



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RAMONA FAVIS-VELASCO G.R. No. 239090
AND ELVIRA L. YULO,
Petitioners,

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
GAERLAN,* JJ.

- versus -

JAYE MARJORIE R.
GONZALES,
Respondent.

Promulgated:

17 JUN 2020

X-----X

RESOLUTION

INTING, J.:

This is a Petition for Review¹ on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision² dated November 23, 2017 and the Resolution³ dated May 3, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 144600. The assailed CA Decision annulled the Resolution⁴ dated July 15, 2015 of the Department of Justice (DOJ) Secretary that reversed and modified the Resolution dated November 13, 2013 issued by Assistant City Prosecutor Gilbert R. Alcala (Prosecutor Alcala) of the Office of City Prosecutor of Makati City (OCP Makati City), dismissing the complaint for *Estafa* filed by Ramona Favis-Velasco and Elvira L. Yulo (petitioners) against Jaye Marjorie Rojas Gonzales (respondent Jaye).

* Designated additional member per Special Order No. 2780 dated May 11, 2020.

¹ *Rollo*, pp. 9-65.

² *Id.* at 67-87; penned by Associate Justice Sesinando E. Villon with Associate Justices Manuel M. Barrios and Renato C. Francisco, concurring.

³ *Id.* at 89-90.

⁴ *Id.* at 372-378; penned by Undersecretary Jose Vicente B. Salazar.

The antecedents of the case are as follows:

The petition stemmed from a Complaint-Affidavit⁵ executed by petitioners against respondent Jaye, her husband, Bienvenido Ma. Gonzales III, and Raul Clemente (collectively known as the respondents) for 35 counts of *Estafa* by unfaithfulness and abuse of confidence as defined under Article 315, paragraph 1(b); and 35 counts of *Estafa* by false pretenses as defined under Article 315, paragraph 2(a) of the Revised Penal Code (RPC).

The Complaint-Affidavit was then referred to the OCP of Makati City for preliminary investigation. On November 13, 2013, Prosecutor Alcalá issued a Resolution⁶ finding no probable cause to hold the respondents liable for the offenses charged, and consequently dismissed the petitioners' complaint.

Undaunted, the petitioners filed a Petition for Review⁷ with the DOJ Secretary, who in turn modified the appealed Resolution of Prosecutor Alcalá, to wit:

WHEREFORE, in view of the foregoing, the assailed resolution is hereby MODIFIED. Accordingly, the City Prosecutor of Makati is directed to file the appropriate Informations for estafa under Article 315 par. 1(b) and 2(a) of the Revised Penal Code against respondent JAYE MARJORIE ROXAS GONZALES and to report the action taken thereon within ten (10) days from receipt hereof. The dismissal of the complaint against the respondents BIENVENIDO MA. GONZALES III and RAUL CLEMENTE stands.

SO ORDERED.⁸

The DOJ Secretary found probable cause to indict respondent Jaye of the crime of *Estafa* under paragraphs 1(b) and 2(a), Article 315 of the RPC. Subsequently, respondent Jaye filed a Motion for Reconsideration seeking to set aside the DOJ Secretary's Resolution. Thereafter, on September 30, 2015, she filed a motion to defer action before the office of the DOJ Secretary.

⁵ *Id.* at 350-371.

⁶ *Id.* at 34.

⁷ *Id.*

⁸ *Id.* at 377.

On January 11, 2016, four Informations all dated January 6, 2016 were filed by the OCP Makati City against the respondent for the crime of *Estafa* under Article 315, paragraphs 1(b) and 2(a) of the RPC. Resultantly, the Informations were consolidated and raffled to Branch 133, Regional Trial Court (RTC) of Makati City. The cases were re-raffled to Branch 60 as a consequence of a failed judicial dispute resolution.

Aggrieved, respondent Jaye filed a Petition for *Certiorari* and Prohibition (with Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Investigation)⁹ before the CA on March 15, 2016.

In compliance with the CA's Resolution dated September 9, 2016, petitioners filed their Comment dated October 20, 2016 while respondent filed her Reply dated November 4, 2016.¹⁰

On June 1, 2017, the CA issued a Resolution denying the respondent Jaye's application for the issuance of an injunctive relief for lack of merit and directed the parties to file their respective memoranda. In compliance thereto, the petitioners filed their Memorandum¹¹ dated July 7, 2017, while respondent Jaye filed her Memorandum¹² dated June 23, 2017.

The petitioners maintained that all the elements of *Estafa* under Article 315, paragraph 1(b) are present: (1) the amounts of money were received by the respondent under an obligation to make delivery or to return the same; (2) the respondent misappropriated or converted the money of the petitioners; (3) the misappropriation or conversion prejudiced the petitioners; and (4) the demands were made by the petitioners for the respondent to return the money invested by them.¹³

Likewise, the petitioners argued that all the elements of *Estafa* under paragraph 2(a), Article 315 are present: (1) there were false pretenses or fraudulent means committed by the respondent Jaye when she represented to the petitioners that she is a licensed broker or part-owner of D.A. Market Securities, Inc. (DAMSI); (2) respondent Jaye's

⁹ *Id.* at 379-411.

¹⁰ *Id.* at 35.

¹¹ *Id.* at 412-443.

¹² *Id.* at 444-475.

¹³ *Id.* at 430-435.

false pretenses or fraudulent means were made prior to or simultaneous with the transaction; (3) the petitioners relied on respondent Jaye's false pretenses or fraudulent means, that is they were induced to part with their hard-earned money because of their reliance that respondent Jaye is a licensed broker or part-owner of DAMSI; and (4) as a result of the investment, the petitioners suffered damage by losing millions of pesos.¹⁴

On the other hand, respondent Jaye asserted that not all the elements of the crimes charged are present in the case. She stressed that the DOJ Secretary committed grave abuse of discretion amounting to lack or in excess of jurisdiction when she directed the filing of Informations for *Estafa* under paragraphs 1(b) and 2(a), Article 315 despite lack of probable cause. She also asseverated that there was no evidence that the amounts invested by the petitioners were not actually used in buying and/or selling securities as to conclude that she misappropriated the money. Moreover, the respondent insisted that she did not commit false pretenses as the petitioners were already decided to invest their money even before they met. She highlighted that for *Estafa* under paragraph 2(a), Article 315 be committed, the deceit should be made prior to or simultaneous with the transaction. Finally, she claimed that the fact that the petitioners gained profits from the investments for several years negated her intention to defraud them.

The Ruling of the CA

On November 23, 2017, the CA promulgated the assailed Decision granting the petition and annulling the earlier Resolution dated July 15, 2015 issued by the DOJ Secretary. The CA disposed the case as follows:

WHEREFORE, the petition is GRANTED. The Resolution dated July 15, 2015 of public respondent, the Secretary of the Department of Justice in NPS No. XV-05-INV-13C-1111 is hereby ANNULLED and SET ASIDE. Resultantly, the Resolution dated November 13, 2013 issued in the said case by Assistant City Prosecutor Gilbert R. Alcala is hereby REINSTATED, and the criminal complaint filed by private respondents Ramona Favis-Velasco and Elvira Yulo against petitioner Jaye Marjorie R. Gonzales, ordered DISMISSED.

¹⁴ *Id.* at 435-439.

The warrants of arrest issued by Branch 133 of the Regional Trial Court of Makati City in Criminal Case Nos. 16-027, 16-028, 16-029 and 16-030 are hereby declared NULL and VOID.

SO ORDERED.¹⁵

The petitioner filed a Motion for Reconsideration,¹⁶ but the CA denied it in its assailed Resolution¹⁷ dated May 3, 2018.

Hence, the petition.

Respondent Jaye filed her Comment¹⁸ dated October 8, 2018. In her Comment, she reiterated that there was no probable cause to charge her of *Estafa* under paragraphs 1(b) and 2(a), Article 315 of the RPC. She insisted that there was no fraud or deceit prior to or simultaneous with the transaction. Likewise, she denied directly receiving money from petitioners. Thus, according to her, the petitioners failed to allege all the elements of the crimes charged.

On February 21, 2019, the petitioners filed their Reply¹⁹ to respondent Jaye's Comment. They argued that all the elements of *Estafa* under paragraphs 2(a) and 1(b), Article 315 are present in the case at bar.

The Issues

The petitioners raised the following grounds:

I. THE COURT OF APPEALS ERRED IN FINDING THAT THERE IS NO PROBABLE CAUSE FOR ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(A) OF THE REVISED PENAL CODE AGAINST RESPONDENT GONZALES. THE PRESENCE OF THE ELEMENTS OF THE SAID CRIME IS AMPLY SUPPORTED BY EVIDENCE IN THE INSTANT CASE.

II. THE COURT OF APPEALS ERRED IN FINDING THAT THERE IS NO PROBABLE CAUSE FOR ESTAFA UNDER ARTICLE 315, PARAGRAPH 1(B) OF THE REVISED PENAL

¹⁵ *Id.* at 86-87.

¹⁶ *Id.* at 91-121.

¹⁷ *Id.* at 89-90.

¹⁸ *Id.* at 668-678.

¹⁹ *Id.* at 683-699.

CODE AGAINST RESPONDENT GONZALES. THE PRESENCE OF THE ELEMENTS OF THE SAID CRIME IS AMPLY SUPPORTED BY THE EVIDENCE IN THE INSTANT CASE.

III. THE COURT OF APPEALS ERRED IN RULING THAT THERE IS GRAVE ABUSE OF DISCRETION ON THE PART OF THE SECRETARY OF JUSTICE IN FINDING PROBABLE CAUSE TO INDICT RESPONDENT GONZALES OF ESTAFA.²⁰

The main issue in this case hinges on the determination of whether or not there is probable cause to indict the respondent of *Estafa* under paragraphs 2(a) and 1(b), Article 315 of the RPC.

Our Ruling

The petition is not meritorious.

A preliminary investigation is defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof.²¹ The right to a preliminary investigation is a substantive right since the accused in a criminal trial is inevitably exposed to prolonged anxiety, aggravation, humiliation, not to speak of expense, and the right to an opportunity to avoid a painful process is a valuable right.²² It is meant to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of a public trial.²³ It is also intended to protect the state from having to conduct useless and expensive trials.²⁴

The rule is that finding of probable cause is an executive function.²⁵ It is not a power that rests in courts. Generally, courts do not disturb conclusions made by public prosecutors.²⁶ This is due to the basic

²⁰ *Id.* at 36-37.

²¹ Section 1, Rule 112 of the Rules of Court.

²² *Labay v. Sandiganbayan*, G.R. Nos. 235937-40, July 23, 2018, citing *Go v. Court of Appeals*, 283 Phil. 24, 43 (1992).

²³ *Id.*, citing *Sales v. Sandiganbayan*, 421 Phil. 176, 186-187 (2001).

²⁴ *Id.*

²⁵ *Reynes v. Office of the Ombudsman*, G.R. No. 223405, February 20, 2019.

²⁶ *Id.*

principle of separation of powers.²⁷ Nonetheless, “grave abuse of discretion taints a public prosecutor’s resolution if he [or she] arbitrarily disregards the jurisprudential parameters of probable cause.”²⁸ Thus, while the determination of probable cause is primarily an executive function, the Court would not hesitate to interfere if there is a clear showing that Secretary of Justice gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached.²⁹

Probable cause has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof.³⁰ The determination of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.³¹ It is enough that it is believed that the act or omission complained of constituted the offense charged.³² In order to arrive at probable cause, the elements of the crime charged should be present.³³

After a careful scrutiny of the case records, the Court rules that there is no probable cause to indict respondent Jaye of the crime of *Estafa* under paragraphs 2(a) and 1(b), Article 315 of the RPC. Not all the elements of the crime of *Estafa* under paragraphs 2(a) and 1(b), Article 315 of the RPC are present in the case at bench. Judicious evaluation of the Complaint-Affidavit and the supporting documents of the parties, reveals that there is no probable cause to charge respondent Jaye. The Complaint-Affidavit does not sufficiently allege the elements of the crime of *Estafa* under paragraphs 2(a) and 1(b), Article 315 of the RPC.

Article 315, paragraph 2(a) of the RPC, as amended, defines the crime of *Estafa* by means of deceit as follows:

ART. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned herein below x x x:

x x x x

²⁷ *Id.*

²⁸ *Id.*, citing *Aguilar v. Department of Justice*, 717 Phil. 789, 799 (2013).

²⁹ *Lanier, et al. v. People*, 730 Phil. 143, (2014)

³⁰ *Supra* note 25, citing *Reyes v. Pearlbank Securities, Inc.* 582 Phil. 505, 518-519 (2008).

³¹ *Id.*

³² *Sen. De Lima v. Judge Guerrero, et al.*, 819 Phil. 616, 737 (2017), citing *Judge Marcos v. Judge Cabrera-Faller*, 804 Phil. 45, 68 (2017).

³³ *Estrada v. Office of the Ombudsman*, G.R. Nos. 212761-62, 213473-74 & 213538-39, July 31, 2018, citing *Hasegawa v. Giron*, 716 Phil. 364, 374 (2013).

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

The elements of *Estafa* under paragraph 2(a), Article 315 of the RPC are: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.³⁴

The petitioners failed to sufficiently allege all of the foregoing elements in their Complaint-Affidavit. Their allegation that respondent Jaye induced them through fraudulent representations and false pretenses to invest their money is instantly belied by their own statement in their complaint, to wit:

1.4 We are formally charging the Respondents co-conspirators with 35 counts of Estafa by unfaithfulness and abuse of confidence as defined under Article 315 paragraph 1 (b) and 35 counts of Estafa by false pretenses as defined by paragraph [2] (a) of the same Article of the Revised Penal Code, to wit:³⁵

X X X X

2.2 We first heard about Respondent Jaye through a mutual friend Marianne Onate (“Ms. Onate”) when we asked her who her broker was. She identified her broker as Respondent Jaye who is the wife of Respondent Bienvenido, a very close friend of her brother. We asked for an introduction to Respondent Jaye.³⁶

It must be noted that the petitioners were the ones who asked Marianne Onate (Onate) to be introduced to respondent Jaye and it was Onate who introduced respondent Jaye as her broker. Clearly, it was through the representation of Onate that petitioners will earn substantial

³⁴ *People v. Sison*, 816 Phil. 8, 26 (2017), citing *Saliman v. People*, 747 Phil. 719, 731 (2014).

³⁵ *Rollo*, p. 350.

³⁶ *Id.* at 354.

amount of money in the stock market that induced them to invest their money. Verily, no deceit or fraud could be attributed to respondent Jaye as would induce the petitioners to part with their money or property.

The Court likewise finds no probable cause for *Estafa* under paragraph 1(b), Article 315 of the RPC, which provides:

ART. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1st. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000), and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Two million pesos (P2,000,000); but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusion temporal*, as the case may be.

X X X X

1. With unfaithfulness or abuse of confidence, namely:

X X X X

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

The elements of *Estafa* through misappropriation under Article 315, paragraph 1(b) are: (a) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (b) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (c) the misappropriation, conversion or denial is to the

prejudice of another; and (d) demand by the offended party that the offender return the money or property received.³⁷

Paragraph 1(b) provides liability for *Estafa* committed by misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though that obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.³⁸

There is no evidence that respondent Jaye received the petitioners' monies in trust or under any other obligation involving the duty to deliver, or to return them and that upon receiving the amounts respondent Jaye misappropriated or converted them. The pieces of evidence showed that the checks issued by the petitioners were made payable to the order of either the B.A. Securities, Inc. or DAMSI and not in respondent Jaye's name. Also, the amounts of money delivered by the petitioners were deposited to the account of either BASI or DAMSI and never in respondent Jaye's bank account. Thus, contrary to the findings of the DOJ Secretary, there could be no way that respondent Jaye could appropriate the amounts of money invested by the petitioners as these investments were not deposited in respondent Jaye's account.

Evidently, the Court of Appeals is correct in finding grave abuse of discretion on the part of the DOJ Secretary when the latter found probable cause to charge respondent Jaye.

WHEREFORE, the petition is **DENIED**. The Decision dated November 23, 2017 and the Resolution dated May 3, 2018 of the Court of Appeals in CA-G.R. SP No. 144600 is **AFFIRMED**.


SO ORDERED.

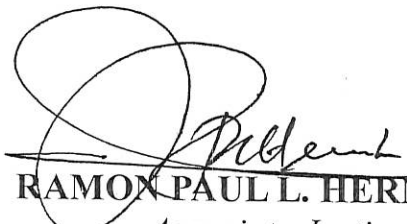
³⁷ *Legaspi v. People*, G.R. Nos. 225753 & 225799, October 15, 2018, citing *Serona v. Court of Appeals*, 440 Phil. 508, 517 (2002).

³⁸ *Gamaro, et al. v. People*, 806 Phil. 483, 497-498 (2017).

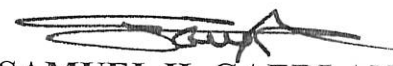

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice