

SECOND DIVISION

[G.R. No. 217777, August 16, 2017]

**PRISCILLA Z. ORBE, PETITIONER, VS. LEONORA O. MIARAL,
RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This petition for review on certiorari^[1] under Rule 45 of the Rules of Court seeks to annul the 24 September 2014 Decision^[2] and the 24 March 2015 Resolution^[3] of the Court of Appeals in CA-G.R. SPNo. 134555, which annulled and set aside the 27 August 2013^[4] and 7 January 2014^[5] Orders of the Regional Trial Court (RTC) of Quezon City, Branch 104.

The RTC Orders denied the Motion to Withdraw Information^[6] for Estafa filed by Quezon City Prosecutor Donald T. Lee in Criminal Case Q-12-174206, entitled *People of the Philippines v. Leonora O. Miaral, et al.*

The Facts

On 6 March 1996, Leonora O. Miaral (respondent) agreed to engage in the garment exportation business with her sister, Priscilla Z. Orbe (petitioner). They executed a partnership agreement^[7] where they agreed to contribute Two Hundred Fifty Thousand Pesos (P250,000.00) each to Toppy Co., Inc. and Miaral Enterprises, and to equally divide the profits they may earn. The partnership agreement reads:

Agreement

Agreement is executed [on the] 6th day of March 1996 by:

Mrs. Nora O. Miaral
11-0 Legaspi Towers, Roxas Blvd., Mla.
as (Party [A])

and Mrs. Priscilla Orbe of No. ____, Villa
Verde Subd., Novaliches, Quezon City
as (Party B).

Both parties agreed on the ff:

Both parties A & B shall invest P250,000.00 each in cash & or goods into a buying & selling of stock lots of garments to be exported to the United States particularly in Los Angeles, California. Authorized purchaser may be Party A or B;

That the exportation of garments shall be done by Toppy Co., Inc. using Toppy's available quota;

That the importation of garments shall be done by Miaral Enterprises in U.S.A.

That whatever income in sales both retail & wholesale shall be divided into equal share after deducting all expenses in export & import including taxes & sea/air freight expenses in connection with the buying and selling of stocks & garments.

That this Contract is renewable yearly as both parties may wish.

Conforme:

(Sgd.)
(Sgd.)
Party
A
Party
B

Signed in the presence of

Petitioner initially invested the amount of One Hundred Eighty-Three Thousand Nine Hundred Ninety-Nine Pesos (P183,999.00).^[8] She subsequently tendered the amount of Twenty Thousand Pesos (P20,000.00) for the payment of salaries of the workers at the factory.^[9]

On one trip to the United States of America in April of 1996, respondent told petitioner that petitioner could join respondent, her daughter Anne Kristine, and her granddaughter Ara in the trip to the United States. Respondent convinced petitioner to pay for the plane tickets of respondent, Anne Kristine and Ara amounting to Two Thousand Seventy One Dollars (US\$2,071.00) with a promise to pay petitioner once they arrive in the United States.^[10]

Upon arrival, respondent issued three (3) checks drawn in a bank in the United States as payment. However, one of the checks was dishonored for having been drawn against insufficient funds.^[11] Petitioner likewise discovered that there was no exportation of garments to the United States or any other transactions in the United States that took place.

Petitioner demanded from respondent and Anne Kristine the total payment of Two Hundred Three Thousand Nine Hundred Ninety-Nine Pesos (P203,999.00) and One Thousand Dollars (US\$1,000.00). Despite demands, respondent and Anne Kristine failed to return the money.^[12]

On 7 February 2011, petitioner filed a complaint^[13] for estafa against respondent and Anne Kristine before the Office of the City Prosecutor (OCP) of Quezon City.

In their counter-affidavit,^[14] respondent and Anne Kristine denied petitioner's allegations and claimed, among others, that the partnership agreement they entered into rules out a successful prosecution for estafa. They also claimed that the action had already prescribed since the complaint was filed 15 years after the agreement. They contended that it was petitioner who owed them the amount of Two Hundred Seven Thousand Eighty-Seven Pesos and Sixty-Five Centavos (P207,087.65) because she issued several checks in the name of respondent and Anne Kristine. Lastly, they alleged that Anne Kristine could not be held liable because she was merely acting under her mother's direction.

In her reply-affidavit,^[15] petitioner claimed that the twenty-four (24) checks amounting to Two Hundred Seven Thousand Eighty-Seven Pesos and Sixty-Five Centavos (P207,087.65) were only borrowed from her as an accommodation party, and that it was respondent who ordered her to close her account with the Republic Planters Bank.

The OCP of Quezon City issued a Resolution dated 15 July 2011,^[16] the dispositive portion of which reads:

WHEREFORE, it is respectfully recommended that, upon approval of this Resolution, the attached Information for Estafa under Article 315, paragraph 2(a) of the Revised Penal Code be filed against respondents Leonora O. Miaral and Anne Kristine O. Miaral.^[17]

Respondent and Anne Kristine filed a Motion for Reconsideration with Motion for Inhibition^[18] dated 27 January 2012, on the ground that petitioner failed to establish the elements of the crime charged. Subsequently, they filed a Motion to Suspend Proceedings and to Lift/Recall Warrant of Arrest^[19] on 14 February 2012.

On 10 August 2012, the OCP of Quezon City issued a Resolution resolving the Motion for Reconsideration with Motion for Inhibition filed by respondent and Anne Kristine, assailing the 15 July 2011 Resolution, the dispositive portion of which reads:

Premises considered, the resolution dated July 15, 2011 is hereby set aside on the ground that the transaction between the parties is civil in nature. The attached Motion to Withdraw Information against movants in Crim. Case No. Q-12-174206 is to be filed in court for the purpose.^[20]

Accordingly, the City Prosecutor filed with the RTC a Motion to Withdraw Information.^[21] On 27 August 2013, the RTC issued an Order^[22] denying the Motion to Withdraw Information, and directing the arraignment of respondent and Anne Kristine.

On 14 October 2013, respondent and Anne Kristine moved for the reconsideration of said Order.^[23] On 30 October 2013, petitioner filed her corresponding comment,^[24] contending that the alleged partnership entered into by the parties merely existed on paper. In fact, respondent and Anne Kristine deceived her into contributing substantial sums of money for a sham investment. The Motion for Reconsideration was denied by the RTC in its Order dated 7 January 2014.^[25]

The Ruling of the Court of Appeals

On 25 March 2014, respondent filed with the Court of Appeals a Petition for Certiorari^[26] under Rule 65 of the Rules of Court, assailing the Orders of the RTC dated 27 August 2013 and 7 January 2014. In its Decision^[27] dated 24 September 2014, the Court of Appeals granted the petition, and reversed and set aside the assailed Orders of the RTC. It further directed the RTC to issue an order for the withdrawal of the Information for estafa against respondent and Anne Kristine.^[28]

Petitioner filed a Motion for Reconsideration^[29] dated 18 October 2014 which was denied by the Court of Appeals on 24 March 2015.^[30]

Hence, this petition.

The Issues

Petitioner presents the following issues in this petition:

1. Whether the Court of Appeals committed reversible error in ruling that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction;
2. Whether the Court of Appeals committed reversible error in reversing and setting aside the 27 August 2013 and 7 January 2014 Orders of the RTC, and in directing the issuance of an Order for the Withdrawal of the Information for estafa against respondent and Anne Kristine; and
3. Whether the action for estafa penalized under Article 315 2(a) of the Revised Penal Code has been barred by prescription.

The Ruling

The petition is meritorious.

The Court of Appeals erred in overturning the Orders of the RTC and in ruling that the RTC gravely abused its discretion when it denied the Motion to Withdraw Information.

Under Section 5, Rule 110 of the Rules of Court, all criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. As the representative of the State, the public prosecutor determines in a preliminary investigation whether there is probable cause that the accused committed a crime.^[31] Probable cause is defined as "such facts and circumstances that will engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial."^[32]

The general rule is that in the conduct of a preliminary investigation, the prosecutor is given a wide latitude of discretion to determine what constitutes sufficient evidence as will establish probable cause.^[33] However, when the respondent establishes that the prosecutor committed grave abuse of discretion amounting to lack or excess of jurisdiction in determining whether there is probable cause, the courts may interfere. Under the doctrine of separation of powers, the courts have no right to decide matters where full discretionary authority has been delegated to the Executive Branch, or to

substitute their own judgements for that of the Executive Branch, in the absence of grave abuse of discretion.^[34] The abuse of discretion must be "so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or hostility."^[35]

In this case, the OCP found that no probable cause existed against respondent and Anne Kristine for the commission of the crime of estafa. In its Resolution^[36] dated 10 August 2012, relying mainly on the case of *United States v. Clarin*,^[37] the OCP found that there was a partnership agreement between the parties, thus resolving that the failure of a partner to account for partnership funds may only give rise to a civil obligation, not a criminal case for estafa. The OCP held:

After a careful and more circumspect evaluation of the evidence on record in relation to the issues in the Motion for Reconsideration, provisions of law involved and pertinent jurisprudence on the matter, we find the existence of a partnership agreement between complainant and her sister, respondent Leonora O. Miaral to have been duly established. The Agreement signed by them on March 6, 1996 clearly speaks for itself, among others a P250,000.00 investment each with equal profit sharing minus all expenses. It also defined in unequivocal terms the buy and sell business, exporting of garments to be undertaken by respondent Leonora Miaral's Toppy Co. Inc. and importation of garments by Miaral Enterprises in the United States.

Such being the case, Estafa either by means of deceit or misappropriation will not lie against respondents, because "partners are not liable for estafa of money or property received for the partnership when the business commenced and profits accrued." (U.S. vs. Clarin, 17 P[h]il. 85). It was further held in said case that "when two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves, a contract is formed which is a partnership."

Furthermore, "failure of a partner to account for partnership funds may give rise to a civil obligation only not estafa." (People vs. Alegre, Jr., C.A. 48 O.G. 5341) x x x.^[38]

We disagree with the ruling of the Court of Appeals when it sustained the OCP on the issue of whether there is probable cause to file an Information. The OCP was in the best position to determine whether or not there was probable cause that the crime of estafa was committed. However, the OCP erred gravely, amounting to grave abuse of discretion, when it applied *United States v. Clarin*^[39] as basis for dismissing the complaint for lack of probable cause. *United States v. Clarin* has already been superseded by *Liwanag v. Court of Appeals*.^[40]

In *Clarin*, four individuals entered into a contract of partnership for the business of **buying and selling mangoes**. When one of the partners demanded from the other three the return of his monetary contribution, this Court ruled that "the action that lies with the [capitalist] partner x x x for the recovery of his money is not a criminal action for estafa, but a civil one arising from the partnership contract for a liquidation of the partnership and a levy on its assets, if there should be any."^[41] Simply put, if a partner demands his money back, the duty to return the contribution does not devolve