezon City, a search was

conducted in the premises of Eduardo Ching at 15-A and C and No. 22 Pittsburgh St., Cubao, and in the premises of the San Juan Enterprises/Seato Trading Inc. (owned by Anthony and Cecilia Say) located at No. 110 20th Avenue, Cubao, Quezon City. Seized from Ching were three (3) pieces of phenolic plywood, and from the Spouses Say, six hundred fifteen (615) pieces of such plywood.[6] The seized items had an estimated aggregate value of one million pesos (P1,000,000.00).[7] These items were later identified by petitioner corporation as among those stolen/pilfered from its warehouse in Cainta, Rizal.[8]

After investigation, the NBI filed on August 29, 1991 a complaint with the Quezon Prosecutor's Office recommending the prosecution of private respondent Eduardo L. Ching for violation of P.D. 1612, otherwise known as the Anti-Fencing Law. On September 25, 1991, the NBI filed another complaint with the same office recommending the prosecution of private respondents Anthony Say and Cecilia Say for the same violation.[9] Both complaints were later consolidated and assigned to public respondent Asst. City Prosecutor Semana for preliminary investigation. The NBI also recommended the prosecution of several employees of the petitioner for qualified theft.[10]

Upon evaluating the affidavits of witnesses, counter-affidavits and reply affidavits, the investigating prosecutor in his Resolution[11] recommended dismissal of the case against private respondents, reasoning in part that:

> "Fencing as defined by law is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should have known to him (sic), to have been derived from the proceeds of the crime of robbery or theft.
>
> "When SEATO TRADING bought the said marine plywoods from EDUARDO CHING, there is no doubt that the Spouses SAY were buying legitimate goods. They never had any suspicious (sic), even the slightest suspicion, that those marine plywoods were allegedly the subject of thievery since they were buying from a legitimate business enterprises (sic) engaged in the selling of construction materials. They never suspected and they do (sic) not have any reason to suspect because 'M.C. Industrial Sales', owned and operated by the Spouses Ching, is duly registered and licensed establishment engaged in the selling of construction materials. Moreover, the SAYS were duly given the proper receipts/sales invoice for all purchases they made from the CHING'S (sic) thus making the transaction over and abovementioned (sic) of what is legitimate.
>
> The same is true in the case of the Spouses Ching. Ernesto Ching bought those plywoods on the representation of Ernesto Yabut and a certain Reyes that they are employees of Paramount Industrial. Eduardo Ching did not have any reason to suspect that what he was buying were the objects of theft because for all purchases he made, he was likewise issued the corresponding receipts/sales invoice. The sales agents in the persons of Ernesto Yabut and a certain Reyes were able to produce sales invoice of their firm in all those transactions and that those goods

> appeared new and unsold. The misrepresentation of Yabut coupled by the circumstances of issuing legal and valid sales invoice of Paramount Industrial which appears to be a legitimate establishment engaged in the selling of construction materials and the condition of the goods that were sold being new and unused leaves no reason for Ching to became (sic) suspicious that those marine plywoods were stolen."

On August 20, 1992, respondent Semana's recommendation was approved by First Assistant City Prosecutor Ramon M. Gerona, by authority of the Quezon City Prosecutor.[12] Petitioner filed a motion for reconsideration[13] which was denied in another approved Resolution dated August 17, 1994.[14]

On September 28, 1994, petitioner filed a petition for review with the Department of Justice.[15] Finding no reversible error committed by the Investigating Prosecutor in its Resolution, and for failure of the petitioner to comply with certain formal requirements for such appeal, the same was denied on October 18, 1994 by respondent Undersecretary Esguerra.[16] Hence, this petition.

The Issues

Petitioner now charges the public respondent Undersecretary of Justice with having "seriously erred and committed grave abuse of discretion" in --

> "I. x x x upholding the resolution of Assistant City Prosecutor Prospero B. Semana, in dismissing the case against the private respondents (and)
>
> II. x x x dismissing the case for failure of the petitioner to comply with the Department Order."

In fine, the only issues raised are whether or not grave abuse of discretion was committed by the respondent Investigating Prosecutor in dismissing, and by the Undersecretary of Justice in upholding the dismissal of the anti-fencing case against private respondents, and if so, whether mandamus should issue to compel them to file the appropriate information against private respondents.

The Court's Ruling

Certiorari Does Not Lie

Petitioner contends that public respondents "committed grave abuse of discretion x x x in refusing to apply the rule in preliminary investigation" that only "probable cause" and not "sufficiency of evidence to establish guilt" is necessary "for the filing of information to the court by the investigating officer".[17] Such evidence "which established the existence of facts and circumstances as would excite the belief in a reasonable mind as acting on the facts within the knowledge of the prosecutor that (private respondents) are guilty of the crime for which they are being prosecuted" [18] are to be found, petitioner insists, in the sworn statements of the employees of petitioner who were investigated by the NBI, namely: Edmund Corate, Cayetano Rodriguez, Augusto Datu, Clemente Revilla, Reynaldo Reyes, and Ernesto Yabut, and in the statements of private respondents.

The Solicitor General disagrees, arguing in his Comment[19] that no clear or concrete proof was submitted to show that private respondents were aware that the

pieces of phenolic plywood they bought were the objects of robbery or theft, an essential element in the crime of fencing. Thus, no grave abuse of discretion was attributable to the public respondents. On the other hand, respondents Spouses Say claim that there was no evidence linking them to the crime and the "affidavits of the witnesses failed to mention their names or implicate them in the alleged illegal transaction."

Petitioner however retorted that, contrary to the contention of the Solicitor General and private respondents, mere possession by private respondents of the stolen phenolic plywood constituted *prima facie* evidence of fencing, according to Section 5 of P.D. 1612. Further, the sales invoices presented by respondent Spouses Say did not exculpate them because such invoices cannot overcome the presumption in Section 5.

Petitioner's position is clearly untenable and cannot be sustained. In *Dizon-Pamintuan vs. People,*[20] we discussed the elements of the crime of fencing:

> "(1) A crime of robbery or theft has been committed;
>
> (2) The accused, who is not a principal or accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells, or disposes or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the said crime;
>
> (3) The accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and
>
> (4) There is, on the part of accused, intent to gain for himself or for another."

In the instant case, the first and second elements were duly established. Qualified theft had been committed. Quantities of phenolic plywood were stolen and were discovered in the premises of private respondents. The question is whether the third element exists. Did private respondents know or should they have known that the phenolic plywood were the subjects or proceeds of crime?

> *Dizon-Pamintuan*[21] gives us the guidelines:
>
> "One is deemed to know a particular fact if he has the cognizance, consciousness or awareness thereof, or is aware of the existence of something, or has the acquaintance with facts, or if he has something within the mind's grasp with certitude and clarity. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence unless he actually believes that it does not exists. On the other hand, the words "should know" denote the fact that a person of reasonable prudence and intelligence would ascertain the fact in performance of his duty to another or would govern his conduct upon assumption that such fact exists. Knowledge refers to a mental state of awareness about a fact. Since the court cannot penetrate the mind of an accused and state with

> certainty what is contained therein, it must determine such knowledge with care from the overt acts of that person. And given two equally plausible states of cognition or mental awareness, the court should choose the one which sustains the constitutional presumption of innocence.
>
> Since Section 5 of P.D. 1612 expressly provides that '[m]ere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing,' it follows that the petitioner is presumed to have knowledge of the fact that the items found in her possession were the proceeds of robbery or theft. The presumption is reasonable for no other natural or logical inference can arise from the established fact of her possession of the proceeds of the crime of robbery or theft. x x x."

In the aforementioned case, the accused was unable to rebut the *prima facie* presumption by failing to present her supplier/dealer, who allegedly was the source of the stolen jewelry; neither did she establish that the latter was a licensed supplier/dealer of jewelry.[22]

This is not so in the case at bar. It is uncontested that private respondents presented sales receipts covering their purchases of the subject phenolic plywood. In respondent Ching's case, he alleges that he purchased the phenolic plywood from agents of Paramount Industrial which is a known hardware store in Caloocan City and that his purchases were covered by receipts.[23] On the other hand, the Spouses Say likewise claim that they bought the plywood from MC Industrial Sales which is a registered business establishment licensed to sell construction materials and that their purchases too were covered by receipts.[24] Thus, the *prima facie* presumption was successfully disputed. The logical inference follows that private respondents had no reason to suspect that said plywoods were the proceeds of qualified theft or any other crime. Admittedly, there is no jurisprudence to the effect that a receipt is a sufficient defense against charges of fencing. But logically, and for all practical purposes, such receipt is proof -- although disputable -- that the transaction in question is above-board and legitimate. Absent other evidence, the presumption of innocence remains. Thus, grave abuse of discretion cannot be successfully imputed upon public respondents. Grave abuse of discretion has been defined thus:

> "By 'grave abuse of discretion' is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. x x x"[25]

At the risk of being repetitious, we reiterate that public respondents had sufficient and substantial basis for the dismissal of the complaint as against private respondents.

Mandamus Is Improper