



Republic of the Philippines
 Supreme Court
 Baguio City

SECOND DIVISION

RUDY CHUA and CAI G.R. No. 204479
 CHANGCHENG,
 Petitioners, Present:

-versus-

LEONEN, J., Chairperson,
 LAZARO-JAVIER,
 LOPEZ, M.,
 LOPEZ, J., and
 KHO, JR., JJ.

THE HON. SECRETARY OF
 JUSTICE AND PRESIDENTIAL
 ANTI-SMUGGLING GROUP-
 TASK FORCE SUBIC (PASG-
 TFS),
 Respondents.

Promulgated:
 JAN 11 2023

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DECISION

LEONEN, J.:

The determination of probable cause for filing an information is lodged with the public prosecutor. Absent any finding of grave abuse of discretion, it is not reviewable by the courts.¹

This Court resolves a Petition² assailing the Court of Appeals' Decision³ and Resolution,⁴ which found no grave abuse of discretion on the

¹ *Securities and Exchange Commission v. Price Richardson Corp.*, 814 Phil 589 (2017) [J. Leonen, Second Division].

² *Rollo*, pp. 7–20.

³ *Id.* at 204–221. The July 17, 2012 Decision in CA-G.R. SP. No. 113802 was penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Ricardo R. Rosario (now a Member of this Court) and Jane Aurora C. Lantion of the Special Fifth Division, Court of Appeals, Manila.

part of the Secretary of Justice, who reversed the City Prosecutor's dismissal and ordered the filing of Information against Rudy Chua, Cai Changcheng and Cai Wengcong (Chua et al.) for violation of Sections 4 and 5 in relation to Section 26, Article II of the Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.⁵

⁴ Id. at 231–232. The November 14, 2012 Resolution in CA-G.R. SP. No. 113802 was penned by Associate Justice Leoncia Real-Dimagiba, and concurred in by Associate Justices Ricardo R. Rosario (now a Member of this Court) and Jane Aurora C. Lantion of the Former Special Fifth Division, Court of Appeals, Manila.

⁵ Republic Act No. 9165 (2002), art II, secs. 4, 5 and 26 provides:

SECTION 4. *Importation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall import or bring into the Philippines any dangerous drug, regardless of the quantity and purity involved, including any and all species of opium poppy or any part thereof or substances derived therefrom even for floral, decorative and culinary purposes.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall import any controlled precursor and essential chemical.

The maximum penalty provided for under this Section shall be imposed upon any person, who, unless authorized under this Act, shall import or bring into the Philippines any dangerous drug and/or controlled precursor and essential chemical through the use of a diplomatic passport, diplomatic facilities or any other means involving his/her official status intended to facilitate the unlawful entry of the same. In addition, the diplomatic passport shall be confiscated and canceled.

The maximum penalty provided for under this Section shall be imposed upon any person, who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case. For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section. The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

ARTICLE 26. *Attempt or Conspiracy.* — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

- (a) Importation of any dangerous drug and/or controlled precursor and essential chemical;
- (b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous

At around 8:35 p.m. on May 25, 2008, Security Guard III Wilfredo Agnazata (SG3 Agnazata) of the Subic Bay Metropolitan Authority Department flagged down a Mitsubishi Outlander with Plate No. RAE 615 driven by Anthony “Anton” Ang (Ang), part-owner of Hualong International, Inc. (Hualong). He inspected the passengers as well as the several boxes in the car. The driver failed to show documents authorizing them to bring out the cargoes, which were earlier seen being unloaded from a docked Chinese-registered cargo ship F/B Shun Fa Xing. SG3 Agnazata went to the guard post to ask for back-up, but the front seat passenger was no longer there upon his return.⁶

SG3 Agnazata brought Ang to the office of Internal Affairs General Assignment Service for investigation. When questioned, Ang refused to open the boxes and claimed that they merely contained sensitive computer parts. Ang was later allowed to leave the office after committing to produce the cargoes’ necessary documents, but he failed to return. When the boxes were opened, they contained 40 transport plastic packs containing white crystalline substance, which later tested positive for shabu, a dangerous drug. These had a total weight of 81.95 kilograms.⁷

On May 28, 2008, two green leatherette bags containing 10 vacuum-sealed packs of the same substances were recovered by divers of the Subic Dry Dock. Laboratory examinations yielded positive results for shabu with a total weight of 20.49 kilograms.⁸ On the same day, the operatives of the Presidential Anti-Smuggling Group-Task Force Subic (Task Force) received information that a Dark Blue Toyota Hi-Ace with plate number UKU-699 parked inside a warehouse owned by Anglo Asia Commodity Corporation (Anglo Asia) contained similar boxes as those earlier seized. The operatives proceeded to the warehouse and confiscated 60 boxes containing five packs of shabu weighing 612.22 kilograms.⁹

Enrique L. Ong, manager of Anglo Asia, admitted that he was instructed by Ang and Ang’s wife Estrella Ang (Estrella), Operations Manager of Hualong, to allow Rolando T. Labandelo, the driver of the Dark Blue Toyota Hi-Ace, to park the said vehicle inside the warehouse.¹⁰ It was also revealed during the investigation that Estrella notified the Seaport Department of Subic Bay Metropolitan Authority of the arrival of the cargo

drug and/or controlled precursor and essential chemical;
(c) Maintenance of a den, dive or resort where any dangerous drug is used in any form;
(d) Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and
(e) Cultivation or culture of plants which are sources of dangerous drugs.

⁶ *Rollo*, p. 206.

⁷ *Id.* at 206–207.

⁸ *Id.* at 4.

⁹ *Id.* at 4–5.

¹⁰ *Id.* at 207.

vessel F/B Shun Fa Xing, which contained the dangerous drugs later seized.¹¹

On June 13, 2008, the Task Force operatives filed before the Office of the City Prosecutor of Olongapo City an Amended Joint Complaint of Arrest against Chua et al.—incorporators of Hualong—and several others as co-principals for the illegal importation of dangerous drugs defined and penalized under Sections 4 and 5 in relation to Sections 26 and 30 of Republic Act No. 9165.¹² Also impleaded was Harry Yao, part owner and Vice-President for Operations of Anglo Asia, which owned the warehouse where the van containing the drugs was parked.¹³

In their counter-affidavit, Rudy Chua (Chua) and Cai Changcheng (Changcheng) denied having knowledge or participation in the illegal importation of shabu as well as the lease agreement between Hualong and Anglo Asia regarding the use of the warehouse. They claimed that they had already assigned all their shares in Hualong to Robert Lee (Lee) for ₱388,000.00 pursuant to a Deed of Assignment dated August 30, 2007.¹⁴

The City Prosecutor of Olongapo dismissed the complaint against Chua, Changcheng, and the others for lack of probable cause.¹⁵ The Regional State Prosecutor sustained the dismissal, and the case was elevated to the Secretary of Justice for review.¹⁶

The Secretary of Justice reversed and set aside the City Prosecutor's Resolution.¹⁷ The Secretary of Justice found that Chua et al. and the others, as incorporators and directors of Hualong, must be the ones to assume criminal liability. Hence, the Secretary of Justice directed the City Prosecutor to file the information against Chua et al. and the others for violation of Sections 4 and 5 in relation to Section 26 of Republic Act No. 9165.¹⁸ A subsequent motion for reconsideration was denied.¹⁹

Chua et al. assailed the Decision and Resolution of the Secretary of Justice before the Court of Appeals through a petition for certiorari.²⁰

In its July 17, 2012 Decision,²¹ the Court of Appeals dismissed the petition, holding that the Secretary did not commit grave abuse of discretion

¹¹ Id. at 208.

¹² Id. at 205–206.

¹³ Id. at 209.

¹⁴ Id. at 210–211.

¹⁵ Id. at 212–213.

¹⁶ Id. at 213.

¹⁷ Id.

¹⁸ Id. at 213–214.

¹⁹ Id. at 214.

²⁰ Id. at 204–205.

²¹ Id. at 204–221.

when it reversed the City Prosecutor of Olongapo City's Resolution and ordered the filing of informations.²² Thus:

As head of the Department of Justice, the Secretary of Justice has the power to alter, modify, nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter as earlier discussed, the decision whether or not to dismiss the complaint against respondent is necessarily dependent on the sound discretion of the prosecuting fiscal and, ultimately, that of the Secretary of Justice. Thus, in the present case, while the City Prosecutor was obligated to dismiss the complaint against petitioners and their co-respondents when he found no probable cause to indict the petitioners and their co-respondents in I.S. Nos. I-80-M-750 to 753, the Secretary of Justice is likewise bound by his oath of office to reverse the City Prosecutor when he found that the evidence warrants or shows probable cause to indict them for the charges filed against them. It must be remembered that the Secretary of Justice has the ultimate power to decide which as between the conflicting theories of the parties should be believed.²³ (Citations omitted)

The Court of Appeals found that the Secretary of Justice did not commit grave abuse of discretion because the findings were reasonably based on the evidence on record. For one, as officers of Hualong, the Secretary of Justice held that Chua et al. were among the persons to assume criminal responsibility. He also belied Cai Wengcong's (Wengcong) allegation that he had already departed for China in 2007 because he had subscribed and sworn to the veracity of his counter-affidavit before the prosecutor. Several documents on record also dispute Chua et al.'s claim that they had already assigned their interest in Hualong to another person.²⁴ Ultimately, the Court of Appeals said that trial is where these claims can be substantiated through the introduction of evidence for all parties.²⁵

Chua et al. moved for reconsideration, which the Court of Appeals denied for lack of merit in its November 14, 2012 Resolution.²⁶

Hence, Chua and Changcheng filed this Petition.²⁷

In its January 23, 2013 Resolution,²⁸ this Court ordered respondents Secretary of Justice and Presidential Anti-Smuggling Group-Task Force Subic, through the Office of the Solicitor General, to file their comments.

²² Id. at 214.

²³ Id. at 216-217.

²⁴ Id. at 15-16.

²⁵ Id. at 17.

²⁶ Id. at 231-232.

²⁷ Id. at 7-20.

²⁸ Id. at 237-238.



In its June 15, 2013 this Court required petitioners to submit their reply.²⁹ This Court gave due course to the Petition and directed the filing of the parties' memoranda.

In their Memorandum,³⁰ petitioners argue that the City Prosecutor's dismissal of the case had already become final because of a considerable period of time since respondent Secretary of Justice's Resolution only came a year after the City Prosecutor's resolution.³¹

Wengcong particularly disputes the finding that he subscribed to his counter-affidavit before the public prosecutor, saying that the affiants to the document are only petitioners.³²

Further, petitioners reiterate their position that they no longer participated in Hualong's affairs because they had already assigned their shares to Lee. They likewise deny knowledge of the incidents that transpired in this case.³³ Petitioners cite the several documents they submitted, which they claim should have resulted in the dismissal of the complaint against them.³⁴

Finally, they claim that the Court of Appeals misapprehended the facts when it rendered its assailed Decision and Resolution, which is an exception to the rule that only questions of law may be raised in petitions for review under Rule 45.³⁵ They pray that the Court of Appeals' Decision and Resolution and the Secretary of Justice's Resolution be set aside and that the City Prosecutor's Resolution dismissing the case be reinstated.³⁶

For its part, respondents, through the Office of the Solicitor General, argue in their memorandum that only questions of law may be raised in petitions for review under Rule 45.³⁷

Moreover, respondent Secretary of Justice says that the Secretary of Justice, as head of the Department of Justice, has "the power to alter, modify, nullify, or set aside what a subordinate officer had done in the performance of [their] duties and to substitute the judgment of the former for that of the latter."³⁸ They further claim that, based on the records, respondent Secretary of Justice reviewed the City Prosecutor's Resolution

²⁹ Id. at 264.

³⁰ Id. at 280–293.

³¹ Id. at 312.

³² Id. at 313.

³³ Id.

³⁴ Id. at 314–315.

³⁵ Id. at 316–317.

³⁶ Id. at 317–318.

³⁷ Id. at 312–314.

³⁸ Id. at 315.

pursuant to an automatic review mandated by Department Circular No. 46, series of 2003.³⁹

For this Court's resolution is the issue of whether or not the Court of Appeals erred in finding that respondent Secretary of Justice did not commit grave abuse of discretion in reversing the Olongapo City Prosecutor's Resolution and ordering the filing of information against petitioners and Cai Wengcong.

We deny the Petition.

With regard to the procedural aspect of this case, as a general rule, a petition for review under Rule 45 of the Rules of Court can only raise questions of law, and raising questions of fact is a ground for the petition's denial.⁴⁰

Moreover, a quasi-judicial agency's findings of fact are binding on the parties and this Court. Since a Rule 45 petition only resolves questions of law, this Court generally relies on the factual findings of the Court of Appeals, and these findings should not be disturbed on appeal.⁴¹

Although jurisprudence admits of several exceptions to this rule,⁴² these exceptions must be "alleged, substantiated, and proved by the parties";⁴³ it is not enough that one simply asserts an exception without substantiating the claim. Here, petitioners have failed to establish that an exception applies to their case.

Now, we rule on the merits.

Probable cause for filing a criminal information has been defined as such facts sufficient to engender a well-founded belief that a crime has been committed and that a person is probably guilty of the crime.⁴⁴ An investigating prosecutor determines it during a preliminary investigation; this process is also referred to as the executive determination of probable cause.

³⁹ Id. at 316. The Circular states: "In the interest of public service and pursuant to existing laws, effective upon issuance hereof until otherwise ordered, the dismissal of all cases, whether on inquest/preliminary investigation on appeal, filed for violation of R.A. No. 9165 and involving the maximum penalty of life imprisonment to death, shall be subject to automatic review, as follows:

....
2. For cases dismissed by the Chief State Prosecutor, Regional State Prosecutors and City Prosecutors of cities in Metropolitan Manila, by the Secretary of Justice."

⁴⁰ RULES OF COURT, Rule 45, sec. 1.

⁴¹ *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].

⁴² Id. at 182-183.

⁴³ Id. at 169.

⁴⁴ RULES OF COURT, Rule 112, sec. 1.

Being based merely on a reasonable belief, it does not import absolute certainty.⁴⁵ Probable cause, as determined by the executive branch, need not be based on clear and convincing evidence of guilt, as the investigating officer only acts upon reasonable belief.⁴⁶ More importantly, it does not require an inquiry into whether there is sufficient evidence to secure a conviction.⁴⁷ It is enough that it is reasonably believed that the act or omission complained of constitutes the offense charged,⁴⁸ and the person is probably guilty of the offense and should be held for trial.⁴⁹

Prosecutorial discretion rests with the executive branch:

The full discretionary authority to determine probable cause in a preliminary investigation to ascertain sufficient ground for the filing of information rests with the executive branch. The determination of probable cause during a preliminary investigation is a function that belongs to the prosecutor and ultimately on the Secretary of Justice... Courts cannot substitute the executive branch's judgment.⁵⁰ (Citations omitted)

This process is separate from probable cause determined by a trial court judge. This process is determined at a later stage of the prosecution process when an information is already filed, and jurisdiction is therefore transferred to the trial court.⁵¹ Before issuing a warrant of arrest to acquire jurisdiction over the person of the accused, the judge personally determines probable cause to see if the issuance of the arrest warrant is proper.⁵² This is called the judicial determination of probable cause, an independent finding by the trial court.

The issue in this case involves the propriety of respondent Secretary of Justice finding probable cause against petitioners. Petitioners question the executive determination of probable cause against them. They claim that courts only step in when there is grave abuse in the exercise of this discretion.

The Court of Appeals correctly found that respondent Secretary of Justice did not commit any grave abuse of discretion in finding probable cause against petitioners. Respondent Secretary of Justice's Resolution finding probable cause was reasonably based on available evidence.

⁴⁵ *Chan v. Secretary of Justice*, 572 Phil. 118, 130 (2008) [Per J. Nachura, Third Division].

⁴⁶ *Id.* at 132.

⁴⁷ *Id.*

⁴⁸ *Villanueva v. Secretary of Justice*, 512 Phil. 14, 159 (2005) [Per J. Calleja, Sr., Second Division].

⁴⁹ RULES OF COURT, Rule 112, sec. 1.

⁵⁰ *Rollo*, pp. 215–216.

⁵¹ *Crespo v. Mogul*, 235 Phil. 465, 476 (1987) [Per J. Gancayco, En Banc].

⁵² CONST., art. III, sec. 2.

As found by the Court of Appeals, records from the proceedings before respondent Secretary of Justice show that Wengcong was in the Philippines when he subscribed and swore to the allegations in his counter-affidavit before the public prosecutor, contrary to his claims that he had already left for China long before the incidents of the case transpired.⁵³ There was also Lee's denial that petitioners had transferred or assigned their Hualong shares to him⁵⁴ and that he did not renew the lease of the warehouse units with petitioner Chua.⁵⁵

These opposing claims controverted petitioners' defenses and were the basis for respondent Secretary of Justice's determination that probable cause exists to charge petitioners for trial. This Court agrees with the Court of Appeals that there was no grave abuse of discretion in this finding.

Petitioners attempt to dispute the allegations against them by presenting their own evidence. However, these are better examined in a full-blown trial. If petitioners want to raise their arguments, the most appropriate recourse would be to proceed to trial and raise their defenses. The finding of probable cause is not a pronouncement of guilt, and "a preliminary investigation does not require a full and exhaustive presentation of the parties' evidence. Precisely, there is a trial to allow the reception of evidence for both parties to substantiate their respective claims."⁵⁶

Thus, in exercising the executive department's prosecutorial discretion, respondent Secretary of Justice deemed it best to charge petitioners before the court. The Secretary of Justice did so without grave abuse of discretion. It was thus correct for the Court of Appeals to dismiss the petition for certiorari.

ACCORDINGLY, the Petition is **DENIED**. The assailed July 17, 2012 Decision and November 14, 2012 Resolution of the Court of Appeals in CA-G.R. SP. No. 113802 are **AFFIRMED**.

SO ORDERED.



MARVIC M.V.F. LEONEN

Senior Associate Justice


⁵³ Id. at 218.

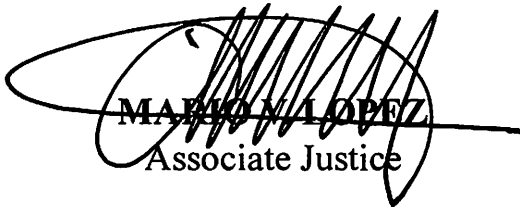
⁵⁴ Id.

⁵⁵ Id. at 218-219.

⁵⁶ Id. at 217-218.

WE CONCUR:


AMY C. LAZARO-JAVIER
Associate Justice



MARIO N. LOPEZ
Associate Justice


JHOSEPY LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

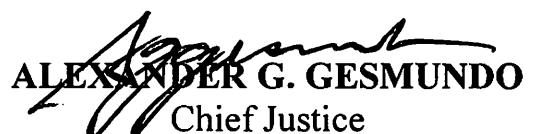
ATTESTATION

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


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice