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THIRD DIVISION

[G.R. No. 143591, November 23, 2007]

TEODORO C. BORLONGAN, JR., CORAZON M. BEJASA, ARTURO E. MANUEL, JR., ERIC L. LEE, P. SIERVO H. DIZON, BENJAMIN DE LEON, DELFIN C. GONZALEZ, JR., AND BEN YU LIM, JR., PETITIONERS, VS. MAGDALENO M. PEÑA AND HON. MANUEL Q. LIMSIACO, JR., AS JUDGE DESIGNATE OF THE MUNICIPAL TRIAL COURT IN CITIES, BAGO CITY, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

For review is the Decision[1] of the Court of Appeals (CA) dated June 20, 2000 in CA-G.R. SP No. 49666 dismissing the petition for *certiorari* filed by petitioners Teodoro C. Borlongan, Jr., Corazon M. Bejasa, Arturo Manuel, Jr., Benjamin de Leon, P. Siervo Dizon, Delfin C. Gonzalez, Jr., Eric Lee and Ben T. Lim, Jr.

The factual and procedural antecedents of the case are as follows:

Respondent Magdaleno Peña instituted a civil case for recovery of agent's compensation and expenses, damages, and attorney's fees,[2] against Urban Bank and the petitioners, before the Regional Trial Court (RTC) of Negros Occidental, Bago City. The case was raffled to Branch 62 and was docketed as Civil Case No. 754. Respondent anchored his claim for compensation on the contract of agency[3] allegedly entered into with the petitioners wherein the former undertook to perform such acts necessary to prevent any intruder and squatter from unlawfully occupying Urban Bank's property located along Roxas Boulevard, Pasay City. Petitioners filed a Motion to Dismiss[4] arguing that they never appointed the respondent as agent or counsel. Attached to the motion were the following documents: 1) a letter[5] dated December 19, 1994 signed by Herman Ponce and Julie Abad on behalf of Isabela Sugar Company, Inc. (ISCI), the original owner of the subject property; 2) an unsigned letter[6] dated December 7, 1994 addressed to Corazon Bejasa from Marilyn G. Ong; 3) a letter[7] dated December 9, 1994 addressed to Teodoro Borlongan and signed by Marilyn G. Ong; and 4) a Memorandum[8] dated November 20, 1994 from Enrique Montilla III. Said documents were presented in an attempt to show that the respondent was appointed as agent by ISCI and not by Urban Bank or by the petitioners.

In view of the introduction of the above-mentioned documents, respondent Peña filed his Complaint-Affidavit[9] with the Office of the City Prosecutor, Bago City.[10] He claimed that said documents were falsified because the alleged signatories did not actually affix their signatures, and the signatories were neither stockholders nor officers and employees of ISCI.[11] Worse, petitioners introduced said documents as

evidence before the RTC knowing that they were falsified.

In a Resolution[12] dated September 23, 1998, the City Prosecutor concluded that the petitioners were probably guilty of four (4) counts of the crime of Introducing Falsified Documents penalized by the second paragraph of Article 172 of the Revised Penal Code (RPC). The City Prosecutor concluded that the documents were falsified because the alleged signatories untruthfully stated that ISCI was the principal of the respondent; that petitioners knew that the documents were falsified considering that the signatories were mere dummies; and that the documents formed part of the record of Civil Case No. 754 where they were used by petitioners as evidence in support of their motion to dismiss, adopted in their answer and later, in their Pre-Trial Brief.[13] Subsequently, the corresponding Informations[14] were filed with the Municipal Trial Court in Cities (MTCC), Bago City. The cases were docketed as Criminal Cases Nos. 6683, 6684, 6685, and 6686. Thereafter, Judge Primitivo Blanca issued the warrants[15] for the arrest of the petitioners.

On October 1, 1998, petitioners filed an Omnibus Motion to Quash, Recall Warrants of Arrest and/or For Reinvestigation.[16] Petitioners insisted that they were denied due process because of the non-observance of the proper procedure on preliminary investigation prescribed in the Rules of Court. Specifically, they claimed that they were not afforded the right to submit their counter-affidavit. They then argued that since no such counter-affidavit and supporting documents were submitted by the petitioners, the trial judge merely relied on the complaint-affidavit and attachments of the respondent in issuing the warrants of arrest, also in contravention of the Rules. Petitioners further prayed that the information be quashed for lack of probable cause. Lastly, petitioners posited that the criminal case should have been suspended on the ground that the issue being threshed out in the civil case is a prejudicial question.

In an Order[17] dated November 13, 1998, the court denied the omnibus motion primarily on the ground that preliminary investigation was not available in the instant case --- which fell within the jurisdiction of the MTCC. The court, likewise, upheld the validity of the warrant of arrest, saying that it was issued in accordance with the Rules. Besides, the court added, petitioners could no longer question the validity of the warrant since they already posted bail. The court also believed that the issue involved in the civil case was not a prejudicial question, and thus, denied the prayer for suspension of the criminal proceedings. Lastly, the court was convinced that the Informations contained all the facts necessary to constitute an offense.

Petitioners subsequently instituted a special civil action for Certiorari and Prohibition with Prayer for Writ of Preliminary Injunction and TRO, before the CA ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the MTCC in issuing and not recalling the warrants of arrest, reiterating the arguments in their omnibus motion.[18] They, likewise, questioned the court's conclusion that by posting bail, petitioners already waived their right to assail the validity of the warrant of arrest.

On June 20, 2000, the CA dismissed the petition.[19] Hence, the instant petition for review on certiorari under Rule 45 of the Rules of Court. Petitioners now raise before

us the following issues:

A.

Where the offense charged in a criminal complaint is not cognizable by the Regional Trial Court and not covered by the Rule on Summary Procedure, is the finding of probable cause required for the filing of an Information in court?

If the allegations in the complaint-affidavit do not establish probable cause, should not the investigating prosecutor dismiss the complaint, or at the very least, require the respondent to submit his counter-affidavit?

B.

Can a complaint-affidavit containing matters which are not within the personal knowledge of the complainant be sufficient basis for the finding of probable cause?

C.

Where the offense charged in a criminal complaint is not cognizable by the Regional Trial Court and not covered by the Rule on Summary Procedure, and the record of the preliminary investigation does not show the existence of probable cause, should not the judge refuse to issue a warrant of arrest and dismiss the criminal case, or at the very least, require the accused to submit his counter-affidavit in order to aid the judge in determining the existence of probable cause?

D.

Can a criminal prosecution be restrained?

E.

Can this Honorable Court itself determine the existence of probable cause?[20]

On August 2, 2000, this Court issued a Temporary Restraining Order (TRO)[21] enjoining the judge of the MTCC from proceeding in any manner with Criminal Cases Nos. 6683 to 6686, effective during the entire period that the case is pending before, or until further orders of, this Court.

With the MTCC proceedings suspended, we now proceed to resolve the issues raised.

Respondents contend that the foregoing issues had become moot and academic when the petitioners posted bail and were arraigned.

We do not agree.

It appears that upon the issuance of the warrant of arrest, petitioners immediately

posted bail as they wanted to avoid embarrassment being then the officers of Urban Bank. On the scheduled date for the arraignment, despite the petitioners' refusal to enter a plea, the court entered a plea of "Not Guilty."

The earlier ruling of this Court that posting of bail constitutes a waiver of the right to question the validity of the arrest has already been superseded by Section 26,[22] Rule 114 of the Revised Rules of Criminal Procedure. Furthermore, the principle that the accused is precluded from questioning the legality of his arrest after arraignment is true only if he voluntarily enters his plea and participates during trial, without previously invoking his objections thereto.[23]

Records reveal that petitioners filed the omnibus motion to quash the information and warrant of arrest, and for reinvestigation, on the same day that they posted bail. Their bail bonds likewise expressly contained a stipulation that they were not waiving their right to question the validity of their arrest.[24] On the date of the arraignment, the petitioners refused to enter their plea, obviously because the issue of the legality of the information and their arrest was yet to be settled by the Court. This notwithstanding, the court entered a plea of "Not Guilty." From these circumstances, we cannot reasonably infer a valid waiver on the part of the petitioners, as to preclude them from raising the issue of the validity of the arrest before the CA and eventually before this Court.

In their petition filed before this Court, petitioners prayed for a TRO to restrain the MTCC from proceeding with the criminal cases (which the Court eventually issued on August 2, 2000). Thus, we confront the question of whether a criminal prosecution can be restrained, to which we answer in the affirmative.

As a general rule, the Court will not issue writs of prohibition or injunction, preliminary or final, to enjoin or restrain criminal prosecution. However, the following exceptions to the rule have been recognized: 1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused; 2) when it is necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; 3) when there is a prejudicial question which is *sub judice;* 4) when the acts of the officer are without or in excess of authority; 5) where the prosecution is under an invalid law, ordinance or regulation; 6) when double jeopardy is clearly apparent; 7) where the Court has no jurisdiction over the offense; 8) where it is a case of persecution rather than prosecution; 9) where the charges are manifestly false and motivated by the lust for vengeance; and 10) when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.[25]

Considering that the issues for resolution involve the validity of the information and warrant of arrest, and considering further that no waiver of rights may be attributed to the petitioners as earlier discussed, we issued a TRO on August 2, 2000 to give the Court the opportunity to resolve the case before the criminal prosecution is allowed to continue. The nature of the crime and the penalty involved (which is less than 4 years of imprisonment), likewise, necessitate the suspension of the case below in order to prevent the controversy from being mooted.

We now proceed with the main issues, viz.: 1) whether petitioners were deprived of their right to due process of law because of the denial of their right to preliminary

investigation and to submit their counter-affidavit; 2) whether the Informations charging the petitioners were validly filed and the warrants for their arrest were properly issued; and 3) whether this Court can, itself, determine probable cause.

As will be discussed below, the petitioners could not validly claim the right to preliminary investigation. Still, petitioners insist that they were denied due process because they were not afforded the right to submit counter-affidavits which would have aided the court in determining the existence of probable cause.[26] Petitioners also claim that the respondent's complaint-affidavit was not based on the latter's personal knowledge; hence, it should not have been used by the court as basis in its finding of probable cause.[27] Moreover, petitioners aver that there was no sufficient evidence to prove the elements of the crime. Specifically, it was not established that the documents in question were falsified; that petitioners were the ones who presented the documents as evidence; and that petitioners knew that the documents were indeed falsified.[28] Petitioners likewise assert that at the time of the filing of the complaint-affidavit, they had not yet formally offered the documents as evidence; hence, they could not have "introduced" the same in court.[29] Considering the foregoing, petitioners pray that this Court, itself, determine whether or not probable cause exists.[30]

The pertinent provisions of the 1985 Rules of Criminal Procedure,[31] namely, Sections 1, 3 (a) and 9(a) of Rule 112, are relevant to the resolution of the aforesaid issues:

> SECTION 1. *Definition.* – Preliminary investigation is an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial.[32]
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> SEC. 3. *Procedure.* – Except as provided for in Section 7 hereof, no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted in the following manner:
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> (a) The complaint shall state the known address of the respondent and be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents, in such number of copies as there are respondents, plus two (2) copies of the official file. The said affidavits shall be sworn to before any fiscal, state prosecutor or government official authorized to administer oath, or, in their absence or unavailability, a notary public, who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.[33]
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> SEC. 9. *Cases not falling under the original jurisdiction of the Regional Trial Courts not covered by the Rule on Summary Procedure.* –
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> (a) Where filed with the fiscal. – If the complaint is filed