

SEVENTH DIVISION

[CA-G.R. SP No. 130411, November 10, 2014]

**HARVEY S. SMOLLER, PETITIONER, VS. THE PRESIDING JUDGE
OF REGIONAL TRIAL COURT BRANCH 276 MUNTINLUPA CITY,
ASSISTANT CITY PROSECUTOR VICENTE B. FRANCISCO AND
SPOUSES RODOLFO O. LETABA AND LOLITA L. LETABA ,
RESPONDENTS.**

DECISION

INTING, S.B., J.:

This *Petition for Certiorari* ^[1] seeks to reverse and set aside the Orders dated: 1) 18 March 2013^[2] granting the motion for withdrawal of the Information against herein private respondents-spouses; and 2) 20 May 2013^[3] denying herein petitioner's Motion for Reconsideration of said Order issued by the Regional Trial Court (RTC), Branch 276, Muntinlupa City in Criminal Case No. 12-709 entitled "*People of the Philippines, Plaintiff, -versus- Lolita L. Letaba and Rodolfo O. Letaba, Accused.*"

THE FACTS

The antecedents are as follows:

Lolita L. Letaba, who is married to Rodolfo O. Letaba (herein private respondent-spouses), is the owner of a house and lot covered by Transfer Certificate of Title (TCT) No. 146474 located at No. 223 Apitong St., Ayala Alabang Village, Muntinlupa City.

Private respondent-spouses bought this house and lot from the previous owner named Jose D. Micael. The lot was previously covered by TCT No. 14068 and the house, by Tax Declaration No. 126-00-024-25-009-1001.

Annotated in the title of Micael is a Notice of *Lis Pendens*^[4] filed by petitioner Harvey Smoller, an American citizen, through his lawyer, Atty. Edward P. Buenaflor.

Said notice pertains to a Complaint filed by herein petitioner Smoller against Micael in Civil Case No. 08-091 before the Regional Trial Court, Muntinlupa City praying for the court to issue an order directing Micael to execute real estate mortgage documents in favor of petitioner Smoller and to be annotated in TCT No. 14068. During the pendency of the above-stated civil case, petitioner Smoller caused the annotation of Notice of *Lis Pendens* on Micael's title TCT No. 14068. Said notice was carried over and annotated on TCT No. 146474 when the property's title was transferred in the names of private respondent-spouses.

In July 2011, private respondent-spouses filed a Petition for Cancellation of Lis

Pendens over the property located at No. 223 Apitong St., Ayala Alabang Village, Muntinlupa City, which they bought from Micael.

According to herein petitioner Smoller, private respondent-spouses Letaba made defamatory remarks against him in said petition, attacked his person and virtue as a person, and cast him in disrepute, thus, he filed a complaint for libel against the private respondent-spouses Letaba.

On 3 October 2012 Assistant State Prosecutor Salazar-Ruba resolved the complaint and found probable cause to charge private respondent-spouses of the crime of libel. Private respondent-spouses filed a motion for reconsideration.

However, on 15 January 2013 the Office of City Prosecutor through Assistant Prosecutor Vicente B. Francisco reversed the finding of probable cause and granted private respondent-spouses' motion for reconsideration.

On 1 February 2013, the Office of the City Prosecutor through Assistant Prosecutor Vicente B. Francisco filed a Motion to Withdraw Information with the Regional Trial Court (RTC) of Muntinlupa City, Branch 276.

On 18 March 2013 the Regional Trial Court (RTC), Branch 276, Muntinlupa City issued an Order^[5] the dispositive portion of which reads:

"WHEREFORE, premises considered the Motion to Withdraw Information is hereby **GRANTED**. Accordingly, let the Information be withdrawn and the case against the accused LOLITA LETABA and RODOLFO LETABA is hereby dismissed.

In view of this ruling, the setting on April 25, 2013 at 8:30 o'clock in the morning for the arraignment of the accused is hereby **CANCELLED**. Likewise, the motion for the issuance of Hold Departure Order, previously held in abeyance, is likewise **DENIED** for lack of basis.

SO ORDERED."^[6]

Herein petitioner filed a motion for reconsideration.

On 18 March 2013 the trial court issued its Order^[7], the pertinent portion of which reads:

"IN THE LIGHT OF THE FOREGOING, the MOTION FOR RECONSIDERATION is hereby DENIED for lack or merit.

IT IS SO ORDERED."^[8]

Hence, this petition.

THE PETITION

Petitioner anchored his petition on these grounds:

A. THE RESPONDENT JUDGE GRANTED THE MOTION TO WITHDRAW INFORMATION BASED ON FINDING THAT THE STATEMENTS MADE BY THE SPOUSES FALL WITHIN THE PROTECTIVE MANTLE OF PRIVILEGED COMMUNICATION, WHICH IS NOT ACTIONABLE.

B. IN ORDER TO BE COMPLIANT WITH THE DOCTRINE LAID DOWN IN THE CRESPO CASE, THE RESPONDENT COURT SHOULD HAVE CONSIDERED PRIVATE RESPONDENTS' ARGUMENTS TO BE A MATTER OF DEFENSE WHICH MUST BE BETTER DETERMINED UPON TRIAL ON THE MERITS, INSTEAD OF A MERE CURSORY EXAMINATION OF THE PLEADINGS OF THE PARTIES."^[9]

Petitioner ascribed abuse of discretion to the trial court. He claimed that issuance of the assailed orders amounted to the trial court's evasion of positive duty to hear the case according to its merits.

Petitioner contended that the trial court was mistaken when it held that the statements of private respondents in their Petition for Cancellation of *Lis Pendens* fall within the protective mantle of privileged communication.

THIS COURT'S RULING

Here, the crux of the controversy is whether the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the case against private respondents and in denying herein petitioner's motion for reconsideration of said order.

We rule in the negative.

A Petition for *Certiorari* under Rule 65 is the proper remedy in assailing that a judge has committed grave abuse of discretion amounting to lack or excess of jurisdiction. Section 1, Rule 65 of the Rules of Court clearly sets forth when a petition for *certiorari* can be used as a proper remedy:

"SECTION 1. Petition for *certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require."