

## SECOND DIVISION

[ G.R. No. 126210, March 09, 2000 ]

**CRISTINA PEREZ, PETITIONER, VS. HAGONoy RURAL BANK, INC., AND HON. COURT OF APPEALS, RESPONDENTS.**

### DECISION

**DE LEON, JR., J.:**

Before us is a petition for review on certiorari of the Decision<sup>[1]</sup> of the Court of Appeals which annulled and set aside an Order<sup>[2]</sup> issued by the Regional Trial Court (RTC) of Malolos, Bulacan. The assailed Order denied the motion for reconsideration filed by private respondent Hagonoy Rural Bank, Inc. of an order allowing the amendment of the information in Criminal Case No. 1604-M-94<sup>[3]</sup> to exclude petitioner Cristina Perez as one of the accused therein.

The following facts are undisputed:

Private respondent Hagonoy Rural Bank, Inc. owns the Hagonoy Money Shop which employed petitioner Cristina O. Perez as Officer-In-Charge, Cashier and Teller, Alberto S. Fabian as Bookkeeper, and Cristina Medina and Milagros Martin as Solicitors/Field Managers.

For the period starting August 3, 1992 up to December 5, 1993, the Laya, Manabat, Salgado and Company, an independent management, consultancy and accounting firm, conducted an audit of the financial affairs of the Hagonoy Money Shop. The auditing firm found anomalies in more or less twenty-eight (28) savings accounts consisting of withdrawals which were recorded in the subsidiary ledgers of the money shop but not in the passbooks which were in the possession of the depositors. Although these withdrawals were supported by withdrawal slips, the signatures appearing thereon were noticeably different from the sample signatures written by the *bona fide* depositors in their specimen signature cards and/or in the subsidiary ledgers. The audit also revealed that to cover-up the anomalous withdrawals, fake deposits were recorded in the money shop's subsidiary ledgers whenever the remaining balance in a particular savings account was depleted below the amount of legitimate withdrawals made by a depositor. All in all, the anomalous withdrawals amounted to P879,727.08.<sup>[4]</sup>

The anomalies unearthed by the auditing firm prompted the private respondent to file an affidavit-complaint for estafa against the aforementioned employees of the money shop and two outsiders, Susan Jordan and Brigida Mangahas.<sup>[5]</sup> On February 18, 1994, Acting Provincial Prosecutor, Jesus Y. Manarang (hereinafter "prosecutor"), issued a resolution finding prima facie evidence that the petitioner and her co-employees, Alberto Fabian, Cristina Medina and Milagros Martin had committed the crime of estafa thru falsification of commercial documents, and recommending the

filing of the corresponding information against them with the Regional Trial Court (RTC) of Malolos, Bulacan. The charges against Susan Jordan and Brigida Mangahas were, however, dismissed.<sup>[6]</sup>

Aggrieved by the said resolution, petitioner filed a petition for review with the Secretary of Justice praying for the dismissal of the charges against her. On the other hand, private respondent moved for a reconsideration of the portion of the same resolution dismissing the complaint against Susan Jordan.<sup>[7]</sup>

In a resolution dated April 19, 1994, the prosecutor granted private respondent's motion for reconsideration.<sup>[8]</sup> Hence, on April 27, 1994, an information for estafa thru falsification of commercial documents was filed against herein petitioner, Alberto Fabian, Milagros Martin, Cristina Medina and Susan Jordan, and docketed as Criminal Case No. 1604-M-94 in Branch 9 of the RTC of Malolos, Bulacan.<sup>[9]</sup>

On September 23, 1994, then Secretary of Justice, Franklin M. Drilon, issued Resolution No. 696, series of 1994 ordering the prosecutor to cause the dismissal of the information against herein petitioner on the ground of insufficient evidence.<sup>[10]</sup> The private respondent filed a motion for reconsideration of the order of the Secretary of Justice, which motion, however, was denied with finality by the latter.<sup>[11]</sup>

Meanwhile, pursuant to the said directive of the Secretary of Justice, the prosecutor filed a motion in the RTC praying for the dismissal of the case against herein petitioner and the admission of an amended information excluding petitioner as one of the accused in Criminal Case No. 1604-M-94.<sup>[12]</sup> On January 13, 1995, presiding Judge D. Roy A. Masadao of the said court granted the said motion. Private respondent assailed the dismissal of the case against the petitioner in a motion for reconsideration filed in the RTC. However, the trial court denied the said motion in an Order dated February 21, 1995 after finding that the private respondent, as private complainant, had no legal personality to question the dismissal of the criminal charges against the petitioner.<sup>[13]</sup>

Alleging that Judge Masadao had issued the said order with grave abuse of discretion amounting to lack of jurisdiction, private respondent filed a petition for certiorari and mandamus with a prayer for the issuance of a temporary restraining order and a writ of preliminary injunction with the Court of Appeals. On February 23, 1996, the Court of Appeals rendered a decision annulling and setting aside the assailed Order of February 21, 1995 and directing Judge Masadao to resolve with dispatch the private respondent's motion for reconsideration on the basis of its merit or lack thereof.<sup>[14]</sup>

Hence, this petition assigning the following errors to the Court of Appeals:

- "1. THE RESPONDENT COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR IN HOLDING THAT THE FAILURE OF THE TRIAL JUDGE TO SQUARELY RULE UPON THE MERITS OF PRIVATE RESPONDENT BANK'S MOTION FOR RECONSIDERATION OF THE FEBRUARY 21, 1995 ORDER OF THE TRIAL JUDGE ALLOWING THE AMENDMENT OF THE INFORMATION WHICH EXCLUDED THE HEREIN PETITIONER FROM THE

SAID INFORMATION [WAS WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION], THUS OVERLOOKING AMPLE JURISPRUDENCE IN SUPPORT OF THE TRIAL JUDGE'S ORDER.

"2. THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN NOT FINDING THAT THE TRIAL JUDGE CANNOT BE COMPELLED TO RULE ON THE MERITS OF A MOTION FOR RECONSIDERATION OF AN OFFENDED PARTY OF THE TRIAL JUDGE'S ORDER ALLOWING THE AMENDMENT OF THE INFORMATION AFTER FINDING THAT THE SAID OFFENDED PARTY HAS NO LEGAL PERSONALITY TO FILE SUCH MOTION FOR RECONSIDERATION.

"3. THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THERE WAS JUSTIFICATION FOR THE SECRETARY OF JUSTICE ON PETITION FOR REVIEW TO ORDER THE PROSECUTOR TO CAUSE THE DISMISSAL OF THE INFORMATION IN COURT AGAINST THE ACCUSED-PETITIONER WHICH IN EFFECT ALLOWED THE AMENDMENT OF THE INFORMATION EXCLUDING THE ACCUSED FROM THE INFORMATION.

"4. THE RESPONDENT COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT THE TRIAL JUDGE DISPOSED OF PRIVATE RESPONDENT BANKS' MOTION FOR RECONSIDERATION IN A CAVALIER FASHION.

"5. THERE WAS SUFFICIENT AND COMPETENT EVIDENCE TO WARRANT THE EXCLUSION OF THE PETITIONER-ACCUSED FROM THE CRIMINAL INFORMATION."<sup>[15]</sup>

Succinctly put, the issues in the instant case are: first, whether or not Judge Masadao, presiding judge of RTC Branch 9, Malolos, Bulacan, committed grave abuse of discretion in granting the prosecutor's motion to dismiss the criminal case against petitioner without an independent assessment of the sufficiency or insufficiency of the evidence against the latter; second, whether or not the private respondent, as private complainant, in a criminal case has the legal personality to question the dismissal by the trial judge of the criminal charges against herein petitioner upon the motion filed by the prosecutor; and third, whether or not the dismissal of the charges against the petitioner is warranted by the evidence at hand.

First. Judge Masadao acted with grave abuse of discretion in granting the prosecutor's motion to dismiss the criminal charges against the petitioner on the basis solely of the recommendation of the Secretary of Justice.

In moving for the dismissal of the case against the petitioner, the prosecutor averred:

"1. That on October 18, 1994 (sic) he was in receipt of a resolution dated September 23, 1994 from the Secretary of Justice, the dispositive portion of which reads as follows:

`x x x

WHEREFORE. Your resolution is partly reversed. You are directed to cause the dismissal of the information if any, filed against respondent Cristina Perez in the above-entitled case and report on the action taken therein within ten (10) days from receipt hereof.'

"2. That pursuant to the said resolution, an amended information is (sic) hereto attached excluding Cristina Perez is well in order and copy of said amended information is hereto attached.

"WHEREFORE, it is respectfully prayed that the case insofar as respondent Cristina Perez be dismissed and the amended information be admitted."<sup>[16]</sup>

The Order granting the above quoted motion states in its entirety that:

"O R D E R

"Finding no legal impediment to the same, the motion filed by Public Prosecutor Jesus Y. Manarang seeking the amendment of the Information is hereby GRANTED, and the Amended Information attached thereto is hereby ADMITTED to form part of the record of the above-entitled case.

"By the foregoing token, the warrant of arrest already issued is hereby recalled and rendered ineffective with respect only to accused CRISTINA PEREZ.

"SO ORDERED."<sup>[17]</sup>

The above quoted Order allowing the amendment of the information to exclude petitioner therefrom effectively dismissed the criminal case against the latter. That the trial judge did not make an independent evaluation or assessment of the merits of the case is apparent from the foregoing order. Judge Masadao's reliance on the prosecutor's averment that the Secretary of Justice had recommended the dismissal of the case against the petitioner was, to say the least, an abdication of the trial court's duty and jurisdiction to determine a *prima facie* case, in blatant violation of this Court's pronouncement in *Crespo v. Mogul*<sup>[18]</sup> as reiterated in the later case of *Martinez v. Court of Appeals*,<sup>[19]</sup> to wit:

"In other words, the grant of the motion to dismiss was based upon considerations other than the judge's own personal individual conviction that there was no case against the accused. Whether to approve or disapprove the stand taken by the prosecution is not the exercise of discretion required in cases like this. The trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.

"As aptly observed by the Office of the Solicitor General, in failing to make an independent finding of the merits of the case and merely anchoring the dismissal on the revised position of the prosecution, the trial judge relinquished the discretion he was duty bound to exercise. In effect, it was the prosecution, through the Department of Justice which decided what to do and not the court which was reduced to a mere rubber stamp in violation of the ruling in *Crespo v. Mogul*." [20]

Petitioner contends that the doctrine laid down by this Court in *Martinez v. Court of Appeals* [21] is not applicable to the instant case for several reasons. First, in the *Martinez* case, the private offended party was deprived of due process as he was not furnished with a copy of the prosecution's motion to dismiss, whereas in this case, not only was the private respondent furnished a copy of the motion to dismiss, it was also given an opportunity to file its comment thereon. Second, in the case at bar, the Solicitor General adopts the view that the trial judge acted correctly in granting the motion to dismiss while in *Martinez v. Court of Appeals*, [22] the Solicitor General recommended the setting aside of the order granting the motion to dismiss. Finally, the dismissal of the criminal case against the accused in *Martinez v. Court of Appeals* [23] was based solely on the findings of the Acting Secretary of Justice. On the other hand, at the time Judge Masadao granted the motion to dismiss the criminal case against the petitioner, he already had before him the affidavit-complaint of private respondent, the resolution of the prosecutor finding probable cause against the employees of the money shop, the prosecutor's motion to dismiss the case against the petitioner, the private respondent's comment and supplemental comment to the latter, and the position papers of the petitioner and the private respondent. [24]

Petitioner's arguments are not convincing.

A perusal of the *Martinez* case reveals that the opinion of this Court finding the dismissal of the case against the accused erroneous was not predicated on the violation of the private offended party's right to due process nor on the recommendation of the Solicitor General. In fact, we categorically stated therein that the "fault or error tainting the order of dismissal of the lower court consists in its failure to observe procedural due process and to exercise its discretion properly and judiciously." [25] The first part refers to the fact that the private offended party was not afforded his day in court while the latter pertains to the failure of the judge to make an independent assessment of the evidence or lack thereof against the accused. Otherwise stated, the first is not the rationale behind the latter declaration.

Furthermore, petitioner's asseveration that as the records of the case were already before Judge Masadao, it can be safely assumed that he had studied them and thereafter agreed with the prosecution that the evidence did not support the earlier finding of probable cause against the petitioner. This is non sequitur and is simply belied by the order that nonchalantly granted the motion to dismiss. Moreover, Judge Masadao categorically declined to pass upon the merits of the private respondent's motion for reconsideration of the dismissal of the criminal case against the petitioner, and chose to summarily deny the same on the ground of the private respondent's lack of personality to revive the criminal charges against the petitioner. [26]