

SPECIAL SIXTEENTH DIVISION

[CA – G.R. SP No. 133958, March 26, 2015]

FORMING ACCESS AND SUPPORT, INC., REPRESENTED BY ITS PRESIDENT, FREDERICK V. ERUM, PETITIONER, VS. HON. LEILA M. DE LIMA, IN HER OFFICIAL CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF JUSTICE, AND MA. MAGDALENA ROYO MUSTAFA, RESPONDENTS.

D E C I S I O N

BRUSELAS, JR. J.:

In this Rule 65 certiorari petition, the petitioner seeks to nullify and set aside the resolution of 28 May 2013,^[1] issued by the public respondent Secretary of the Department of Justice, which resolved to dismiss the complaint against respondent Ma. Magdalena Royo Mustafa ("Magdalena") for falsification of public document by a private individual under Article 172(1) of the Revised Penal Code (RPC). The dispositive portion of the resolution states:

"WHEREFORE, the instant petition is hereby DISMISSED for LACK OF MERIT.

SO ORDERED."^[2]

Likewise assailed is the resolution of 19 December 2013^[3] which denied the petitioner's motion for reconsideration^[4] for lack of merit.

The pertinent and relevant facts, as can be culled from the submissions of the parties, are as follows:

On 22 May 2006, petitioner filed a *complaint*^[5] for collection of sum of money, damages and with prayer for issuance of writ of preliminary attachment, levy and garnishment against Magdalena and her husband Ma'rouf Tawfiq Ahmad Mustafa ("Ma'rouf"), with the Regional Trial Court (RTC) of Pasig City. The complaint was docketed as Civil Case No. 70806 ("collection case").

In a Resolution dated 24 May 2006, the RTC granted the petitioner's application for the issuance of a writ of preliminary attachment against the properties of the spouses. During the implementation of the writ on 26 May 2006, the RTC Sheriff discovered two (2) properties in Baguio City that were registered solely in the name of Magdalena^[6], which were, two (2) parcels of land covered by Transfer Certificates of Title Nos. T-76301^[7] and T-76302^[8].

Sometime in June 2011, the petitioner caused an inquiry and research with the Office of the Registrar of Deeds of Baguio City and found out that the said

certificates of title were issued by virtue of the two (2) Deeds of Absolute Sale notarized on 24 and 25 September 2001.^[9] In both deeds of sale, Magdalena narrated the fact that she was "single".

The said deeds of sale were executed at the time Magdalena was already married to her husband Ma'rouf and such marriage was then validly subsisting. Magdalena's marriage to Ma'rouf is evidenced by a Marriage Contract^[10] dated 18 December 1984 and entered into in 87 Maharlika Village, Bicutan, Taguig, Metro Manila.

On 10 October 2011, the petitioner filed a complaint-affidavit^[11] before the Baguio City Prosecutor for two counts of falsification of public document under Art. 172(1) of the RPC against Magdalena.

In its Resolution^[12] issued on 26 October 2011, the Baguio City 2nd Assistant Prosecutor dismissed the complaint of the herein petitioner for want of probable cause. The prosecutor ratiocinated as follows:

"However, the undersigned prosecutor finds no probable cause to indict the respondent of Falsification of Public Document by a PRIVATE INDIVIDUAL under Article 172(1) of the Revised Penal Code by means of "making untruthful statements in a narration of facts."

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In the case at bar, the investigating prosecutor does not find the element that the declaration made by the respondent that she was single was made with wrongful intent of injuring a third person. Moreover, the statement of respondent that she acted in good faith deserves weight and credence."^[13]

The petitioner moved for the reconsideration of the prosecutor's resolution but the same was denied *via* a Review Resolution^[14] issued by the Assistant City Prosecutor as approved by the Deputy City Prosecutor. It declared that no sufficient evidence existed to sustain the finding of *probable cause* that the crime of falsification of public document under Art. 172 of the RPC has been committed by Magdalena. Not satisfied with the view of the assistant city prosecutor, the petitioner filed a Verified Petition for Review^[15] with the Department of Justice.

In the assailed resolution, the Secretary of Justice found no reversible error committed by the city prosecutor. She concluded that the declaration made by Magdalena was not attended by any wrongful intent. Further, the Secretary of Justice gave credence to Magdalena's defense of good faith; thus, the city prosecutor's conclusion was upheld. Aggrieved, the petitioner moved for the reconsideration of the Secretary of Justice's resolution but the same was denied.

Undaunted, the petitioner came to us *via* the instant petition for *certiorari* which ascribes to the Secretary of Justice grave abuse of discretion amounting to lack or excess of jurisdiction. In support of its petition, the petitioner raised the following grounds:

"I.

THE EVIDENCE TAKEN DURING THE PRELIMINARY INVESTIGATION CLEARLY ESTABLISHES THE EXISTENCE OF PROBABLE CAUSE IN LIGHT OF THE PRESENCE OF ALL THE ELEMENTS OF THE CRIME OF FALSIFICATION UNDER ART. 172(1) OF THE RPC;

II.

THE DEFENSE OF GOOD FAITH BY PRIVATE RESPONDENT WAS NOT WELL TAKEN BY PUBLIC RESPONDENT.

A. THE ELEMENT OF INTENT TO INJURE A THIRD PERSON IS NOT A REQUIREMENT IF THE DOCUMENT FALSIFIED IS A PUBLIC DOCUMENT. HERE, WHAT WERE FALSIFIED BY PRIVATE RESPONDENT ARE DEEDS OF ABSOLUTE SALE – WHICH ARE CLEARLY PUBLIC DOCUMENTS.

B. THE DEFENSE OF “GOOD FAITH” IS EVIDENTIARY IN NATURE AND A MATTER THAT MAY BE PASSED UPON ONLY AFTER A FULL-BLOWN TRIAL ON THE MERITS BEFORE THE TRIAL COURT.

THE RULE IS THAT THE VALIDITY AND MERITS OF A PARTY'S DEFENSE OR ACCUSATION, AS WELL AS THE ADMISSIBILITY OF TESTIMONIES AND EVIDENCE, ARE BETTER VENTILATED DURING TRIAL PROPER THAN AT THE PRELIMINARY INVESTIGATION LEVEL.

C. THE REAL INTENTION OF PRIVATE RESPONDENT COULD BE SEEN FROM HER “OVERT ACT” OF SIGNING THE FALSIFIED DEEDS OF ABSOLUTE SALE, NOT FROM HER ALLEGED “STATE OF MIND”;

D. THE FACTUAL STATEMENT OF PRIVATE RESPONDENT IN THE SUBJECT DEEDS OF ABSOLUTE SALE THAT SHE WAS “SINGLE” (WHEN IN TRUTH AND IN FACT, SHE WAS MARRIED AT THAT TIME) SMACKS OF EVIDENT BAD FAITH, NOT “GOOD FAITH”.

The petitioner contends that the finding of the Secretary of Justice was gravely erroneous and marred with grave abuse of discretion as there was actually evidence on record that could support a determination of *probable cause* for the crime falsification of public document under Art. 172(1) of the RPC against Magdalena. The petitioner further contends that all the elements of the crime of falsification under Art. 172(1) had been established during the preliminary investigation. The petitioner opposes Magdalena's defense of 'good faith' or 'lack of wrongful intent to injure a third person' on the assertion that the said defenses are not essential when the document falsified is a public document.

The contentions of the petitioner are meritorious.

In a preliminary investigation, *probable cause* for the filing of an information by the

prosecutor has been defined as “the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.”^[16] Further, the term *probable cause* does not mean “actual or positive cause” nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of *probable cause* does not require an inquiry into the presence of sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.^[17]

Per complaint-affidavit dated 10 October 2011, the petitioner accused Magdalena of having committed the crime of falsification under Art. 172, paragraph 1 of the RPC in relation to number four of Art. 171 of the same code or “making untruthful statements in a narration of facts”. The pertinent portion of the complaint-affidavit is herein quoted as follows:

“9. Respondent Magdalena committed the act of falsification under Art. 172(1) of the RPC by means of making untruthful statements in a narration of facts which has the following elements: (a) that the offender makes in a document statements in a narration of facts; (b) that he has legal obligation to disclose the truth of the facts narrated by him; (c) that the facts narrated by him are absolutely false; and (d) that the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person. However, this element (wrongful intent to injure third person) is not essential when the document falsified is a public document.

9.1. All these elements are present in this case.

9.1.1 Firstly, the statement in the Deeds of Absolute Sale that respondent Magdalena was “single” at the time of the execution thereof is a narration of fact, not a conclusion of law.

9.1.2 Secondly, respondent Magdalena has the legal obligation to disclose her correct status, single or married, because the same is required by law, more particularly, Sec. 55, Chapter V, P.D. 1529, otherwise known as the “Property Registration Decree”. Thus:

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9.1.3 Thirdly, the narrated factual statement in the subject Deeds of Absolute Sale (Annexes “F” and “G” hereof) by respondent Magdalena that she was “single” (at the time of the execution thereof) is absolutely false. As stated, the truth is that she was validly married with Ma'rouf during that time – a fact established by her own Marriage Contract (Annex “H” hereof) and judicial admission (Annex “I” hereof).

9.1.4 Fourthly, since the falsified Deeds of Absolute Sale are public documents, the last element of “wrongful intent to injure a third person” is not essential.

10. In the light of the foregoing, I believe that there is sufficient ground