

THIRTEENTH DIVISION

[CA-G.R. SP NO. 132719, March 11, 2015]

ARIEL R. CUA AND RICHARD R. CUA, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND HON. GAMOR B. DISALO AS ASSISTING PRESIDING JUDGE OF REGIONAL TRIAL COURT OF VALENZUELA CITY, BRANCH 75, RESPONDENTS.

DECISION

CORALES, J.:

This is a Petition for *Certiorari*^[1] under Rule 65 of the Rules of Court with application for temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) against the July 24, 2013^[2] and September 27, 2013^[3] Orders of the Regional Trial Court (RTC), Branch 75, Valenzuela City in Criminal Case No. 36-V-04 entitled "*People of the Philippines v. Dr. Ariel R. Cua and Richard R. Cua*". The first assailed Order granted the People of the Philippines' motion for reconsideration and in effect reversed the RTC's November 24, 2004 Order^[4] which quashed and set aside the Amended Information against petitioners Ariel and Richard R. Cua (the Cuas). The second assailed Order denied the motion for reconsideration of the Cuas.

The Antecedents

The Cuas were charged with violation of Section 155 in relation to Section 170 of Republic Act (R.A.) No. 8293, otherwise known as the Intellectual Property Code, under an Amended Information which reads:^[5]

That on or about March 30, 2001 in Valenzuela City within the jurisdiction of this Honorable Court, the said accused *did then and there willfully, unlawfully and feloniously used in commerce, without the consent of Ajinomoto Company, Inc., the owner of duly registered AJINOMOTO trademarks, reproductions, copies, counterfeits, or colorable imitations of said AJINOMOTO trademarks in connection with their possession of finished counterfeit AJINOMOTO Monosodium Glutamate ("Vetsin"), which all bear reproductions, copies, counterfeits, or colorable imitations of said AJINOMOTO trademarks and which possession of said articles constitutes a preparatory act necessary to carry out the sale or ordering for sale of said counterfeit Ajinomoto Vetsin, and which use is likely to cause confusion, or to cause mistake, or to deceive consumers to the damage and prejudice of Ajinomoto Company, Inc. and the public.*

CONTRARY TO LAW. x x x (Underscoring appears in the original text of the Amended Information)

On September 18, 2004, petitioners moved to quash the Amended Information on the ground that the facts alleged therein do not constitute an offense. They argued

that "possession" is not an element of the offense under Section 155.1 of R.A. No. 8293 and "it is the use in commerce ... in connection with the sale that makes the act punishable".^[6]

In its November 24, 2004 Order, the RTC initially granted the motion to quash and set aside the Amended Information based on the following ratiocination:^[7]

x x x However, this Court finds no evidence in the records showing that during the search conducted by the search team the accused were indeed manufacturing, selling and distributing counterfeit [A]jinomoto products. But there is evidence in the records of the instant case that the accused were not engaged in the manufacture of counterfeit [A]jinomoto products and this is the Receipt For Property Seized issued on March 30, 2001 by the search team. x x x How could the accused manufacture vetsin if there are no such necessary equipments? With respect to the alleged selling and distribution of adverted counterfeit [A]jinomoto products, there is no evidence to prove the same illegal acts or in other words to show that the accused had "willfully, unlawfully and feloniously used in commerce" the reproductions, copies, counterfeit or colorable imitations of said [A]jinomoto trademarks and finished vetsin product (*sic*).

It is the contention of the prosecution that the possession of voluminous vetsin products found in the premises of the accused is *prima facie* evidence of the charge of Infringement. **But his contention is not tenable because the accused were able to satisfactorily explain to the satisfaction of this Court as to how the subject [A]jinomoto products came into their possession. The accused purchased the subject products from David Ho of Seng Hiap Trading and such purchase was duly covered by a receipt issued therefor. No evidence was submitted by the prosecution to controvert accused's evidence. Again, it must be emphasized that the quantum of evidence needed to convict the accused is evidence showing the guilt of the accused beyond reasonable doubt and not merely the existence of probable cause or *prima facie* evidence, more so when the latter evidence is refuted or controverted by the accused with sufficient credible and admissible evidence.** x x x

In view of the foregoing discussions, this Court is very much inclined to give due course to the accused's motion to quash the Amended Information on the ground that the facts charged do not constitute the offense.

WHEREFORE, the Amended Information in the instant case is hereby SET ASIDE.

The cash bond posted by the accused for their respective probational liberty is also CANCELLED.

SO ORDERED. (Emphasis supplied; citation omitted)

On January 24, 2005, the prosecution filed a Motion for Reconsideration^[8] arguing that the Amended Information contained allegations constitutive of the offense defined in Section 155 of R.A. No. 8293. It contended that possession of counterfeit goods bearing colorable imitations of the trademarks constituted a preparatory act necessary to carry out the sale or offering for sale of the counterfeit Ajinomoto products which would likely cause confusion or mistake or to deceive consumers. It further faulted the RTC for relying on evidence *aliunde*, considering the Cuas' defenses, and applying the quantum of evidence required for conviction, instead of determining the sufficiency of the allegations in the Amended Information.

The Cuas filed their Opposition^[9] on February 7, 2005.

The Assailed Rulings of the RTC

On July 24, 2013, the RTC rendered an Order^[10] reversing its earlier ruling and setting the case for arraignment. It stressed that the charge against the Cuas was not the mere possession of the alleged counterfeit products but rather the preparatory steps necessary to carry out the sale, which is one of the alternative acts mentioned in R.A. No. 8293 aside from sale, distribution, or advertising. It disposed the case as follows:

WHEREFORE, the Motion for Reconsideration is Granted being impressed with merit.

Accordingly, the case shall forthwith be set for arraignment.

SO ORDERED.

This time, the Cuas sought reconsideration insisting that the court, in resolving motion to quash, should consider facts apparent from the records and not denied by the prosecution. They claimed that there was no evidence showing that they have sold, offered for sale, or performed an overt act preparatory and necessary to carry out the sale of counterfeit Ajinomoto products. They also harped on their right to a speedy disposition of case and blamed the State for allowing the case to sleep for more than eight (8) years from the filing of the motion for reconsideration, allegedly in violation of the 30-day time limit between filing of Information and arraignment mandated under R.A. No. 8493.^[11] They added that the State's failure to prosecute warrants the dismissal of the case against them.^[12]

After submission of the People of the Philippines' comment/opposition,^[13] the RTC denied the Cuas' motion for reconsideration through its September 27, 2013 Order.^[14]

Unfazed, the Cuas are now before Us *via* this petition for *certiorari* raising the following issues:^[15]

I

The unjustified inaction or lack of interest on the part of the State to prosecute this case for an unreasonable length of time (8 1/2 years) is prejudicial to and violative of the right of the accused to a speedy trial,

justifying dismissal of the criminal case.

II

As aptly found by the Court in its Order dated 24 November 2004, "*this Court finds no evidence in the records showing that during the search conducted by the search team the accused were indeed manufacturing, selling and distributing counterfeit Ajinomoto products.*"

The Cuas insist on the dismissal of the criminal charges against them in view of the alleged deprivation of their constitutional right to a speedy trial and the failure of the Amended Information to allege facts constituting an offense. Substantially reiterating the arguments in their earlier motion for reconsideration, the Cuas add that the records merely showed seizure and confiscation of an alleged large quantity of counterfeit products, not the sale or offer for sale thereof or overt acts preparatory or necessary to such sale or offer. They pray for the issuance of a TRO to enjoin the RTC from enforcing its assailed Orders, as well as a WPI and/or prohibition against the continuation of the proceedings until the resolution of this petition.^[16]

The Office of the Solicitor General (OSG), representing the People of the Philippines, counters that the delay in the proceedings *a quo* was neither unjust nor unreasonable and simply resulted from the pending incidents such as the motion to quash and the parties' respective motions for reconsideration of the November 24, 2004 and July 24, 2013 Orders. It urges Us to maintain a delicate balance between the demands of due process and the strictures of speedy trial on the one hand, and the right of the State to prosecute crimes and rid society of criminals on the other. It further asserts that the court cannot consider a situation contrary to that set forth in the criminal Information and facts constituting the defense of the accused must be proved during trial. It maintains that the Amended Information adequately charged the Cuas with preparatory act necessary to carry out a violation of R.A. No. 8293 and by moving to quash the Amended Information, they hypothetically admitted the factual allegations therein.^[17]

This Court's Ruling

The petition lacks merit.

A special civil action for *certiorari* under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. Grave abuse of discretion, as contemplated by the Rules of Court, is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that is so patent and gross that it amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order.^[18] It is therefore imperative for the petitioners to show that the RTC issued its assailed Orders with grave abuse of discretion.

The Cuas failed to discharge this burden. There is nothing in the petition which indicates how the RTC gravely abused its discretion in rendering the assailed Orders. They failed to show that the RTC has no legal power to determine the case or