606 Phil. 337

THIRD DIVISION

[G.R. No. 152889, June 05, 2009]

ENRIQUE V. VIUDEZ II, PETITIONER, VS. THE COURT OF APPEALS AND HON. BASILIO R. GABO, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 11, REGIONAL TRIAL COURT, MALOLOS, BULACAN, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari* under Section 1, Rule 45 of the 1997 Rules of Civil Procedure, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 67115 dismissing the petition for *certiorari* filed by herein petitioner against Judge Basilio R. Gabo, Jr., in his capacity as Presiding Judge of Branch 11, Regional Trial Court (RTC) of Malolos, Bulacan.

The factual and procedural antecedents are as follows:

Honorato Galvez and his driver were fatally shot on June 9, 2000 in *Barangay* San Juan, San Ildefonso, Bulacan. On June 26, 2000, a complaint for the alleged murder of the said victims was filed by the 303rd Philippine National Police Criminal Investigation Division (PNP CID) Team with the Office of the Provincial Prosecutor against the following: Cirilo de la Cruz, Guilberto Chico, Edmund Fernando, two persons named Ronald and Gerry, three (3) John Does, and Eulogio Villanueva. Likewise, on July 14, 2000, a complaint for murder against petitioner Enrique Viudez II was filed by Estrella Galvez, widow of Mayor Honorato Galvez, for the killing of the latter and his driver.[2]

On March 31, 2001, a Resolution was issued by the Investigating State Prosecutor finding probable cause to indict the petitioner and others for the crime of murder. On September 19, 2001, two (2) Informations[3] for murder were filed with the RTC of Malolos, Bulacan, which then issued warrants of arrest on the same day.[4]

On September 21, 2001, petitioner filed a Motion to Suspend Proceedings and to Suspend the Implementation of the Warrant of Arrest, Pursuant to Department Circular No. 70 of the Department of Justice (DOJ)[5] arguing that all the accused in the said criminal cases had filed a timely petition for review with the Secretary of Justice and, pursuant to Section 9[6] of Department Circular No. 70, the implementation of the warrant of arrest against petitioner should be suspended and/or recalled pending resolution of the said petition for review.

In an Order[7] dated September 28, 2001, the RTC denied petitioner's Motion stating that, insofar as the implementation of the warrant of arrest against

petitioner was concerned, said warrant had already been issued for his apprehension. The court also added that there was no way for it to recall the same in the absence of any compelling reason, and that jurisdiction over his person had not yet been acquired by it; hence, petitioner had no personality to file any pleading in court relative to the case until he was arrested or voluntarily surrendered himself to the court. Thus, petitioner filed a motion for reconsideration of the said Order, but was denied in an Order dated October 10, 2001.

Thereafter, petitioner filed with the CA on October 11, 2001, a petition for *certiorari* with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injuction[8] claiming the following:

> x x x The Order of September 28, 2001 and the Order of October 10, 2001 denying the Motion for Reconsideration were issued with grave abuse of discretion amounting to lack of jurisdiction. This is because of the following reasons:
>
> > (a) The fact that the petitioner has not voluntarily surrendered nor arrested is not a legal impediment or obstacle to the suspension of the implementation of the warrant of arrest issued against the petitioner.
> >
> > (b) Precisely, the petitioner has prayed for the suspension of the implementation of the warrant of arrest because if he is arrested or voluntarily surrenders to the Court, the issues on the suspension of the implementation of the warrant of arrest would become moot and academic. It is for this reason that the petitioner has prayed for the suspension of the implementation of the warrant of arrest. The petitioner is merely availing of his rights under the law. There would be a waiver on the part of the petitioner if he surrenders to the lower court. Meantime, he would be deprived of his provisional liberty pending the resolution of his petition for review. The clear intention of Department Circular No. 70 is to suspend all proceedings including the implementation of the warrant of arrest pending resolution by the Secretary of Justice of the petition for review.
> >
> > (c) The authority of the Secretary of Justice to entertain the petition for review even after the filing of the informations is settled. In *Solar Team Entertainment, Inc. v. Hon. Rolando How*, the High Court ruled, "the authority of the Secretary of Justice to review resolutions of his subordinates even after an information has already been filed in court does not present an irreconcilable conflict with the 30-day period prescribed by Section 7 of the Speedy Trial Act."
> >
> > (d) Moreover, the authority of the Secretary of Justice to review resolutions of the Chief State Prosecutor, Provincial or City Prosecutors is recognized by Sec. 4 of Rule 112 of the Revised Rules of Criminal Procedure.

(e) Sec. 4, Rule 112 of the Revised Rules of Criminal Procedure expressly recognizes the authority and power of the Department of Justice to prescribe the rules to be followed in cases of a petition for review of a resolution of the Chief State Prosecutor, Provincial or City Prosecutors. The rules provide "if upon petition by a proper party under such rules as the Department of Justice may prescribe," clearly recognizing the power of the Secretary of Justice to promulgate rules to be followed in petitions for review of appeals from resolutions of the Chief State Prosecutor, Provincial or City Prosecutor.

(f) Pursuant to the rule-making power of the Secretary of Justice, Department Circular No. 70 was promulgated by the Secretary of Justice providing that "the appellant and the trial prosecutor shall see to it that, pending resolution of the appeal, the proceedings in court are held in abeyance.

(g) The implementation of the warrant of arrest issued against the petitioner is part of the proceedings in court. Since the circular unequivocally provides that the "proceedings in court are held in abeyance" pending resolution of the petition for review or appeal, it follows that the lower court committed grave abuse of discretion amounting to lack of jurisdiction when it denied the motion to suspend the implementation of the warrant of arrest. There is even no opposition by the trial prosecutor to the motion to suspend the implementation of the warrant of arrest against the petitioner.[9]

In a Resolution[10] dated October 16, 2001, the CA found that the verified petition of petitioner sufficiently showed that unless the implementation of the warrants of arrest dated September 19, 2001 in Criminal Case Nos. 2492-M-2001 and 2693-M-2001 were temporarily enjoined before the application for a writ of preliminary injunction could be heard on notice, great or irreparable injury would be visited upon the petitioner, as he could momentarily be arrested and detained upon non-bailable charges. Thus, the CA granted a TRO, commanding respondent RTC Judge Gabo to enjoin the implementation of the said warrants of arrest.

Respondents RTC Judge Basilio R. Gabo, Jr., in his capacity as Presiding Judge of the RTC, Branch II of Malolos, Bulacan, and the Office of the Solicitor General (OSG) argued in their Comment (with motion to lift temporary restraining order and opposition to the application for the issuance of a writ of preliminary injunction) [11] dated November 12, 2001, that the determination of whether to issue a warrant of arrest after the filing of an information was a function that was exclusively vested in respondent Judge. Respondent Judge, therefore, was in no way obligated to defer the implementation of the service of the warrant of arrest simply because a petition for review was filed by petitioner before the Secretary of Justice to question the filing of the information against the same petitioner. As to their Opposition to the application for issuance of preliminary injunction with motion to lift temporary restraining order, the public respondents contended that the issue proposed by petitioner was the mere suspension of the implementation of the warrant of arrest to await the resolution of the Department of Justice; hence, respondent Judge was

under no obligation to suspend the proceedings, because the issuance of the warrant of arrest was his exclusive function.

On December 19, 2001, the CA promulgated its Decision[12] dismissing the petition for *certiorari* for lack of merit and found no whimsicality or oppressiveness in the exercise of the respondent Judge's discretion in issuing the challenged Orders. The court added that, since the premise of petitioner's conclusion was erroneous - for said circular and the cases cited did not make it obligatory for respondent Judge to grant petitioner's motion - petitioner's cause was lost. It also stated that nowhere in the Revised Rules of Criminal Procedure, or in any circular of this Court, even in any of its decision was it ever pronounced that when a petition for review of the resolution of the investigating prosecutor -- finding probable cause to indict a respondent -- is filed with the Office of the Secretary of Justice, the court which earlier issued warrants of arrest, should suspend their enforcement.

In an Order[13] dated January 9, 2002, respondent Judge ordered the issuance of an alias warrant of arrest for the apprehension of petitioner by virtue of the expiration of the effectivity of the TRO issued by the CA.

Petitioner filed with the CA a Motion for Reconsideration[14] dated January 3, 2002 of the Decision dated December 19, 2001, which was eventually denied by the same court in its Resolution[15] dated April 11, 2002, stating, among others, that it found nothing to justify a modification, much less a reversal, of its judgment. The court further stated that the motion for reconsideration had not presented any fresh argument or raised any new matter that would need an extended discussion, and that the points stressed were the same as those already discussed in the petition and other papers of the petitioner which were fully considered in the decision.

Hence, the instant petition.

Petitioner claimed, among others, that the Decision of the CA was issued with grave abuse of discretion amounting to lack of jurisdiction when it ruled that Department Circular No. 70 of the Department of Justice promulgated on July 3, 2000 was plainly a directive of the Secretary of Justice to the accused and the trial prosecutor to ask the Court to suspend the proceedings thereon during the pendency of the appeal. According to petitioner, the said department circular had the force and effect of law. He cited cases[16] wherein this Court ruled that administrative regulations adopted pursuant to law had the force and effect of law. Petitioner also pointed out that the same department circular stated that its promulgation was in line with recent jurisprudence. Anent the prayer for the issuance of a TRO, petitioner argued that unless a TRO was issued enjoining the implementation of the warrant of arrest dated September 19, 2001 and the alias warrant of arrest issued by virtue of the Order of January 9, 2002, he stood to suffer great and irreparable injury, as he would be deprived of his liberty without due process of law.

In a Resolution[17] dated May 6, 2002, this Court resolved to issue the TRO prayed for by petitioner and to direct respondent Judge to cease and desist from implementing the warrant of arrest dated September 19, 2001 against petitioner and the alias warrant of arrest issued pursuant to the Order of January 9, 2002 in Criminal Case Nos. 2492-M-2001 and 2493-M-2001, entitled "People of the Philippines vs. Enrique V. Viudez II, *et al*.," effective immediately until further orders

from the same Court.

In its Comment[18] dated June 13, 2002, the OSG stated that the determination of whether to issue a warrant of arrest after the filing of an information was a function that was exclusively vested in respondent Judge. Respondent Judge, therefore, was in no way obliged to defer the implementation of the service of the warrant simply because a petition for review was filed by petitioner before the Secretary of Justice to question the filing of the information against him. The OSG further argued that the respondent Judge did not need to wait for the completion of the preliminary investigation before issuing a warrant of arrest, for Section 4, Rule 113 of the Rules of Criminal Procedure provides that the head of the office to whom the warrant of arrest has been delivered for execution shall cause the warrant to be executed within ten (10) days from receipt thereof. As an opposition to the application for issuance of preliminary injunction and as a motion to lift the temporary restraining order, the OSG stated that the petitioner did not challenge the finding of probable cause of respondent Judge in the issuance of the warrant of arrest against him. Petitioner simply wanted a deferment of its implementation by virtue of Section 9 of Department Circular No. 70; hence, according to the OSG, the issuance of the TRO was tantamount to an abatement of the criminal proceedings.

Petitioner, in its Opposition[19] to the motion to lift temporary restraining order dated September 5, 2002 stated that the discussion of the evidence of the prosecution by the OSG was way off the mark, because the only issue to be resolved in the present petition was whether the implementation of the warrant of arrest issued by the RTC should be suspended pending resolution by the Secretary of Justice of the petition for review filed by petitioner. He also reiterated that the lifting of the TRO would cause grave and irreparable injury to his rights because no bail had been recommended for his provisional liberty.

On September 19, 2002, petitioner filed a Manifestation[20] informing this Court that the Secretary of Justice had already sustained his petition for review. A photocopy of the Resolution[21] of the Secretary of Justice, promulgated on September 13, 2002, was attached to the said manifestation, the dispositive portion of which reads, among others:

> [t]he Chief State Prosecutor is directed to move, with leave of court, for the withdrawal of the information for murder (2 counts) against Mayor Enrique V. Viudez II and Eulogio Villanueva immediately. In view of the same resolution, according to petitioner, the motion of the OSG for the lifting of the TRO issued by this Court has no more legal basis and should be denied for lack of merit.

In his Reply[22] to the Comment of the OSG, dated November 6, 2002, petitioner reiterated that the Secretary of Justice had already issued a resolution on the petition for review that he filed with the said office, and that the State Prosecutor had already filed with the RTC a motion to withdraw the information against him and his co-accused; hence, the instant petition may already be moot and academic because of the said developments.

On December 2, 2002, this Court resolved to give due course to the present petition and required the parties to submit their respective memoranda.[23] Petitioner