

## THIRD DIVISION

[ G.R. No. 211108, June 07, 2017 ]

**ALEJANDRO D.C. ROQUE, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**TIJAM, J.:**

Before Us is a Petition for Review on Certiorari under Rule 45 filed by petitioner Alejandro Roque (Roque).

Roque assails the Decision<sup>[1]</sup> dated August 31, 2012 and the Resolution<sup>[2]</sup> dated January 22, 2014 of the Court of Appeals<sup>[3]</sup> (CA), which set aside and annulled the Order<sup>[4]</sup> dated November 12, 2008 of the Regional Trial Court (RTC)<sup>[5]</sup>, Third Judicial Region, Branch 11, Malolos City, Bulacan in Criminal Case No. 1011-M-2005. Said Order granted the motion for leave of court to file demurrer to evidence filed by Rosalyn Singson (Singson), herein petitioner's co-accused.

On November 17, 1993, Barangay Mulawin Tricycle Operators and Drivers Association, Inc. (BMTODA) became a corporation duly registered with the Securities and Exchange Commission (SEC).

Sometime in August 2003, Oscar Ongjoco (Ongjoco), a member of BMTODA, learned that BMTODA's funds were missing. In a letter, Ongjoco requested copies of the Association's documents pursuant to his right to examine records under Section 74 of the Corporation Code of the Philippines (Corporation Code). However, Singson, the Secretary of BMTODA, denied his request.

Ongjoco also learned that the incumbent officers were holding office for three years already, in violation of the one-year period provided for in BMTODA's by-laws. He then requested from Roque, the President of BMTODA, a copy of the list of its members with the corresponding franchise numbers of their respective tricycle fees and the franchise fees paid by each member, but Roque denied Ongjoco's request.

Ongjoco filed an Affidavit-Complaint against Roque and Singson for violation of Section 74 in relation to Section 144 of the Corporation Code because of their refusal to furnish him copies of records pertaining to BMTODA.

The Office of the City Prosecutor of San Jose Del Monte, Bulacan found probable cause to indict Roque and Singson. Hence, an Information was filed against them, which reads:

That sometime in December 2004, in San Jose Del Monte City, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Alejandro D.C. Roque and Rosalyn G. Singson, being the President and Secretary, respectively, of Barangay Mulawin Tricycle Operators and Drivers Association, Inc. (BMTODA), conspiring,

confederating, and mutually helping each other, did then and there willfully, unlawfully, and feloniously fail and neglect to keep in their official record of all business transactions, minutes of all meetings or stockholders or members, or of the board of directors or trustees and refused to allow stockholders, members, directors or trustees to examine and copy excerpt from the records or minutes of the association after demand in writing.<sup>[6]</sup>

After the prosecution rested its case, Roque and Singson filed a Motion for Leave of Court to File Demurrer to Evidence with Motion to Dismiss by way of Demurrer to Evidence. The prosecution failed to file any comment thereon.

In an Order<sup>[7]</sup> dated November 12, 2008, the RTC granted the motion and gave due course to Roque and Singson's demurrer to evidence. The RTC ruled that said association failed to prove its existence as a corporation. Hence, a violation under the Corporation Code cannot be made applicable against its officers. The *fallo* thereof reads:

Accordingly, this demurrer is GIVEN DUE COURSE and the instant case is hereby DISMISSED.

SO ORDERED.<sup>[8]</sup>

On appeal, the CA reversed and set aside the Order dated November 12, 2008 of the RTC. The CA ruled that BMTODA is a duly registered corporation. The CA stated that a Petition to Lift Order of Revocation and the SEC Order Lifting the Revocation were presented in evidence; and that logic dictates that such documentary evidence presupposes a duly registered and existing entity. The dispositive portion thereof reads:

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby GRANTED. Accordingly, the court a quo's Order dated 12 November 2008 is hereby ANNULLED and SET ASIDE.

This case is hereby remanded to the court a quo for the presentation of defense evidence.

SO ORDERED.<sup>[9]</sup>

Hence, Roque, thru his counsel, filed the present Petition.

Petitioner contends that there is want of evidence to prove that BMTODA is a corporation duly established and organized under the Corporation Code; thus, he cannot be prosecuted under the penal provisions of the said code.

The appeal lacks merit.

Section 74<sup>[10]</sup> of the Corporation Code provides for the liability for damages of any officer or agent of the corporation for refusing to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes. Section 144 of the same Code further provides for other applicable penalties in case of violation of any provision of the Corporation Code.