



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

RAMON H. DEBUQUE,
Petitioner,

G.R. No. 191718

Present:

- versus -

LEONEN, *J.*,
Chairperson,
HERNANDO,
LOPEZ, M. V., *
DELOS SANTOS, and
LOPEZ, J. Y., *JJ.*

MATT C. NILSON,
Respondent.

Promulgated:
May 10, 2021

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DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*¹ assails the June 30, 2009 Decision² and March 23, 2010 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 100625, which reversed the August 23, 2007 Resolution⁴ of the Secretary of the Department of Justice (DOJ), and reinstated the May 10, 2006 Joint Resolution of the City Prosecutor of Quezon City in I.S. Nos. 05-5856, 05-10313, and 05-7951.⁵

* Designated as additional member per raffle dated February 23, 2021 vice *J. Inting* who recused himself due to prior action in the trial court.

¹ *Rollo*, pp. 13-38. Filed on May 17, 2010. Petitioner subsequently filed an *Addendum* on the same day to correct typographical oversight in the Petition (*Rollo*, pp. 8-11).

² *Id.* at 41-61. Penned by Associate Justice Martin S. Villarama (now a retired Member of this Court) and concurred in by then Associate Justice Jose C. Reyes, Jr. (now a retired Member of this Court) and Associate Justice Normandie B. Pizarro.

³ *Id.* at 77-78. *Id.*

⁴ *Id.* at 115-120.

⁵ *Id.* at 214-220.

The said Joint Resolution found probable cause for the crime of Syndicated Estafa under Article 315(2)(a) of the Revised Penal Code⁶ (RPC), as amended, in relation to Presidential Decree No. 1689⁷ (PD 1689) against petitioner Ramon H. Debuque (Ramon) and other individuals not included as parties in this Petition, namely: Atty. Ignacio D. Debuque, Jr. (Atty. Debuque), Margarita H. Debuque (Margarita), Antonio H. Debuque (Antonio), Manuel Litonjua Yap (Manuel), and Luz Litonjua Yap (Luz) (collectively, the accused). The August 23, 2007 Resolution of the DOJ Secretary reversed the Joint Resolution of the City Prosecutor and ordered the filing of an Information for Estafa under Article 315(2)(a) of the RPC only against Atty. Debuque.

The Factual Antecedents:

This case arose from a Complaint-Affidavit for Syndicated Estafa filed by respondent Matt C. Nilson (Nilson) before the Office of the City Prosecutor of Quezon City against Ramon and the other accused. The criminal case was docketed as I.S. No. 05-5856.⁸

Nilson alleged that in the early 1990s, while he was the Managing Director of Tongsat,⁹ he met Atty. Debuque, who was then the Chairman of Domestic Satellite Philippines, Inc. (DOMSAT).¹⁰ They developed a professional relationship and eventually became friends.¹¹ Subsequently, Atty. Debuque was able to borrow sizable funds from Nilson numerous times.¹²

Atty. Debuque, who was also acting on behalf of the other accused, invited Nilson to join them in a business venture, which the former alleged would yield large profits.¹³ He promised Nilson shares of stock in Investa Land Corporation (ILC), a corporation then to be formed, equivalent to the value of the numerous personal loans extended to him by Nilson.¹⁴

Atty. Debuque also induced Nilson to purchase various commercial lots in partnership with him, stating that the value of the lands will rise exponentially, and that these will be transferred in the name of ILC.¹⁵ Consequently, on two occasions, Nilson paid Atty. Debuque sums of money

⁶ Act No. 3815, An Act Revising the Penal Code and Other Penal Laws [THE REVISED PENAL CODE] (1930).

⁷ Presidential Decree No. 1689, Increasing the Penalty for Certain Forms of Swindling or Estafa (1980).

⁸ *Rollo*, p. 42.

⁹ No other information was provided about this entity.

¹⁰ *Rollo*, p. 42.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

as his share in the purchase price of commercial lots located in General Santos City - ₱6 million on September 20, 1997, and ₱3 million on November 19, 1997.¹⁶

Nilson, however, thereafter claimed that the lots were not commercial lands and were represented as such to induce him to pay a higher price. Atty. Debuque then pledged TCT No. 203836 in exchange for the release of the ₱3 million. The Land Registration Authority, however, reported that the said title was questionable.¹⁷ Also, Nilson's wife, Racquel, lent Atty. Debuque sums of money in exchange for ILC shares of stock, secured by TCT No. 291035.¹⁸ Nilson further contributed ₱8 million as initial operational funds of ILC.¹⁹ In turn, Atty. Debuque promised to give Nilson ILC shares of stock in the total amount of ₱76 million.²⁰

Hence the filing of a Complaint-Affidavit for Syndicated Estafa against Atty. Debuque, Ramon, and the other accused. Nilson alleged that they neither gave him the promised ILC shares of stock nor returned the funds that he contributed to the venture.²¹

In response, Atty. Debuque and the other accused filed counter-charges for Falsification and Perjury against Nilson.²²

In their Joint Counter-Affidavit in the Syndicated Estafa charge (instant case), Atty. Debuque and the other accused denied the charges against them and alleged the following: (a) PD 1689 is not applicable because ILC is a closed corporation; (b) they filed a complaint for declaratory relief against Nilson and the issue raised therein presents a prejudicial question in the instant criminal case; (c) the mere act of disbursing the corporate funds by Atty. Debuque does not *ipso facto* mean that these were mishandled; (d) the charge is in the nature of an intra-corporate dispute; and (e) ILC is not bankrupt as it has numerous properties assigned to it.²³

Joint Resolution of the City Prosecutor:

In a May 10, 2006 Joint Resolution,²⁴ Assistant City Prosecutor Florante R. Ramolete found probable cause to charge Atty. Debuque and the other

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 42-43.

¹⁹ Id. at 43.

²⁰ Id.

²¹ Id.

²² Id. at 44.

²³ Id.

²⁴ Id. at 214-221.

accused with Syndicated Estafa in relation to PD 1689. He also dismissed the counter-charges of Falsification and Perjury against Nilson.

The public prosecutor found that no properties were contributed to ILC in exchange for shares of stock.²⁵ Further, no certificates of stock of ILC were issued or delivered to Nilson, contrary to what was promised.²⁶ The Securities and Exchange Commission revoked ILC's certificate of registration leaving Nilson without recourse against it regarding his purported investments in the form of loans to Atty. Debuque.²⁷ Nilson's money was never returned given that there was no issuance of shares of stock in his name.²⁸ The prosecutor also found that the other accused were shareholders or officers of ILC or Investa Holdings Corporation (a related corporation), thereby warranting the finding of probable cause for Syndicated Estafa.²⁹ The Joint Resolution was approved by City Prosecutor Claro A. Arellano.

The dispositive portion of the Joint Resolution reads:

WHEREFORE, premises considered, it is respectfully recommended that Atty. Ignacio D. Debuque, Jr. and his co-respondents be indicted of the crime of **Syndicated Estafa in relation to P.D. 1689**. However, the counter-charge of Perjury and Falsification of [P]ublic Documents in I.S. Nos. 05-10313 and 05-7951 are hereby recommended dismissed for lack of factual and legal basis.

Bail is so stated in the Information.³⁰

Aggrieved, Atty. Debuque and the other accused elevated the finding to the DOJ Secretary.

Meanwhile, on May 19, 2006, an Information for Syndicated Estafa was filed before the Regional Trial Court (RTC) of Quezon City, Branch 105 against Ramon, Atty. Debuque, and the other accused, docketed as Criminal Case No. Q-06-141941.³¹

²⁵ Id. at 216.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id. at 218-219.

³⁰ Id. at 220. Emphasis supplied.

³¹ *Records*, vol. I, pp. 1-2. The Information reads:

That during the period comprised from March 1996 to July 1998, in Quezon City, Philippines, the said accused with intent to defraud, by means of false pretenses, fraudulent acts and means executed prior to or simultaneously with the commission of the fraud, conspiring[,] and confederating together and mutually helping one another, did then and there[,] willfully, unlawfully[,] and feloniously defraud complainant MATT C. NILSON, in the following manner[,] to wit: accused represented to the complainant, that accused together with some investors are in the process of incorporating a corporation, INVESTA LAND CORPORATION (ILC, in short), for the purpose of engaging in Land Banking Business or real estate venture which is an extremely profitable business; that accused have been soliciting money or investment from the general public to make investment with ILC; that in exchange with the

Resolutions of the Secretary of the Department of Justice:

In a March 12, 2007 Resolution,³² then DOJ Secretary Raul M. Gonzalez reversed and set aside the Joint Resolution of the City Prosecutor of Quezon City. He ordered the withdrawal of the Information for Syndicated Estafa and directed the filing of a new one for Estafa under Article 315 (2)(a) of the RPC but only against Atty. Debuque.

The Secretary of Justice ruled that all the elements of Estafa under Article 315 (2)(a) of the RPC were present, namely: (a) Atty. Debuque made false pretenses regarding the issuance of certificates of shares of stock in exchange for the loans extended by Nilson; (b) the false pretenses were made prior to or simultaneously with the commission of fraud; (c) Nilson relied on Atty. Debuque's false pretenses and was induced to part with his money or property; and, (d) Nilson suffered damage when Atty. Debuque failed to issue the promised shares of stock despite repeated demands.³³

Further, the DOJ Secretary did not find any evidence implicating the other accused for Syndicated Estafa.³⁴ There was no evidence showing that Atty. Debuque was authorized by the other shareholders of the corporation to transact with Nilson.³⁵ The other accused were in fact strangers to the agreements between Atty. Debuque and Nilson.³⁶ Likewise, conspiracy among Atty. Debuque and the other accused in the perpetuation of fraud was not proved.³⁷

investment, the investor will automatically become a stockholder of ILC and that ILC will issue to the investor a shares of stock [sic] equivalent to his investment, that the shares of stock will earn interest or profit which profit shall also be converted into shares of stock of ILC; that accused solicited and induced complainant to make an investment; that because of the assurances and promises of the accused that complainant's investment will be profitable, complainant was induced to invest with ILC the aggregate amount of 565,765.00 US Dollars (28,288,250.00 in Philippine Currency) relying on the promises and assurances of accused; that accused knew fully well that their representations were false and fraudulent and were made by them with evident bad faith from the very beginning to induce complainant to give money to ILC; that once accused obtained the money from the complainant, they misappropriated the same for their own personal use and benefit, to the damage and prejudice of the complainant in the amount above-mentioned.

The crime is committed by a syndicate consisting of six (6) persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise[,] or scheme.

CONTRARY TO LAW.

³² *Rollo*, pp. 127-134.

³³ *Id.* at 130-131.

³⁴ *Id.* at 131.

³⁵ *Id.* at 132.

³⁶ *Id.*

³⁷ *Id.*

The dispositive portion of the March 12, 2007 Resolution reads:

WHEREFORE, based on the foregoing premises, the assailed resolution of the City Prosecutor of Quezon City is hereby REVERSED and SET ASIDE. The City Prosecutor is hereby directed to **withdraw the information for Syndicated Estafa and instead file a new information for Estafa under Article 315 (2)(a) against Atty. Ignacio Debuque, Jr.** Further, the City Prosecutor is hereby directed to report the action taken within ten (10) days from receipt hereof.

SO ORDERED.³⁸ (Underscoring and emphasis supplied)

Nilson filed a Motion for Reconsideration claiming that the other accused participated and ratified Atty. Debuque's scheme to defraud him.³⁹

In his June 25, 2007 Resolution,⁴⁰ the DOJ Secretary reversed his previous Resolution and reinstated the Joint Resolution of the City Prosecutor in finding probable cause for Syndicated Estafa against Atty. Debuque and the other accused.

The DOJ Secretary found that the other accused are likewise liable for the following reasons: (a) they joined Atty. Debuque in incorporating ILC; (b) they were the controlling stockholders and officers of ILC, therefore privy to the matters relating to it, including Atty. Debuque's scheme; (c) despite being aware that the amounts Nilson paid (as his share for the purchase of properties and as his contribution for ILC's operational funds) were made in exchange for ILC shares of stock, they refused to issue the same; and, (d) they actively participated in delaying the resolution of Nilson's criminal complaint against Atty. Debuque by filing a complaint for declaratory relief.⁴¹ Ramon, Antonio, Margarita, and Manuel, among the accused, collectively owned 75% of ILC's shareholdings; hence, they could have overruled Atty. Debuque and issued ILC shares of stock to Nilson or even returned the latter's investments.⁴² The DOJ Secretary reasoned that by their inaction despite their majority shareholdings, it was evident that they intended to avail of the fruits of Atty. Debuque's fraudulent schemes.⁴³

The dispositive portion of the June 25, 2007 Resolution reads:

WHEREFORE, premises considered, the motion for reconsideration is hereby GRANTED and our Resolution promulgated on 12 March 2007 is

³⁸ Id. at 133.

³⁹ Id. at 123.

⁴⁰ Id. at 121-125.

⁴¹ Id. at 123-124.

⁴² Id. at 124.

⁴³ Id.

REVERSED and SET ASIDE. Accordingly, the appealed resolution of the City Prosecutor of Quezon City is hereby **REINSTATED** and he is further directed to report the action taken thereon within ten (10) days from receipt hereof.

SO ORDERED.⁴⁴ (Underscoring and emphasis supplied)

The accused filed a Motion for Reconsideration claiming that they did not participate and were indeed ignorant of the transactions between Atty. Debuque and Nilson.⁴⁵

In an August 23, 2007 Resolution,⁴⁶ the DOJ Secretary again reversed his last Resolution and reverted to his first disposition that only Atty. Debuque was to be held liable for Estafa. He ruled that there were no allegations showing that Nilson met and discussed with the other accused, apart from Atty. Debuque, regarding the transactions.⁴⁷ There were also no allegations showing that they made misrepresentations nor committed fraudulent acts concerning the transactions.⁴⁸ Nilson sent demand letters only to Atty. Debuque, and not to the other accused.⁴⁹

While it is true that the other accused were stockholders of ILC, the DOJ Secretary ruled that such fact alone was insufficient to prove that they participated in the fraudulent schemes.⁵⁰ To indict them, conspiracy among them must be shown, which was absent in this instance.⁵¹ There was also no proof that the other accused authorized Atty. Debuque to act on their behalf.⁵² Further, the other accused were not signatories or even witnesses to the agreements between Atty. Debuque and Nilson.⁵³

The dispositive portion of the August 23, 2007 Resolution reads:

WHEREFORE, premises considered, the motion for reconsideration is hereby GRANTED and our Resolution promulgated on 25 June 2007 is REVERSED and SET ASIDE. Accordingly, the City Prosecutor of Quezon City is hereby directed to **withdraw the information for Syndicated Estafa against respondents Atty. Ignacio Debuque, Jr., Ramon H. Debuque, Antonio H. Debuque, Margarita H. Debuque, Manuel Litonjua Yap, Jr., and Luz Litonjua Yap** and instead **file a new information for Estafa under Article 315 (2) (a) against Atty. Ignacio Debuque, Jr.** and he is likewise directed to report action taken within ten (10) days from receipt hereof.

⁴⁴ Id. at 125.

⁴⁵ Id. at 115.

⁴⁶ Id. at 115-120.

⁴⁷ Id. at 118.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ Id.

SO ORDERED.⁵⁴ (Underscoring and emphasis supplied)

Aggrieved, Nilson filed a Petition for Review under Rule 43 of the Rules of Court before the CA assailing the August 23, 2007 Resolution of the DOJ Secretary.

Ruling of the Court of Appeals:

The CA treated Nilson's petition as a Petition for *Certiorari* under Rule 65 considering that there was an allegation of grave abuse of discretion on the part of the DOJ Secretary in issuing his August 23, 2007 Resolution.⁵⁵

In its assailed June 30, 2009 Decision,⁵⁶ the appellate court reversed the last Resolution of the DOJ Secretary and reinstated the Joint Resolution of the City Prosecutor finding probable cause for Syndicated Estafa against all accused.

The CA ruled that conspiracy may be implied from the fact that Ramon and the other accused were all relatives of Atty. Debuque, and were incorporators, officers, and stockholders of ILC.⁵⁷ According to the CA, these circumstances make them privy to Atty. Debuque's activities.⁵⁸

The appellate court also found that they indeed participated and ratified the agreements between Atty. Debuque and Nilson even prior to the incorporation of ILC by virtue of their being signatories to the subsequent contracts on the settlement and assignments of real properties.⁵⁹ The other accused did not deny their participation in the purchase of real properties using the funds contributed by Nilson.⁶⁰ They did not explain why the promised shares of stock were not issued to Nilson despite the latter's investments.⁶¹

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The assailed Resolution dated August 23, 2007 in I.S. No. 05-5856 of respondent Secretary of Justice is hereby REVERSED and SET ASIDE. The Joint Resolution dated May 10, 2006 of the City Prosecutor of Quezon City finding

⁵⁴ Id. at 120.

⁵⁵ Id. at 54.

⁵⁶ Id. at 41-61.

⁵⁷ Id. at 58.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

probable cause against the private respondents for the crime of **Syndicated Estafa under Art. 315, par. 2 (a) of the Revised Penal Code, as amended, in relation to P.D. No. 1689 is hereby REINSTATED.**

No pronouncement as to costs.

SO ORDERED.⁶² (Underscoring and emphasis supplied)

Only Ramon moved for a reconsideration of the CA Decision, but it was subsequently denied by the appellate court in a Resolution dated March 23, 2010.⁶³

Still aggrieved, Ramon by himself elevated the case to this Court.

Contentions of the Petitioner:

In his Petition, Ramon alleges that the CA erred in giving due course to Nilson's Petition for Review under Rule 43 and in treating it as a Petition for *Certiorari* under Rule 65.⁶⁴ He further alleges that the elements of Syndicated Estafa are not present, making the CA's finding of probable cause erroneous.⁶⁵ He insists that he has absolutely no participation in the transactions between Atty. Debuque and Nilson.⁶⁶ These transactions occurred long before the incorporation of ILC, which he became a part of.⁶⁷ Ramon prays that the August 23, 2007 Resolution of the DOJ Secretary, finding probable cause of Estafa only against Atty. Debuque, be reinstated.⁶⁸

In his Reply,⁶⁹ Ramon alleges that Nilson failed to exhaust administrative remedies as the DOJ Secretary's Resolution should have been appealed to the Office of the President instead of the CA.⁷⁰ Ramon insists that there was no probable cause for Syndicated Estafa since the loans that were extended prior to the incorporation of ILC were the personal liabilities of Atty. Debuque,⁷¹ and not in the form of investments in ILC.⁷² Further, he claims that he and Nilson were strangers; they never met nor previously dealt with each other.⁷³

⁶² Id. at 61.

⁶³ Id. at 77-78.

⁶⁴ Id. at 28-31.

⁶⁵ Id. at 32-34.

⁶⁶ Id. at 33.

⁶⁷ Id.

⁶⁸ Id. at 35.

⁶⁹ Id. at 577-594.

⁷⁰ Id. at 581-582.

⁷¹ Id. at 583-584, 588-593.

⁷² Id. at 584-585, 588-593.

⁷³ Id. at 585-587.

Arguments of the Respondent:

Nilson, in his Comment,⁷⁴ avers that the CA correctly treated his Petition for Review as a Petition for *Certiorari* given that there were allegations of grave abuse of discretion on the part of the DOJ Secretary.⁷⁵ Further, he contends that there was overwhelming evidence showing that Ramon conspired with Atty. Debuque and the other accused in committing fraudulent acts against him.⁷⁶ Numerous documents and agreements showed their intent (including Ramon's) to cause prejudice and damage to Nilson by abusing his trust and respect.⁷⁷ Nilson prays that the CA Decision be affirmed, thereby indicting Ramon and the other accused for Syndicated Estafa.⁷⁸

Ramon filed a Rejoinder⁷⁹ reiterating his allegations in his Reply.

On October 4, 2013, Ramon filed a manifestation stating that the RTC, in an Order⁸⁰ dated February 22, 2013, dismissed Criminal Case No. Q-06-141941 against him, Margarita, and Luz pursuant to a demurrer to evidence.⁸¹

The RTC ruled that the prosecution failed to prove beyond reasonable doubt the participation and culpability of Ramon, Margarita, and Luz.⁸² The RTC ordered: (a) the dismissal of the criminal case against Ramon, Margarita, and Luz for failure of the prosecution to establish guilt pursuant to a demurrer to evidence; (b) the dismissal of the criminal case against Atty. Debuque due to his death; and, (c) the archival of the criminal case against Antonio and Manuel, who are still at large.⁸³

⁷⁴ Id. at 230-252.

⁷⁵ Id. at 239-247.

⁷⁶ Id. at 247-250.

⁷⁷ Id.

⁷⁸ Id. at 250.

⁷⁹ Id. at 598-607.

⁸⁰ Id. at 629-636; penned by Presiding Judge Rosa M. Samson.

⁸¹ Id. at 614-616.

⁸² Id. at 633-636.

⁸³ Id. The dispositive portion of the RTC Order states:

WHEREFORE, premises considered, the Motion to Dismiss on a Demurrer to Evidence filed by accused Ramon Debuque, Margarita Debuque, and Luz Yap are hereby granted and the case against them is now ordered DISMISSED.

With respect to the principal accused Atty. Ignacio Debuque who already passed away, his criminal liability is deemed extinguished, hence, the case against him is likewise ordered DISMISSED.

The case against the two other accused, Antonio Debuque and Manuel Litonjua, Jr., who are still at large, is ordered ARCHIVED.

Accordingly, the hearing set on May 28[,] 2013 is cancelled. Let a copy of this Order be furnished the above-named accused and their respective counsel, the Public Prosecutor, and the counsel for the private complainant.

After the denial by the RTC of his partial motion for reconsideration of the February 22, 2013 Order, Nilson filed a notice of appeal. This Court directed Nilson to inform the Court as to the status of his appeal regarding the criminal case.⁸⁴ The RTC, by way of compliance to Our July 2, 2020 Resolution requiring it to inform the court of the status of the appeal in Crim. Case No. Q-06-141941, furnished Us a copy of the Decision of the CA in CA-G.R. CV No. 101914.⁸⁵ The CA affirmed the February 22, 2013 and July 22, 2013 Orders of the RTC and denied the prosecution's appeal and upheld the dismissal of the criminal case against the accused including Ramon.⁸⁶

Issue

Whether or not there was probable cause to indict Ramon for the crime of Syndicated Estafa under Article 315(2)(a) of the RPC, as amended, in relation to PD 1689.

Our Ruling

The circumstances of the instant case are quite distinct: the appeal with respect to the finding of probable cause has yet to be resolved, however, the merits of the case has already been decided by the trial court resulting to an acquittal. It is well settled that "the prosecution cannot appeal from a ruling granting the demurrer to evidence of the accused as it is equivalent to an acquittal, unless the prosecution can sufficiently prove that the court's action is attended with grave abuse of discretion."⁸⁷ And as mentioned, the CA has already affirmed the RTC's dismissal of the criminal case.

In any case, We find the instant case already moot and academic. In *Crespo v. Mogul*⁸⁸ (*Crespo*), We ruled that once the information has been filed before the courts, the dismissal, conviction, or acquittal of the accused rests on their sound discretion; they are not bound by any change in the opinion of the prosecutor or his superior regarding probable cause.⁸⁹ The courts should not blindly follow the resolutions issued by the DOJ and should determine on their own whether there is probable cause to hold the accused for trial.⁹⁰

SO ORDERED.

⁸⁴ *Rollo*, at 640, 647-655.

⁸⁵ Temporary *rollo*, unpaginated.

⁸⁶ *Id.*

⁸⁷ *People v. Sandiganbayan*, 637 Phil 147, 152 (2010).

⁸⁸ 235 Phil 465 (1987).

⁸⁹ *Id.* at 476.

⁹⁰ *Summerville General Merchandising & Co., Inc. v. Eugenio*, 556 Phil 121, 127 (2007).

Further, in *De Lima v. Reyes*⁹¹ (*De Lima*), We reiterated *Crespo* and stated that “once the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused’s guilt or innocence rests within the sound discretion of the court.”⁹² The trial court thus has the prerogative on whether to continue the criminal proceedings or not, notwithstanding the prosecution’s filing of a motion to dismiss or to withdraw the information. It is not bound to adopt the prosecution’s findings, and it can deny the motion and continue with the proceedings.

And as we have held in *De Lima*, a petition for *certiorari* filed to assail the executive determination of probable cause (and the subsequent appeal therefrom) becomes moot once an information has been filed before the court and a warrant of arrest has been issued;⁹³ more so if the trial court has already ruled on the merits of the criminal case.

In the instant case, the RTC and the CA have already ruled on the merits of the criminal case that resulted to Ramon’s acquittal. Following *Crespo* and *De Lima*, the Petition for *Certiorari* filed before the CA to assail the latest Resolution of the DOJ Secretary has become moot. It follows then that this Petition for Review on *Certiorari* before Us to assail that CA Decision (on probable cause) has also become moot; hence, it is only proper that it be dismissed.

If We were to uphold the assailed CA Decision and sustain the finding of probable cause against Ramon for the crime of Syndicated Estafa, the fact remains that the RTC had already dismissed the case as against him based on a demurrer to evidence, which effectively amounted to an acquittal. On the other hand, if We were to reverse the CA Decision and reinstate the August 23, 2007 Resolution of the DOJ Secretary, an information for Estafa may only be filed against Atty. Debuque to the exclusion of Ramon. And since Atty. Debuque has already passed away, thereby extinguishing his criminal liability, a new information then may not be filed.

Considering the foregoing, We could have ended here our disquisition on the case. Nonetheless, We deem it necessary to rule on the merits if only to lay to rest the conflicting resolutions of the Secretary of Justice and more importantly, determine the liability, if any, of petitioner Ramon. This is only fair considering the length of time this case has been pending before Us.

⁹¹ 776 Phil 623 (2016)

⁹² Id. at 649-651.

⁹³ Id. at 652-653.

We find that the CA erred in finding that the DOJ Secretary committed grave abuse of discretion in issuing the August 23, 2007 Resolution. The DOJ Secretary correctly found no probable cause to indict the accused for the crime of Syndicated Estafa under Article 315(2)(a) of the RPC, as amended, in relation to PD 1689. The DOJ Secretary was correct in resolving that only Atty. Debuque should be held liable for Estafa.

The DOJ's Department Circular No. 70 dated July 3, 2000,⁹⁴ otherwise known as the 2000 NPS Rules on Appeal, governs the appeals process in the National Prosecution Service. It provides that the resolutions of the Chief State Prosecutor, Regional State Prosecutors, Provincial Prosecutors, and City Prosecutors may be appealed to the DOJ Secretary by filing a verified petition for review.⁹⁵ The DOJ subsequently issued numerous department circulars on the delegation of authority to resolve appealed cases. Nonetheless, it remains that the DOJ Secretary may directly act on such petitions, or review the resolutions of the officers exercising the delegated power.

*Forietrans Manufacturing Corp. v. Davidoff Et. Cie SA*⁹⁶ (*Forietrans*) discusses the nature of probable cause in filing a criminal information, to wit:

Probable cause, for purposes of filing a criminal action, is 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. It does not require an inquiry into whether there is sufficient evidence to procure conviction. Only prima facie evidence is required or that which is, on its face, good and sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense; and which, if not rebutted or contradicted, will remain sufficient.⁹⁷ (Citations omitted)

Probable cause, for the purpose of filing a criminal information, does not require absolute certainty or guilt beyond reasonable doubt. A well-founded belief that a crime was committed and that the individual charged is probably guilty of committing the crime suffices. The merits of the parties' respective accusations and defenses and admissibility of testimonies and defenses are better ventilated in the trial proper before the courts than during the preliminary investigation level.⁹⁸

Forietrans further explains that the determination of probable cause is essentially executive in nature, though reviewable by the courts if the determination is tainted with grave abuse of discretion:

⁹⁴ Department of Justice, Department Circular No. 70, 2000 NPS Rules on Appeal, July 3, 2000.

⁹⁵ Id. Sections 1 & 2.

⁹⁶ 806 Phil 704 (2017).

⁹⁷ Id. at 716.

⁹⁸ Id. at 721.

The task of determining probable cause is lodged with the public prosecutor and ultimately, the Secretary of Justice. Under the doctrine of separation of powers, courts have no right to directly decide matters over which full discretionary authority has been delegated to the Executive Branch of the Government. Thus, we have generally adopted a policy of non-interference with the executive determination of probable cause. Where, however, there is a clear case of grave abuse of discretion, courts are allowed to reverse the Secretary of Justice's findings and conclusions on matters of probable cause.

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion is grave where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law.⁹⁹ (Citations omitted)

The courts may review the executive determination of probable cause only if it is tainted with grave abuse of discretion through a petition for *certiorari* filed before the CA.¹⁰⁰ The underlying principle behind this power to review is to ensure that the public prosecutor “acts within the permissible bounds of his authority or does not gravely abuse the same.”¹⁰¹ There is grave abuse of discretion if the public prosecutor blatantly disregards the parameters of probable cause.¹⁰²

To reiterate, this power to review, however, becomes moot upon the trial court's issuance of a warrant of arrest, as provided in *De Lima*.¹⁰³

In the instant case, an information for Syndicated Estafa was filed before the RTC against Ramon together with Atty. Debuque and the other accused pursuant to the May 10, 2006 Joint Resolution of the City Prosecutor.

The elements of Estafa under Article 315(2)(a) of the RPC are as follows: (a) there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) 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) as a result thereof, the offended party suffered damage.¹⁰⁴

⁹⁹ Id. at 716-717.

¹⁰⁰ See *Elma v. Jacobi*, 689 Phil 307, 336 (2012).

¹⁰¹ *Aguilar v. Department of Justice*, 717 Phil 789, 799 (2013).

¹⁰² Id.

¹⁰³ *Supra* notes 89-91.

¹⁰⁴ *People v. Aquino*, G.R. No. 234818, November 5, 2018.

In this relation, PD 1689 imposes the penalty of life imprisonment to death if the estafa is committed by a syndicate, defined as a group of “five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme...”¹⁰⁵ Section 1 of PD 1689 reads:

Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, “samahang nayon(s)”, or farmers’ association, or of funds solicited by corporations/associations from the general public.

x x x x

Thus, the elements of Syndicated Estafa are as follows: (a) Estafa or Other Forms of Swindling, as defined in Articles 315 and 316 of the RPC, is committed; (b) the Estafa or Swindling is committed by a syndicate of five [5] or more persons; and, (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, “samahang nayon[s],” or farmers’ association, or of funds solicited by corporations/associations from the general public.¹⁰⁶

The case of *Remo v. Devanadera*¹⁰⁷ clarifies the standards on what constitutes a syndicate under PD 1689, to wit:

1. [The group] must be at least five (5) in number.
2. [The group] must have formed or managed a rural bank, cooperative, “samahang nayon,” farmer's association or any other corporation or association that solicits funds from the general public.
3. [The group] formed or managed such association with the intention of carrying out an unlawful or illegal act, transaction, enterprise or scheme *i.e.*, they used the very association that they formed or managed as the means to defraud its own stockholders, members and depositors.¹⁰⁸ (Citations omitted)

¹⁰⁵ Presidential Decree No. 1689, sec. 1 (1980).

¹⁰⁶ *People v. Aquino*, supra note 102.

¹⁰⁷ 802 Phil 860 (2016).

¹⁰⁸ *Id.* at 881-882.

Applying the foregoing, the Court finds no existing syndicate in which Ramon and the other accused had any participation. As found by the DOJ Secretary, Atty. Debuque acted on his own, without the participation or involvement of Ramon or the other accused. Atty. Debuque was never authorized by the ILC shareholders, *i.e.*, Ramon and the other accused, to transact with Nilson. The third standard provided in *Remo*, therefore, is not satisfied. There is simply no proof that all of the accused, including Ramon, acted through ILC in defrauding Nilson.

There was also no showing that Ramon acted on his own and defrauded Nilson. On the contrary, the evidence shows that Nilson parted with his money solely because of Atty. Debuque's misrepresentations and false pretenses.

Moreover, there was no conspiracy, express or implied, among Ramon, Atty. Debuque, and the other accused. Implied conspiracy, as correctly ruled by the CA, must be proved "through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of [the] crime indubitably pointing to a joint purpose, a concert of action and a community of interest."¹⁰⁹

Here, it was not shown that Ramon performed any overt act in consonance with Atty. Debuque's intent to defraud Nilson. That Ramon and the other accused were relatives of Atty. Debuque and incorporators and officers of ILC, standing alone, would not suffice to warrant the finding of implied conspiracy absent the commission of an act in furtherance of a joint purpose or community of interest with Atty. Debuque. Being incorporators and officers of a corporation does not automatically connote conspiracy.

Therefore, there being no syndicate in the first place, only Atty. Debuque is to be held personally liable. The DOJ Secretary, in his August 23, 2007 Resolution, correctly found probable cause for Estafa only against him. However, as stated, this criminal case for Estafa may not be initiated anymore due to his death.

WHEREFORE, the Petition is **DISMISSED** on grounds of mootness, considering the dismissal by the Regional Trial Court of the case against petitioner Ramon H. Debuque based on a demurrer to evidence which effectively amounted to an acquittal, and in view of the death of the principal accused Atty. Ignacio D. Debuque, Jr.

¹⁰⁹ *People v. Credo*, G.R. No. 230778, July 22, 2019 citing *Macapagal-Arroyo v. People*, 790 Phil 367, 419-420 (2016).

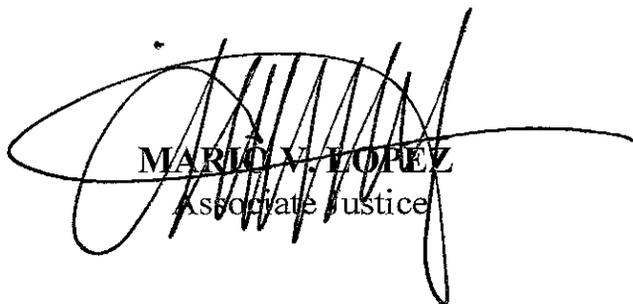
W

SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson


MARIO V. LOPEZ
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


JHOSEP Y. LOPEZ
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
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 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