

## SECOND DIVISION

[ G.R. No. 183345, September 17, 2014 ]

**MA. GRACIA HAO AND DANNY HAO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**BRION, J.:**

Before this Court is the petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court, filed by Ma. Gracia Hao and Danny Hao (*petitioners*). They seek the reversal of the Court of Appeals' (CA) decision<sup>[2]</sup> dated February 28, 2006 and resolution<sup>[3]</sup> dated June 13, 2008 in CA-G.R. SP No. 86289. These CA rulings affirmed the February 26, 2004<sup>[4]</sup> and July 26, 2004<sup>[5]</sup> orders of the Regional Trial Court (RTC) of Manila, which respectively denied the petitioners' motion to defer arraignment and motion to lift warrant of arrest.<sup>[6]</sup>

#### **Factual Antecedents**

On July 11, 2003 private complainant Manuel Dy y Awiten (*Dy*) filed a criminal complaint against the petitioners and Victor Ngo (*Ngo*) for syndicated *estafa* penalized under Article 315(2)(a) of the Revised Penal Code (*RPC*), as amended, in relation with Presidential Decree (*PD*) No. 1689.<sup>[7]</sup>

Dy alleged that he was a long-time client of Asiatrust Bank, Binondo Branch where Ngo was the manager. Because of their good business relationship, Dy took Ngo's advice to deposit his money in an investment house that will give a higher rate of return. Ngo then introduced him to Ma. Gracia Hao (*Gracia*), also known as Mina Tan Hao, who presented herself as an officer of various reputable companies and an incorporator of State Resources Development Corporation (*State Resources*), the recommended company that can give Dy his higher investment return.<sup>[8]</sup>

Relying on Ngo and Gracia's assurances, Dy initially invested in State Resources the approximate amount of Ten Million Pesos (P10,000,000.00). This initial investment earned the promised interests, leading Dy, at the urging of Gracia, to increase his investment to almost One Hundred Million Pesos (P100,000,000.00). Dy increased his investments through several checks he issued in the name of State Resources.<sup>[9]</sup> In return, Gracia also issued several checks to Dy representing his earnings for his investment. Gracia issued checks in the total amount of One Hundred Fourteen Million, Two Hundred Eighty Six Thousand, Eighty Six Pesos and Fourteen Centavos (P114,286,086.14). All these checks<sup>[10]</sup> were subsequently dishonored when Dy deposited them.

Dy sought the assistance of Ngo for the recovery of the amount of the dishonored checks. Ngo promised assistance, but after a few months, Dy found out that Ngo

already resigned from Asiatrust Bank and could no longer be located. Hence, he confronted Gracia regarding the dishonored checks. He eventually learned that Gracia invested his money in the construction and realty business of Gracia's husband, Danny Hao (*Danny*). Despite their promises to pay, the petitioners never returned Dy's money.

On July 17, 2003, Dy filed a supplemental affidavit to include in the criminal complaint Chester De Joya, Allan Roxas, Samantha Roxas, Geraldine Chiong, and Lyn Ansuas – all incorporators and/or directors of State Resources.<sup>[11]</sup>

On the basis of Dy's complaint<sup>[12]</sup> and supplemental affidavit,<sup>[13]</sup> the public prosecutor filed an information<sup>[14]</sup> for syndicated *estafa* against the petitioners and their six co-accused. The case was docketed as Criminal Case No. 03-219952 and was raffled to respondent RTC of Manila, Branch 40.

Judge Placido Marquez issued warrants of arrest against the petitioners and the other accused. Consequently, petitioners immediately filed a motion to defer arraignment and motion to lift warrant of arrest. In their twin motions, they invoked the absence of probable cause against them and the pendency of their petition for review with the Department of Justice (*DOJ*).<sup>[15]</sup>

In its February 26, 2004 order, the trial court denied the petitioners' twin motions.<sup>[16]</sup> The petitioners moved for reconsideration but the trial court also denied this in its July 26, 2004 order.

Consequently, the petitioners filed a petition for *certiorari* under Rule 65 of the Rules of Court with the CA.

### **The CA's Ruling**

The CA affirmed the denial of the petitioners' motion to defer arraignment and motion to lift warrant of arrest.

In determining probable cause for the issuance of a warrant of arrest, a judge is mandated to personally evaluate the resolution of the prosecutor and its supporting evidence.<sup>[17]</sup> The CA noted that Judge Marquez only issued the warrants of arrest after his personal examination of the facts and circumstances of the case. Since the judge complied with the Rules, the CA concluded that no grave abuse of discretion could be attributed to him.<sup>[18]</sup>

In its decision, however, the CA opined that the evidence on record and the assertions in Dy's affidavits only show probable cause for the crime of simple *estafa*, not syndicated *estafa*. Under PD No. 1689, in order for syndicated *estafa* to exist, the swindling must have been committed by five or more persons, and the fraud must be against the general public or at least a group of persons. In his complaint-affidavit, Dy merely stated that he relied on the petitioners' false representations and was defrauded into parting with his money, causing him damage.<sup>[19]</sup> Since there was no evidence that State Resources was formed to defraud the public in general or that it was used to solicit money from other persons aside from Dy, then the offense charged should only be for simple *estafa*.<sup>[20]</sup>

Nevertheless, the CA found that the trial court did not commit grave abuse of discretion in issuing the warrants of arrest against the petitioners as there was still probable cause to believe that the petitioners committed the crime of simple *estafa*.  
[21]

### **The Petition**

The petitioners submit that an examination of Dy's affidavits shows inconsistencies in his cited factual circumstances. These inconsistencies, according to the petitioners, negate the existence of probable cause against them for the crime charged.

The petitioners also contend that it was only Ngo who enticed Dy to invest his money. As early as August 1995, State Resources had already been dissolved, thus negating the assertion that Dy advanced funds for this corporation.[22] They question the fact that it took Dy almost five years to file his complaint despite his allegation that he lost almost P100,000,000.00.[23]

Lastly, the petitioners claim that the warrants of arrest issued against them were null and void. Contrary to the trial court's findings, the CA noted in the body of its decision, that PD 1689 was inapplicable to their case. There was no evidence to show that State Resources was formed to solicit funds not only from Dy but also from the general public. Since simple *estafa* and syndicated *estafa* are two distinct offenses, then the warrants of arrest issued to petitioners were erroneous because these warrants pertained to two different crimes.[24]

### **The Court's Ruling**

We resolve to **DENY** the petition.

### ***Procedural Consideration***

We note that the present petition questions the CA's decision and resolution on the petition for *certiorari* the petitioners filed with that court. At the CA, the petitioners imputed grave abuse of discretion against the trial court for the denial of their twin motions to defer arraignment and to lift warrant of arrest.

This situation is similar to the procedural issue we addressed in the case of *Montoya v. Transmed Manila Corporation*[25] where we faced the question of how to review a Rule 45 petition before us, a CA decision made under Rule 65. We clarified in this cited case the kind of review that this Court should undertake given the distinctions between the two remedies. In Rule 45, we consider the correctness of the decision made by an inferior court. In contrast, a Rule 65 review focuses on jurisdictional errors.

As in *Montoya*, we need to scrutinize the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it. Thus, we need to examine the CA decision from the prism of **whether it correctly determined the presence or absence of grave abuse of discretion on the part of the trial court and not on the basis of whether the trial court's denial of petitioners' motions**

**was strictly legally correct.** In question form, the question to ask is: did the CA correctly determine whether the trial court committed grave abuse of discretion in denying petitioners' motions to defer arraignment and lift warrant of arrest?

### ***Probable Cause for the Issuance of a Warrant of Arrest***

Under the Constitution<sup>[26]</sup> and the Revised Rules of Criminal Procedure,<sup>[27]</sup> a judge is mandated to **personally determine** the existence of probable cause after his **personal evaluation** of the prosecutor's resolution and the supporting evidence for the crime charged. These provisions command the judge to refrain from making a mindless acquiescence to the prosecutor's findings and to conduct his own examination of the facts and circumstances presented by both parties.

Section 5(a) of Rule 112, grants the trial court three options upon the filing of the criminal complaint or information. He may: a) dismiss the case if the evidence on record clearly failed to establish probable cause; b) issue a warrant of arrest if it finds probable cause; or c) order the prosecutor to present additional evidence within five days from notice in case of doubt on the existence of probable cause.<sup>[28]</sup>

In the present case, the trial court chose to issue warrants of arrest to the petitioners and their co-accused. To be valid, these warrants must have been issued after compliance with the requirement that probable cause be personally determined by the judge. Notably at this stage, the judge is tasked to merely determine **the probability, not the certainty, of guilt of the accused**. In doing so, he need not conduct a *de novo* hearing; he only needs to personally review the prosecutor's initial determination and see if it is supported by substantial evidence.<sup>[29]</sup>

The records showed that Judge Marquez made a personal determination of the existence of probable cause to support the issuance of the warrants. The petitioners, in fact, did not present any evidence to controvert this. As the trial court ruled in its February 26, 2004 order:

The non-arrest of all the accused or their refusal to surrender practically resulted in the suspension of arraignment exceeding the sixty (60) days counted from the filing of co-accused De Joya's motions, which may be considered a petition for review, and that of co-accused Spouses Hao's own petition for review. This is not to mention the delay in the resolution by the Department of Justice. **On the other hand, co-accused De Joya's motion to determine probable cause and co-accused Spouses Hao's motion to lift warrant of arrest have been rendered moot and academic with the issuance of warrants of arrest by this presiding judge after his personal examination of the facts and circumstances strong enough in themselves to support the belief that they are guilty of the crime that in fact happened.**<sup>[30]</sup> [Emphasis ours]

Under this situation, we conclude that Judge Marquez did not arbitrarily issue the warrants of arrest against the petitioners. As stated by him, the warrants were only issued after his personal evaluation of the factual circumstances that led him to

believe that there was probable cause to apprehend the petitioners for their commission of a criminal offense.

***Distinction between Executive and Judicial Determination of Probable Cause***

In a criminal prosecution, probable cause is determined at two stages. The first is at the executive level, where determination is made by the prosecutor during the preliminary investigation, before the filing of the criminal information. The second is at the judicial level, undertaken by the judge before the issuance of a warrant of arrest.

In the case at hand, the question before us relates to the judicial determination of probable cause. In order to properly resolve if the CA erred in affirming the trial court's issuance of the warrants of arrest against the petitioners, it is necessary to scrutinize the crime of *estafa*, whether committed as a simple offense or through a syndicate.

The crime of swindling or *estafa* is covered by Articles 315-316 of the RPC. In these provisions, the different modes by which *estafa* may be committed, as well as the corresponding penalties for each are outlined. One of these modes is *estafa* by means of deceit. Article 315(2)(a) of the RPC defines how this particular crime is perpetrated:

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceptions.

Under this provision, *estafa* has the following elements: 1) the existence of a false pretense, fraudulent act or fraudulent means; 2) the execution of the false pretense, fraudulent act or fraudulent means prior to or simultaneously with the commission of the fraud; 3) the reliance by the offended party on the false pretense, fraudulent act or fraudulent means, which induced him to part with his money or property; and 4) as a result, the offended party suffered damage.<sup>[31]</sup>

As Dy alleged in his complaint-affidavit, Ngo and Gracia induced him to invest with State Resources and promised him a higher rate of return.<sup>[32]</sup> Because of his good business relationship with Ngo and relying on Gracia's attractive financial representations, Dy initially invested the approximate amount of P10,000,000.00.

This first investment earned profits. Thus, Dy was enticed by Gracia to invest more so that he eventually advanced almost P100,000,000.00<sup>[33]</sup> with State Resources. Gracia's succeeding checks representing the earnings of his investments, however, were all dishonored upon deposit.<sup>[34]</sup> He subsequently learned that the petitioners used his money for Danny's construction and realty business.<sup>[35]</sup> Despite repeated