

SECOND DIVISION

[G.R. No. 162187, November 18, 2005]

**CRISTE B. VILLANUEVA, PETITIONER, VS. THE HON. SECRETARY
OF JUSTICE AND HORST-KESSLER VON SPRENGEISEN,
RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 76999 dismissing the petition for *certiorari* assailing the finding of the Secretary of Justice that no probable cause exists against private respondent Horst-Kessler Von Sprengelsen for perjury.

The Antecedents

On April 2, 1996, the Refractories Corporation of the Philippines (RCP) filed a protest before the Special Committee on Anti-Dumping of the Department of Finance against certain importations of Hamburg Trading Corporation (HTC), a corporation duly organized and existing under the laws of the Philippines. The matter involved 151.070 tons of magnesite-based refractory bricks from Germany.^[2] The case was docketed as Anti-Dumping Case No. I-98.

The protest was referred to the Bureau of Import Services (BIS) of the Department of Trade and Industry, to determine if there was a *prima facie* case for violation of Republic Act (R.A.) No. 7843, the Anti-Dumping Law. Sometime in February 1997, the BIS submitted its report to the Tariff Commission, declaring that a *prima facie* case existed and that continued importation of refractory bricks from Germany would harm the local industry. It adopted the amount of DM 1,200 per metric ton as the normal value of the imported goods.^[3]

The HTC received a copy of the said report on February 14, 1997. However, before it could respond, the chairman of the Tariff Commission prodded the parties to settle the matter amicably. A conference ensued between RCP Senior Vice President and Assistant General Manager Criste Villanueva and Jesus Borgonia, on the one hand, and HTC President and General Manager Horst-Kessler Von Sprengelsen and Sales Manager Dennis Gonzales, on the other. During the conference, the parties agreed that the refractory bricks were imported by the HTC at a price less than its normal value of DM 1,200, and that such importation was likely to injure the local industry. The parties also agreed to settle the case to avoid expenses and protracted litigation. HTC was required to reform its price policy/structure of its importation and sale of refractory bricks from Germany to conform to the provisions of R.A. No. 7843 and its rules and regulations. Jesus Borgonio thereafter prepared and signed a compromise agreement containing the terms agreed upon which Villanueva and Borgonia signed.^[4] Bienvenido Flores, an Office Clerk of RCP, delivered the

agreement to HTC at the 9th Floor of Ramon Magsaysay Center Building, 1680 Roxas Boulevard, Manila by Von Sprengen's approval.^[5]

However, Von Sprengen did not sign the agreement. Borgonia revised the agreement by inserting the phrase "based on the findings of the BIS" in paragraph 1 thereof. Villanueva and Borgonia signed the agreement and had the same delivered to the office of HTC on April 22, 1997 by Lino M. Gutierrez, a technical assistant of RCP. Gonzales received the agreement and delivered the same to Von Sprengen. After 20 minutes, Gonzales returned, with the agreement already signed by Von Sprengen.^[6] Gonzales, who had also signed, then gave it to Gutierrez. On the same day, Notary Public Zenaida P. De Zuñiga notarized the agreement.^[7] Gonzales delivered a copy of the notarized Agreement to HTC.^[8]

RCP submitted the compromise agreement to the Tariff Commission. During the May 9, 1997 hearing before the Commission for the approval of the agreement, a representative of HTC appeared. He offered no objection to the Agreement. The Commission submitted its report to the Special Committee which rendered a decision declaring that, based on the findings of the BIS, the normal value of the imported refractory bricks was DM 1,200 per metric ton. HTC received a copy of the decision on March 4, 1998. Neither RCP nor HTC appealed the decision to the Court of Tax Appeals.

In the meantime, HTC imported refractory bricks from Germany anew and noted that the normal value of the said importation under the decision of the Special Committee based on the BIS report was DM 1,200 per metric ton. On July 28, 1998, the HTC filed an Urgent Motion to Set Aside and/or Vacate Judgment with the Special Committee on Anti-Dumping, praying that such decision be declared null and void on the following grounds:

1. THE FRAUD HAD BEEN COMMITTED BY THE PROTESTANT DURING THE NEGOTIATION FOR THE PREPARATION OF THE COMPROMISE AGREEMENT.
2. THAT INSERTIONS AND/OR SUBSTITUTION OF THE FACTS NOT AGREED UPON WAS DELIBERATELY AND SURREPTITIOUSLY MADE BY THE PROTESTANT IN THE COMPROMISE AGREEMENT WITHOUT THE KNOWLEDGE AND CONSENT OF THE PROTESTEE.^[9]

The motion was verified by Von Sprengen. The HTC averred therein that Villanueva violated Article 172 of the Revised Penal Code when he surreptitiously inserted the phrase "based on the findings of the BIS" in the agreement without the knowledge and consent of Von Sprengen and despite their agreement to put behind them the findings of the BIS. Appended to the motion was an Affidavit of Merit executed by Von Sprengen in which he alleged, *inter alia*, that sometime in February 1997, the BIS came out with its Report declaring that the normal value of the magnesite-based refractory bricks was DM 1,200 per metric ton; before HTC could respond to the report, Villanueva invited him to a conference for the purpose of finding the best solution to the pending case before the Commission; he and Gonzales attended the meeting during which it was agreed, by way of a compromise, that the parties will accept the amount of DM 1,050 per metric ton as the normal value for all magnesite-based refractory bricks from Germany; when he

received the draft of the compromise agreement prepared by Villanueva, he approved the same; subsequently, Villanueva transmitted a compromise agreement already signed by him to Von Sprengen for his review, approval and signature; believing that the compromise agreement reproduced the contents of the first compromise agreement, he signed the second agreement without reading it; when he received, on March 4, 1998, a copy of the decision of the Tariff Commission based on the compromise agreement of the parties wherein the committee adopted the findings and recommendations of the BIS (that the normal value of the shipment was DM 1,200 per metric ton), he was shocked because he never agreed to the use of such findings for the reformation of its price policies; there was, in fact, an agreement between him and Villanueva to put behind them the findings of the BIS; he called up Villanueva at his office but failed to contact him despite several attempts; suspecting that something amiss happened, he had the draft of the first compromise agreement retrieved but his secretary failed to locate the same; it was only sometime later that his secretary found the folder-file containing the draft and was appalled to discover that Villanueva had substantially altered the first draft of the compromise agreement; this made him conclude and confirm his suspicion that Villanueva, thru deceit and fraud, induced him to sign the compromise agreement to the prejudice of the HTC.^[10]

The RCP opposed the motion. But, in a parallel move, Villanueva, in his capacity as Senior Vice President and Assistant General Manager of RCP, filed a criminal complaint for perjury against Von Sprengen in the Office of the City Prosecutor of Manila. Appended thereto was a complaint-affidavit executed by Villanueva wherein he declared, *inter alia*, that Von Sprengen made the following false statements in the Urgent Motion, thus:

- a. [Complainant] was the one who called up his office, inviting him to a meeting for the purpose of finding the best and most equitable solution to the case (p. 3, Urgent Motion);
- b. RCP and Hamburg Trading agreed to put behind them the findings and recommendations of the Bureau of Import Services (BIS) with respect to the anti-dumping protest filed by RCP (p. 3, Urgent Motion);
- c. The original version of the Compromise Agreement sent to him was merely a draft (p. 3, Urgent Motion);
- d. The phrase "based on the findings of the Bureau of Import Services" was inserted in paragraph 1 of the final Compromise Agreement without his knowledge and consent (p. 3, Urgent Motion); and
- e. [Complainant] was the one who surreptitiously inserted the aforesaid phrase (p. 3, Urgent Motion).^[11]

Villanueva also alleged that Von Sprengen made the following false statements in his Affidavit of Merit:

- a. [Complainant] invited him to a conference for the purpose of finding the best solution to the case;

- b. [Complainant and he] agreed to put behind [them] the findings and recommendation of the BIS submitted to the Secretary of Finance;
- c. We agreed to the amount of DM 1,050/ton as the normal value for all magnesite-based refractory bricks from Germany;
- d. The original version of the Compromise Agreement sent to him was merely a draft; and
- e. Through deceit and fraud, [complainant] induced [respondent] to sign the final Compromise Agreement.^[12]

In his Counter-Affidavit, Von Sprengisen averred that whoever called the other for a conference was not a material matter. Since the first draft of the Compromise Agreement transmitted to him was by fax, he asked the complainant to send to him the hard copy of the Agreement for his signature. He further narrated that when he received the hard copy of the compromise agreement, he did not bother to review since he assumed that it contained the same provisions in the faxed copy. He did not suggest that the phrase "based on the findings of the BIS" be inserted in the hard copy of the agreement because he and Villanueva were at odds on the BIS finding the normal price of the goods was DM 1,200 per metric ton. He insisted that it would have been senseless of him to agree to such insertion; as such, he did not make any willful and deliberate assertion of any falsehood as to any material fact.^[13]

Investigating Prosecutor Francisco G. Supnet found no probable cause for perjury against the private respondent and recommended the dismissal of the complaint. Second Assistant City Prosecutor Leoncia Dimagiba reviewed the resolution of Prosecutor Supnet and found probable cause for perjury against the private respondent for alleging in his Affidavit of Merit that he was induced to sign the compromise agreement through fraud and deceit. According to the Second Assistant City Prosecutor, the allegation of the private respondent "thru deceit and fraud to sign the final Compromise Agreement" was a deliberate assertion of a falsehood, designed as it was merely to give the BIS the impression that private respondent was misled into agreeing to the compromise agreement. She further opined that the allegation was perjurious, considering that the private respondent had sufficient time to pass upon the Compromise Agreement and could have availed the services of legal minds who could review the terms and conditions thereof before signing the same;^[14] hence, she recommended the reversal of Prosecutor Supnet's resolution and the filing of the information. The City Prosecutor approved the recommendation of the Second Assistant City Prosecutor. Accordingly, an Information for perjury was filed against the private respondent with the Metropolitan Trial Court of Manila.

The private respondent appealed the resolution to the Secretary of Justice, who reversed the resolution of the City Prosecutor on September 20, 2002. According to the Justice Secretary, the complainant failed to establish the materiality of the alleged false assertions and that the said assertions were willful and deliberate. Moreover, the allegations in the Affidavit of Merit are not altogether false since the intention of the parties in executing the compromise agreement was precisely to put behind the ruling of the BIS, despite which the complainant inserted the condition

that the parties would be bound by such findings and recommendations.^[15] The decretal portion of the resolution reads:

WHEREFORE, the appealed resolution of the City Prosecutor of Manila is hereby REVERSED. The City Prosecutor is directed to withdraw the information for perjury against respondent Horst-Kessler von Sprengen and to report the action taken within ten (10) days from receipt hereof.

SO ORDERED.^[16]

Villanueva then filed a petition for *certiorari* with the CA assailing the resolution of the Justice Secretary, alleging therein that grave abuse of discretion, amounting to excess or lack of jurisdiction, was committed in issuing the said resolution.^[17] The private respondent, for his part, sought the dismissal of the petition alleging that, as found by the Justice Secretary, there was no probable cause against him for perjury.^[18]

On February 13, 2004, the CA dismissed the petition and affirmed the resolution of the Justice Secretary.^[19]

The CA declared that, as posited by the Office of the Solicitor General in its comment on the petition, the parties had agreed to put behind them the findings and recommendations of the BIS with respect to the anti-dumping protest. The appellate court stated that its finding is buttressed by the fact that the amount of DM 1,050 was not mentioned in the first compromise agreement and that, under such agreement, the HTC obliged itself "to reform its pricing policy and structure with respect to refractory products being imported to and sold in the Philippines in accordance with the provisions of R.A. No. 7843 and its implementing rules and requirements." The CA emphasized that it was inclined to believe that there was no meeting of the minds of the parties when the petitioner inserted the phrase "based on the findings of the BIS" in the revised compromise agreement; hence, there could not have been perjury when the private respondent executed the Affidavit of Merit and the Urgent Motion to Set Aside and/or Vacate Judgment. The CA also agreed with the findings of the Secretary of Justice that the insertion of the condition in the compromise agreement that the parties would be bound by the BIS findings and recommendation gave the private respondent reason to believe that he was deceived by the petitioner into signing the Agreement; as such, the private respondent's allegation in his Affidavit of Merit, that he was induced to signing the Compromise Agreement through fraud and deceit, was not altogether false. Consequently, the CA ruled, the private respondent did not make any willful and deliberate assertion of a falsehood.^[20] The appellate court conformed to the disquisitions of the Secretary of Justice in the assailed resolution and concluded that the private respondent did not, in the Affidavit of Merit, make a willful and deliberate assertion of a falsehood.^[21]

Aggrieved, the petitioner filed a petition for review on *certiorari* with this Court against private respondent Von Sprengen and the Secretary of Justice, insisting that the CA committed grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing the petition and affirming the assailed resolution.