

## **SPECIAL ELEVENTH DIVISION**

**[ CA-G.R. SP. No. 136936, November 17, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. EDMAR CASTILLO, IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 11, TUAO, CAGAYAN AND LEONIDES "ODI" FAUSTO, RESPONDENTS.**

### **D E C I S I O N**

**DICDICAN, J.:**

Although jurisprudence and procedural rules allow it, a judge must always proceed with caution in dismissing cases due to lack of probable cause, considering the preliminary nature of the evidence before it<sup>[1]</sup>. It is only when he finds that the evidence on hand absolutely fails to support a finding of probable cause that he can dismiss the case<sup>[2]</sup>. On the other hand, if a judge finds probable cause, he must not hesitate to proceed with arraignment and trial in order that justice may be served<sup>[3]</sup>.

Before this Court is a Petition for *Certiorari*<sup>[4]</sup> filed pursuant to Rule 65 of the Revised Rules of Court assailing, for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, the Order<sup>[5]</sup> dated June 17, 2013 issued by Presiding Judge Edmar P. Castillo, Sr. of Branch 11 of the Regional Trial Court in Pata, Tuao, Cagayan ("RTC"), Second Judicial Region, in Criminal Case No. 1558-T which dismissed the case for frustrated murder which was filed against herein private respondent Leonides Fausto ("Fausto") for lack of probable cause pursuant to Section 6(a), Rule 112 of the Rules on Criminal Procedure. Likewise assailed herein is the Joint Order<sup>[6]</sup> dated May 2, 2014 issued by the same court which denied the Motion for Reconsideration filed by private complainant William N. Mamba ("Mamba").

The material and relevant facts, as culled from the record, are as follows:

On October 23, 2010, private complainant William N. Mamba, then Mayor of Tuao, Cagayan, together with other officials, were on their way to the eastern barangays of the Municipality of Tuao, Cagayan for an information campaign for the then upcoming barangay and SK elections.

On their way to the house of Ricardo Capalungan ("Capalungan"), who was a candidate in the said elections, Mamba allegedly noticed that the vehicle of an opposing candidate, who was supported by herein private respondent Fausto, was following their convoy which was also escorted by other vehicles.

Upon reaching the house of Capalungan, the group of Mamba allegedly alighted from their vehicles. At this point, Mamba narrated that he saw Fausto alight from a

Sports Utility Vehicle in full battle gear with bandolier and a baby armalite. The group of Fausto then allegedly opened fire against the group of Mamba which caused the latter to scamper away for their safety. Mamba, together with his brother and two escorts, stayed behind his bullet-proof SUV-Toyota Land Cruiser. Fortunately for the group of Mamba, the timely arrival of the operatives of PNP Lakambini, Tuao, Cagayan, signalled the end of the shooting incident.

As a result thereof, Mamba initiated criminal charges against the group of Fausto on December 22, 2011. Assistant State Prosecutor Phillip dela Cruz recommended that Fausto be charged with direct assault and frustrated murder. The Information, which was docketed as Criminal Case No. 1558-T<sup>[7]</sup> read as follows:

"That on or about the 23rd day of October 2010, in the Municipality of Tuao, Province of Cagayan, Philippines, a place within the territorial jurisdiction of this Honorable Court, the above-named accused, with the use of armed men and motor vehicle, willfully, unlawfully, and feloniously, and with intent of taking the life of Willima Mamba, attack and shoot the latter with the use of a high powered firearm having performed all the acts which would have produced the crime of murder but which did not, by reason of causes independent of the defendant's will, that is, the victim was able to hide behind his bullet-proof armored vehicle.

"CONTRARY TO LAW."

During the judicial determination of the existence of probable cause for the issuance of a warrant of arrest against Fausto, Presiding Judge Edmar P. Castillo, Sr. issued the assailed Order<sup>[8]</sup> on June 17, 2013, pertinent portions of which are cited herein as follows:

"In page 8 of the Resolution dated December 22, 2011, upon which the Information filed on June 6, 2013 was based, Asst. State Prosecutor Phillip L. dela Cruz found: *'The records show that respondent Vice-Governor Fausto opened fire on complainant and his group. Luckily, the complainant and his group were not hit as **his SUV-Toyota Land Cruiser is bullet-proof**. The direction of the shot and where it landed are indubitable proof that respondent Vice-Governor Fausto intended to kill complainant but his effort and intent was thwarted by the complainant's **use of a bullet-proof vehicle**.'*

"With due respect to Asst. State Prosecutor dela Cruz, the Court do not share his findings as to the existence of probable cause for the crime charged of Frustrated Murder. The private offended party, Mayor William Mamba of Cagayan, did not incur any injury whatsoever – even a superficial one, which death may ensue as a consequence. Death on the part of the offended party not being a logical consequence of the acts attributable to the accused, the offense of Frustrated Murder could not have been committed.

"On the other hand, the private offended party admitted, and found as a

fact by Asst. State Prosecutor dela Cruz, that he and his group were not hit because they were then using a '*bullet-proof*' vehicle at the time they were fired at. Such being the case, even if how many bullets the accused may have fired against the private offended party, the offense of murder will never ensue as a consequence. The private offended party will always be shielded from harm by his '*bullet-proof*' vehicle. Neither would a frustration or an attempt of the offense of murder would occur.

"WHEREFORE, in view of all the foregoing, the case is hereby DISMISSED pursuant to the second sentence, Section 6(a), Rule 112 of the Rules on Criminal Procedure.

"SO ORDERED."

A Motion for Reconsideration<sup>[9]</sup> was filed by Mamba on July 12, 2013 which was likewise denied in a Joint Order<sup>[10]</sup> dated May 2, 2014.

Unstirred by the foregoing disposition of the RTC, the petitioner, through the Office of the Solicitor General ("OSG") filed the instant petition with this Court assigning as lone error the following act that was purportedly committed by the RTC with grave abuse of discretion amounting to lack or excess of jurisdiction, to wit:

THE REGIONAL TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING CRIMINAL CASE NO. 1158-T ON THE GROUND THAT NO CRIME WOULD ARISE FROM THE SUBJECT INCIDENT.

The primordial issue brought before this Court for resolution is whether the court *a quo* exercised grave abuse of discretion tantamount to lack or excess of jurisdiction in dismissing the criminal case for frustrated murder against Fausto for lack of probable cause.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be meritorious.

We first discuss the procedural infirmities as raised by private respondent Fausto.

According to Fausto, a petition for *certiorari* under Rule 65 of the Rules of Court was not the proper remedy to question the Order of the RTC since it involved a final order which is one which disposes of the whole subject matter leaving nothing to be done but to enforce the same. He also asserted that appeal was then the adequate, speedy and available remedy which, however, had already been lost on account of the lapse of the reglementary period for the filing thereof.

We are not in conformity with the arguments as espoused by private respondent Fausto. In a long line of cases<sup>[11]</sup>, the Supreme Court had upheld the remedy of *certiorari* under Rule 65 of the Rules of Court in assailing a trial court's Order which dismisses a criminal case for lack of probable cause. In the same manner, the

reckoning point for the period to file the petition for *certiorari* is upon the receipt of the Order by the public prosecutor and not by the private prosecutor since the proper party to assail an Order of dismissal in a criminal action is the State, through the Office of the Solicitor General<sup>[12]</sup>. Hence, the remedy of petition for *certiorari* was properly and timely availed by the OSG herein.

Going to the substantial matters involved in the case before us, the private respondent would want to convince us that the RTC did not commit grave abuse of discretion tantamount to lack or excess of jurisdiction in issuing the questioned Order which effectively dismissed the criminal case for frustrated murder against him.

Under Section 5(a) of the Revised Rules of Criminal Procedure, a trial court judge may immediately dismiss a criminal case if the evidence on record clearly fails to establish probable cause, *viz*:

"Sec. 5. When warrant of arrest may issue. – (a) By the Regional Trial Court. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information."

It must, however, be observed that the judge's power to immediately dismiss a criminal case would only be warranted when the lack of probable cause is clear. In *De Los Santos-Dio v. CA*<sup>[13]</sup>, the Supreme Court illumined that a clear-cut case of lack of probable cause exists when the records readily show uncontroverted and, thus, established facts which unmistakably negate the existence of the elements of the crime charged, *viz*:

"While a judge's determination of probable cause is generally confined to the limited purpose of issuing arrest warrants, Section 5(a), Rule 112 of the Revised Rules of Criminal Procedure explicitly states that a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause x x x.

"In this regard, so as not to transgress the public prosecutor's authority, it must be stressed that the judge's dismissal of a case must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause – that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged. On the contrary, if