

THIRTEENTH DIVISION

[CA-G.R. SP No. 123157, October 15, 2014]

**PIROUZ HADI OR KAZIM HADI AND HONEY MALEK,
REPRESENTED BY THEIR COUNSEL OF RECORD, ATTY. NESTOR P.
IFURUNG, PETITIONERS, VS. HON. ELPIDIO R. CALIS, IN HIS
CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL
COURT OF MAKATI CITY AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

DECISION

SADANG, J.:

This is a petition for certiorari with prayer for issuance of a writ of preliminary injunction seeking to set aside the Order^[1] dated December 14, 2011 of the Regional Trial Court (RTC) of Makati City, Branch 133, in Criminal Case No. 11-1942 and the Order^[2] dated January 16, 2012 denying petitioner's Motion for Reconsideration.

Records show that on March 18, 2011, Bahman Pourmohammad (hereafter, Bahman) filed with the City Prosecutor's Office of Makati a Complaint-Affidavit^[3] accusing petitioners spouses Pirouz Hadi (Hadi) and Honey Malek (Malek) of estafa upon the following allegations: In August 2010, Bahman met Hadi inside the Iranian Embassy. A few days later, Hadi asked Bahman to sponsor a concert that Hadi is going to produce on November 19, 2010, featuring Iranian singers Kamran and Hooman. Hadi promised Bahman a huge profit in return. On September 16, 2010, Bahman gave Hadi and his wife, Malek, \$10,000.00. On November 9, 2010, Hadi came to see Bahman because the Meralco would cut off his power supply and Bahman gave him P40,000.00 provided that Hadi would return the money as soon as possible. Bahman later learned that there was no concert being organized at all and Hadi did not return his money in spite of demands.

Petitioners Hadi and Malek filed their Joint Counter-Affidavit^[4] dated April 2011 alleging that: Bahman gave them \$10,000.00 on October 19, 2010 not as a loan but as a sponsorship investment in the concert project for which they prepared a receipt; thereafter, Morteza "Pedram" Dolatabadi (Morteza), manager of the singers, cancelled the concert on his own; Hadi called up the producer who told him about the concern for the safety of the singers in the Philippines; Hadi gave safety assurances but an additional amount of \$22,000.00 was demanded; Malek also confronted Morteza and demanded the return of the \$10,000.00 but the latter gave many excuses for his inability to return the initial investment.

Petitioners denied having received \$10,000.00 from Bahman on September 16, 2010 because they met him for the first time in October 2010. They alleged that they did not receive the \$10,000.00 as a loan but as a sponsorship investment and they remitted said amount to Morteza. They also averred that the receipt attached

to the complaint is a forgery and even assuming that the machine copy of the receipt is a faithful reproduction of the genuine receipt that they signed, the money received is still a loan and their obligation is only civil in nature.

Bahman filed a Reply-Affidavit^[5] to which petitioners filed a Rejoinder Affidavit.^[6]

On June 30, 2011, Prosecutor Marlyn R. Agama issued a Resolution^[7] recommending that petitioners be indicted for the crime of estafa penalized under Article 315, paragraph 2 (a) of the Revised Penal Code; hence, the filing of the Information^[8] with the trial court on July 21, 2011.

Petitioners filed a Motion for Reconsideration^[9] of the prosecutor's resolution but later withdrew^[10] the motion and instead filed, on October 6, 2011, a Motion for Judicial Determination of Probable Cause.^[11] They averred that: they did not commit misrepresentation because their documents show that they produced a concert which prompted them to look for sponsors for a second concert; they do not deny their receipt of the \$10,000.00 from Bahman but they dispute the date thereof and the purpose for which the money was solicited and received; the photocopy of the receipt adduced by Bahman is not a faithful reproduction of the original receipt that they prepared, hence, it is a forgery; they do not have a copy of the original receipt; in determining probable cause, judges must not rely solely on the resolution of the prosecutor but must evaluate the supporting documents; the investigating prosecutor relied only on the forged receipt and did not give probative value to the documents that they adduced; and there is no probable cause for the filing of the information and the issuance of the warrant of arrest against them.

On October 14, 2011, petitioners filed a Motion to Admit the Attached Judicial Affidavit of Defendant Honey Malek.^[12] In her affidavit,^[13] Malek reiterated her previous allegations.

The public prosecutor filed an Opposition^[14] to petitioners' Motion for Judicial Determination of Probable Cause.

On December 14, 2011, respondent judge issued the assailed Order which the dispositive portion, reads:

WHEREFORE, in view of the above considerations, the Motion for Judicial determination of Probable Cause is DENIED for lack of merit and the Order of the Court dated 28 July 2011 shall stand.

Accordingly, let the arraignment of the accused Pirouz Hadi or Kazim Hadi and Honey Malek be set on 7 February 2012 at 9 o'clock in the morning.

Notify all the parties and their counsels of this order.

SO ORDERED.^[15]

Petitioners filed a Motion for Reconsideration^[16] but it was denied in an Order^[17]

dated January 16, 2012 for lack of merit and for petitioners' failure to set the motion for hearing.

Thereafter, petitioners filed a Motion^[18] dated January 19, 2012, seeking cancellation/deferment of their arraignment and it was granted in an Order^[19] dated January 31, 2012.

Petitioners anchor their petition on these grounds:

- I. RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED HIS ORDER DATED DECEMBER 27, 2011 [sic], DENYING THE EXISTENCE OF PROBABLE CAUSE FOR THE MAINTENANCE OF THE CHARGE.
- II. RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNG [sic] TO LACK OR EXCESS OF JURISDICTION IN ISSUING WARRANTS OF ARREST AGAINST PETITIONERS.
- III. RESPONDENT JUDGE COMMITTERD [sic] GRAVE ABUSE OF DISCRETION IN ISSUING HIS ORDER DATED JANUARY 14, 2012 [sic] DENYING PETITIONERS' MOTION FOR RECONSIDERATION OF HIS ORDER DATED DECEMBER 14, 2011.^[20]

The Solicitor General filed his Comment^[21] to the petition to which petitioners filed a Reply.^[22] Both parties submitted memoranda.^[23]

On October 9, 2012, the Court of Appeals (10th Division) issued a Resolution^[24] denying petitioners' application for the issuance of a temporary restraining order and/or a writ of preliminary injunction.

RULING

The petition lacks merit.

Petitioners contend that there was no personal determination of probable cause by respondent judge in issuing the warrant of arrest. They argue that respondent judge overlooked the probative value of their evidence and merely assumed the existence of probable cause on the basis of the findings of the public prosecutor.

Contrary to petitioners' contention, respondent judge personally determined the existence of probable cause by examining not only the prosecutor's report but also the supporting evidence consisting of the sworn statement of private complainant, the receipt, and the documents adduced by petitioners. The pertinent portion of the challenged order reads:

After a careful consideration of the arguments raised by the contending parties including the review of all the affidavits and supporting

documents, consistent with the ruling laid by the Supreme Court in *Lourdes Baltazar, et al. vs. Jaime Chua* (G.R. No. 177583, February 27, 2009) adjudging all trial courts to make an independent assessment of the merits of the recommendation of the prosecution, this Court hereby rules to deny the relief sought in the Motion as probable cause for the issuance of a warrant of arrest is existent.^[25]

"Personal determination" as a prerequisite for the issuance of a warrant of arrest means that the judge should not rely solely on the report of the investigating prosecutor^[26] but must also consider the affidavits and the documentary evidence of the parties submitted to the court by the prosecutor upon the filing of the Information.^[27] Personal examination by the judge of the complainant and his or her witnesses themselves is not mandatory and indispensable in the determination of probable cause for the issuance of a warrant of arrest. The necessity

arises only when there is an utter failure of the evidence to show the existence of probable cause.^[28] Otherwise, the judge may rely on the report of the investigating prosecutor, provided that he likewise evaluates the documentary evidence in support thereof.^[29]

The Solicitor General correctly cites the distinction between the determination of probable cause by the prosecutor for the filing of an information with the court and the determination of probable cause by the judge for the issuance of a warrant of arrest. As held in *People v. Castillo*:^[30]

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant. (Underscoring supplied)

Clearly, executive determination of probable cause is done during the preliminary investigation and resolves the issue of whether there is probable cause that a crime