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SECOND DIVISION

[G.R. No. 175930-31, February 11, 2008]

WILFRED* A. NICOLAS, Petitioner, vs. HON. SANDIGANBAYAN, Third Division and the OFFICE OF THE SPECIAL PROSECUTOR, Respondents.

[G.R. Nos. 176010-11]

JOSE FRANCISCO ARRIOLA, Petitioner, vs. THE HON. SANDIGANBAYAN (THIRD DIVISION) and PEOPLE OF THE PHILIPPINES, Respondents.

D E C I S I O N

CARPIO MORALES, J.:

In the present consolidated petitions for *certiorari* and prohibition with prayer for issuance of a Temporary Restraining Order (TRO) or Writ of Preliminary Injunction, petitioners, Wilfred A. Nicolas (Nicolas) and Jose Francisco Arriola (Arriola), attribute to public respondent, Sandiganbayan, grave abuse of discretion in issuing its Resolutions of August 31, 2006[1] and December 7, 2006[2] denying their Demurrer to Evidence and their motions for reconsideration, respectively.

Nicolas and Arriola, former Commissioner and Deputy Commissioner, respectively, of the Economic Intelligence and Investigation Bureau (EIIB), stand charged before public respondent in Criminal Case Nos. 26267 and 26268,[3] for violation of Section 3604[4] of the Tariff and Customs Code in the first case, and Section 3(e)[5] of the Anti-Graft and Corrupt Practices Act or Republic Act (R.A.) No. 3019 in the second.

Culled from the records are the following material facts:

On April 16, 1999, a 40-footer container van bearing Serial Number TRIU-576078-1 and Plate Number PKN 290, which was suspected to be carrying undeclared goods, was seized by EIIB operatives under the command of Arriola, then chief of the Special Operations Group. The van was turned over for safekeeping to the Armed Forces of the Philippines Logistics Command (LOGCOM) compound in Quezon City on April 19, 1999.

On May 6, 1999, however, the van was released by military police from the LOGCOM compound to representatives of the EIIB and Trinity Brokerage. While the van was heading to the docks for shipment to the alleged consignee, it surreptitiously exited at the North harbor with its cargo. It has since been missing.

For purportedly allowing the release of the goods, Nicolas and Arriola were indicted for conspiring with one John Doe who took possession of the goods without proper

documentation and payment of customs duties and taxes in the alleged amount of P656,950, thereby depriving the government of revenue.

Both Nicolas and Arriola pleaded not guilty to the charges.

The prosecution presented four witnesses: (1) Commodore George T. Uy (Uy), former commander of the LOGCOM whose signature appeared in the Authority for the withdrawal of the van; (2) Romeo Allan Rosales, chief of the Informal Entry Division-Manila International Container Port (IED-MICP); (3) Ruel Pantaleon (Pantaleon), chief of the Supply Section of the General Services Division (GSD) of the Bureau of Customs; and (4) Alejo Acorda (Acorda) of the LOGCOM who signed as a witness in the Certification of Withdrawal of the van.

Through its testimonial and documentary evidence, the prosecution attempted to show that the withdrawal of the van from the LOGCOM compound was based on a Notice of Withdrawal signed by Nicolas, and on the Authority for the withdrawal of the van which, though it appeared to have been issued by Uy, was not actually signed by him.

The prosecution likewise attempted to establish that the documents, including Official Receipts allegedly presented to show payment of customs duties and taxes, were all spurious.

After concluding the presentation of its evidence, the prosecution filed on February 16, 2006 a Formal Offer of Evidence/Exhibits[6] to which petitioner Arriola filed a Comment/Opposition.[7]

By Resolution of March 30, 2006,[8] public respondent admitted the following documentary evidence for the prosecution:

(1) Exhibit "A"	-	Turn-Over Receipt dated April 19, 1999 for container Van No. TRIU 576078-1[9]
(2) Exhibit "E"	-	Certification of Withdrawal dated May 6, 1999[10]
(3) Exhibit "F"	-	A portion of the passport of then Capt. Uy[11]
(4) Exhibit "G"	-	Affidavit of Capt. Uy dated May 25, 2004[12]
(5) Exhibit "H"	-	Letter dated March 4, 2003 of Mr. Ramon P. Simon addressed to the chief of the Informal Entry Division of the Bureau of Customs[13]
(6) Exhibit "I"	-	Letter dated March 4, 2003 of Mr. Reynaldo E. Tanquilut addressed to Ms. Zenaida D. Lanaria, chief of the Liquidation and Billing Division of the Bureau of Customs[14]
(7) Exhibits "J" to J-2"	-	Certification dated March 17, 2003 issued by Mr. Romeo Allan

R. Rosales, chief of the IED-MICP[15]

(8) Exhibit "K" - Certification dated December 14, 1999 issued by Ruel L. Pantaleon, chief of the Supply Section, GSD, Bureau of Customs[16]

The rest of the Exhibits for the prosecution, being mere photocopies, were not admitted by public respondent. The excluded evidence consisted of Mission Order No. 04-105-99 dated April 19,1999 for the inventory of the contents of the van (Exhibit "B"); the Inventory List of the van (Exhibits "C" to "C-3"); the Notice of Withdrawal dated May 6, 1999 (Exhibit "D"); and portions of No. 4 Ledger Series-99, the official logbook of the IED-MICP (Exhibits "J-3" and "J-4").

Petitioners separately filed motions for Leave of Court to File Demurrer to Evidence with Motion to Admit Attached Demurrer to Evidence.[17]

Respecting the first Information, petitioners' respective Demurrer maintained that the evidence admitted by public respondent failed to identify and prove that they were the perpetrators of the crimes charged, for there was no showing that they caused, approved or acted in any manner relative to the release of the goods.

Petitioners went on to contend that none of the documentary evidence bore their names or signatures. And neither was there any testimonial evidence that they acted towards the release of the shipment.

Additionally, petitioners contended that the shipment was not shown to be imported, or for export, or otherwise subject of coastwise trade as to be subject to customs duties; and that even assuming that customs duties were due, there was no evidence that the same were not paid.

Regarding Import Entry Declaration Nos. 5000-99, 5001-99 and 5002-99 which, the prosecution maintained, were used for the release of the goods but were not processed through the IED-MICP, petitioners contended that the same were not shown to have a bearing on the shipment or to their indictment. These import entry declarations were not even presented as documentary evidence, they added.

On the prosecution's submission that customs duties were not paid, petitioners' contended that the same is visited by a similar failure to link the allegedly fraudulent Official Receipt[18] Nos. 75071606, 7501609, and 75071603 to the cargo.

Respecting the second Information, petitioners' Demurrer maintained that the prosecution failed to establish each and every material element thereof.

In the main, petitioners thus argued that the prosecution was not only unable to show that they were the perpetrators of the crimes charged or that they committed any prohibited act; it was also not able to prove that undue injury was caused the government.

Finally, as to both Informations, petitioners submitted that the existence of conspiracy between them and/or John Doe was not established.

To petitioners' motions to File Demurrer to Evidence[19] and their Demurrer to Evidence,[20] the prosecution filed a Comment/Opposition.

By the first questioned Resolution of August 31, 2006, public respondent denied petitioners' respective Demurrer to Evidence. In denying the Demurrer, public respondent held that, *inter alia*, the prosecution was able to establish that the goods apprehended by the EIIB for non-payment of customs duties were deposited at the LOGCOM in Quezon City and while there they were inventoried and found to be computer spare parts and not "parts of a rock crusher" as they were allegedly originally declared; and that on May 6, 1999, the goods were withdrawn from the LOGCOM compound on the strength of a Notice of Withdrawal purportedly signed by then LOGCOM Commander Uy who did not actually issue it as he was then in the United States on official travel nor by the then deputy LOGCOM commander, one Colonel Romero.

Public respondent concluded that petitioners should not have allowed the withdrawal of the goods from the LOGCOM compound by persons other than the real consignee and without obtaining proof that the customs duties were fully and correctly paid. In doing so, public respondent ruled, petitioners "can be deemed to have conspired or colluded with one another or others to defraud the customs revenue or otherwise violated the law."[21]

Petitioners filed their respective motions for reconsideration.[22] The prosecution filed an Opposition[23] which merited petitioners' Reply.[24]

By the second questioned Resolution of December 7, 2006,[25] public respondent denied petitioners' motions for reconsideration.

Hence, these consolidated petitions.

As stated early on, petitioners jointly ascribe grave abuse of discretion to public respondent for denying their Demurrer given what they submit is the absence or lack of evidence to sustain the cases against them.

Nicolas additionally submits that public respondent grievously abused its discretion when it disregarded this Court's December 16, 2004 Decision in G.R. No. 154668[26] *"Wilfred A. Nicolas v. Aniano A. Desierto,"* in which he was absolved of administrative liability for gross neglect of duty and dishonesty arising from the same incident subject of the criminal charges against him.

Invoking the doctrines of *res judicata* and *stare decisis*, Nicolas contends that public respondent particularly failed to abide by this Court's ruling in the said administrative case that he had acted in good faith in relying upon the apparently valid and genuine documents submitted to him when he requested for the release of the van from the LOGCOM compound.

It appears that Nicolas had, by way of a Manifestation,[27] informed public respondent of this Court's Decision in the administrative case. Public respondent merely noted it, however, together with the pleadings that were subsequently filed

after the Manifestation.[28] On the basis of the same Decision in the administrative case, Nicolas filed a Motion to Dismiss[29] the criminal cases against him but public respondent denied it.[30]

Before delving on the substantive issues, this Court must first address the propriety of the availment of a petition for certiorari and prohibition in assailing a denial of a demurrer to evidence. Then, too, it must determine if the present petitions have been rendered moot and academic by the continuation of the trial – for reception of evidence for the defense. As to the latter issue, the Court notes that public respondent had cancelled the initial presentation of defense evidence upon the filing of the present petitions to afford the Court time to act on petitioners' applications for TRO or Writ of Preliminary Injunction.

By Order given in open court on March 27, 2007, public respondent subsequently cancelled and reset the hearing scheduled on even date and on March 28, 2007.[31] It directed the initial presentation of evidence for Arriola on June 27, 2007 if no TRO was issued by this Court.

The Court did not issue a TRO or a Writ of Preliminary Injunction to stop public respondent from continuing the proceedings in the cases. There is no information if the defense has started or concluded the presentation of its evidence.

Be that as it may, the continuation of the trial should not stand in the way of this Court's ruling on the present petitions. Suffice it to stress that should the denial of petitioners' Demurrer be found to be tainted with grave abuse of discretion, whatever proceedings were conducted before public respondent during the pendency of the present petitions are void.

Moreover, it bears stressing that the evidence for the prosecution is the yardstick for determining the sufficiency of proof necessary to convict; and that the prosecution must rely on the strength of its own evidence rather than on the weakness of the evidence for the defense.[32]

On whether certiorari is the proper remedy in the consolidated petitions, the general rule prevailing is that it does not lie to review an order denying a demurrer to evidence, which is equivalent to a motion to dismiss, filed after the prosecution has presented its evidence and rested its case.[33]

Such order, being merely interlocutory, is not appealable; neither can it be the subject of a petition for certiorari.[34] The rule admits of exceptions, however. Action on a demurrer or on a motion to dismiss rests on the sound exercise of judicial discretion.[35] In *Tadeo v. People,*[36] this Court declared that certiorari may be availed of when the denial of a demurrer to evidence is tainted with "grave abuse of discretion or excess of jurisdiction, or oppressive exercise of judicial authority." And so it did declare in *Choa v. Choa*[37] where the denial is patently erroneous.

> Indeed, resort to certiorari is expressly recognized and allowed under Rules 41 and 65 of the Rules of Court, *viz*:
>
> **Rule 41:**