

THIRD DIVISION

[G.R. NO. 158148, June 30, 2005]

CRISANTA JIMENEZ, PETITIONER, VS. JOSE JIMENEZ AND JOEL JIMENEZ, RESPONDENTS.

DECISION

CARPIO-MORALES, J.:

From the Court of Appeals decision^[1] annulling and setting aside the Order^[2] of the Regional Trial Court (RTC) of Parañaque denying the Motion of the prosecution in Criminal Case No. 02-084, "*People of the Philippines v. Jose Jimenez and Joel Jimenez*," to Withdraw Information, the present petition was filed by Crisanta Jimenez on whose complaint the information was filed.

In a Complaint-Affidavit^[3] dated October 31, 2001 filed before the Parañaque Prosecutor's Office, herein petitioner charged herein respondents, father and son Jose and Joel Jimenez, with Qualified Theft of several documents, to wit:

- a. Original Owner's Duplicate Copy of the Transfer Certificate of Title over the House and Lot located at No. 7 Tayabas St., South Bay Garden, Parañaque City;
- b. Original Owner's Duplicate Copy of the Title of the Condominium located at K-4 in Kamuning, Quezon City;
- c. Original Owner's Duplicate Copy of the Transfer Certificate of Title of two (2) Fairway Lots at Sherwood Hills Country Club in Trece Martires City, Cavite;
- d. Original Copy of two (2) Golf Chares (sic) at Sherwood Hills Country Club in Trece Martires City, Cavite;
- e. Original Copy of one (1) Gold Share at Manila Southwoods Country Club;
- f. f. Original Copy of the Deed of Absolute Sale of a parcel of land located at Mega-Heights in Batangas;
- g. Original Documents pertaining to the House, Lot and Warehouse located at Old Cruz Property in San Roque, Lubao, Pampanga;
- h. Original Owner's Duplicate Copy of the Certificate of Title over the Vacant Lot at San Roque, Lubao, Pampanga, particularly the old residence of Ben Jimenez;
- i. Original Owner's Duplicate Copy of the Certificate of Title over the Vacant Lot at San Roque, Lubao, Pampanga which was purchased from Doming Beltran;

j. Original Owner's duplicate Copy and other legal documents pertaining to the Bataan Property purchased from Bong Riel,

allegedly committed under the following facts and circumstances:

On September 10, 2001, petitioner, along with her husband Antonio Jimenez who is the brother of respondent Jose Jimenez, left for the United States of which they are residents, leaving the above-mentioned documents "inside [her husband's] office drawer" at their house in No. 7 Tayabas, South Bay Garden, Capa, Parañaque City.

Knowing that her husband was not able to "securely keep" the documents, she called up her daughter Lisa who is residing at said house in Parañaque City to get all the documents from the drawer and keep them in a secured place. Her daughter forgot, however, to carry out her instruction.

On or about September 17, 2001, respondent Jose Jimenez's son-co-respondent Atty. Joel Jimenez, who was also staying in the house at Parañaque City, left the house without leaving a word, taking with him, with grave abuse of confidence and intent to gain, the above-enumerated documents.

On or about September 19, 2001, she learned from real-estate agent Aurora Realon that the documents were already in the possession of her (petitioner's) brother-in-law respondent Jose Jimenez, her and her husband's attorney-in-fact, who admitted to Aurora that his son Atty. Joel Jimenez got hold of the documents and turned them over to him. And she likewise learned from Aurora that respondent Jose Jimenez had told her (Aurora) that he would only return the documents if he was paid his commission of P4 Million by petitioner and her husband.

Jose Jimenez had likewise admitted to his brothers Carlos, Ruben and Eduardo Jimenez that the documents were all indeed in his possession and that he would not return them unless he is paid his commission of P4 Million.

Among the documents petitioner submitted in support of her complaint were the Affidavit^[4] of Aurora Realon and the Joint Affidavit^[5] of Carlos and Eduardo Jimenez.

Denying the charge, respondents Jose and Joel Jimenez alleged, inter alia, that when petitioner and her husband returned to the United States on September 10, 2001, respondent Jose Jimenez, who was the attorney-in-fact of petitioner and her husband, brought the documents along with him when he went home to Pampanga; and that respondent Jose Jimenez's possession was, therefore, legal and bereft of unlawful taking, hence, the elements of Qualified Theft are not present.

By Resolution of January 9, 2002,^[6] the Parañaque City Prosecutor's Office, appreciating the presence of the elements of Qualified Theft including *animo lucrandi* which may be "presumed from all furtive taking of useful [property] appertaining to another" and grave abuse of confidence, found probable cause to hale respondents into court.

An information for Qualified Theft^[7] was thus filed on January 22, 2002 against

respondents. Respondents' Motion for Reconsideration of the Prosecutor's Office Resolution having been denied, they filed on May 14, 2002 a Petition for Review^[8] at the Department of Justice (DOJ).

During the pendency of their Petition for Review before the DOJ or on August 16, 2002, respondents filed a Motion to Quash^[9] before Branch 274 of the RTC, Parañaque (to which the information-criminal case was raffled) on the ground that the element of abuse of confidence which is essential in the crime of Qualified Theft was not clearly alleged in the information, the information having merely stated that herein respondent Jose Jimenez was a brother (sic) of complainant-herein petitioner and that respondent Joel Jimenez was petitioner's nephew; and that the information was bereft of allegation that there was "dependence, guardianship or vigilance between the accused and the offended party that would have created a high degree of confidence between them [which] the accused could have abused."

The hearing of the Motion to Quash was set on August 20, 2002, later reset to October 16, 2002. Before that or on August 22, 2002, the DOJ issued its Resolution,^[10] holding that, after assessing and evaluating the evidence, it was "not satisfied that there [was] probable cause to hold the respondents liable for qualified [theft]," reversed the City Prosecutor's Resolution and accordingly directed the filing of a Motion to Withdraw the Information before the trial court.

Pursuant to the resolution-directive of the DOJ, Second Assistant City Prosecutor Antonietta Pablo Medina filed a Motion to Withdraw Information dated September 3, 2002^[11] to which was attached the DOJ Resolution.

On September 8, 2002, petitioner filed a Motion for Reconsideration of the DOJ Resolution.

The hearing of the Motion to Withdraw Information which was initially set on October 16, 2002 was reset to November 21, 2002 in light of the pendency of petitioner's Motion for Reconsideration of the DOJ Resolution.

By Order of October 29, 2002,^[12] the DOJ denied petitioner's Motion for Reconsideration.

On November 6, 2002, respondents filed before the trial court a "MANIFESTATION AND MOTION TO RESOLVE Motion to Withdraw Information"^[13] manifesting that the DOJ had denied petitioner's Motion for Reconsideration of its Resolution of October 25, 2002.

The trial court, acting on the MANIFESTATION AND MOTION TO RESOLVE filed by respondents, gave the prosecution three (3) days to file Comment thereon, by Order of November 12, 2002.^[14]

By Order of November 26, 2002,^[15] the trial court issued an Order denying the Motion to Withdraw Information, it finding that there was probable cause to hold respondents for trial in this wise:

From the perspective of the prosecution's evidence, the letter reply dated October 24, 2001 (which was close to the date of the incident) of accused's counsel denying the taking or possession of the documents, was or has never been denied or refuted. The affidavit too of Aurora Realon was neither refuted nor denied by the accused. Her statement about accused Jose Jimenez' admission to her of his possession of the documents as a way of leverage or extortion was echoed in the joint affidavit of Carlos Jimenez and Eduardo Jimenez, all brothers of accused Jose. To all these, the accused proffered the ambivalent defense re the taking or possession of the documents and a defense of existence of alleged agency coupled with interest which could not just be revoked by the private complainant unilaterally.

In the consideration of the Court, albeit prima facie, the prosecution's supporting evidence was able to show circumstantially the element of taking of the documents by both the accused, and positively the other elements of ownership by private complainant of these documents, the taking of the documents being without the consent of the private complainant, and the taking with animo lucrandi. These elements constitute theft under Article 308 of the Revised Penal Code, and qualified theft under Article 310 thereof with the circumstance of grave abuse of confidence also being shown in the evidence. What bolstered this prima facie finding of probability of guilt is the undisputed surrounding fact that the incident of taking or of disappearance of the documents transpired after September 10, 2001 when the private complainant and her husband Antonio Jimenez left for and returned to the United States, after their relationship with accused Jose turned sour their meeting over business matters and after co-accused Joel left the residence of private complainant where they kept the subject documents.

[16] (Emphasis and underscoring supplied)

On December 16, 2002, respondents filed a Motion for Reconsideration^[17] of the trial court's Order denying the prosecution's Motion to Withdraw Information.

In the meantime, the arraignment was set on January 29, 2003, two days before which or on January 27, 2003, respondents filed a PETITION FOR *CERTIORARI*, PROHIBITION AND MANDAMUS before the Court of Appeals^[18] ascribing to the trial court excess of jurisdiction in ignoring palpable absence of the elements of the offense; complaining, among other things, that their Motion to Quash which was filed on August 16, 2002, and their December 16, 2002 Motion for Reconsideration of the Order denying the prosecutor's Motion to Withdraw Information had remained unresolved; and praying that as the arraignment was scheduled two days later or on January 29, 2003, so as not to render the petition nugatory, in the interest of justice, the arraignment be restrained. The full text of respondents' prayer reads as follows:

1. IMMEDIATELY UPON THE FILING OF THIS PETITION, this Honorable Court immediately issue ex-parte a Temporary Restraining Order ENJOINING AND RESTRAINING the Regional Trial Court of Parañaque City, Branch 274, from proceeding with the Arraignment of the Petitioners on 29 January 2003.

2. AFTER DUE NOTICE AND HEARING, this Honorable Court issue a Writ of Preliminary Injunction ENJOINING AND RESTRAINING the Regional Trial Court of Parañaque City, Branch 274, from proceeding with the Arraignment of the Petitioners until after the Motion to Quash and the Motion for Reconsideration had been resolved.

3. AFTER GIVING DUE COURSE TO THE INSTANT PETITION AND AFTER DUE CONSIDERATION OF THE ISSUES, thus Honorable render judgment —

a) Annulling the Order of the Honorable Court dated 26 November 2002 finding probable cause against the petitioners;

b) Prohibiting the Regional Trial Court of Parañaque City, Branch 274 from proceeding with Criminal Case No. 02-084;

c) And directing the Regional Trial Court of Parañaque City, Branch 274, to resolve the Motion to Quash and Motion for Reconsideration and to dismiss the case due to lack of probable cause.

d) Other reliefs just and equitable in the premises are likewise prayed for.
[19] (Underscoring supplied)

To their petition before the appellate court, respondents annexed material documents relevant to the determination of the merits of the petition.

By the assailed decision, [20] the Court of Appeals held that there is no showing of probable cause for Qualified Theft against respondents in this wise:

Under the factual setting therefore, there is serious doubt as to the commission of the crime of theft, much less qualified theft, under the Revised Penal Code, **where no such unlawful taking with intent to gain characterized the possession by petitioners of the questioned documents** belonging to private complainant and her husband Antonio Jimenez. In this regard, it has been held that the unlawful taking or deprivation of property may occur at or soon after the transfer of physical possession. The actual transfer of possession may not always and by itself constitute the unlawful taking, but an act done soon thereafter by the offender may result in unlawful taking or asportation. Here, We find **no subsequent act of the petitioners that resulted in unlawful taking with intent to gain, given the principal agent relationship and the legal rights flowing from such agency**, for the petitioners to incur criminal liability either for theft or estafa. The more plausible legal solution, we believe, lies with enforcement of their respective rights and obligations under the Civil Code rather than setting into motion the process of criminal prosecution.

In totally disregarding the facts on record clearly negating such a prima facie showing of the commission of the offense charged in the Information, and in failing to apply the relevant provisions of law with due consideration for the right of petitioners against unfounded criminal accusation, respondent Judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction. It is precisely such