551 Phil. 936

THIRD DIVISION

[G.R. No. 171465, June 08, 2007]

AAA,* PETITIONER, VS. HON. ANTONIO A. CARBONELL, IN HIS CAPACITY AS PRESIDING JUDGE, BRANCH 27, REGIONAL TRIAL COURT, SAN FERNANDO CITY, LA UNION AND ENGR. JAIME O. ARZADON, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

This petition for *certiorari*[1] assails the December 16, 2005[2] Order of the Regional Trial Court, Branch 27, San Fernando, La Union in Criminal Case No. 6983, dismissing the rape case filed against private respondent Jaime O. Arzadon for lack of probable cause; and its February 3, 2006[3] Order denying petitioner's motion for reconsideration.

Petitioner worked as a secretary at the Arzadon Automotive and Car Service Center from February 28, 2001 to August 16, 2001. On May 27, 2001 at about 6:30 p.m., Arzadon asked her to deliver a book to an office located at another building but when she returned to their office, the lights had been turned off and the gate was closed. Nevertheless, she went inside to get her handbag.

On her way out, she saw Arzadon standing beside a parked van holding a pipe. He told her to go near him and upon reaching his side, he threatened her with the pipe and forced her to lie on the pavement. He removed her pants and underwear, and inserted his penis into her vagina. She wept and cried out for help but to no avail because there was nobody else in the premises.

Petitioner did not report the incident because Arzadon threatened to kill her and her family. But when she discovered that she was pregnant as a consequence of the rape, she narrated the incident to her parents. On July 24, 2002, petitioner filed a complaint for rape against Arzadon.

On September 16, 2002, Assistant City Prosecutor Imelda Cosalan issued a Resolution[4] finding probable cause and recommending the filing of an information for rape. Arzadon moved for reconsideration and during the clarificatory hearing held on October 11, 2002, petitioner testified before the investigating prosecutor. However, she failed to attend the next hearing hence, the case was provisionally dismissed.

On March 5, 2003, petitioner filed another Affidavit-Complaint[5] with a comprehensive account of the alleged rape incident. The case was assigned to 2nd Assistant Provincial Prosecutor Georgina Hidalgo. During the preliminary investigation, petitioner appeared for clarificatory questioning. On June 11, 2003,

the investigating prosecutor issued a Resolution[6] finding that a *prima facie* case of rape exists and recommending the filing of the information.

Arzadon moved for reconsideration and requested that a panel of prosecutors be constituted to review the case. Thus, a panel of prosecutors was created and after the clarificatory questioning, the panel issued on October 13, 2003 a Resolution[7] finding probable cause and denying Arzadon's motion for reconsideration.

An Information[8] for rape was filed before the Regional Trial Court, Branch 27, San Fernando, La Union on February 6, 2004, docketed as Criminal Case No. 6415. Thereafter, Arzadon filed a "Motion to Hold in Abeyance All Court Proceedings Including the Issuance of a Warrant of Arrest and to Determine Probable Cause for the Purpose of Issuing a Warrant of Arrest."[9] On March 18, 2004, respondent Judge Antonio A. Carbonell granted the motion and directed petitioner and her witnesses to take the witness stand for determination of probable cause.

Arzadon also appealed the Resolution of the panel of prosecutors finding probable cause before the Department of Justice. On July 9, 2004, then Acting Secretary of Justice Merceditas Gutierrez found no probable cause and directed the withdrawal of the Information in Criminal Case No. 6415.[10]

Upon motion for reconsideration by petitioner, however, Secretary of Justice Raul Gonzales reversed the July 9, 2004 Resolution and issued another Resolution[11] finding that probable cause exists. Thus, a new Information[12] for rape was filed against Arzadon docketed as Criminal Case No. 6983.

Consequently, Arzadon filed an "Urgent Motion for Judicial Determination of Probable Cause for the Purpose of Issuing a Warrant of Arrest."[13] In an Order dated August 11, 2005, respondent Judge Carbonell granted the motion and directed petitioner and her witnesses to take the witness stand.

Instead of taking the witness stand, petitioner filed a motion for reconsideration claiming that the documentary evidence sufficiently established the existence of probable cause. Pending resolution thereof, she likewise filed a petition[14] with this Court for the transfer of venue of Criminal Case No. 6983. The case was docketed as Administrative Matter No. 05-12-756-RTC and entitled *Re: Transfer of Venue of Criminal Case No. 6983, formerly Criminal Case No. 6415, from the Regional Trial Court, Branch 27, San Fernando City, La Union, to any Court in Metro Manila.*

In a Resolution[15] dated January 18, 2006, the Court granted petitioner's request for transfer of venue. The case was raffled to the Regional Trial Court of Manila, Branch 25, and docketed as Criminal Case No. 06-242289. However, the proceedings have been suspended pending the resolution of this petition.

Meanwhile, on December 16, 2005, respondent Judge Carbonell issued the assailed Order dismissing Criminal Case No. 6983 for lack of probable cause. Petitioner's motion for reconsideration was denied hence, this petition.

Petitioner raises the following issues:[16]

I

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT GRANTED THE MOTION FOR DETERMINATION OF PROBABLE CAUSE FILED BY THE PRIVATE RESPONDENT AND THE SUBSEQUENT DENIAL OF THE MOTION FOR RECONSIDERATION

II

RESPONDENT JUDGE COMMITTED FURTHER ACTS CONSTITUTING GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT ORDERED THE COMPLAINANT AND WITNESSES TO TAKE THE STAND FOR THE PURPOSE OF DETERMINING PROBABLE CAUSE

III

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION WHEN HE REFUSED TO INHIBIT FROM FURTHER HANDLING THE CASE DESPITE WHISPERS OF DOUBT ON HIS BIAS AND PARTIALITY

IV

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT ISSUED THE ORDER OF FEBRUARY 3, 2006, DENYING THE MOTION FOR RECONSIDERATION, DESPITE THE SUPREME COURT RESOLUTION OF JANUARY 18, 2006, GRANTING THE TRANSFER OF VENUE

Petitioner contends that the judge is not required to personally examine the complainant and her witnesses in satisfying himself of the existence of probable cause for the issuance of a warrant of arrest. She argues that respondent Judge Carbonell should have taken into consideration the documentary evidence as well as the transcript of stenographic notes which sufficiently established the existence of probable cause.

Arzadon claims that the petition should be dismissed outright for being the wrong mode of appeal, it appearing that the issues raised by petitioner properly fall under an action for *certiorari* under Rule 65, and not Rule 45, of the Rules of Court.

Respondent Judge Carbonell argues in his Comment[17] that the finding of probable cause by the investigating prosecutor is not binding or obligatory, and that he was justified in requiring petitioner and her witnesses to take the witness stand in order to determine probable cause.

The issues for resolution are 1) whether the petition should be dismissed for being the wrong mode of appeal; and 2) whether respondent Judge Carbonell acted with grave abuse of discretion in dismissing Criminal Case No. 6983 for lack of probable cause.

The petition has merit.

A petition for review on *certiorari* under Rule 45 is distinct from a petition for certiorari under Rule 65 in that the former brings up for review errors of judgment while the latter concerns errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion is not an allowable ground under Rule 45. However, a petition for review on *certiorari* under Rule 45 may be considered a petition for certiorari under Rule 65 where it is alleged that the respondents abused their discretion in their questioned actions, as in the instant case.[18] While petitioner claims to have brought the instant action under Rule 45, the grounds raised herein involve an alleged grave abuse of discretion on the part of respondent Judge Carbonell. Accordingly, the Court shall treat the same as a petition for *certiorari* under Rule 65.

However, we must point out the procedural error committed by petitioner in directly filing the instant petition before this Court instead of the Court of Appeals, thereby violating the principle of judicial hierarchy of courts. It is well-settled that although the Supreme Court, Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, prohibition, mandamus, *quo warranto, habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum.[19] In this case, however, the gravity of the offense charged and the length of time that has passed since the filing of the complaint for rape, compel us to resolve the present controversy in order to avoid further delay.[20]

We thus proceed to the issue of whether respondent Judge Carbonell acted with grave abuse of discretion in dismissing Criminal Case No. 6983 for lack of probable cause.

We rule in the affirmative.

Respondent Judge Carbonell dismissed Criminal Case No. 6983 for lack of probable cause on the ground that petitioner and her witnesses failed to comply with his orders to take the witness stand. Thus –

> In RESUME therefore, as indubitably borne out by the case record and considering that the Private Prosecutor, despite several admonitions contumaciously nay contemptuously refused to comply/obey this Court's Orders of March 18, 2004, August 11, 2005 and eight (8) other similar Orders issued in open Court that directed the complainant/witnesses to take the witness stand to be asked probing/clarificatory questions consonant with cited jurisprudential rulings of the Supreme Court, this Court in the exercise of its discretion and sound judgment finds and so holds that NO probable cause was established to warrant the issuance of an arrest order and the further prosecution of the instant case.
>
> Record also shows in no unclear terms that in all the scheduled hearings of the case, the accused had always been present. A contrario, the private complainant failed to appear during the last four (4) consecutive settings despite due notice without giving any explanation, which to the mind of the Court may indicate an apparent lack of interest in the further prosecution of this case. That failure may even be construed as a confirmation of the Defense's contention reflected in the case record, that

> the only party interested in this case is the Private prosecutor, prodded by the accused's alleged hostile siblings to continue with the case.
>
> WHEREFORE, premises considered, for utter lack of probable cause, the instant case is hereby ordered DISMISSED.[21]

He claims that under Section 2, Article III of the 1987 Constitution, no warrant of arrest shall issue except upon probable cause "to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce."

However, in the leading case of *Soliven v. Makasiar*,[22] the Court explained that this constitutional provision does not mandatorily require the judge to personally examine the complainant and her witnesses. Instead, he may opt to personally evaluate the report and supporting documents submitted by the prosecutor or he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses. Thus:

> The addition of the word "personally" after the word "determined" and the deletion of the grant of authority by the 1973 Constitution to issue warrants to "other responsible officers as may be authorized by law," has apparently convinced petitioner Beltran that the Constitution now requires the judge to personally examine the complainant and his witnesses in his determination of probable cause for the issuance of warrants of arrest. This is not an accurate interpretation.
>
> What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.
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> Sound policy dictates this procedure, otherwise judges would by unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts.[23]

We reiterated the above ruling in the case of *Webb v. De Leon*,[24] where we held that before issuing warrants of arrest, judges merely determine the probability, not the certainty, of guilt of an accused. In doing so, judges do not conduct a *de novo* hearing to determine the existence of probable cause. They just personally review the initial determination of the prosecutor finding a probable cause to see if it is supported by substantial evidence.[25]

It is well to remember that there is a distinction between the preliminary inquiry