

TENTH DIVISION

[SP No. 109963, June 17, 2010]

SOLOMON P. SABADO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, HON. MA. THERESA L. DELA TORRE-YADAO, IN HER CAPACITY AS PRESIDING JUDGE OF RTC-QUEZON CITY, BRANCH 81 AND MR. RANDY GLEAVE LAWYER AND MS. MIMILANIE L. MARQUEZ, RESPONDENTS.

D E C I S I O N

Court of Appeals

Before Us is a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Court assailing the Order^[1] dated July 28, 2009 of the Regional Trial Court, Branch 81, Quezon City in Criminal Case No. Q-09-159130 which denied for lack of merit the *Motion to Defer Arraignment* filed by herein petitioner Solomon Sabado.

THE FACTS

On July 25, 2008, private respondents spouses Randy Gleave Lawyer and Mimilanie Marquez filed before the Office of the City Prosecutor of Makati a complaint-affidavit for estafa against their former assistant/secretary, herein petitioner Solomon Sabado. Private respondents alleged that one of petitioner's responsibilities as assistant/secretary was to collect rent from Jan Maria Peeters, the lessee of private respondents' house and lot located at Coron, Busuanga, Palawan. Petitioner, in four separate instances spanning from 2003 to 2008, through false representations, was able to prevail Peeters to issue rental checks payable directly to petitioner, instead of private respondents. Thus, he was able to encash rental checks as follows: (1) Union Bank Check No. 0003116617 dated April 23, 2003 for P3,000.00; (2) Union Bank Check No. 0003130296 dated May 16, 2005 for P9,000.00 (3) Union Bank Check No. 000313048 dated February 8, 2006 for P9,000.00; and (4) Union Bank Check No. 0003156750 dated February 15, 2006 for P15,00.00, or a total of P36,000.00. Petitioner failed to remit the value of all four checks despite written demand from private respondents. Hence, the instant complaint for estafa.

A subpoena was duly served on petitioner at his office address in Unit 1003, 10th Floor, One Executive Building, No. 5 West Avenue corner Col. Martinez Street, Quezon City informing him of the scheduled preliminary investigation hearing on October 30, 2008.

On October 30, 2008, petitioner appeared in the preliminary investigation hearing where he filed his counter-affidavit^[2]. He denied having committed the acts impugned against him. He likewise sought the dismissal of the complaint on the ground of lack of jurisdiction of the Makati City Prosecutor's Office considering that venue was improperly laid. An examination of private respondents' allegations would reveal that none of the alleged acts constituting estafa occurred in Makati City. Instead, it was in Quezon City where petitioner allegedly received the subject

checks and encashed the same.

On October 2, 2008, private respondents filed a motion to withdraw their complaint for estafa with the Makati City Prosecutor because of the alleged lack of jurisdiction. This was granted by the Makati City Prosecutor on December 18, 2008.

On January 22, 2009, private respondents re-filed the same complaint for estafa against petitioner, this time with the Office of the City Prosecutor of Quezon City.

A subpoena was again served on petitioner in his office address in Quezon City informing him of the scheduled preliminary investigation. He however, failed to attend any of the hearings.

In Resolution^[3] dated May 22, 2009, the Office of the City Prosecutor of Quezon City found probable cause that petitioner committed the acts complained of by private respondents. It then recommended the filing against petitioner of four separate informations of estafa, defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code.

On May 28, 2009, before receiving a copy of the Resolution dated May 22, 2009 and before the filing of any of the Informations against him, petitioner filed *Urgent Motion to Re-Open and for Reconsideration*^[4] seeking the re-opening of the preliminary investigation of the complaint for estafa against him so that he may file a counter-affidavit for his defense. Petitioner alleged that he had no knowledge that a preliminary investigation was ongoing with the Office of the City Prosecutor of Quezon City, having failed to receive a notice thereof. This was because he had long vacated his office address in Quezon City, and he is now residing in Novaliches, Caloocan City. It was only upon "verification" that he discovered that the subject complaint was filed against him by private respondents.

Meanwhile, on June 9, 2009, an Information^[5] for estafa against petitioner was filed before the court *a quo* regarding the Union Bank Check No. 0003156750 dated February 15, 2006 for P15,000.00. The three informations for estafa regarding the three other checks were filed before the Metropolitan Trial Court (MT'C) Branch 41, Quezon City.

On June 16, 2009, before receiving any notice regarding the filing of a criminal information against him, petitioner went to the court *a quo* to post bail for his provisional liberty.

In an Order^[6] dated June 16, 2009, the court *a quo* set petitioner's arraignment on August 4, 2009.

On July 1, 2009, petitioner filed an *Urgent Motion for Reconsideration*^[7] before the Quezon City Prosecutor's Office. He alleged that his *Urgent Motion to Re-Open and for Reconsideration* dated May 28, 2009 was rendered moot and academic by the filing of the instant Information for estafa. He reiterated his prayer that his case be re-opened for preliminary investigation so that he could submit a counter-affidavit. Petitioner maintained that fairness and equity required that he be afforded an opportunity to present his defense, which was denied him since the notice of the preliminary investigation was sent his former address in Quezon City instead of his

current address in Quezon City.

On July 27, 2009, petitioner filed a *Motion to Defer Arraignment*^[8] before the court *a quo* alleging that there still was a pending Motion for Reconsideration pending before the Prosecutor's Office of Quezon City which must be first resolved before he can be arraigned.

In an Order^[9] dated July 28, 2009, the court *a quo* denied petitioner's *Motion to Defer Arraignment* for lack of merit. It ratiocinated! that Section 11, Rule 116 of the Revised Rules of Court contains an enumeration of instances when arraignment should be suspended. Petitioner's ground supporting his motion, that is, that his *Motion for Reconsideration* is still pending before the City Prosecutor, is not one of the instances enumerated in the said provision. The full text of the assailed Order is quoted:

ORDER

Accused's Motion to Defer Arraignment is hereby denied for lack of merit considering that the ground set forth by the accused in his motion is not one of the cases provided under Section 11 Rule 116 of the Revised Rules of Criminal Procedure.

Accordingly, the Order dated June 16, 2009 setting accused's arraignment on August 4, 2009

SO ORDERED.^[10]

On August 4, 2009, the scheduled day of arraignment, petitioner orally reiterated his motion to defer his arraignment until the resolution of his *Motion for Reconsideration* pending before the Office of the City Prosecutor of Quezon City. The court *a quo* informed petitioner that the *Motion to Defer Arraignment* had already been resolved in its Order dated July 28, 2009. The court *a quo* thereafter ordered that petitioner be arraigned. Hence, on the same day of August 4, 2009, petitioner, with the assistance of counsel, pleaded not guilty to the crime charged.^[11]

Aggrieved, appellant filed the instant petition, raising the lone ISSUE^[12], to wit:

WHETHER OR NOT THE COURT A QUO GRAVELY ABUSED ITS DISCRETION IN DENYING PETITIONER'S MOTION TO DEFER ARRAIGNMENT AND PROCEEDING WITH PETITIONER'S ARRAIGNMENT.

THE ISSUE

The focal issue in this case is whether or not the court *a quo* committed grave abuse of discretion amounting to lack of or excess of jurisdiction when it denied petitioner's *Motion to Defer Arraignment*.

THE RULING

The petition is bereft of merit.