

SECOND DIVISION

[G.R. No. 174168, March 30, 2009]

SY TIONG SHIOU, JUANITA TAN SY, JOLIE ROSS TAN, ROMER TAN, CHARLIE TAN, AND JESSIE JAMES TAN, PETITIONERS, VS. SY CHIM AND FELICIDAD CHAN SY, RESPONDENTS.

[G.R. NO. 179438]

SY CHIM AND FELICIDAD CHAN SY, PETITIONERS, VS. SY TIONG SHIOU AND JUANITA TAN, RESPONDENTS.

D E C I S I O N

TINGA, J.:

These consolidated petitions involving the same parties. although related, dwell on different issues.

G.R. No. 174168.

This is a petition for review^[1] assailing the decision and resolution of the Court of Appeals dated 31 May 2006 and 8 August 2006, respectively, in CA-G.R. SP No. 91416.^[2]

On 30 May 2003, four criminal complaints were filed by Sy Chim and Felicidad Chan Sy (Spouses Sy) against Sy Tiong Shiou, Juanita Tan Sy, Jolie Ross Tan, Romer Tan, Charlie Tan and Jessie James Tan (Sy Tiong Shiou, et al.) before the City Prosecutor's Office of Manila. The cases were later consolidated. Two of the complaints, I.S. Nos. 03E-15285 and 03E-15286,^[3] were for alleged violation of Section 74 in relation to Section 144 of the Corporation Code. In these complaints, the Spouses Sy averred that they are stockholders and directors of Sy Siy Ho & Sons, Inc. (the corporation) who asked Sy Tiong Shiou, et al., officers of the corporation, to allow them to inspect the books and records of the business on three occasions to no avail. In a letter^[4] dated 21 May 2003, Sy Tiong Shiou, et al. denied the request, citing civil and intra-corporate cases pending in court.^[5]

In the two other complaints, I.S. No. 03E-15287 and 03E-15288,^[6] Sy Tiong Shiou was charged with falsification under Article 172, in relation to Article 171 of the Revised Penal Code (RPC), and perjury under Article 183 of the RPC. According to the Spouses Sy, Sy Tiong Shiou executed under oath the 2003 General Information Sheet (GIS) wherein he falsely stated that the shareholdings of the Spouses Sy had decreased despite the fact that they had not executed any conveyance of their shares.^[7]

Sy Tiong Shiou, et al. argued before the prosecutor that the issues involved in the

civil case for accounting and damages pending before the RTC of Manila were intimately related to the two criminal complaints filed by the Spouses Sy against them, and thus constituted a prejudicial question that should require the suspension of the criminal complaints. They also argued that the Spouses Sy's request for inspection was premature as the latter's concern may be properly addressed once an answer is filed in the civil case. Sy Tiong Shiou, on the other hand, denied the accusations against him, alleging that before the 2003 GIS was submitted to the Securities and Exchange Commission (SEC), the same was shown to respondents, who at that time were the President/Chairman of the Board and Assistant Treasurer of the corporation, and that they did not object to the entries in the GIS. Sy Tiong Shiou also argued that the issues raised in the pending civil case for accounting presented a prejudicial question that necessitated the suspension of criminal proceedings.

On 29 December 2003, the investigating prosecutor issued a resolution recommending the suspension of the criminal complaints for violation of the Corporation Code and the dismissal of the criminal complaints for falsification and perjury against Sy Tiong Shiou.^[8] The reviewing prosecutor approved the resolution. The Spouses Sy moved for the reconsideration of the resolution, but their motion was denied on 14 June 2004.^[9] The Spouses Sy thereupon filed a petition for review with the Department of Justice (DOJ), which the latter denied in a resolution issued on 02 September 2004.^[10] Their subsequent motion for reconsideration was likewise denied in the resolution of 20 July 2005.^[11]

The Spouses Sy elevated the DOJ's resolutions to the Court of Appeals through a petition for certiorari, imputing grave abuse of discretion on the part of the DOJ. The appellate court granted the petition^[12] and directed the City Prosecutor's Office to file the appropriate informations against Sy Tiong Shiou, et al. for violation of Section 74, in relation to Section 144 of the Corporation Code and of Articles 172 and 183 of the RPC. The appellate court ruled that the civil case for accounting and damages cannot be deemed prejudicial to the maintenance or prosecution of a criminal action for violation of Section 74 in relation to Section 144 of the Corporation Code since a finding in the civil case that respondents mishandled or misappropriated the funds would not be determinative of their guilt or innocence in the criminal complaint. In the same manner, the criminal complaints for falsification and/or perjury should not have been dismissed on the ground of prejudicial question because the accounting case is unrelated and not necessarily determinative of the success or failure of the falsification or perjury charges. Furthermore, the Court of Appeals held that there was probable cause that Sy Tiong Shiou had committed falsification and that the City of Manila where the 2003 GIS was executed is the proper venue for the institution of the perjury charges. Sy Tiong Shiou, *et al.* sought reconsideration of the Court of Appeals decision but their motion was denied.^[13]

On 2 April 2008, the Court ordered the consolidation of G.R. No. 179438 with G.R. No. 174168.^[14]

Sy Tiong Shiou, et al. argue that findings of the DOJ in affirming, modifying or reversing the recommendations of the public prosecutor cannot be the subject of certiorari or review of the Court of Appeals because the DOJ is not a quasi-judicial body within the purview of Section 1, Rule 65 of the Rules of Court. Petitioners rely

on the separate opinion of former Chief Justice Andres R. Narvasa in *Roberts, Jr. v. Court of Appeals*,^[15] wherein he wrote that this Court should not be called upon to determine the existence of probable cause, as there is no provision of law authorizing an aggrieved party to petition for such a determination.^[16] In any event, they argue, assuming without admitting that the findings of the DOJ may be subject to judicial review under Section 1, Rule 65 of the Rules of Court, the DOJ has not committed any grave abuse of discretion in affirming the findings of the City Prosecutor of Manila. They claim that the Spouses Sy's request for inspection was not made in good faith and that their motives were tainted with the intention to harass and to intimidate Sy Tiong Shiou, et al. from pursuing the criminal and civil cases pending before the prosecutor's office and the Regional Trial Court (RTC) of Manila, Branch 46. Thus, to accede to the Spouses Sy's request would pose serious threats to the existence of the corporation.^[17] Sy Tiong Shiou, et al. aver that the RTC had already denied the motion for production and inspection and instead ordered petitioners to make the corporate records available to the appointed independent auditor. Hence, the DOJ did not commit any grave abuse of discretion in affirming the recommendation of the City Prosecutor of Manila.^[18] They further argue that adherence to the Court of Appeals' ruling that the accounting case is unrelated to, and not necessarily determinative of the success of, the criminal complaint for falsification and/or perjury would unnecessarily indict petitioner Sy Tiong Shiou for the said offenses he may not have committed but only because of an outcome unfavorable to him in the civil action.^[19]

Indeed, a preliminary proceeding is not a quasi-judicial function and that the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause.^[20] Moreover, it is settled that the preliminary investigation proper, *i.e.*, the determination of whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be subjected to the expense, rigors and embarrassment of trial, is the function of the prosecution.^[21] This Court has adopted a policy of non-interference in the conduct of preliminary investigations and leaves to the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of information against the supposed offender.^[22]

As in every rule, however, there are settled exceptions. Hence, the principle of non-interference does not apply when there is grave abuse of discretion which would authorize the aggrieved person to file a petition for certiorari and prohibition under Rule 65, 1997 Rules of Civil Procedure.^[23]

As correctly found by the Court of Appeals, the DOJ gravely abused its discretion when it suspended the hearing of the charges for violation of the Corporation Code on the ground of prejudicial question and when it dismissed the criminal complaints.

A prejudicial question comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed since howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The reason behind the principle of prejudicial question is to avoid two conflicting

decisions. It has two essential elements: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.^[24]

The civil action and the criminal cases do not involve any prejudicial question.

The civil action for accounting and damages, Civil Case No. 03-106456 pending before the RTC Manila, Branch 46, seeks the issuance of an order compelling the Spouses Sy to render a full, complete and true accounting of all the amounts, proceeds and fund paid to, received and earned by the corporation since 1993 and to restitute it such amounts, proceeds and funds which the Spouses Sy have misappropriated. The criminal cases, on the other hand, charge that the Spouses Sy were illegally prevented from getting inside company premises and from inspecting company records, and that Sy Tiong Shiou falsified the entries in the GIS, specifically the Spouses Sy's shares in the corporation. Surely, the civil case presents no prejudicial question to the criminal cases since a finding that the Spouses Sy mishandled the funds will have no effect on the determination of guilt in the complaint for violation of Section 74 in relation to Section 144 of the Corporation Code; the civil case concerns the validity of Sy Tiong Shiou's refusal to allow inspection of the records, while in the falsification and perjury cases, what is material is the veracity of the entries made by Sy Tiong Shiou in the sworn GIS.

Anent the issue of probable cause, the Court also finds that there is enough probable cause to warrant the institution of the criminal cases.

The term probable cause does not mean 'actual and positive cause' nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.^[25]

In order that probable cause to file a criminal case may be arrived at, or in order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present. This is based on the principle that every crime is defined by its elements, without which there should be-at the most-no criminal offense.^[26]

Section 74 of the Corporation Code reads in part:

x x x

The records of all business transactions of the corporation and the minutes of any meeting shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the

provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: *Provided, That* if such refusal is made pursuant to a resolution or order of the Board of Directors or Trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and *Provided, further*, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

Meanwhile, Section 144 of the same Code provides:

Sec. 144. *Violations of the Code.*--Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: *Provided, That* such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: *Provided, further*, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

In the recent case of *Ang-Abaya, et al. v. Ang, et al.*,^[27] the Court had the occasion to enumerate the requisites before the penal provision under Section 144 of the Corporation Code may be applied in a case of violation of a stockholder or member's right to inspect the corporate books/records as provided for under Section 74 of the Corporation Code. The elements of the offense, as laid down in the case, are:

First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes;

Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts;

Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and,

Fourth. Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or