

SPECIAL TWELFTH DIVISION

[CA–G.R. SP No. 132989, May 30, 2014]

**EXTRA EXCEL INTERNATIONAL PHILIPPINES, INC., PETITIONER,
VS. HONORABLE JUDGE AFABLE E. CAJIGAL, IN HIS CAPACITY
AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF
QUEZON CITY, BRANCH 96 AND IKE R. KATIPUNAN,
RESPONDENTS.**

D E C I S I O N

DICDICAN, J.:

Before us is a Petition for *Certiorari*^[1] filed by herein petitioner Extra Excel International Philippines, Inc. ("petitioner") pursuant to Rule 65 of the 1997 Revised Rules of Court seeking to annul and set aside the Resolution^[2] that was issued by public respondent Judge Afable E. Cajigal ("public respondent judge") of Branch 96 of the Regional Trial Court of the National Capital Judicial Region in Quezon City ("trial court") dated June 10, 2013 in Criminal Case No. R-QZN-13-00488 which, *inter alia*, directed the Office of the Prosecutor of Quezon City to conduct a preliminary investigation of the case for qualified theft that was filed by herein petitioner against private respondent Ike R. Katipunan ("private respondent") in the said office. Likewise assailed in the instant petition is the subsequent Resolution^[3] of the trial court dated September 16, 2013 which denied the motion for reconsideration of the June 10, 2013 Resolution that was issued by the said court for lack of merit.

The material and relevant facts of the case, as culled from the record, are as follows:

The instant case stemmed from a Complaint-Affidavit^[4] for the crime of qualified theft that was filed by one Jose Asencio D. Taña ("Taña") against herein private respondent at the Office of the Prosecutor of Quezon City on March 16, 2012. The said complaint-affidavit stated that Taña was the operations manager of herein petitioner, a domestic corporation that is engaged in multi-level marketing of health products with several branches in the Philippines, including a store that is located at West Avenue, Quezon City ("store"). The aforesaid store, in turn, employed only two (2) employees, one of whom was herein private respondent, the store stockman, who had the duty to receive the delivery of various health products at the warehouse of the petitioner and to keep them safe at the stockroom or otherwise release the said health products from storage upon presentment upon him of their corresponding sales invoices.

On January 4, 2012, Taña, along with his team, went to the store in order to conduct its annual audit therein but he was informed by the other employee, Rubelyn R. Hidalgo ("Hidalgo"), that the private respondent had been on emergency leave since on December 29, 2011. Thereafter, when the audit team conducted an

examination and physical inventory of the products that had been stored in the stockroom, it discovered some missing health products therein with a total value of One Million Five Hundred Thirty Thousand One Hundred Five Pesos (Php1,530,105.00). Company record likewise showed that the missing products had not been sold to any of the customers of the store and that the petitioner never received any payment for the said products.

The petitioner then conducted an investigation whereby it learned of the purported scheme that was employed by the private respondent in that the latter allegedly offered the products of the store on discount to its customers on the condition that the private respondent would not be issuing any receipt for the purchase of the same. Subsequently, a Notice to Explain^[5] dated January 9, 2012 was served upon the private respondent requiring the latter to explain in writing why no disciplinary action should be taken upon him for the purported violations that he had committed against the petitioner. However, Taña maintained that, despite his receipt of the said notice to explain, the private respondent still failed and refused to account for the missing store products. Worse, the private respondent never reported back to work from the time when he took an emergency leave on December 29, 2011, thereby indicating his guilt that he misappropriated or stole the missing health products of the petitioner.

The foregoing antecedents then prompted herein petitioner to file a criminal case for qualified theft against the private respondent at the Office of the Prosecutor of Quezon City on March 16, 2012. The said case was docketed as NPS Docket No. XV-03-INV-12C-2504. In a Motion to Re-Open^[6] that was filed by the private respondent in the said office on May 6, 2013, the private respondent averred that he was not able to participate in the proceedings during the preliminary investigation of the case in that he did not receive any notice, order or subpoena from the Office of the Prosecutor of Quezon City. Thus, the private respondent prayed that, in order to serve the ends of justice, the case against him be re-opened in order to provide him an opportunity to be heard. The petitioner opposed the said motion to re-open the case on the ground that it did not contain any notice of hearing or notification to the other party, thereby rendering the said motion to be a mere scrap of paper which had no probative value. Further, the petitioner pointed out that the address which the private respondent used and indicated in his motion to re-open was the same address that was provided by the petitioner in its complaint-affidavit. Thus, the petitioner asseverated that it was highly improbable that the private respondent did not receive any subpoena from the Office of the Prosecutor of Quezon City where the case was being heard for preliminary investigation.

On November 15, 2012, the Office of the Prosecutor of Quezon City, issued a Resolution^[7] recommending that the private respondent be charged with the crime of qualified theft. On the same day, a criminal Information^[8] for the crime of qualified theft under Article 310 of the Revised Penal Code was filed against the private respondent, as follows:

"That on or about the period comprised from December 8, 2011 up to December 29, 2011, in Quezon City, Philippines, the said accused, being then employed as Inventory Control Service Assistant or stockman at Extra Excel, represented by Jose Asencio D. Taña with office branch at 2/F Westlife Place, 107 West Avenue corner Bulacan St., this City, who

has the duty to receive the delivery of various health products from the warehouse of Extra Excel and keep them safe at the stock room or otherwise release the products from the storage after being presented the corresponding sales invoice and as such has free access to the health products, with grave abuse of confidence reposed upon him by his employer, did then and there, willfully, unlawfully and feloniously with intent to gain and without the knowledge and consent of the owner thereof, take, steal and carry away the said assorted health products in the total amount of P1,530,105.00, Philippine Currency, belonging to Extra Excel, represented by Jose Asencio D. Taña, to the damage and prejudice of said offended party in the aforementioned amount.

“CONTRARY TO LAW.”

Thereafter, the private respondent filed in the trial court a Motion for Preliminary Investigation^[9] alleging that he did not receive any notice of the filing of the criminal complaint for qualified theft against him in the Office of the Prosecutor of Quezon City. In the aforesaid motion for preliminary investigation, the private respondent claimed that no valid preliminary investigation was conducted in the criminal case that was filed against him since he was not given an opportunity to defend himself against the aforesaid charge. Moreover, the private respondent contended that the charge against him was so serious and non-bailable in that it would be a gross violation of his fundamental rights should a warrant of arrest be issued against him and should he be detained in jail without having been given the opportunity to defend himself.

In the herein first assailed Resolution dated June 10, 2013, the trial court gave due course to the motion for preliminary investigation that was filed by the private respondent. Accordingly, the Office of the Prosecutor of Quezon City was directed to conduct a preliminary investigation or re-investigation of NPS Docket No. XV-03-INV-12C-2504. In the meantime, the criminal case for qualified theft that was filed in the trial court against the private respondent was deferred pending the outcome of the said re-investigation.

Aggrieved by the foregoing disposition of the public respondent judge, herein petitioner filed a Motion for Reconsideration^[10] of the June 10, 2013 Resolution of the said public respondent judge. However, in the second assailed Resolution dated September 16, 2013, the public respondent judge likewise denied the aforementioned motion for reconsideration that was filed by the petitioner for lack of merit.

Hence, the petitioner filed this petition for *certiorari* wherein the petitioner raised the following acts of grave abuse of discretion that were purportedly committed by the public respondent RTC judge:

I.

THE HONORABLE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE GRANTED RESPONDENT KATIPUNAN'S MOTION FOR PRELIMINARY INVESTIGATION DESPITE THE MANDATORY PROVISION OF A.M. NO. 11-6-10-SC WHICH STATES THAT A MOTION FOR PRELIMINARY INVESTIGATION SHALL ONLY BE GRANTED WHERE