

## SECOND DIVISION

[ G.R. NO. 166924, August 17, 2006 ]

**GLAXOSMITHKLINE PHILIPPINES, INC., PETITIONER, VS.  
KHALID MEHMOOD MALIK AND MUHAMMAD ATEEQUE,  
RESPONDENTS.**

### D E C I S I O N

**GARCIA, J.:**

In this petition for review under Rule 45 of the Rules of Court, petitioner GLAXOSMITHKLINE PHILIPPINES, INC. (Glaxo, hereafter) seeks to nullify and set aside the Decision<sup>[1]</sup> dated October 28, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 78646, as reiterated in its Resolution<sup>[2]</sup> of January 24, 2005, affirming an earlier resolution of the Secretary of Justice which dismissed the petition for review taken by the petitioner in I.S. No. 2002-515 (Crim. Case Nos. 02-0699-0701), a prosecution for violation of Republic Acts (RA) No. 3720 and No. 8230, filed against the herein respondents, Khalid Mehmood Malik and Muhammad Ateeque, at the instance of the petitioner and others.

The facts:

Acting on separate letter-complaints filed by Glaxo and two (2) other pharmaceutical companies operating in the country, namely, Pfizer Phil., Inc. (Pfizer) and Roche Phil., Inc. (Roche), to the effect that respondents were illegally engaged in the sale and distribution of unregistered imported pharmaceutical drugs at their business establishments in Parañaque City, namely, the World Traders, Inc. and the Sahar International Trading Center (SITI), the National Bureau of Investigation (NBI) Intellectual Property Rights Division sent NBI agent Rodolfo Ignacio, accompanied by investigators of the IP Manila Associates, a private investigating firm hired by Glaxo, Pfizer and Roche, to the respondents' place of business in Parañaque City. There, respondent Muhammad Ateeque allegedly showed the members of the covert team samples of the medicines he was selling. The samples shown allegedly included imported drugs bearing the brand names of Glaxo, Pfizer and Roche, which the team found to be without the requisite registration numbers from the Bureau of Food and Drugs (BFAD).

On June 9, 2002, NBI operatives, again with members of the same private investigating team, conducted an entrapment operation at the premises of SITI in Parañaque City, during which respondent Malik was allegedly caught receiving marked money from one of the team members as payment for parallel imported pharmaceutical products. Then and there, Malik was placed under arrest and brought to the NBI Headquarters whereat he was found positive for the presence of fluorescent powder. Respondent Ateeque allegedly left before the buy-bust operation could be effected.

After due examination of the confiscated samples of pharmaceutical products and the drugs allegedly sold by Malik, petitioner concluded that the same did not conform to Glaxo's standards.

The next day, June 10, 2002, Inquest Prosecutor Albert R. Fonacier of the Department of Justice (DOJ) conducted an inquest investigation of respondent Malik. Thereafter, Criminal Cases No. 02-0699 to No. 0701 for violation of RA No. 3720, also known as the Food, Drugs and Cosmetic Act and RA No. 8203, otherwise known as the *Special Law on Counterfeit Drugs*, were filed against Malik before the Regional Trial Court of Parañaque City, Branch 258. As regards respondent Ateeque who was at large at the time, the court recommended that he too be preliminarily investigated.

State Prosecutor Isagani Rabe commenced the preliminary investigation of respondent Ateeque. Upon motion of respondent Malik that his case be reinvestigated together with that of Ateeque's, the DOJ consolidated the preliminary investigation of the complaints against both respondents and had them docketed as I.S. No. 2002-515.

On January 14, 2003, Senior State Prosecutor Leah C. Tanodra-Armamento issued a resolution<sup>[3]</sup> dismissing the charges against both respondents. Pertinently, the resolution reads:

xxx xxx xxx

Consequently, the affidavits filed by complainant failed to sustain any indictment in the light of respondents' evidence. Worse, it is not consistent with the truth.

xxx xxx xxx

WHEREFORE, premises considered, the foregoing charges against respondents Khalid Mehmood Malik and Muhammad Ateeque are hereby dismissed for lack of merit.

SO ORDERED.

Petitioner Glaxo moved for a reconsideration but its motion was denied by the same State Prosecutor in her subsequent resolution of February 18, 2003.

From such denial, petitioner and the other pharmaceutical firms (Pfizer and Roche) went to the Secretary of Justice on separate petitions for review.

In a Resolution<sup>[4]</sup> dated June 17, 2003, the Justice Secretary dismissed Glaxo's petition, saying: "*We have examined the record and found no such error committed by the prosecutor that would justify a reversal of the assailed resolution which is in accord with the law and evidence on the matter.*"

In yet a similarly worded Resolution<sup>[5]</sup> dated June 25, 2003, the Secretary of Justice dismissed the other petitions for review of Pfizer and Roche.

Obviously displeased, Glaxo went to the CA on a petition for certiorari in CA-G.R. SP