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 Division Clerk of Court
 Third Division

JAN 16 2018

Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

PERSONAL COLLECTION G.R. No. 206958
DIRECT SELLING, INC.,
 Petitioner,

Present:

VELASCO, JR., J., *Chairperson*,
 BERSAMIN,
 LEONEN,
 MARTIRES, and
 GESMUNDO, JJ.

-versus-

TERESITA L. CARANDANG,
 Respondent.

Promulgated:
November 8, 2017

X-----*Wilfredo V. Velasco*-----X

DECISION

LEONEN, J.:

Judges must act with cautious discernment and faithfully exercise their judicial discretion when dismissing cases for lack of probable cause. An order granting the withdrawal of an information based on the prosecutor's findings of lack of probable cause must show that the judge did not rely solely on the prosecution's conclusions but had independently evaluated the evidence on record and the merits of the case.

This is a Petition for Review on Certiorari¹ under Rule 45 of the Rules of Court, assailing the November 7, 2012 Decision² and April 22, 2013

¹ *Rollo*, pp. 11-31.

² *Id.* at 33-43. The Decision was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon of the Sixth Division, Court of Appeals, Manila.

Resolution³ of the Court of Appeals in CA-G.R. SP No. 122696. The Decision dismissed Personal Collection Direct Selling, Inc.'s (Personal Collection) Petition for Certiorari,⁴ which alleged that Branch 221, Regional Trial Court, Quezon City acted with grave abuse of discretion in granting the Motion to Withdraw Information filed by the prosecutor in Criminal Case No. Q-07-148858 entitled *People of the Philippines v. Teresita L. Carandang*.⁵ Teresita L. Carandang (Carandang) was charged with committing estafa with unfaithfulness and/or abuse of confidence under Article 315 paragraph 1(b) of the Revised Penal Code.⁶ Personal Collection was the private offended party.⁷

On March 30, 2007, Personal Collection filed a Complaint-Affidavit⁸ for estafa with unfaithfulness and/or abuse of confidence against Carandang before the Office of the City Prosecutor of Quezon City. After the preliminary investigation, Assistant City Prosecutor Job M. Mangente filed an Information against Carandang before the Regional Trial Court of Quezon City:

The undersigned accuses TERESITA L. CARANDANG of the crime of ESTAFA under Art. 315 par. 1(b) of the Revised Penal Code committed as follows:

That on or about the period from July 11, 2005 up to August 30, 2006 in Quezon City, Philippines, the said accused, did then and there, willfully, unlawfully and feloniously defraud Personal Collection Direct Selling, Inc. herein represented by Marilou Palarca, in the manner as follows[:] said accused who was then an employee of said private complainant company received in trust, cash advances in the total amount of P161,902.80, Philippine currency as company expenses for various projects under the obligation to liquidate the proceeds thereof or return the same if not used, but said accused once in possession of the said amount far from complying with her obligation as aforesaid, with intent to defraud, unfaithfulness and grave abuse of confidence, failed and refused and still fail and refuse to fulfill her obligation despite repeated demands made upon her to do so and instead misapplied, misappropriated and converted the same to her own personal use and benefit, to the damage and prejudice of the said offended party in the aforesaid amount.

CONTRARY TO LAW.⁹

The case was docketed as Criminal Case No. Q-07-148858. On

³ Id. at 44–46. The Resolution was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon of the Sixth Division, Court of Appeals, Manila.

⁴ Id. at 65–109.

⁵ Id. at 65–66.

⁶ Id. at 35.

⁷ Id. at 65.

⁸ Id. at 111–113.

⁹ Id. at 35.

September 20, 2007, Presiding Judge Jocelyn A. Solis-Reyes of Branch 221, Regional Trial Court, Quezon City ordered that an arrest warrant be issued against Carandang:

After an evaluation of the Resolution and the documents attached thereto, the Court believes that a *prima facie* evidence exists to support the charge and the accused is probably guilty thereof.

WHEREFORE, let a Warrant of Arrest be issued against the accused.¹⁰

On July 10, 2009, Carandang filed a Motion for Reinvestigation,¹¹ alleging that she did not appear during the preliminary investigation because she did not receive any subpoena from the Office of the City Prosecutor. She moved for the reinvestigation of Personal Collection's complaint to not deprive her of due process.

Personal Collection filed its Opposition [To: Motion for Reinvestigation Dated 01 July 2009],¹² arguing that Carandang was not deprived of due process during the preliminary investigation and that the Regional Trial Court found that there was *prima facie* evidence to support the case. Carandang filed a Manifestation and Motion to Admit Reply (To Opposition to the Motion for Reinvestigation Dated 01 July 2009),¹³ arguing that her motion was meritorious and not filed to delay the case. The Regional Trial Court granted Carandang's Motion for Reinvestigation in its Order dated August 14, 2009.¹⁴

Carandang filed her Counter-Affidavit¹⁵ before the Office of the City Prosecutor, claiming that her failure to completely liquidate the cash advances was due to the sudden termination of her employment by Personal Collection. She also claimed that she did not receive any demand letter or any offer from Personal Collection to settle the case. Personal Collection, through its representative Marilou S. Palarca, filed its Reply-Affidavit,¹⁶ pointing out that Carandang admitted to receiving the cash advances and failing to liquidate the proceeds. It also argued that it had demanded Carandang to return the cash advances or liquidate their proceeds and that prior demand was unnecessary since she admitted that she had received these cash advances. Personal Collection also filed its Compliance,¹⁷ claiming that the cash advances to Carandang were not in the form of a

¹⁰ Id. at 159.

¹¹ Id. at 160-162.

¹² Id. at 163-168.

¹³ Id. at 169-172.

¹⁴ Id. at 17.

¹⁵ Id. at 173-175.

¹⁶ Id. at 177-179.

¹⁷ Id. at 180-191.

contract of simple loan.

On January 29, 2010, the Office of the City Prosecutor, through State Prosecutor Liezel Aquiatan-Morales (Prosecutor Aquiatan-Morales), issued a Resolution¹⁸ recommending that the complaint against Carandang be dismissed. After reinvestigation, it found that Personal Collection's cause of action is anchored primarily on Carandang's failure to liquidate her remaining cash advances.¹⁹ However, the Office of the City Prosecutor was unconvinced that Carandang's failure to return the cash advances would be sufficient to hold her liable for estafa. There would be no estafa to speak of so long as there is no demand to return the money under obligation to be returned. The element of demand not being present, the earlier finding that there was probable cause to charge Carandang with estafa was overturned. Carandang's acts could only be a subject of a civil action for sum of money.²⁰

On June 15, 2010, Prosecutor Aquiatan-Morales filed a Motion to Withdraw Information²¹ with the Regional Trial Court, stating that the Office of the City Prosecutor found that there was lack of probable cause to hold Carandang liable for estafa. Personal Collection filed its Opposition [To: Motion To Withdraw Information Dated 29 January 2010],²² arguing that demand is not an element of estafa, such that its lack would warrant the withdrawal of the Information. Carandang filed her Reply (Private Complainant's Opposition),²³ arguing that the Office of the City Prosecutor has control of the proceedings in a criminal case and that the private offended party or private prosecutor has no right to question its actions and authority.²⁴

On November 19, 2010, the Regional Trial Court issued an Order²⁵ granting the Motion to Withdraw Information. It found that Carandang used the cash advances to pay for the operational expenses of Personal Collection Iloilo City branch and that her unceremonious termination from employment prevented her from fully liquidating these cash advances.²⁶ Thus, Carandang was able to explain her failure to account for the cash advances she had received in trust. The trial court also noted the general policy of the courts to not interfere in the conduct of preliminary investigations and to give the investigating officers sufficient discretion to determine probable cause. It found that no exception existed in the case that would require the court to

¹⁸ Id. at 194–196.

¹⁹ Id. at 195.

²⁰ Id. at 196.

²¹ Id. at 192–193.

²² Id. at 200–213.

²³ Id. at 214–216.

²⁴ Id. at 215.

²⁵ Id. at 92–94.

²⁶ Id. at 93.

intervene in the findings of the preliminary investigation.²⁷ Personal Collection's Motion for Reconsideration²⁸ was denied by the Regional Trial Court in its Order²⁹ dated October 12, 2011. Upon Carandang's motion, the Regional Trial Court, in its Order³⁰ dated November 16, 2011, released the cash bond posted for Carandang's bail.

Personal Collection filed a Petition for Certiorari³¹ with the Court of Appeals, arguing that the Regional Trial Court acted with grave abuse of discretion when it issued the Orders granting the Motion to Withdraw Information and the Motion to Release Bond. It argued that the trial court failed to make its own evaluation of the merits of the case and only relied on Prosecutor Aquiatan-Morales' recommendation that there was no probable cause to charge Carandang with estafa.³² It alleged that the trial court had already found that there was probable cause to sustain the complaint in its Order dated September 20, 2007, in which a warrant of arrest was issued against Carandang.³³

Moreover, Carandang already admitted in her reply-affidavit that she had received the funds in trust but still had not liquidated the balance. Contrary to the public prosecutor's resolution, all of the elements of estafa were present.³⁴ Personal Collection also alleged that it was deprived of due process when the Regional Trial Court granted Carandang's Motion to Release Cash Bond, even though Personal Collection did not receive a copy of this motion.³⁵

On November 7, 2012, the Court of Appeals issued its Decision,³⁶ dismissing the Petition for Certiorari for lack of merit. It found that the Regional Trial Court conducted an independent assessment of the facts of the case, basing its order to withdraw the Information on the pleadings filed by the parties.³⁷ Further, the trial court's determination of probable cause for purposes of preliminary investigation was separate from the probable cause for the issuance of an arrest warrant. In issuing the warrant of arrest against Carandang, the trial court only evaluated the evidence furnished by Personal Collection.³⁸ In contrast, by the time the trial court was deciding whether to permit the withdrawal of the Information or not, Carandang had filed her counter-affidavit and subsequent pleadings.

²⁷ Id. at 93-94.

²⁸ Id. at 97-109.

²⁹ Id. at 95.

³⁰ Id. at 96.

³¹ Id. at 65-91.

³² Id. at 78.

³³ Id. at 79.

³⁴ Id. at 82.

³⁵ Id. at 87.

³⁶ Id. at 33-43.

³⁷ Id. at 39.

³⁸ Id. at 40.

The Court of Appeals also found that Personal Collection was not deprived of the opportunity to oppose Carandang's Motion to Release Cash Bond. Under Rule 110, Section 16 of the Rules of Court, the accused's bail bond shall be automatically cancelled when the accused was acquitted, the case dismissed, or the judgment of conviction executed.³⁹

Finally, the Court of Appeals pointed out that the private offended party's interest in a criminal case was limited to its civil aspect. It found that the Petition for Certiorari already involved matters beyond the civil aspect of the estafa case against Carandang. In praying for the annulment of the trial court Orders, Personal Collection was asking for the reinstatement of the criminal case, which only the State, through the Office of the Solicitor General, could do.⁴⁰

The Court of Appeals denied Personal Collection's Motion for Reconsideration⁴¹ in its Resolution dated April 22, 2013.⁴²

On June 17, 2013, Personal Collection filed its Petition for Review on Certiorari before this Court. It argues that the Regional Trial Court gravely abused its discretion when it reversed and set aside its earlier finding of probable cause, despite Carandang's express admissions, showing that all elements of the crime of estafa were present.⁴³ It claims that the trial court merely adopted the Resolution of Prosecutor Aquiatan-Morales and did not make any independent determination of probable cause.⁴⁴ Moreover, the basis of Prosecutor Aquiatan-Morales' finding that Carandang was willing to fully liquidate her cash advance was Carandang's unsubstantiated and self-serving statements.⁴⁵

As regards the grant of the motion to release cash bond, Personal Collection claims that the motion violated Rule 15, Sections 2, 5, and 6 of the Rules of Court, which require that motions be in writing, be set for hearing, and contain proof of service.⁴⁶ It points out that the trial court did not deny that Personal Collection was not given notice or an opportunity to appear in the hearing on the motion. This was tantamount to a deprivation of due process of law.⁴⁷

³⁹ Id. at 40-41.

⁴⁰ Id. at 41-42.

⁴¹ Id. at 47-64.

⁴² Id. at 44-46.

⁴³ Id. at 22.

⁴⁴ Id. at 22-23.

⁴⁵ Id. at 23.

⁴⁶ Id. at 23-24.

⁴⁷ Id. at 24.

Finally, Personal Collection argues that the Court of Appeals incorrectly ruled that a private complainant in a criminal suit may file a special civil action for certiorari only in a limited capacity.⁴⁸ It claims that the Court of Appeals erroneously relied on *Rodriguez v. Gadiane* because this case stated that there was no limitation to the capacity of a private complainant to seek judicial review of assailed orders.⁴⁹ Here, Personal Collection avers that the Regional Trial Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction. It also contends that its Petition for Review is not an appeal assailing an order dismissing the case, or acquitting the accused, or involving the merits of the case.⁵⁰ It holds that its interest in the civil aspect of the case is the basis of its standing to file its Petition for Review.⁵¹

On September 2, 2013, this Court issued a Resolution⁵² requiring Carandang to comment on the Petition for Review.

On November 5, 2013, Carandang filed her Comment,⁵³ arguing that the Regional Trial Court did not abuse its discretion in granting the Motion to Withdraw Information. She points out that the ruling of the trial court granting the withdrawal was not irregular.⁵⁴ She also argues that her Motion to Release Cash Bond was granted after notice and hearing. Finally, she claims that in criminal cases, the party in interest is the State and that the private offended party is only a witness for the State. Thus, the Petition for Review should be dismissed for lack of merit.⁵⁵

On March 17, 2014, Personal Collection filed its Reply [Re: Comment dated 04 November 2013].⁵⁶ It argues that the Regional Trial Court did not make its own independent evaluation of the evidence of the case when it granted the Motion to Withdraw Information. In merely relying on the prosecutor's recommendation, the trial court disregarded its prior finding of probable cause and failed to consider that all of the elements of estafa were present.⁵⁷ It also claims that it became aware of the Motion to Release Cash Bond only when it received the trial court October 12, 2011 Order granting this Motion.⁵⁸ On its personality to question the trial court Orders, Personal Collection argues that a private offended party may file a special civil action on jurisdictional grounds.⁵⁹

⁴⁸ Id. at 25.

⁴⁹ Id. at 26.

⁵⁰ Id. at 27.

⁵¹ Id. at 28.

⁵² Id. at 223.

⁵³ Id. at 224–226.

⁵⁴ Id. at 224.

⁵⁵ Id. at 224–225.

⁵⁶ Id. at 228–239.

⁵⁷ Id. at 229–230.

⁵⁸ Id. at 233.

⁵⁹ Id. at 233–234.

On June 2, 2014, this Court issued a Resolution⁶⁰ noting Personal Collection's reply to Carandang's comment.

The issues to be resolved by this Court are as follows:

First, whether or not the Regional Trial Court correctly allowed the withdrawal of the Information against Teresita L. Carandang upon a finding that there was a lack of probable cause;

Second, whether or not petitioner Personal Collection Direct Selling, Inc. was deprived of due process when it was allegedly not given notice or opportunity to be heard on respondent Teresita L. Carandang's Motion to Release Cash Bond; and

Finally, whether or not the Court of Appeals correctly ruled that the Petition for Certiorari was improper, since it is only the State which may pray for the reinstatement of the criminal case.

I

This Court notes that the procedural vehicle invoked by petitioner was inappropriate.

In its Petition for Certiorari before the Court of Appeals, petitioner claims that it resorted to a special civil action for certiorari as it had "no recourse to an appeal or any other plain, speedy, and adequate remedy in the ordinary course of law"⁶¹ against the trial court's orders to withdraw the Information and release respondent's bail bond.

Petitioner is incorrect. Appeal was available and was the proper remedy.

Rule 122, Section 1 of the Rules of Court states:

Section 1. *Who may appeal.* – Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy.

An order granting a motion to withdraw an information and

⁶⁰ Id. at 240.

⁶¹ Id. at 69.

dismissing a criminal case is final, and the remedy to question this final order is an appeal. In *Santos v. Orda*.⁶²

On the first issue, the petition for *certiorari* filed by respondent under Rule 65 of the Rules of Court is inappropriate. It bears stressing that the Order of the RTC, granting the motion of the prosecution to withdraw the Informations and ordering the case dismissed, is final because it disposed of the case and terminated the proceedings therein, leaving nothing to be done by the court. Thus, the proper remedy is appeal.

Respondent filed with the CA the special civil action for *certiorari* under Rule 65 of the Rules of Court instead of an ordinary appeal, not because it was the only plain, speedy, and adequate remedy available to him under the law, but, obviously, to make up for the loss of his right to an ordinary appeal. It is elementary that the special civil action of *certiorari* is not and cannot be a substitute for an appeal, where the latter remedy is available, as it was in this case. A special civil action under Rule 65 cannot cure a party's failure to timely appeal the assailed decision or resolution. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal.⁶³

Appealing the withdrawal of an information does not violate the right of the accused against being placed in double jeopardy. In *First Women's Credit Corp. v. Baybay*.⁶⁴

As to what mode of review petitioners may avail of after a court grants an accused's motion to withdraw information and/or to dismiss the case, Section 1 of Rule 122 of the 2000 Revised Rules of Criminal Procedure instructs: "Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy."

In availing of the remedy of *certiorari* before the RTC, petitioners claim that they had no plain, adequate and speedy remedy to question the MeTC's grant of the motion.

The records of the cases show, however, that the motion was granted by the MeTC before respondents were arraigned. Thus, the prohibition against appeal in case a criminal case is dismissed as the accused would be placed in double jeopardy does not apply.⁶⁵

The case cited by petitioner to support its choice of remedy before the Court of Appeals concerns the filing of a special civil action for *certiorari* to assail an interlocutory order. In *Rodriguez v. Gadiane*,⁶⁶ the order being assailed in the petition for *certiorari* was an order suspending a criminal

⁶² 634 Phil. 452 (2010) [Per J. Nachura, Third Division].

⁶³ Id. at 460.

⁶⁴ 542 Phil. 607 (2007) [Per J. Carpio-Morales, Second Division].

⁶⁵ Id. at 615-616.

⁶⁶ 527 Phil. 691 (2006) [Per J. Tinga, Third Division].

proceeding due to a prejudicial question, which was not an order which dismissed the case or acquitted the accused. If the case is dismissed or if there is an acquittal, the appeal of the criminal aspect of the case must be instituted by the Solicitor General on behalf of the State:

The Court has nonetheless recognized that if the criminal case is dismissed by the trial court or if there is an acquittal, the appeal on the criminal aspect of the case must be instituted by the Solicitor General in behalf of the State. The capability of the private complainant to question such dismissal or acquittal is limited only to the civil aspect of the case. This rule is reiterated in the Metrobank case cited by respondent. **However, it should be remembered that the order which herein petitioner seeks to assail is not one dismissing the case or acquitting respondents.** Hence, there is no limitation to the capacity of the private complainant to seek judicial review of the assailed order.⁶⁷ (Emphasis supplied, citation omitted)

Despite petitioner's claim that its petition before the Court of Appeals was not an appeal of an order dismissing the criminal case against respondent, it is evident that the grant of the Motion to Withdraw Information dismissed the criminal case. Further, in its Petition for Certiorari, petitioner assails the Regional Trial Court's findings of lack of probable cause due to the alleged insufficiency of evidence presented by respondent and because all the elements of estafa were present.⁶⁸ Thus, petitioner questions the trial court's allegedly erroneous conclusions of fact and law, which are errors of judgment that cannot be corrected by an extraordinary writ of certiorari.⁶⁹

Despite the use of an improper remedy, this Court proceeds to decide the issues to pursue judicial economy. That is, the prospective opportunity cost that may be expended by the parties and the courts far outweigh the likelihood of success of the aggrieved party. Court resources will be more efficiently expended by this Court's discussion of the merits of the case.

II

When an information is filed in court, the court acquires jurisdiction over the case and has the authority to determine, among others, whether or not the case should be dismissed.⁷⁰ The court is "the best and sole judge of what to do with the case before it."⁷¹ The dismissal of a criminal case due to lack of probable cause protects the accused from having to undergo trial

⁶⁷ Id. at 697.

⁶⁸ *Rollo*, pp. 81-86.

⁶⁹ *Toh v. Court of Appeals*, 398 Phil. 793, 802 (2000) [Per J. Gonzaga-Reyes, Third Division].

⁷⁰ *Ramos v. People*, 639 Phil. 51, 67-68 (2010) [Per J. Mendoza, Second Division].

⁷¹ *Yambot v. Armovit*, 586 Phil. 735, 738 (2008) [Per J. Nachura, Third Division], citing *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

based on insufficient evidence:

Although there is no general formula or fixed rule for the determination of probable cause since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge nor run counter to the clear dictates of reasons . . . The judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn up during trial for this would be a flagrant violation of a basic right which the courts are created to uphold. It bears repeating that the judiciary lives up to its mission by vitalizing and not denigrating constitutional rights. So it has been before. It should continue to be so.⁷² (Citations omitted)

Judges must proceed with caution in dismissing cases for lack of probable cause since the evidence before them are preliminary in nature.⁷³ When probable cause exists, the court must proceed with arraignment and trial. But should the evidence presented absolutely fail to support this finding of probable cause, the case should be dismissed. Whether it is to dismiss the case or to proceed with trial, a judge's action must not impair "the substantial rights of the accused [or] the right of the State and the offended party to due process of law."⁷⁴

*In Spouses Dimatulac v. Judge Villon:*⁷⁵

The Judge, on the other hand, "should always be imbued with a high sense of duty and responsibility in the discharge of his obligation to promptly and properly administer justice." He must view himself as a priest, for the administration of justice is akin to a religious crusade. Thus exerting the same devotion as a priest "in the performance of the most sacred ceremonies of religious liturgy," the judge must render service with impartiality commensurate with the public trust and confidence reposed in him. Although the determination of a criminal case before a judge lies within his exclusive jurisdiction and competence, his discretion is not unfettered, but rather must be exercised within reasonable confines. The judge's action must not impair the substantial rights of the accused, nor the right of the State and offended party to due process of law.

Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice, for, to the society offended

⁷² *Salonga v. Paño*, 219 Phil. 402, 428-429 (1985) [Per J. Gutierrez, Jr., En Banc].

⁷³ *Mendoza v. People*, 733 Phil. 603, 615 (2014) [Per J. Leonen, Third Division].

⁷⁴ *Judge Marcos v. Judge Cabrera-Faller*, A.M. No. RTJ-16-2472, January 24, 2017 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/RTJ-16-2472.pdf>> 12-13 [Per Curiam, En Banc].

⁷⁵ 358 Phil. 328 (1998) [Per J. Davide, Jr., First Division].

and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other.⁷⁶ (Citations omitted)

Judges must act with cautious discernment when asked to dismiss cases on the ground of the absence of probable cause to support the withdrawal or dismissal of an information. While the accused is constitutionally given a guarantee of presumption of innocence, there is also the concern for the right to due process of the prosecution. The balance in each case is not theoretical. Rather, it will be the outcome of the proper appreciation of the evidence presented and a conscientious application by the judge of the proper burdens of proof and evidence. Likewise, the trial court must consider that trial is always available after arraignment and is a forum for the accused as much as it is for the prosecution to carefully examine the merits of the case. As a general proposition, once the information is filed and a warrant is issued after a judicial determination of probable cause, subsequent technical dismissals are inequitable and should generally be avoided.

Thus, in granting or denying a motion to withdraw an information, the court must conduct a cautious and independent evaluation of the evidence of the prosecution and must be convinced that the merits of the case warrant either the dismissal or continuation of the action.⁷⁷ In *Baltazar v. People*:⁷⁸

We have likewise held that once a case has been filed with the court, it is that court, no longer the prosecution, which has full control of the case, so much so that the information may not be dismissed without its approval. Significantly, once a motion to dismiss or withdraw the information is filed, the court may grant or deny it, in the faithful exercise of judicial discretion. In doing so, the trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.⁷⁹ (Citation omitted)

However, courts are not absolutely barred from reversing a prior determination of probable cause upon the reassessment of evidence presented to it.⁸⁰ There is no grave abuse of discretion when an earlier finding of probable cause is overturned, if it can be shown that the judge

⁷⁶ Id. at 365.

⁷⁷ See *Ramos v. People*, 639 Phil. 51 (2010) [Per J. Mendoza, Second Division] and *Jose v. Suarez*, 714 Phil. 310 (2013) [Per J. Del Castillo, Second Division].

⁷⁸ 582 Phil. 275 (2008) [Per J. Chico-Nazario, Third Division].

⁷⁹ Id. at 292.

⁸⁰ *Ramos v. People*, 639 Phil. 51, 68 (2010) [Per J. Mendoza, Second Division].

arrived at the later conclusion upon an independent study of the available facts, allegations, and evidence on record.⁸¹

The order granting the withdrawal of an information must state the judge's assessment of the evidence and reasons in resolving the motion. It must clearly show why the court's earlier assessment of probable cause was erroneous. The court should not merely accept the prosecution's findings and conclusions. Its independent judicial discretion in allowing the information to be withdrawn must not only be implied but must be palpable in its order.⁸² Should the court fail to faithfully exercise its judicial discretion, the order granting the withdrawal of the information is void.⁸³ In extreme cases, arbitrary action by the trial court may lead to an administrative inquiry.⁸⁴

In *Lee v. KBC Bank N.V.*,⁸⁵ this Court stated that some of the matters that should be contained in an order granting or denying a motion to withdraw an information are:

In the present case, Judge Dumayas, in his 26 March 2003 order, did not (1) positively state that the evidence against Lee and Lim is insufficient, (2) include a discussion of the merits of the case, (3) assess whether [Department of Justice] Secretary Perez's conclusion is supported by evidence, (4) look at the basis of Secretary Perez's recommendation, (5) embody his assessment in the order, and (6) state his reasons for granting the motion to withdraw the informations.

Judge Dumayas' failure to make his own evaluation of the merits of the case violates KBC Bank's right to due process and constitutes grave abuse of discretion. Judge Dumayas' 26 March 2003 order granting the motion to withdraw the informations is void.⁸⁶ (Citation omitted)

In *Jose v. Suarez*,⁸⁷ the trial court was found to not have conducted an independent assessment of the merits of the motion to withdraw information:

When a trial court is confronted to rule on "a motion to dismiss a case or to withdraw an Information", it is its "bounden duty to assess independently the merits of the motion, and this assessment must be embodied in a written order disposing of the motion."

As aptly observed by the CA, the RTC's December 9, 2005 Order denying the Motion to Withdraw Information failed to state cogent reasons

⁸¹ See *Baltazar v. People*, 582 Phil. 275 (2008) [Per J. Chico-Nazario, Third Division].

⁸² See *Baltazar v. People*, 582 Phil. 275 (2008) [Per J. Chico-Nazario, Third Division].

⁸³ *Lee v. KBC Bank N.V.*, 624 Phil. 115, 125 (2010) [Per J. Carpio, Second Division].

⁸⁴ See *Marcas v. Judge Pinto*, 640 Phil. 1 (2010) [Per J. Peralta, Second Division].

⁸⁵ 624 Phil. 115 (2010) [Per J. Carpio, Second Division].

⁸⁶ *Id.* at 130.

⁸⁷ 714 Phil. 310 (2013) [Per J. Del Castillo, Second Division].

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behind the said court's refusal to grant withdrawal of the Information. To stress, the December 9, 2005 Order merely stated:

ORDER

Acting on the Motion to Resolve "Motion to Withdraw Information[?]" dated July 13, 2005, and finding it to be unmeritorious, the Court resolves to deny the motion.

SO ORDERED.

The RTC simply declared that it was denying the motion for being "unmeritorious," without further elaborating on the bases of its conclusion. Moreover, there is nary any reference made to the findings of the DOJ. The same holds true with respect to the Order dated February 17, 2006 which denied respondent's Motion for Reconsideration. We note that in her Motion for Reconsideration, respondent already called the trial court's attention to the findings of the DOJ that the transactions were loans thus civil in character and to this Court's ruling in *People v. Cuyugan* which allegedly has a similar factual setting as in this case. The RTC, however, gave scant consideration to these arguments. Instead, it denied the Motion for Reconsideration in its February 17, 2006 Order, viz.:

The Motion for Reconsideration of the Order of this Court dated December 9, 2005 is DENIED.

SO ORDERED.

Likewise, in its March 10, 2006 Order reiterating its denial of respondent's Motion for Reconsideration, the RTC merely stated that the 5% interest is a matter of defense. There was never any discussion as to how it reached such conclusion, or how the DOJ findings impacted on its ruling. And instead of confronting the reasons stated in the motion for the withdrawal of the Information, the RTC digressed and focused solely on what constitutes estafa involving bouncing checks. It said, "The prosecution has established that complainant gave [her] money to accused for the exchange of checks simultaneously delivered to [her] and if it were not for the delivery of the checks, complainant would not have parted with [her] money." Notably, the RTC in both Orders perfunctorily denied the motion to withdraw as it did not "(1) positively state that the evidence against [Purita is sufficient to make out a case for estafa]; (2) include a discussion [on] the merits of the case; (3) assess [if the DOJ's conclusion] is supported by evidence; (4) look at the basis of [the DOJ's] recommendation; (5) embody its assessment in the [said Orders]; and, (6) state [the] reasons in denying the motion to withdraw information." Hence, it is plain from the said Orders that the RTC failed to perform its bounden-duty to make an independent evaluation of the merits of the case. The CA did not therefore err in declaring that such failure of the RTC constitutes grave abuse of discretion amounting to excess of jurisdiction.⁸⁸ (Citations omitted)

⁸⁸ Id. at 319-321.

Conversely, in *Ramos v. People*,⁸⁹ the order granting the motion to withdraw showed that the trial court judge exercised judicial discretion in evaluating the prosecution's evidence:

On March 14, 2003, the MeTC of Quezon City, Branch 43 dismissed Criminal Case Nos. 94961-64. The trial court was convinced with the finding of the City Prosecutor, which was sustained by the DOJ, that probable cause for the falsification of commercial documents against the remaining accused, Escobal, did not exist.

The MeTC enumerated the elements of falsification of commercial documents under paragraph 6 of Article 171 of the RPC. Thus:

1. That there be an alteration (change) or intercalation (insertion) on a document;
2. That it was made on a genuine document;
3. That the alteration or intercalation has changed the meaning of the document; and
4. That the change made the document speak something false.

The MeTC ruled that the referred alterations committed by accused E. Ramos in changing the name of the indorsee of the stock certificates from that of the complainant Antonio Ramos to E.M. RAMOS & SONS, INC., could not be considered as the falsification contemplated by the law as the change did not make the document speak something false. The commercial documents subject of these cases were admittedly altered by the accused Ramos, Sr., purposely to correct the inequity brought about by the failure of petitioner Ramos to comply with what was incumbent upon him under their agreement.

....

However, in granting or denying the motion to withdraw, the court must judiciously evaluate the evidence in the hands of the prosecution. The court must itself be convinced that there is indeed no satisfactory evidence against the accused and this conclusion can only be reached after an assessment of the evidence in the possession of the prosecution. In this case, the trial court had sufficiently explained the reasons for the grant of the motion for the withdrawal of the Information. The Court agrees with the dispositions made by the trial court. Corollarily, the RTC did not err in dismissing the petition (under Rule 65) filed by petitioner challenging the ruling of the MeTC.⁹⁰ (Citations omitted)

Similarly, in *Torres, Jr. v. Spouses Torres-Aguinaldo*,⁹¹ the trial court was found to have independently considered not only the findings of the

⁸⁹ 639 Phil. 51 (2010) [Per J. Mendoza, Second Division].

⁹⁰ Id. at 61-68.

⁹¹ 500 Phil. 365 (2005) [Per J. Ynares-Santiago, First Division].

Department of Justice but also the private offended party's opposition to the motion to withdraw and the accused's comment to it:

We also find that the trial court independently assessed the merits of the motion to withdraw information. Before it was granted, respondents were allowed to submit their opposition and the petitioner to comment thereon, which were both considered. The trial judge also considered the basis of the Justice Secretary's resolution before finding that no probable cause exists, thus:

The two DOJ Resolutions absolving the accused from incipient criminal liability were premised on the ground that the herein accused had no participation in the preparation of the alleged falsified Deed of Sale dated July 29, 1979, which deed, in effect, transferred ownership of private complainant's three parcels of land located in Tanza, Cavite to the accused. This finding was based on the argument that it would be highly irregular for the accused to effect the transfer of the property through a falsified deed when accused had in his possession a valid and genuine Deed of Sale dated March 10, 1991 executed by the spouses-complainants transferring ownership of the aforesaid property to him.

The court is inclined to grant the motion of the public prosecutor.

The issues which the court has to resolve in the instant case had been amply discussed in the aforesaid resolutions of the DOJ and it is convinced that, indeed, no probable cause exists against the accused.⁹² (Citations omitted)

The trial court erroneously stated in its November 19, 2010 Order that it is the investigating officers who had sufficient discretion to determine probable cause:

It is the general policy of the Court not to interfere in the conduct of preliminary investigations, leaving the investigating officers sufficient discretion to determine probable cause, jurisprudence nonetheless made some exceptions to the general rule . . .

. . . .

In the instant case however, no such exception exists. Thus, the Court is of the view that the finding of the prosecution must be given weight.⁹³

⁹² Id. at 380-381.

⁹³ *Relle*, pp. 93-94.



However, the trial court rendered a more satisfactory justification. A reading of the Order shows that the trial court made its own assessment of the prosecution's evidence as embodied in its January 29, 2010 Resolution. It sufficiently explained how the elements of estafa were not met based on the additional evidence presented by the accused at the reinvestigation before the Office of the City Prosecutor. The trial court also considered the opposition filed by petitioner to the Motion to Withdraw Information, giving even the private offended party the opportunity to be heard:

This resolves the Motion to Withdraw Information filed by the Public Prosecutor praying that the Information for estafa under Article 315 par. 1 (b) filed against herein accused be withdrawn and the case against her be dismissed accordingly.

The Motion is based on the Resolution dated January 29, 2010 finding no probable cause to indict accused for estafa after a reinvestigation was conducted on the ground of lack of demand.

The Motion is being opposed by the private complainant Personal Collection Direct Selling, Inc., through counsel which claims that demand is not an element of the felony or a condition precedent to the filing of a criminal complaint for estafa. Instead, it is the appropriation or conversion of money received to the prejudice of the owner thereof that is the sole essential fact which constitutes the crime of estafa.

....

After a consideration of the respective allegations of both parties, the Court finds [that] the Motion [is] impressed with merit.

Estafa is a crime committed by a person who defrauds another causing him to suffer damages, by means of unfaithfulness or abuse of confidence, or of false pretenses of fraudulent acts. From the foregoing, the elements of estafa are, as follows: (1) that the accused defrauded another by abuse of confidence or deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third party, and it is essential that there be a fiduciary relation between them either in the form of a trust, commission or administration (*Carmen Liwanag vs. CA, G.R. No. 114398, October 24, 1997*). Demand is not an element of the felony or a condition precedent to the filing of a criminal complaint for estafa. Indeed, the accused may be convicted of the felony under Article 315, par. 1 (b) of the Revised Penal Code if the prosecution proved misappropriation or conversion by the accused of the money or subject of the Information. In a prosecution for estafa, demand is not necessary where there is evidence of misappropriation or conversion. However, failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation (*Lee v. People, G.R. No. 157781, April 11, 2005*).

While it is true that herein accused failed to fully liquidate the cash advance received in trust from the private complainant, regardless of whether or not a demand was made upon the former, is only a circumstantial evidence of misappropriation which can be rebutted. As found by the prosecution, the accused was able to satisfactorily explain her failure to account or liquidate the cash advance received in trust, as



follows: (1) that accused utilized the cash advance given to her but the same was used to defray the operational expenses of private complainant's branch in Iloilo City as evidenced by the Cash Advance Summary as of November 23, 2006 prepared by Marilou S. Palarca, private complainant's representative; (2) that accused was willing to fully liquidate her cash advances as in fact she was able to make partial liquidation and that her unceremonious termination of her employment with the private complainant prevented her from doing so.⁹⁴

The trial court did not gravely abuse its discretion when it reversed its earlier finding of probable cause. The earlier finding was about the issuance of the arrest warrant, in which the trial court evaluated the prosecutor's Resolution and its attached documents. Following this, respondent prayed for the reinvestigation of the case as she was unable to attend the initial preliminary investigation. It was during the reinvestigation before the Office of the City Prosecutor that respondent was able to present her defense against the allegations in the complaint.

Clearly, the additional evidence adduced prompted the prosecutor's reversal of its initial finding of probable cause and the filing of the motion to withdraw information. It was also this additional evidence that formed the basis of the trial court's evaluation that there was now a lack of probable cause sufficient to withdraw the information.

There being insufficient evidence showing that the trial court erred in finding a lack of probable cause, the grant of the withdrawal of the information must be upheld.

III

Rule 114, Section 22 of the Rules of Court provides the guidelines for the cancellation of bail:

Section 22. *Cancellation of bail.* -- Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.

The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction.

In all instances, the cancellation shall be without prejudice to any liability on the bail.

⁹⁴ Id. at 92-93.

Among the instances when bail is deemed automatically cancelled is when the case is dismissed.⁹⁵ Since cancellation of bail is automatic upon the dismissal of the case, no notice or hearing is even necessary, as the cancellation takes place when any of the three (3) enumerated instances takes place.

The release of the amount posted as bail is a separate matter. When the cash bond is made to answer for any fines or costs, the automatic cancellation is not succeeded by the immediate release of the cash bond.⁹⁶

In this case, the dismissal of the case due to the withdrawal of the information resulted in the automatic cancellation of respondent's bail. Further, the trial court November 16, 2011 Order does not state that there is any need for the deposit to be applied to any fines or costs:

ORDER

Acting on the accused's Motion to Release Cash Bond, there being no objection from the prosecution and it appearing from the records that the Information in this case was considered withdrawn under Order dated November 19, 2010, the Motion is hereby GRANTED.

WHEREFORE, the cash bond posted for the provisional liberty of the accused under OR No. 038430 dated June 30, 2009 is hereby ordered release.

The Clerk of Court VI, Office of the Clerk of Court, RTC, Quezon City is ordered to withdraw the amount covered by OR No. 0348430 from the judiciary fund and delivered the same to the accused or to her duly authorized representative.

SO ORDERED.⁹⁷

The trial court correctly granted the release of respondent's cash bond.

Petitioner's right to due process was not violated when it was not given notice or an opportunity to be heard on the Motion to Release Cash Bond. No notice or hearing was necessary, since the bail was automatically cancelled upon the dismissal of the case. Petitioner's hypothetical objections to the Motion to Release Cash Bond would have been superfluous

⁹⁵ See *Cruz v. People*, G.R. No. 224974, July 3, 2017 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/224974.pdf>> [Per J. Leonen, Second Division].

⁹⁶ Id. See RULES OF COURT, Rule 114, sec. 14, which states in part: Section 14. Deposit of cash as bail. -

The money deposited shall be considered as bail and applied to the payment of fine and costs while the excess, if any, shall be returned to the accused or to whoever made the deposit.

⁹⁷ *Rollo*, p. 96.

and unnecessary since the release of the cash bond to respondent was already warranted under the Rules of Court.

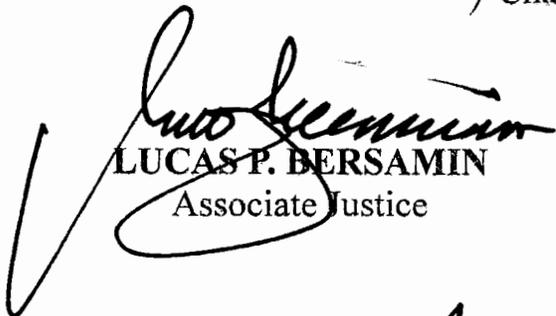
WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Decision dated November 7, 2012 and Resolution dated April 22, 2013 of the Court of Appeals in CA-G.R. SP No. 122696 are **AFFIRMED**.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

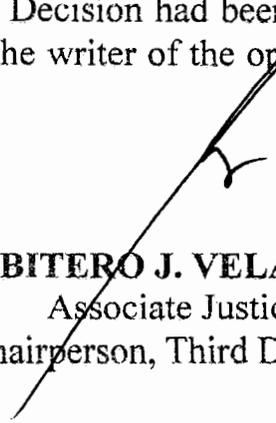

LUCAS P. BERSAMIN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice


ALEXANDER G. GESMUNDO
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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

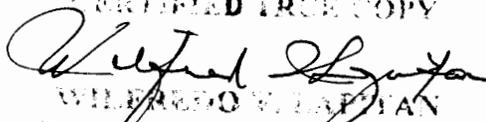
CERTIFICATION

Pursuant to Section 13, Article VIII 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.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY



WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JAN 16 2018