456 Phil. 542

FIRST DIVISION

[G.R. No. 154920, August 15, 2003]

RODNEY HEGERTY, PETITIONER, VS. THE HON. COURT OF APPEALS AND ALLAN NASH, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition seeks to annul and set aside the decision of the Court of Appeals in CA-G.R. SP No. 66680[1] which reversed the resolution[2] of the Office of the City Prosecutor of Manila dismissing the complaint for *estafa* filed against petitioner Rodney Hegerty, as well as the resolution of the Secretary of Justice dismissing respondent Allan Nash's appeal and denying his motion for reconsideration for having been filed out of time.

Respondent Allan Nash alleged that petitioner Rodney Hegerty, together with the deceased Don Judevine and James Studenski, invited him to invest in a foreign exchange scheme with a guaranteed return of 10.45% per annum on the money invested. From July 1992 to November 28, 1997, Nash invested a total of US$236,353.34.

Sometime in December 1997, Hegerty informed Nash that all his investments had been lost after he lent a portion of the investment to Swagman Hotels and Travel, Inc., of which he was a stockholder. Initially, Hegerty offered to return to Nash half of his total investment, but later on withdrew the offer.

After his demands were ignored, Nash filed a complaint-affidavit against Hegerty before the City Prosecutor of Manila for estafa under Article 315 (1) (b) of the Revised Penal Code.

For his part, Hegerty denied making any invitation to Nash to invest his money in any foreign exchange scheme. Neither did he divert any portion of such investment to the Swagman Group of Companies. He, however, admitted his acquaintance with Judevine and Studenski but denied that they were his business partners. He likewise disclaimed any knowledge of or participation in any of the receipts and cash vouchers presented by Nash supposedly as proofs of his investments.

The City Prosecutor dismissed the complaint for estafa against Hegerty for insufficiency of evidence. Upon receipt of a copy of the said resolution on June 16, 1999, counsel of Nash filed a motion for reconsideration. On May 8, 2000, Nash himself received a copy of the resolution denying the motion for reconsideration.

On May 19, 2000, Nash filed an appeal with the Department of Justice (DOJ), however, the same was dismissed[3] for having been filed out of time. He filed a motion for reconsideration, which was denied again for having been filed beyond the

reglementary period of ten (10) days.

Undaunted, Nash filed with the Court of Appeals a petition for *certiorari* and *mandamus* under Rule 65 of the 1997 Rules of Civil Procedure, contending that the DOJ acted in grave abuse of discretion amounting to lack of or in excess of jurisdiction when it dismissed his appeal and denied his motion for reconsideration.

On June 28, 2002, the Court of Appeals rendered the assailed decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the PETITION is GRANTED. The undated resolution and 22 August 2001 resolution are REVERSED and SET ASIDE. The public respondent is directed to prosecute respondent Hegerty for the crime of estafa under Article 315 (1) (b) of the Revised Penal Code.
>
> SO ORDERED.[4]

Hegerty is now before us on this petition for review, raising the following issues:

> I. DOES THE RESPONDENT COURT OF APPEALS HAVE JURISDICTION OVER A CASE WHICH STARTED AT THE OFFICE OF THE PROSECUTOR OF MANILA THEN APPEALED TO THE DEPARTMENT OF JUSTICE BUT WHICH APPEAL WAS FILED WAY OUT OF TIME?
>
> II. MAY THE RESPONDENT COURT OF APPEALS ACTING WITHOUT JURISDICTION ORDER THE PROSECUTION OF A CRIMINAL CASE? [5]

Hegerty contends that since Nash's appeal with the DOJ and his motion for reconsideration were both filed out of time, the prosecutor's resolution had become final and executory. Consequently, the DOJ and the Court of Appeals never acquired jurisdiction over the case. Corollarily, the Court of Appeals does not have the authority to order the filing of a case in the absence of grave abuse of discretion on the part of the prosecutor.

We agree. The rule is settled that our duty in an appropriate case is confined to determining whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion. Thus, although it is entirely possible that the investigating fiscal may erroneously exercise the discretion lodged in him by law, this does not render his act amenable to correction and annulment by the extraordinary remedy of *certiorari*, absent any showing of grave abuse of discretion amounting to excess of jurisdiction. [6]

The pivotal question, therefore, in this case is: whether the City Prosecutor acted with grave abuse of discretion in dismissing the criminal complaint for estafa against Hegerty.

In *D.M. Consunji, Inc. v. Esguerra*,[7] we defined grave abuse of discretion in this wise:

> By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

The City Prosecutor had the duty to determine whether there was a *prima facie* case for estafa based on sufficient evidence that would warrant the filing of an information. The elements of estafa through misappropriation as defined and penalized under Article 315 (1) (b) are:

> (1) That money, goods, or other personal property be received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;
>
> (2) That there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;
>
> (3) That such misappropriation or conversion or denial is to the prejudice of another; and
>
> (4) That there is a demand made by the offended party to the offender. [8]

The City Prosecutor dismissed the complaint for estafa based on the following findings:

> Recouping everything that has been maintained and asserted by the parties, there is really reason to believe that the complainant had in fact made some investments with the late DON JUDEVINE who acknowledged receipts thereof and bound himself thereby **alone**. There is, however, an utter and absolute absence of a showing that the respondent partook of the said investments nor had any business dealing with either the late DON JUDEVINE or the complainant. Complainant also tried in vain to show some form of a partnership between the respondent and the two deceased individuals but the former failed to adduce any tangible evidence to support the same except his general declarations which remain bare as they were. [9]

A public prosecutor, by the nature of his office, is under no compulsion to file a criminal information where no clear legal justification has been shown, and no sufficient evidence of guilt nor *prima facie* case has been presented by the petitioner.[10]

We need only to stress that the determination of probable cause during a preliminary investigation or reinvestigation is recognized as an executive function exclusively of the prosecutor. An investigating prosecutor is under no obligation to file a criminal action where he is not convinced that he has the quantum of evidence at hand to support the averments. Prosecuting officers have equally the duty not to prosecute when after investigation or reinvestigation they are convinced that the