

## THIRD DIVISION

[ G.R. No. 132422, March 30, 2004 ]

### FILADAMS PHARMA, INC., PETITIONER, VS. HONORABLE COURT OF APPEALS AND ANTONIO FERIA, RESPONDENTS.

#### DECISION

##### CORONA, J.:

This is a petition for review under Rule 45 of the Rules of Court seeking to annul and set aside the resolution<sup>[1]</sup> dated May 29, 1997 of the Court of Appeals denying petitioner's petition for *certiorari* and its resolution<sup>[2]</sup> dated January 23, 1998 denying petitioner's motion for reconsideration.

The antecedent facts follow.

Petitioner Filadams Pharma, Inc. (Filadams) was a corporation engaged in the business of selling medicines to wholesalers. Private respondent Antonio Feria was its sales representative from November 3, 1993 until his dismissal on March 9, 1994. In an audit conducted sometime between March 10 to 26, 1994, respondent Feria was found accountable for P41,733.01 representing unsold but unreturned stocks and samples, unremitted collections and unliquidated cash advances. Filadams alleged that these shortages and accountabilities were admitted by respondent through his wife and counsel in a conference held at its office but despite repeated demands, respondent failed to settle them to its damage and prejudice.<sup>[3]</sup>

In his defense, respondent denied the charge. He averred that, although he was an agent of the corporation, he was not the trustee of its products. The cash advances were spent, as intended, for promoting the products of the company and it was only the unexpended amount that was supposed to be returned by way of liquidation. The cash rebates were properly given to the customers concerned although the same were given in kind, as requested by the customers. In a spot check conducted in his area in January and February of 1994, the stock overages in his possession were segregated and returned to the company but he was not given the returned goods slip (RGS). He also returned various items or medicines on March 14, 1994 amounting to P19,615.49 but what was reflected in the inventory report was only P8,185.30. He maintained that he neither misappropriated nor converted the subject sums of money for his personal use or benefit. If ever, his obligation was purely civil in nature and the company in fact accepted his partial payment of P3,000 through his wife in a conference held at petitioner's office on September 13, 1994.<sup>[4]</sup>

In a reply-affidavit, the internal auditor of Filadams asserted that respondent occupied a position of trust and confidence. He was not given a new cash advance but merely a replenishment of the used revolving fund. The cash rebates were never

received by the customer as confirmed by the customer himself. Respondent signed the physical inventory report so he could not claim that he made returns that were not recorded. Paying back the amount of P3,000 to the company was an acknowledgment of his stock shortages and proof of his breach of trust and confidence resulting in the company's damage and prejudice.<sup>[5]</sup>

The Assistant City Prosecutor of Quezon City dismissed the complaint-affidavit for lack of cause of action:

A careful examination of the affidavit complaint plus the reply affidavit of complainant failed to state the ultimate facts constituting the cause of action.

While complainant states that their audit resulted in Feria's misappropriation of the company's products, unremitted collections, unreturned advances and unsubmitted sales proceeds in the total amount of P41,733.01, the specifics of the misappropriation, (*i.e.*, [ineligible]. . . when committed, where committed, how much per act of misappropriation or was the misappropriation a one-act deal...[ineligible]) were all conclusions a general recitals (sic) of the fact of commission/omission followed by the personal conclusion of guilt by the complainant which are not sustained by admissible evidence.<sup>[6]</sup>

Petitioner filed a motion for reconsideration but this was denied by 1<sup>st</sup> Assistant City Prosecutor Gerona who ruled that there was no "manifest error or grave abuse of discretion to justify reversal, alteration or modification of the challenged resolution."<sup>[7]</sup>

Petitioner appealed to the Secretary of Justice under the 1993 Revised Rules on Appeals from Resolutions in Preliminary Investigations or Reinvestigations.<sup>[8]</sup>

But the Department of Justice (DOJ), through the Office of the Chief State Prosecutor,<sup>[9]</sup> also dismissed the appeal:

While it is an undisputed fact that respondent incurred some accountabilities with Filadams during the duration of his employment, as shown by respondent's payment of the amount of P3,000.00 on September 13, 1994, mere acknowledgment by respondent of these accountabilities does not of itself establish that estafa under par. 1 (b) was committed. What is apparent from the evidence adduced is the necessity for the parties to sit down together and make an accounting of the alleged accountability. Complainant failed to present any evidence of conversion of the property to the benefit of the respondent or of some other person. Respondent's failure to return the goods or cash advances in this case is not sufficient proof of conversion. If at all, respondent's liability to the company is purely civil in nature as the acts complained of do not constitute the crime of estafa.<sup>[10]</sup>

On the ground of grave abuse of discretion, Filadams filed with the Court of Appeals a petition for *certiorari* under Rule 65 of the Rules of Court seeking to annul the above-quoted decision of the DOJ dismissing its appeal and affirming the resolution of the Assistant City Prosecutor of Quezon City. The Court of Appeals denied the

petition on two grounds: (1) the proper remedy for the petitioner was a petition for review under Rule 45 and not a petition for certiorari inasmuch as *certiorari* was available only if there was no appeal or any plain, speedy and adequate remedy in the ordinary course of law, and (2) assuming that a petition for *certiorari* was proper, the DOJ decision was not marked by grave abuse of discretion.<sup>[11]</sup>

Hence, the petitioner filed the instant petition seeking to annul the decision of the Court of Appeals and raising the following issues:

## I

WHETHER OR NOT APPEAL AND NOT *CERTIORARI* IS THE PROPER REMEDY IN ASSAILING THE TWO RESOLUTIONS OF THE CHIEF STATE PROSECUTOR FINDING THE ABSENCE OF PROBABLE CAUSE.

## II

WHETHER OR NOT BOTH THE CHIEF STATE PROSECUTOR AND THE COURT OF APPEALS HAVE COMMITTED A (*SIC*) GRAVE ABUSE OF DISCRETION IN DISREGARDING THE GUIDELINES SET BY THIS HON. SUPREME COURT IN DETERMINING THE EXISTENCE OF A PROBABLE CAUSE TO WARRANT THE FILING OF AN INFORMATION IN COURT.<sup>[12]</sup>

Before anything else, we need to clarify some ground rules. This case was elevated to the Court of Appeals by way of a petition on *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. The Court of Appeals dismissed the petition for *certiorari* on the ground that the proper remedy was petition for review under Revised Circular No. 1-91, now embodied in Rule 43 of the 1997 Rules of Civil Procedure. Rule 43 applies to "appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by *any quasi-judicial agency in the exercise of quasi-judicial functions* to the Court of Appeals."<sup>[13]</sup> The question is: was the Office of the Prosecutor of Quezon City a quasi-judicial agency whose resolutions were appealable to the Court of Appeals under Rule 43? In *Bautista vs. Court of Appeals*,<sup>[14]</sup> we ruled:

Petitioner submits that a prosecutor conducting a preliminary investigation performs a quasi-judicial function, citing *Cojuangco v. PCGG*, *Koh v. Court of Appeals*, *Andaya v. Provincial Fiscal of Surigao del Norte* and *Crespo v. Mogul*. In these cases this Court held that the power to conduct preliminary investigation is quasi-judicial in nature. But this statement holds true only in the sense that, like quasi-judicial bodies, the prosecutor is an office in the executive department exercising powers akin to those of a court. Here is where the similarity ends.

A closer scrutiny will show that preliminary investigation is very different from other quasi-judicial proceedings. A quasi-judicial body has been defined as "an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making."

In *Luzon Development Bank v. Luzon Development Bank Employees*, we held that a voluntary arbitrator, whether acting solely or in a panel,

enjoys in law the status of a quasi-judicial agency, hence his decisions and awards are appealable to the Court of Appeals. This is so because the awards of voluntary arbitrators become final and executory upon the lapse of the period to appeal; and since their awards determine the rights of parties, their decisions have the same effect as judgments of a court. Therefore, the proper remedy from an award of a voluntary arbitrator is a petition for review to the Court of Appeals, following Revised Administrative Circular No. 1-95, which provided for a uniform procedure for appellate review of all adjudications of quasi-judicial entities, which is now embodied in Rule 43 of the 1997 Rules of Civil Procedure.

On the other hand, the prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.

Hence, the Office of the Prosecutor is not a quasi-judicial body; necessarily, its decisions approving the filing of a criminal complaint are not appealable to the Court of Appeals under Rule 43. Since the ORSP (Office of the Regional State Prosecutor) has the power to resolve appeals with finality only where the penalty prescribed for the offense does not exceed *prision correccional*, regardless of the imposable fine, the only remedy of petitioner, *in the absence of grave abuse of discretion*, is to present her defense in the trial of the case.

With our ruling in *Bautista* that the Office of the Prosecutor was not covered by the appellate process under Rule 43 of the Rules of Court, what then was petitioner's remedy from the resolution of the Assistant Prosecutor dismissing his complaint? Based on the 1993 Revised Rules on Appeals from Resolutions in Preliminary Investigations or Reinvestigations — now the 2000 NPS<sup>[15]</sup> Rule on Appeals — the petitioner could appeal to the Secretary of Justice. In this case, the petitioner did appeal to the Secretary of Justice but his appeal was dismissed. His motion for reconsideration was also dismissed. Since there was no more appeal or other remedy available in the ordinary course of law, the petitioner correctly filed a petition for *certiorari* with the Court of Appeals on the ground of grave abuse of discretion.

The next question now arises: was the Court of Appeals correct in dismissing the petition for *certiorari* on the ground that there was no grave abuse of discretion on the part of the DOJ (in dismissing the petitioner's appeal, thus affirming the resolution of the Assistant City Prosecutor)? The Court of Appeal's cryptic ruling on this matter read:

His ruling that "in the crime of estafa under Art. 315 par. 1 (b), it is an essential element that there be proof of misappropriation or conversion",