

## **SECOND DIVISION**

**[ G.R. No. 155451, April 14, 2004 ]**

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. DAVID S. ODILAO, JR., RESPONDENT.**

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

**AUSTRIA-MARTINEZ, J.:**

Before us is a petition for review on certiorari filed by the People of the Philippines assailing the Decision<sup>[1]</sup> of the Court of Appeals dated September 27, 2002 in CA-G.R. SP No. 71198 which directed Judge Caminade of the Regional Trial Court (RTC) of Cebu City (Branch 6), to defer the proceedings in Criminal Case No. CBU-55283 until the petition for review of the reinvestigation report of the Office of the City Prosecutor is resolved by the Department of Justice (DOJ).

The antecedent facts are as follows.

Herein respondent David S. Odilao, Jr. together with Enrique Samonte and Mario Yares, was charged with Estafa in an Information<sup>[2]</sup> filed by the Asst. City Prosecutor Feliciano with the RTC of Cebu City, to wit:

The undersigned Prosecutor I of Cebu City, accuses David Odilao, Jr., Enrique Samonte and Mario Yares of the crime of ESTAFA, committed as follows:

That sometime during the latter part of 1997, and for sometime prior or subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving, confederating and mutually helping with one another, having received in trust from Trans Eagle Corporation a luxury car known as "Jeep Cherokee Sport 4wd" valued at P1,199,520.00 with the agreement that they would sign the document of sale if they are interested to buy the same and with the obligation to return the said car to Trans Eagle Corporation if they are not interested, the said accused, once in possession of the said luxury car, far from complying with their obligation, with deliberate intent, with intent to gain, with unfaithfulness and grave abuse of confidence, did then and there misappropriate, misapply and convert into their own personal use and benefit the same or the amount of P1,199,520.00 which is the equivalent value thereof, and inspite of repeated demands made upon them to let them comply with their obligation to return the luxury car, they have failed and refused and instead denied to have received the luxury car known as "Jeep Cherokee Sport 4WD" and up to the present time still fail and refuse to do so, to the damage and prejudice of Trans Eagle Corporation in the amount aforestated.

## CONTRARY TO LAW.

A warrant of arrest against respondent was then issued by the Executive Judge. Upon motion of respondent, the Executive Judge issued an Order<sup>[3]</sup> dated September 28, 2000 directing the Office of the City Prosecutor to conduct reinvestigation of the case with a caveat that the reinvestigation will be terminated within ten days from receipt of the order and thereafter, submit appropriate recommendation to it. In the meantime the Executive Judge countermanded the service of the warrant of arrest.

Based on his reinvestigation report<sup>[4]</sup> dated October 17, 2000 which found no probable cause, Asst. City Prosecutor Capacio filed with the trial court a Motion to Dismiss<sup>[5]</sup> dated October 20, 2000. On October 27, 2000, private complainant Carmen G. Bugash filed an urgent motion to disregard the reinvestigation report.<sup>[6]</sup> On November 3, 2000, private complainant filed with the DOJ a petition for review<sup>[7]</sup> seeking the reversal of the Reinvestigation Report. In an Order dated October 30, 2000, the trial court deferred the arraignment until the petition for review would have been finally resolved by the Department of Justice.<sup>[8]</sup> On February 20, 2001, the trial court issued another order holding in abeyance the resolution of the motion to dismiss until the DOJ shall have resolved the petition for review.<sup>[9]</sup>

More than one year later, private complainant filed with the trial court on March 14, 2002, a Motion to Suspend Resolution of the Motion to Dismiss.<sup>[10]</sup> Thereafter, the trial court, acting on the prosecution's motion to dismiss filed on October 20, 2000 and private complainant's motion to disregard the reinvestigation report, issued an Order<sup>[11]</sup> dated May 21, 2002, (1) denying the motion to dismiss; and (2) declaring the motion to disregard the reinvestigation report to be moot and academic, rationalizing that "[t]he Revised Rules of Criminal Procedure which was approved on December 1, 2000 vests now authority to the trial court to rule on the presence or absence of probable cause. If the Court finds probable cause it will issue forthwith a warrant of arrest otherwise it will dismiss the case." Respondent filed a motion for reconsideration<sup>[12]</sup> which was denied in the Order<sup>[13]</sup> dated June 13, 2002 of the RTC which likewise directed the implementation of the existing warrant of arrest against him.

Respondent went up to the Court of Appeals by filing a petition for certiorari and prohibition,<sup>[14]</sup> docketed as CA-G.R. SP No. 91198, against the People of the Philippines, Presiding Judge Caminade and private complainant Carmen Bugash. On September 27, 2002, the Court of Appeals rendered a Decision<sup>[15]</sup> granting the petition and directing the trial court to defer the proceedings until the petition for review before the DOJ has been resolved.

Hence, the People of the Philippines filed the instant petition for review on certiorari seeking the reversal of the Court of Appeal's decision. Petitioner, represented by the Office of the Solicitor General (OSG), claims:

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT FINDING THAT THE TRIAL COURT WAS JUSTIFIED IN RESOLVING THE MOTION TO DISMISS FILED BY THE OFFICE OF THE CITY PROSECUTOR DESPITE THE PENDENCY OF A PETITION FOR REVIEW BEFORE THE DEPARTMENT OF JUSTICE.

## II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT FINDING THAT THE TRIAL COURT WAS JUSTIFIED IN DIRECTING THE IMPLEMENTATION OF THE WARRANT OF ARREST AFTER FINDING PROBABLE CAUSE.

## III

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN GRANTING THE INJUNCTION SOUGHT BY THE RESPONDENT WHICH ENJOINED THE TRIAL COURT FROM IMPLEMENTING THE WARRANT OF ARREST AND FROM FURTHER CONDUCTING PROCEEDINGS IN THE CASE UNTIL THE PETITION FOR REVIEW OF THE REINVESTIGATION REPORT OF THE CITY PROSECUTOR IS RESOLVED BY THE DEPARTMENT OF JUSTICE.

On December 11, 2002, we issued a Resolution<sup>[16]</sup> requiring respondent to file his comment on the petition. In compliance therewith respondent filed his Comment/Opposition to Petitioner's Application for Temporary Restraining Order and/or Writ of Preliminary Injunction,<sup>[17]</sup> which we duly noted. Respondent alleges:

- a. The Petition for Review on Certiorari filed by the Office of the Solicitor General, and wherein the Application for Temporary Restraining Order and/or Writ of Preliminary Injunction is incorporated, is fatally defective, hence both Petition and Application should be dismissed and denied, respectively; and
- b. Petitioner-applicant failed to adequately and sufficiently show that it is entitled to the issuance of the temporary restraining order and/or writ of preliminary injunction, while on the other hand, it is undeniable that the issuance of the temporary restraining order and/or writ of preliminary injunction would undeniably cause irreparable damage to the person and rights of herein respondent.

Unknown to us, however, while herein petition was pending our resolution, private complainant Bugash filed a motion for reconsideration before the Court of Appeals, seeking reversal of its Decision dated September 27, 2002. The Court of Appeals granted private complainant's motion for reconsideration per its Resolution dated June 12, 2003, thereby reversing its own Decision dated September 27, 2002. In said Resolution, the Court of Appeals ruled that the trial court's Orders dated May 21, 2002 and June 13, 2002, denying the prosecution's motion to dismiss together with the implementation of the warrant of arrest against herein respondent is valid, pursuant to Section 11, Rule 116 of the Revised Rules of Criminal Procedure which provides that the suspension of arraignment shall not be more than sixty days from the filing of the petition for review of the resolution of the prosecutor.

It should be emphasized that the Resolution of June 12, 2003 was issued by the Court of Appeals despite the pendency of the petition for review on certiorari before us. We were only apprised of such development when respondent furnished us with a copy of his Very Urgent Motion for Reconsideration<sup>[18]</sup> filed with the Court of Appeals, where he sought reconsideration of its Resolution dated June 12, 2003. The records do not show whether the Court of Appeals had resolved said motion.

Respondent likewise filed with us an Urgent Manifestation<sup>[19]</sup> dated June 16, 2003, informing us that the DOJ, acting on private complainant Carmen Bugash's petition for review, has issued a Resolution<sup>[20]</sup> dated May 27, 2003, denying the petition for review; in effect, sustaining the filing of the motion to dismiss by the Assistant City Prosecutor.

Meanwhile, on October 6, 2003, we received petitioner's Consolidated Reply and Comment,<sup>[21]</sup> praying that the Resolution of the Court of Appeals dated June 12, 2003, finding the trial court's Orders to be valid, be affirmed and that a temporary restraining order and/or preliminary injunction be issued to restrain respondent and any person acting in his behalf from implementing the Court of Appeals' decision dated September 27, 2002 which directed the trial court to defer the proceedings before it until the DOJ shall have resolved the petition for review filed before the DOJ.

The main issue brought before us is whether or not the trial court was correct in denying the prosecution's motion to dismiss the estafa case and ordering the implementation of the warrant of arrest against herein respondent.

The petition is impressed with merit.

First, let us dispose of respondent's argument that the petition should be dismissed for failure to comply with the requirements of a proper verification and proof of service; and that the petition was prematurely filed because it was filed even before we issued a resolution granting the motion for extension of time to file the petition.

With regard to the verification, we are convinced that the verification/certification appearing in the petition for review, although referring to a "motion for extension to file" is a valid verification/certification of the petition for review. The phrase "motion for extension to file" was merely a typographical error committed through sheer inadvertence.

As to the requirement of attaching an affidavit of service to the petition, a perusal of the rollo of this case will readily show that such an affidavit of service had been attached to the petition.<sup>[22]</sup>

Moreover, the OSG may not be faulted in filing the petition for review before its receipt of our Resolution dated November 25, 2002 granting the motion for extension of time. Had petitioner waited to receive a resolution granting its motion for extension before filing the petition, the extended period for filing would have, by then, expired. Thus, there was nothing irregular with the procedure taken by petitioner, rather, such was the most prudent thing for it to have done.