

SECOND DIVISION

[G.R. No. 132684, August 20, 2001]

**HERNANI N. FABIA, PETITIONER, VS. COURT OF APPEALS,
DEPARTMENT OF JUSTICE, OFFICE OF THE CITY PROSECUTOR OF
MANILA, REGIONAL TRIAL COURT OF MANILA-BR. 22, AND
THE MARITIME TRAINING CENTER OF THE PHILIPINES (MTCP),
RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

This is a petition for review on *certiorari* seeking to annul the Decision dated 12 November 1997 and the Resolution dated 9 February 1998 both of the Court of Appeals^[1] in CA-G.R. SP No. 44120 which annulled and set aside the 2 December 1996 Resolution of the Department of Justice (DOJ)^[2] affirming the dismissal by the City Prosecutor of the complaint for estafa filed by private respondent Maritime Training Center of the Philippines, Inc.

(MTCP) against petitioner Hernani N. Fabia for lack of prior settlement of account. Instead, the appellate court directed the filing of an information for estafa against petitioner Hernani N. Fabia, which was thereafter lodged with the Regional Trial Court of Manila-Br. 22, and docketed as Crim. Case No. 98-162570.

Petitioner Hernani N. Fabia, until his resignation on 10 August 1994, was the President of private respondent MTCP, a domestic corporation engaged in providing maritime courses and seminars to prospective overseas contract workers and seamen. He was likewise a Director and stockholder thereof.

On 3 January 1996 MTCP through its new President Exequiel B. Tamayo filed an affidavit-complaint for estafa against Hernani N. Fabia with the Office of the City Prosecutor of Manila alleging that on various occasions from January to July 1994 Fabia drew cash advances from MTCP, covered by cash vouchers, amounting to P1,291,376.61 which he failed to liquidate despite repeated demands.

Petitioner Fabia in his 20 March 1996 Reply-Affidavit and Motion to Dismiss admitted having received the various amounts covered by the cash vouchers but reasoned that they were in the nature of simple loans that had already been liquidated and paid as shown by the receipts and vouchers which he had attached to his pleadings.

On 8 April 1996 the Office of the City Prosecutor of Manila acting through Assistant City Prosecutor Ramon O. Carisma dismissed the complaint for lack of jurisdiction for the reason that the controversy pertained to the relationship between a corporation and a former officer thereof, hence, it was the Securities and Exchange Commission (SEC) which had original and exclusive jurisdiction over the case.^[3] MTCP moved to reconsider the resolution but the same was denied with the

additional ground that "the charge involves accounting and liquidation of cash advances which receipts and vouchers had not been examined by an independent certified public accountant for a conclusive determination as to the actual amount stashed by the officer,"^[4] hence, the evidence was insufficient to show probable cause.

Thereafter, on 13 September 1996, MTCP filed a petition for review before the Department of Justice (DOJ) questioning the two (2) resolutions issued by the Office of the City Prosecutor. The petition was however dismissed by the DOJ on 2 December 1996 as it found no reversible error committed by the Office of the City Prosecutor.^[5] The motion for reconsideration subsequently filed by the MTCP was likewise denied by the DOJ on 1 April 1997^[6] on the ground that the prosecuting officers had the legal duty not to prosecute when after an investigation they are convinced that the evidence adduced is insufficient to establish a *prima facie* case.

Consequently, on 9 May 1997 MTCP filed a petition for certiorari before the Court of Appeals raising as sole issue whether the defense of lack of accounting precludes a finding of probable cause, with prayer that the DOJ Resolutions be annulled.

The Court of Appeals granted the petition and in its assailed Decision of 12 November 1997 held that the amount subject of the estafa charge had in fact been determined by an independent certified public accountant as shown by the report from the accounting firm of Mendoza, Ignacio, Corvera and Co., containing an itemized account of the unliquidated cash advances made by petitioner, which fact he admitted in his Reply-Affidavit. The appellate court further explained that assuming *arguendo* that there was no accounting made, petitioner's reliance on *Perez v. People*^[7] declaring prior settlement of account as *sine qua non* to the filing of an information for estafa was misplaced since the cited case involved complicated transactions regarding numerous checks in various amounts while the instant case merely involved cash advances entrusted and received by petitioner.

By comparison, therefore, the instant case comprehends a simple transaction where the requirement of prior accounting and liquidation may be done away with, as it is not essential. As to petitioner's alleged payment and liquidation of the amount, the Court of Appeals held that it is a matter of defense that is best threshed out in the trial proper.

On 27 November 1997 petitioner moved for a reconsideration of the Decision but it was denied. Hence, on 23 January 1998 the Office of the City Prosecutor as directed caused the filing of an Information for estafa against petitioner before the Manila RTC, docketed as Crim. Case No. 98-162570.

Petitioner now questions the jurisdiction of the trial court arguing that the instant case involves an intra-corporate controversy primarily cognizable by the SEC and, as such, the public prosecutor had no authority to initially rule in the preliminary investigation of the complaint for estafa filed against him as it was barred under the doctrine of primary jurisdiction from exercising jurisdiction over the criminal case without the prior resolution of the SEC on the matter.^[8] Granting that jurisdiction over the matter lies with the regular courts, petitioner maintains that the doctrine that "there can be no estafa charge without previous settlement of account to determine the amount due" as enunciated in *Perez v. People* applies in the instant