

THIRD DIVISION

[G.R. No. 228373, March 12, 2018]

PEOPLE OF THE PHILIPPINES, PETITIONER, V. PO1 JOHNNY K. SULLANO, RESPONDENT.

D E C I S I O N

GESMUNDO, J.:

This is a petition for review on *certiorari* seeking to reverse and set aside the Decision^[1] promulgated on June 10, 2016 and Resolution^[2] promulgated on November 17, 2016 of the Court of Appeals-Cagayan de Oro City (CA) in CA-G.R. SP No. 06247-MIN. The CA affirmed the Order^[3] dated March 7, 2014 and Resolution^[4] dated April 8, 2014 of the Regional Trial Court of Butuan City, Branch 4 (RTC) in Crim. Case No. 16757 which granted the demurrer of evidence of accused PO1 Johnny K. Sullano (*respondent*) and dismissed the case for violation of Section 15, Article II, Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (*R.A. No. 9165*) against respondent.

The Antecedents

On October 16, 2012, Senior Superintendent Nerio T. Bermudo (*P/SSupt Bermudo*), the City Director of the Butuan City Police Office, ordered fifty (50) randomly selected police officers under the Butuan City Police Office to undergo drug testing pursuant to Section 36, Article III of R.A. No. 9165. Among those who underwent testing was respondent, a police officer at Butuan City Police Station 5.

Respondent's urine sample was received on October 17, 2012. According to the Initial Chemistry Report^[5] of the Philippine National Police Regional Crime Laboratory Office 13, the test conducted on respondent's urine specimen gave a positive result for the presence of methamphetamine. The confirmatory test^[6] on the same specimen completed on November 5, 2012 yielded the same result.

Given the result of the random drug test and confirmatory test, P/SSupt. Bermudo filed a Complaint Affidavit^[7] against respondent for violation of Section 15, Article II of R.A. No. 9165. In lieu of a counter-affidavit, respondent filed a Manifestation,^[8] wherein he claimed that he voluntarily submitted to the random drug test ordered by P/SSupt. Bermudo; the urine sample he submitted gave a positive result to the presence of methamphetamine; he did not use the dangerous drug but had no means to contest the test's veracity; and he entered into a rehabilitation program with Cocoon Foundation for Substance Abuse. He concluded by pleading for the dismissal of the complaint against him.

Assistant City Prosecutor Isabel Corazon Cabuga-Plaza recommended the dismissal of the complaint through a Resolution^[9] dated February 1, 2013.^[10] This was reversed by Deputy City Prosecutor Aljay O. Go in an Order^[11] dated April 8, 2013,

finding probable cause against respondent. Consequently, an information was filed, the delictual allegations of which read:

That sometime on October 17, 2012 at Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused not being authorized by law, did then and there wilfully, unlawfully and feloniously use methamphetamine hydro chloride, otherwise known as shabu, which is a dangerous drug and found positive for use, after a confirmatory test.

CONTRARY TO LAW. (Violation of Section 15, Article II of Republic Act No. 9165, as amended)^[12]

Respondent pleaded not guilty to the charge. Trial then ensued. After the prosecution rested its case, respondent filed a Demurrer to Evidence.^[13]

In his Demurrer to Evidence,^[14] respondent argued that the case against him should be dismissed as the State failed to adduce sufficient evidence to prove his guilt beyond reasonable doubt. The essential elements of the crime were not proven as it was never asserted that respondent was apprehended or arrested or actually caught using any dangerous drug.

RTC Ruling

The RTC granted the demurrer to evidence through its order dated March 7, 2014. The RTC relied upon the wording of Sec. 15, Article II of R.A. No. 9165 articulating its reasoning thus:

It pre-supposes that accused was arrested or apprehended committing a crime and therefore should be subjected to a drug examination, considering that this could be alleged as an aggravating circumstance in any criminal case filed against him.

In this case, the accused was never arrested nor apprehended committing an offense. He was only subjected to a random drug examination per directive of the PNP Superior Officer.

It is the opinion of the Court that the accused should not be charged for violation of Section 15, Article II of R.A. 9165, but, should be administratively charged for being a user of prohibited drugs under the other provisions of R.A. 9165.

WHEREFORE, premises considered, the Demurrer to Evidence is granted.

This case is dismissed, for insufficiency of evidence.

The bail bond in the amount of Thirty thousand pesos (P30,000.00) as evidence per Official Receipt No. 3502863, dated June 20, 2013 is ordered cancelled and released to the bondsman, Mr. Juanito A. Sullano.

SO ORDERED.^[15]

Petitioner filed a motion for reconsideration of this RTC order. The same was denied in the resolution dated April 8, 2014, citing that there was no good reason to grant the motion for reconsideration.

CA Ruling

Due to the dismissal of the case, petitioner filed a petition for *certiorari* with the CA, alleging that the RTC committed grave abuse of discretion in granting the demurrer to evidence.

In its decision dated June 10, 2016, the CA was not convinced of petitioner's arguments and denied the petition. The CA ratiocinated:

As can be deduced from the foregoing, the elements to be charged under Section 15 of R.A. 9165 are as follows: 1) a person is apprehended or arrested; 2) the said person was subjected to a drug test; and 3) the person tested positive for use of any dangerous drug after a confirmatory test.

In the case at bar, the first element for private respondent to be charged under Section 15 of R.A. 9165 is absent. It bears stressing that private respondent was not apprehended nor arrested. As borne by the records, private respondent was subjected to a random drug testing conducted by the PNP Crime Laboratory as directed by P/S Superintendent Bermudo. Accordingly, as correctly pointed out by the trial court, there is no sufficient evidence to charge private respondent for violation of Section 15 of R.A. 9165.

The findings of the trial court also finds support in the recent case of *Dela Cruz v. People*. xxx

In fine, petitioner have failed to show that the trial court capriciously and whimsically exercised its discretion or grossly misapprehended the facts in granting the demurrer to evidence filed by private respondent. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is a patent and gross abuse of discretion amounting to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Absent any showing that trial court abused its discretion, much less gravely, the instant petition must be dismissed.^[16]

The *fallo* of the decision reads:

WHEREFORE, the petition is DISMISSED. The Order dated March 7, 2014 and Resolution dated April 8, 2014 of the Regional Trial Court, Branch 4, Butuan City, in Criminal Case No. 16757 [are] AFFIRMED.

SO ORDERED.^[17]

Petitioners filed a motion for reconsideration but the same was denied for lack of merit.

Hence, this petition, raising the sole issue of - whether the CA committed a reversible error when it held that Hon. Godofredo B. Abul, Jr., in his capacity as the Presiding judge of the Butuan City RTC, Branch 4, did not gravely abuse his

discretion, amounting to lack or excess of jurisdiction, in granting respondent's demurrer to evidence.^[18]

Petitioner contends that the CA erred in interpreting R.A. No. 9165, instead insisting that Section 15, Article II of R.A. No. 9165 does not exclusively apply to circumstances where the accused was apprehended or arrested. To petitioner, once the results of the mandatory drug test showed a positive result, the person tested may be criminally prosecuted under Section 15, Article II of R.A. No. 9165. In the instant case, since there was an order for respondent to undergo mandatory drug testing, and the initial and confirmatory tests gave a positive result, he was properly charged with violating Section 15, Article II of R.A. No. 9165 in relation to Sec. 36, Article III of R.A. No. 9165.

Petitioner maintains that under Section 36, Article II of R.A. No. 9165, arrest or apprehension of the accused is not required prior to the submission to drug examination. Random drug tests are allowed under certain circumstances, which include the instant case. Petitioner further insists that the case of *Dela Cruz v. People of the Philippines*^[19] (*Dela Cruz*) does not preclude the application of Section 36, Article III of R.A. No. 9165 in relation to Section 15, Article II of R.A. No. 9165. To petitioner, the narrow interpretation of Section 15 will result in an absurd situation where an individual, found to be positive for the use of dangerous drugs through a random mandatory drug test, may not be penalized.

Petitioner further claims grave abuse of discretion on the part of the RTC judge when the latter found that respondent should only be held administratively liable for his conduct. Petitioner also points out that respondent failed to comply with Section 54, Article VIII of R.A. No. 9165, and respondent was likewise not exempt from criminal liability under Section 55, Article VIII of R.A. No. 9165 for his failure to justify his exemption.

Finally, petitioner avers that respondent is not placed in double jeopardy as the instant case is an exception to the rule, there being grave abuse of discretion amounting to excess or lack of jurisdiction on the part of the trial judge.

On the other hand, respondent maintains that a person may only be charged of violating Section 15, Article II of R.A. No. 9165, if he was apprehended or arrested, and later found to be positive for use of any dangerous drugs. Petitioner expands the scope of Section 15 even when the information did not relate the respondent's offense to Section 36, Article III of R.A. No. 9165. An indictment under Section 15 is totally different from Section 36; they are not interchangeable. Petitioner's position effectively denies respondent his right to be informed of the nature and cause of the allegations against him. Finally, the petition places the accused in double jeopardy as his acquittal is final and unappealable.

The Court's Ruling

The petition is unmeritorious.

At the heart of this petition is the question of whether Section 15, Article II of R.A. No. 9165 requires the apprehension or arrest of a person for the latter to be considered as violating the provision. Taking into consideration the text of the law itself, general criminal law principles, and previous jurisprudential interpretation, the answer is in the affirmative, given the specific facts of this case.

The provision, Section 15, Article II of R.A. No. 9165, reads:

Section 15. *Use of Dangerous Drugs.* — A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (PhP50,000.00) to Two hundred thousand pesos (PhP200,000.00): *Provided*, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply. (emphasis supplied)

Petitioner claims that this section should be read in conjunction with Section 36, Article III of the same law, which mandates the random drug testing for certain employees, and pertinently includes police officers like respondent. Section 36, Article III of R.A. No. 9165 states:

Section 36. *Authorized Drug Testing.* - Authorized drug testing shall be done by any government forensic laboratories or by any of the drug testing laboratories accredited and monitored by the DOH to safeguard the quality of test results. The DOH shall take steps in setting the price of the drug test with DOH accredited drug testing centers to further reduce the cost of such drug test. The drug testing shall employ, among others, two (2) testing methods, the screening test which will determine the positive result as well as the type of the drug used and the confirmatory test which will confirm a positive screening test. Drug test certificates issued by accredited drug testing centers shall be valid for a one-year period from the date of issue which may be used for other purposes. The following shall be subjected to undergo drug testing:

xxx

(e) Officers and members of the military, police and other law enforcement agencies. - **Officers and members of the military, police and other law enforcement agencies shall undergo an annual mandatory drug test;**

In addition to the above stated penalties in this Section, those found to be positive for dangerous drugs use shall be subject to the provisions of Section 15 of this Act. (emphasis supplied)

The constitutionality of certain portions of Section 36 has already been questioned in *Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*^[20] (SJS).

As stated, several factors militate against petitioner's construction of the phrase "a person apprehended or arrested" appearing in Section 15. *It is likewise important to note that the allegations in the information against respondent clearly state that he*