

FIRST DIVISION

[G.R. No. 191237, September 24, 2014]

**ROBERT KUA, CAROLINE N. KUA, AND MA. TERESITA N. KUA,
PETITIONERS, VS. GREGORIO SACUPAYO AND MAXIMINIANO
PANERIO, RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

We heed the urgings in this petition to reverse the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 01569-MIN which ordered the reinstatement of Criminal Case Nos. 2006-072, 2006-073 and 2006-074 pending before, and subsequently withdrawn by, the Regional Trial Court (RTC), Branch 20, Cagayan de Oro City.^[2] Petitioners Robert, Caroline and Ma. Teresita, all surnamed Kua, were charged in the criminal cases for failure to remit Social Security System (SSS) contributions and payments on loans of respondents Gregorio Sacupayo and Maximiniano Panerio under Section 22 (a) and (d), in relation to Section 28 (e), of Republic Act (R.A.) No. 8282, the Social Security (SS) Law.

The Court of Appeals fairly summarizes the facts, to wit:

[Petitioners] Robert Kua, Engr. Juanito Pagcaliwagan, Caroline N. Kua, Cleofe P. Adiao, Ma. Teresita N. Kua and Francisco Alconis are members of the Board of Directors and the officers of Vicmar Development Corporation, a domestic corporation, x x x. [Respondents] Gregorio G. Sacupayo and Maximiniano Panerio were VICMAR employees since 1985 and 1995[,] respectively. Sacupayo was a foreman while Panerio was an assistant foreman.

As required by law, Vicmar, through its officers, deducted the Social Security System (SSS) contributions of [respondents] from their wages. It also deducted four hundred sixty eight pesos (Php468.00) per month from the wage of Sacupayo as his monthly amortization for a ten thousand peso (Php10,000.00) loan he obtained from the SSS on November 14, 2002. The deductions were remitted by Vicmar to the SSS at first.

Sometime in 2003 and 2004, unknown to [respondents] and despite the continued SSS deductions from their wages, Vicmar stopped remitting the same to the SSS. The un-remitted contributions for each [respondent] reached five thousand seven hundred sixty pesos (Php5,760.00) each. For the amortizations, a total of eleven thousand two hundred thirty two pesos (Php11,232.00) was deducted from the wages of Sacupayo as full payment for his loan. Yet only four thousand

pesos (Php4,000.00) was remitted.

Meantime, on August 7, 2004 and August 9, 2004 respectively, Sacupayo and Panerio were dismissed from employment. Both filed complaints for illegal dismissal.

Panerio was thereafter afflicted with Chronic Persistent Asthma on September 28, 2004. But when he applied for sickness benefits before the SSS in October 2004, the same was denied for the reason that no contributions or payments were made for twelve (12) months prior to the semester of confinement. Sacupayo, for his part, filed another loan application before the SSS. But this was also denied outright for non-payment of a previous loan which should have been fully paid if not for the failure of Vicmar to remit the amounts due to the SSS.

x x x x

Aggrieved by the wrongful acts of Vicmar in failing to remit the amounts due to the SSS that were deducted from their wages, [respondents] filed complaints before the Office of the City Prosecutor in Cagayan de Oro City. Vicmar then remitted to SSS the contributions and loan payments of [respondents] sometime thereafter. Nevertheless, probable cause was found and three (3) separate Informations all dated June 6, 2005 were filed against [petitioners] officers of Vicmar for violation of Section 22 (a) in relation to Section 28 (e) of RA 8282 otherwise known as the Social Security Act of 1997. The cases were first filed before the Municipal Trial Court in Cities but these were dismissed outright for lack of jurisdiction. However, the same was also filed before the RTC where the three (3) cases were given due course, raffled and consolidated to Branch 20 thereof.

[Petitioners] appealed the finding of probable cause against them before the Office of the Regional State Prosecutor (RSP). This was granted by the RSP in a Resolution dated July 14, 2005, which ordered the City Prosecutor to desist from filing the case or to withdraw the cases if one has already been filed for the following reason:

x x x x

Section 28 of RA 8282 above-cited merely lays down a disputable presumption that the members' contribution to the SSS is deemed misappropriated if the employer fails to remit the same to the SSS within 30 days from the date they became due. The full payment and remittance of the same destroys this presumption. Section 22 of R.A. 1161 even allowed delayed remittance and payment by providing for a 3% penalty. In this case, the full payment made by [petitioners] had never been rebutted nor questioned by [respondents]. x x x

[Petitioners] having already fully paid to the SSS the total and full membership dues for [respondents], there is no more

reason to prosecute them under the aforecited section of RA 8282.

[Respondents] sought reconsideration thereto alleging lack of jurisdiction considering the prescribed penalty for the crimes charged. But the same was denied by the RSP in a Resolution dated August 9, 2005. Hence, [respondents] filed an appeal before the Department of Justice which seemingly remains un-acted upon to this day.

Pursuant to the Resolution of the RSP reversing the finding of probable cause by the City Prosecutor, [petitioners] filed a Motion to Dismiss dated February 13, 2006 before [the] RTC. The City Prosecutor likewise filed a Comment manifesting agreement to the withdrawal of the criminal cases pending resolution of the appeal with the DOJ. This was opposed by [respondents] for the reason that the RSP lacked jurisdiction to resolve the appeal of [petitioners]. In an Order dated May 17, 2006, the trial court deemed it best to momentarily suspend the proceedings considering the pending appeal before the DOJ.

On November 8, 2006, [petitioners] filed a second Motion to Dismiss alleging, among others, that [respondents] have already been paid the benefits due to them in the labor case. Moreover, the DOJ still has not acted upon on the appeal of [respondents]. [Petitioners] then argued that the cases should be withdrawn on the ground of fairness. The public prosecutor, pursuant to a directive of the RTC to comment on the Motion, adopted *in toto* the earlier manifestation of the City Prosecutor espousing the withdrawal of the case.

This time, in the herein assailed Order dated December 5, 2006, the RTC granted the Motion of [petitioners] and ordered the withdrawal of the criminal cases x x x:

x x x x

Considering therefore the time that elapsed without any action taken by the Department of Justice and the manifestation of the Public Prosecutor withdrawing the case from the docket of the court and in as much as it is the Public Prosecutor that is in control of the prosecution of all criminal cases, the motion to withdraw case is hereby granted. ^[3]

WHEREFORE, Criminal Case Nos. 2006-072, 2006-073 and 2006-074 for violation of Sec. 22 (a) and (d) in relation to Sec. 28 (e) of R.A. 8282 is hereby ordered withdrawn from the dockets of the Court.^[4]

Respondents filed a Petition for *Certiorari* and *Mandamus* under Rule 65 of the Rules of Court before the appellate court to annul and set aside the trial court's withdrawal of Criminal Case Nos. 2006-072, 2006-073 and 2006-074 from its docket.

As stated at the outset, the Court of Appeals granted respondents' petition, reversed

and set aside the RTC's ruling, and reinstated the criminal cases against petitioners:

WHEREFORE, premises considered, the Order dated December 5, 2006 of the Regional Trial Court, Branch 20, Cagayan de Oro City is **REVERSED** and **SET ASIDE**. Criminal Case Nos. 2006-072, 2006-073 and 2006-074 are **REINSTATED**. The Presiding Judge of the Regional Trial Court, Branch 20, Cagayan de Oro City is **DIRECTED** to issue the corresponding warrants for the arrest of the accused therein [petitioners herein] and to proceed with the disposition of the said cases with dispatch.^[5]

Hence, this appeal by *certiorari* of petitioners insisting on the withdrawal of the criminal cases against them.

In reversing the trial court, the appellate court found grave abuse of discretion in the trial court's withdrawal of the criminal cases from its docket by merely parroting the reasoning of the public prosecutor and not making its own independent assessment of the merits of the case.

The Court of Appeals summarized the trial court's reasoning:

1. The lapse of almost seven (7) months without any action taken by the DOJ; and
2. The manifestation to withdraw the case by the Public Prosecutor who is in control of the prosecution of all criminal cases.^[6]

and found it "flawed and insufficient to effect a withdrawal of the criminal cases" because:

1. The suspension of arraignment of an accused, while authorized under Section 11,^[7] Rule 116 of the Rules of Court, is only for a period of 60 days reckoned from the filing of the petition with the reviewing office.
2. Its own failure to act for seven (7) months without arraigning the accused cannot be an excuse to dismiss the case, especially when the rules dictate that the deferment of arraignment in such case may only be done for a period of 60 days.
3. The controlling case of *Crespo v. Mogul*^[8] teaches us that, while the prosecution of criminal actions is under the discretion and control of the public prosecutor, once a complaint or information is filed, any disposition of the case, be it a dismissal or a conviction or acquittal of an accused, rests in the sound discretion of the court.
4. Well-settled in jurisprudence is the principle that trial judges ought to make its own independent assessment of the merits of the case and not abdicate its judicial power and act as a mere surrogate of the Secretary of Justice.
5. In any event, there exists probable cause to indict petitioners for violation of