

SECOND DIVISION

[G.R. NO. 155041, February 14, 2007]

REYNALDO DE CASTRO, PETITIONER, VS. HON. MANUEL B. FERNANDEZ, JR. IN HIS OFFICIAL CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF LAS PIÑAS CITY, BRANCH 254, METRO MANILA, RESPONDENT.

DECISION

CARPIO, J.:

The Case

This petition for certiorari^[1] assails the Orders dated 5 and 28 August 2002 of Judge Manuel B. Fernandez, Jr., Regional Trial Court of Las Piñas City, Branch 254 (trial court) in Criminal Case No. 02-0527.^[2] The 5 August 2002 Order denied petitioner Reynaldo de Castro's (petitioner) Motion for Reinvestigation and the 28 August 2002 Order denied petitioner's Motion for Reconsideration.

The Facts

On the evening of 11 June 2002, barangay *tanods* invited petitioner to the barangay hall in connection with a complaint for sexual assault filed by AAA,^[3] on behalf of her daughter BBB.^[4] Petitioner accepted the invitation without any resistance.

On 12 June 2002, the barangay officials turned over petitioner to the Las Piñas City Police Station.

On 13 June 2002, the police indorsed the complaint to the city prosecutor of Las Piñas City for inquest proceedings.^[5] Later, the state prosecutor issued a commitment order for petitioner's detention.^[6]

On 18 June 2002, State Prosecutor Napoleon A. Monsod filed an Information against petitioner for the crime of rape. The Information reads:

The undersigned State Prosecutor II accuses REYNALDO DE CASTRO y AVELLANA of the crime of Rape (Art. 266-A, par. 2 in relation to Art. 266-B, Revised Penal Code, as amended by R[.]A[.] [No.] 8353 and R[.]A[.] [No.] 7659) and in relation with R[.]A[.] [No.] 7610, committed as follows:

That on or about the 11th day of June 2002 or prior thereto, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously

commits [sic] act[s] of sexual assault with one [BBB], a seven (7) years [sic] old minor, by touching and inserting his finger into her vagina against her will and consent.

CONTRARY TO LAW.^[7]

On 1 July 2002, petitioner filed a Motion for Reinvestigation praying that the trial court issue an order directing the Office of the Prosecutor of Las Piñas City to conduct a preliminary investigation in accordance with Rule 112 of the Rules of Court. Petitioner also asked that the charge filed against him be amended to acts of lasciviousness instead of rape since "fingering" is not covered under Article 266-A, paragraph 2 of Republic Act No. 8353 (RA 8353).^[8] In the Order dated 5 August 2002, the trial court denied petitioner's Motion for Reinvestigation.

On 22 August 2002, petitioner filed a Motion for Reconsideration. In the Order dated 28 August 2002, the trial court denied the motion. Hence, this petition.

The Issues

Petitioner raises the following issues:

1. WHETHER A FINGER CONSTITUTES AN OBJECT OR INSTRUMENT IN THE CONTEMPLATION OF REPUBLIC ACT NO. 8353; and
2. WHETHER THE ACCUSED IS ENTITLED TO A PRELIMINARY INVESTIGATION IN FULL ACCORD WITH RULE 112 OF THE RULES ON CRIMINAL PROCEDURE.^[9]

The Court's Ruling

We dismiss the petition.

At the outset, we declare that petitioner availed of the wrong remedy in assailing the trial court's Orders. Petitioner filed before this Court a petition captioned "Petition for Certiorari" and specifically stated that the petition is based on Rule 65. However, petitioner also stated that the issues raised are pure questions of law,^[10] which properly fall under Rule 45.

Under Rule 65, a special civil action for certiorari lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.

^[11] In this case, petitioner failed to allege any circumstance which would show that in issuing the assailed Orders, the trial court acted without or in excess of jurisdiction or with grave abuse of discretion. Moreover, following the hierarchy of courts, a special civil action for certiorari assailing an order of the Regional Trial Court should be filed with the Court of Appeals and not with this Court.^[12] Petitioner did not raise any special reason or compelling circumstance that would justify direct recourse to this Court.^[13]

On the other hand, if the petition is to be treated as a petition for review under Rule 45, the petition would fail because only judgments or final orders that completely