

FIRST DIVISION

[G.R. No. 182147, December 15, 2010]

**ARNEL U. TY, MARIE ANTONETTE TY, JASON ONG, WILLY DY,
AND ALVIN TY, PETITIONERS, VS. NBI SUPERVISING AGENT
MARVIN E. DE JEMIL, PETRON GASUL DEALERS ASSOCIATION,
AND TOTALGAZ DEALERS ASSOCIATION, RESPONDENTS.**

DECISION

VELASCO JR., J.:

The Case

In this Petition for Review on Certiorari under Rule 45, petitioners seek the reversal of the Decision^[1] dated September 28, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 98054, which reversed and set aside the Resolutions dated October 9, 2006^[2] and December 14, 2006^[3] of the Secretary of Justice, and reinstated the November 7, 2005 Joint Resolution^[4] of the Office of the Chief State Prosecutor. Petitioners assail also the CA Resolution^[5] dated March 14, 2008, denying their motion for reconsideration.

The Facts

Petitioners are stockholders of Omni Gas Corporation (Omni) as per Omni's General Information Sheet^[6] (GIS) dated March 6, 2004 submitted to the Securities and Exchange Commission (SEC). Omni is in the business of trading and refilling of Liquefied Petroleum Gas (LPG) cylinders and holds Pasig City Mayor's Permit No. RET-04-001256 dated February 3, 2004.

The case all started when Joaquin Guevara Adarlo & Caoile Law Offices (JGAC Law Offices) sent a letter dated March 22, 2004^[7] to the NBI requesting, on behalf of their clients Shellane Dealers Association, Inc., Petron Gasul Dealers Association, Inc., and Totalgaz Dealers Association, Inc., for the surveillance, investigation, and apprehension of persons or establishments in Pasig City that are engaged in alleged illegal trading of petroleum products and underfilling of branded LPG cylinders in violation of *Batas Pambansa Blg.* (BP) 33,^[8] as amended by Presidential Decree No. (PD) 1865.^[9]

Earlier, the JGAC Law Offices was furnished by several petroleum producers/brand owners their respective certifications on the dealers/plants authorized to refill their respective branded LPG cylinders, to wit: (1) On October 3, 2003, Pilipinas Shell Petroleum Corporation (Pilipinas Shell) issued a certification^[10] of the list of entities duly authorized to refill *Shellane* LPG cylinders; (2) on December 4, 2003, Petron Corporation (Petron) issued a certification^[11] of their dealers in Luzon, Visayas, and

Mindanao authorized to refill *Petron Gasul* LPG cylinders; and (3) on January 5, 2004, Total (Philippines) Corporation (Total) issued two certifications^[12] of the refilling stations and plants authorized to refill their *Totalgaz* and *Superkalan Gaz* LPG cylinders.

Agents De Jemil and Kawada attested to conducting surveillance of Omni in the months of March and April 2004 and doing a test-buy on April 15, 2004. They brought eight branded LPG cylinders of *Shellane*, *Petron Gasul*, *Totalgaz*, and *Superkalan Gaz* to Omni for refilling. The branded LPG cylinders were refilled, for which the National Bureau of Investigation (NBI) agents paid Php 1,582 as evidenced by Sales Invoice No. 90040^[13] issued by Omni on April 15, 2004. The refilled LPG cylinders were without LPG valve seals and one of the cylinders was actually underfilled, as found by LPG Inspector Noel N. Navio of the Liquefied Petroleum Gas Industry Association (LPGIA) who inspected the eight branded LPG cylinders on April 23, 2004 which were properly marked by the NBI after the test-buy.

The NBI's test-buy yielded positive results for violations of BP 33, Section 2(a) in relation to Secs. 3(c) and 4, i.e., refilling branded LPG cylinders without authority; and Sec. 2(c) in relation to Sec. 4, i.e., underdelivery or underfilling of LPG cylinders. Thus, on April 28, 2004, Agent De Jemil filed an Application for Search Warrant (With Request for Temporary Custody of the Seized Items)^[14] before the Regional Trial Court (RTC) in Pasig City, attaching, among others, his affidavit^[15] and the affidavit of Edgardo C. Kawada,^[16] an NBI confidential agent.

On the same day of the filing of the application for search warrants on April 28, 2004, the RTC, Branch 167 in Pasig City issued Search Warrants No. 2624^[17] and 2625.^[18] The NBI served the warrants the next day or on April 29, 2004 resulting in the seizure of several items from Omni's premises duly itemized in the NBI's Receipt/Inventory of Property/Item Seized.^[19] On May 25, 2004, Agent De Jemil filed his Consolidated Return of Search Warrants with Ex-Parte Motion to Retain Custody of the Seized Items^[20] before the RTC Pasig City.

Subsequently, Agent De Jemil filed before the Department of Justice (DOJ) his Complaint-Affidavits against petitioners for: (1) *Violation of Section 2(a), in relation to Sections 3(c) and 4, of B.P. Blg. 33, as amended by P.D. 1865*;^[21] and (2) *Violation of Section 2(c), in relation to Section 4, of B.P. Blg. 33, as amended by P.D. 1865*,^[22] docketed as I.S. Nos. 2004-616 and 2004-618, respectively.

During the preliminary investigation, petitioners submitted their Joint Counter-Affidavit,^[23] which was replied^[24] to by Agent De Jemil with a corresponding rejoinder^[25] from petitioners.

The Ruling of the Office of the Chief State Prosecutor in I.S. No. 2004-616 and I.S. No. 2004-618

On November 7, 2005, the 3rd Assistant City Prosecutor Leandro C. Catalo of Manila issued a Joint Resolution,^[26] later approved by the Chief State Prosecutor Jovencito R. Zuño upon the recommendation of the Head of the Task Force on Anti-Intellectual

Property Piracy (TFAIPP), Assistant Chief State Prosecutor Leah C. Tanodra-Armamento, finding probable cause to charge petitioners with violations of pertinent sections of BP 33, as amended, resolving as follows:

WHEREFORE, premises considered, it is hereby recommended that two (2) Informations for violations of Section 2 [a] (illegal trading in petroleum and/or petroleum products) and Section 2 [c] (underfilling of LPG cylinders), both of Batas Pambansa Bilang 33, as amended, be filed against respondents [herein petitioners] ARNEL TY, MARIE ANTONETTE TY, JASON ONG, WILLY DY and ALVIN TY.^[27]

Assistant City Prosecutor Catalo found the existence of probable cause based on the evidence submitted by Agent De Jemil establishing the fact that Omni is not an authorized refiller of *Shellane*, *Petron Gasul*, *Totalgaz* and *Superkalan Gaz* LPG cylinders. Debunking petitioners' contention that the branded LPG cylinders are already owned by consumers who are free to do with them as they please, the law is clear that the stamped markings on the LPG cylinders show who are the real owners thereof and they cannot be refilled sans authority from Pilipinas Shell, Petron or Total, as the case may be. On the underfilling of one LPG cylinder, the findings of LPG Inspector Navio of the LPGIA were uncontroverted by petitioners.

Petitioners' motion for reconsideration,^[28] was denied through a Resolution^[29] by the Office of the Chief State Prosecutor issued on May 3, 2006.

In time, petitioners appealed to the Office of the Secretary of Justice.^[30]

**The Ruling of the DOJ Secretary
in I.S. No. 2004-616 and I.S. No. 2004-618**

On October 9, 2006, the Office of the Secretary of Justice issued a Resolution^[31] reversing and setting aside the November 7, 2005 Joint Resolution of the Office of the Chief State Prosecutor, the dispositive portion of which reads:

WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The Chief State Prosecutor is directed to cause the withdrawal of the informations for violations of Sections 2(a) and 2(c) of B.P. Blg. 33, as amended by P.D. 1865, against respondents Arnel Ty, Mari Antonette Ty, Jason Ong, Willy Dy and Alvin Ty and report the action taken within ten (10) days from receipt hereof.

SO ORDERED.^[32]

The Office of the Secretary of Justice viewed, *first*, that the underfilling of one of the eight LPG cylinders was an isolated incident and cannot give rise to a conclusion of underfilling, as the phenomenon may have been caused by human error, oversight or technical error. Being an isolated case, it ruled that there was no showing of a

clear pattern of deliberate underfilling. *Second*, on the alleged violation of refilling branded LPG cylinders sans written authority, it found no sufficient basis to hold petitioners responsible for violation of Sec. 2 (c) of BP 33, as amended, since there was no proof that the branded LPG cylinders seized from Omni belong to another company or firm, holding that the simple fact that the LPG cylinders with markings or stamps of other petroleum producers cannot by itself prove ownership by said firms or companies as the consumers who take them to Omni fully owned them having purchased or acquired them beforehand.

Agent De Jemil moved but was denied reconsideration^[33] through another Resolution^[34] dated December 14, 2006 prompting him to repair to the CA via a petition for certiorari^[35] under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 98054.

The Ruling of the CA

The Office of the Solicitor General (OSG), in its Comment^[36] on Agent De Jemil's appeal, sought the dismissal of the latter's petition viewing that the determination by the Office of the Secretary of Justice of probable cause is entitled to respect owing to the exercise of his prerogative to prosecute or not.

On August 31, 2007, Petron filed a Motion to Intervene and to Admit Attached Petition-in-Intervention^[37] and Petition-in-Intervention^[38] before the CA in CA-G.R. SP No. 98054. And much earlier, the Nationwide Association of Consumers, Inc. (NACI) also filed a similar motion.

On September 28, 2007, the appellate court rendered the assailed Decision^[39] revoking the resolutions of the Office of the Secretary of Justice and reinstated the November 7, 2005 Joint Resolution of the Office of the Chief State Prosecutor. The *fallo* reads:

WHEREFORE, the instant petition is **GRANTED**. The assailed resolutions dated October 9, 2006 and December 14, 2006 are hereby **REVERSED** and **SET ASIDE**. The Joint Resolution dated November 7, 2005 of the Office of the Chief State Prosecutor finding probable cause against private respondents Arnel Ty, Marie Antonette Ty, Jason Ong, Willy Dy, and Alvin Ty is hereby **REINSTATED**.

SO ORDERED.^[40]

Citing Sec. 1 (1) and (3) of BP 33, as amended, which provide for the presumption of underfilling, the CA held that the actual underfilling of an LPG cylinder falls under the prohibition of the law which does not require for the underfilling to be substantial and deliberate.

Moreover, the CA found strong probable violation of "refilling of another company's or firm's cylinders without such company's or firm's written authorization" under Sec. 3 (c) of BP 33, as amended. The CA relied on the affidavits of Agents De Jemil and Kawada, the certifications from various LPG producers that Omni is not

authorized to refill their branded LPG cylinders, the results of the test-buy operation as attested to by the NBI agents and confirmed by the examination of LPG Inspector Navio of the LPGIA, the letter-opinion^[41] of the Department of Energy (DOE) to Pilipinas Shell confirming that branded LPG cylinders are properties of the companies whose stamp markings appear thereon, and Department Circular No. 2000-05-007^[42] of the DOE on the required stamps or markings by the manufacturers of LPG cylinders.

After granting the appeal of Agent De Jemil, however, the motions to intervene filed by Petron and NACI were simply noted by the appellate court.

Petitioners' motion for reconsideration was rebuffed by the CA through the equally assailed March 14, 2008 Resolution.^[43]

Thus, the instant petition.

The Issues

- I. WHETHER OR NOT RESPONDENTS WERE ENTITLED TO THE SPECIAL CIVIL ACTION OF CERTIORARI IN THE COURT OF APPEALS.
- II. WHETHER OR NOT UNDER THE CIRCUMSTANCES THERE WAS PROBABLE CAUSE TO BELIEVE THAT PETITIONERS VIOLATED SECTION 2(A) OF BATAS PAMBANSA BLG. 33, AS AMENDED.
- III. WHETHER OR NOT UNDER THE CIRCUMSTANCES THERE WAS PROBABLE CAUSE TO BELIEVE THAT PETITIONERS VIOLATED SECTION 2(C) OF BATAS PAMBANSA BLG. 33, AS AMENDED.
- IV. WHETHER OR NOT PETITIONERS CAN BE HELD LIABLE UNDER BATAS PAMBANSA BLG. 33, AS AMENDED, FOR BEING MERE DIRECTORS, NOT ACTUALLY IN CHARGE OF THE MANAGEMENT OF THE BUSINESS AFFAIRS OF THE CORPORATION.^[44]

The foregoing issues can be summarized into two core issues: *first*, whether probable cause exists against petitioners for violations of Sec. 2 (a) and (c) of BP 33, as amended; and *second*, whether petitioners can be held liable therefor. We, however, will tackle at the outset the sole procedural issue raised: the propriety of the petition for certiorari under Rule 65 availed of by public respondent Agent De Jemil to assail the resolutions of the Office of the Secretary of Justice.

Petron's Comment-in-Intervention

On April 14, 2009, Petron entered its appearance by filing a Motion for Leave to Intervene and to Admit Comment-in-Intervention^[45] and its Comment-in-Intervention [To petition for Review on *Certiorari* dated 13 May 2008].^[46] It asserted vested interest in the seizure of several *Gasul* LPG cylinders and the right