



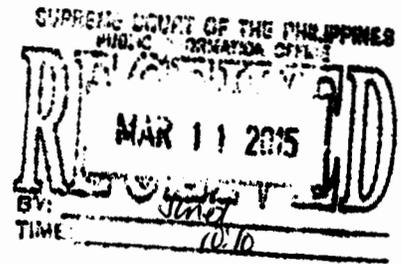
Republic of the Philippines

Supreme Court

Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated February 18, 2015, which reads as follows:

G.R. No. 176532 (Potenciano Intig, Joy Espuerta, Arnold Española, Winston Banlos, Joseph Española, Ma. Dulce Judis, Ma. Nelly Basister, Jesusa Sandigan, and Allan Pedrajas v. Ricardo Gamboa, Lydia Montelibano,<sup>1</sup> Antonia Araneta, Cristina Espinos, Ricky Trinidad, and The Secretary of Justice), – This is a petition for review on certiorari under Rule 45 of the 1997 Revised Rules on Civil Procedure (Rules) seeking to set aside the November 29, 2006 Decision<sup>2</sup> and January 31, 2007 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 01904, which affirmed the Resolutions dated November 29, 2005<sup>4</sup> and June 15, 2006<sup>5</sup> of public respondent Department of Justice (DOJ) Secretary Raul M. Gonzalez finding no probable cause to indict private respondents for Estafa.

The case stemmed from several complaints<sup>6</sup> filed in 2004 by petitioners before the Office of the City Prosecutor against private respondents for alleged violations of Section 22 (a), in relation to Section 28 (e) and (h) of Republic Act (R.A.) No. 8282,<sup>7</sup> Sections 22 and 23 of Presidential Decree (P.D.) No. 1752,<sup>8</sup> and Estafa under Article 315 Paragraph 1 (b) of the Revised Penal Code (RPC).

Petitioners were regular employees of Twenty One Food Corporation, which owned and operated 21 Bar and Restaurant. As such, their salaries were deducted with the mandated Social Security System (SSS) monthly contributions. In 2004, however, they discovered that the corporation failed to remit their SSS contributions for the following: April-July 2000, January-December 2002 (but excluding February), January-November 2003, and March-April 2004. Some were also surprised to see that they still have outstanding liabilities on their SSS salary and calamity loans despite their

<sup>1</sup> Referred to as Liddy Montelibano in some parts of the case records.

<sup>2</sup> Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Agustin S. Dizon and Priscilla Baltazar-Padilla concurring; *rollo*, pp. 231-239.

<sup>3</sup> *Rollo*, pp. 262-263.

<sup>4</sup> *Id.* at. 174-181.

<sup>5</sup> *Id.* at. 209-212.

<sup>6</sup> Docketed as BC-I.S. Nos. 04-1078, 04-1251, 04-1342, 04-1378, 04-1392, 04-1429, 04-1235, 04-1239, 04-1316, 04-1228, 04-1332, and 04-1270.

<sup>7</sup> Otherwise known as the “Social Security Act of 1997”

<sup>8</sup> Otherwise known as the “Home Development Mutual Fund Law of 1980”

knowledge of having fully paid the loan amortizations, and that the corporation failed to remit Pag-ibig contributions for November-December 1997 and January-December 1998.

In their *Joint Counter Affidavit*,<sup>9</sup> private respondents Lydia Montelibano, Ricardo Gamboa, Antonia Araneta admitted that they are the President, Vice-President, and Corporate Secretary, respectively, of the corporation. They denied the allegation of failure to remit complainants' SSS contributions and loan amortizations, countering that either these were already paid or that the periods complained of are covered by the SSS Installment Program. In availing the Program, a schedule of payment for unpaid contributions as well as penalties had been agreed upon and which had long taken effect prior to the filing of the complaints. They claimed that the reason why the corporation was delayed in payment is that it suffered serious business reverses for the past years. Finally, it was noted that no letter of referral came from the SSS to verify the authenticity and status of the records prior to the filing of the complaints and that the complainants were not prejudiced in any way by the agreement entered into by the SSS and the corporation as in fact their entitlement to any SSS benefit or claim has not in any way been compromised or affected.

A *Manifestation*<sup>10</sup> was later on filed by private respondents Ricky Trinidad and Cristina Espinos. They alleged that: all the employees did not report for work and were not deducted their SSS contributions from June to July 2000 because the restaurant temporarily ceased its operation due to renovation; as of January 2002, the accountabilities with the SSS were completely paid and settled; Trinidad became the restaurant's manager only in the early part of 2004 and the paper works and accounting relative to the payment of the SSS contributions do not form part of his duties and responsibilities; and Espinos, though a member of the board of directors, did not take part in the management and operation of the restaurant.

On November 30, 2004, Investigating Prosecutor Ma. Theresa B. Ditching found probable cause to indict respondents for violation of R.A. No. 8282, but dismissed the charges for *Estafa* and violations of P.D. No. 1752 due to insufficiency of evidence.

Both parties filed their respective motion for partial reconsideration, but the same were denied.<sup>11</sup> Subsequently, only petitioners appealed to the Office of the Regional State Prosecutor-Region VI.<sup>12</sup>

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<sup>9</sup> *Rollo*, pp. 304-307.

<sup>10</sup> *Id.* at 422-425.

<sup>11</sup> *Id.* at 428-455.

<sup>12</sup> *Id.* at. 102-114.

February 18, 2015

On March 31, 2005, Regional State Prosecutor Domingo J. Laurea, Jr. reversed Prosecutor Ditching's resolution with respect to the dismissal of the complaint for *Estafa* and, consequently, directed the filing of appropriate Information against private respondents.

When the motion for reconsideration (*MR*) filed by private respondents was denied, they elevated the case to the DOJ *via* petition for review.<sup>13</sup>

Meantime, on June 1, 2005, Criminal Case Nos. 05-7-10010 to 05-7-10013 and 05-7-10017 to 05-7-10019 for *Estafa* were filed. The Municipal Trial Court in Cities, Branch 3, Bacolod City, issued a warrant of arrest against private respondents, but its enforcement and the arraignment of all the accused were later held in abeyance pending resolution of private respondents' petition before the DOJ.<sup>14</sup>

Not too long, on November 29, 2005, the DOJ reinstated the withdrawal of the Information for *Estafa*. In holding that there was no criminal intent to misappropriate the amounts deducted from the complainants' salaries, it reasoned out as follows:

There could be no criminal liability for estafa through conversion or misappropriation when the evidence on record is bereft of proof of respondents' intention to appropriate for themselves the amount supposedly remitted to Pag-ibig and SSS. In this case, there was no criminal intention to misappropriate the amounts purportedly deducted from complainants' salaries as 21 Food had suffered business reverses. The delay incurred by 21 Food in paying its obligations to SSS and Pag-ibig was mainly due to its financial difficulties. Had respondents been deliberately and willfully remised in its duty to their employees, they would not have endeavored to settle their monetary obligations to SSS and Pag-ibig.

As records show, respondents' lack of criminal intention is evident on their subsequent actions to settle all their obligations to Pag-ibig and SSS. They had submitted documents establishing their payments of complainants' unpaid contributions to SSS. Had respondents indeed incurred criminal liability for such alleged delay in payment, then SSS and Pag-ibig should have filed the necessary criminal actions against respondents. But these agencies did not, which only shows that no illegal activities were committed warranting the filing of criminal complaints against respondents. At most, such delay in remitting complainants' contributions to SSS and Pag-ibig, which was justifiably explained by respondents, would only give rise to civil liability. However, as it is, said civil liability had already been extinguished by the subsequent payments

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<sup>13</sup> *Id.* at. 467-528.

<sup>14</sup> Folder of Criminal Case No. 05-7-10010 (Records, pp. 152,162, 169).

made by respondents. Thus, it cannot be gainsaid that complainants still suffered damages.<sup>15</sup>

The DOJ later denied petitioners' MR. As a result, on January 19, 2006, Criminal Case Nos. 05-7-10010 to 05-7-10013 and 05-7-10017 to 05-7-10019 were withdrawn by the court upon motion of the City Prosecutor.<sup>16</sup>

On appeal, the CA affirmed the DOJ resolution that misappropriation or conversion of money, which is an essential element of *Estafa*, is lacking in this case. It ruled:

A perusal of the records clearly reveals that the second element of estafa – “*misappropriation or conversion of such money or property*” [–] is absent. Private respondents, even without notice from the SSS office, immediately remitted SSS contributions and availed of the SSS installment program. A *Certification* dated 27 May 2004 to this effect has been issued by Atty. Cecilia P. Sabig, AVP-Western Visayas Cluster of the SSS. Not only that, the SSS office further certified that as of 18 March 2005, the SS and EC premiums of the employees from April 1999 to July 2000 and from March 2002 to November 2003 including corresponding penalties have been remitted [and] that the SSS office would no longer file any criminal case for non-payment of premiums covering the said period.

In line with the ruling in *Saddul vs. Court of Appeals* where the words “*convert*” and “*misappropriate*” in the crime of *estafa* punished under Art. 315, par. 1 (b) connotes an act of using or disposing of another's property as if it were one's own, or if devoting it to a purpose or use different from that agreed upon, the facts at hand in this instant case negates any act of conversion or misappropriation on the part of private respondents. Here, private respondents did not fail nor adamantly refused to remit petitioners' contributions, rather, they were merely delay in remitting the monthly contributions due to serious business reverses. This has been complied with upon remittance of the premiums and payment of the corresponding penalties which were imposed for the delay in remittances. Absent any evidence showing private respondents' criminal or malicious intent, it would be erroneous for the Court to conclude that the petitioners' contributions were fraudulently converted or appropriated for private respondents' personal use. Evidently, We simply cannot treat private respondents' mere delay in the remittance to the SSS or the mere detention of petitioners' contributions as *prima facie* evidence of *estafa*.<sup>17</sup>

Petitioners' MR was denied on January 31, 2007; hence, this petition.

We deny.

<sup>15</sup> Rollo, p. 180.

<sup>16</sup> Folder of Criminal Case No. 05-7-10010 (Records, pp. 171-172, 180).

<sup>17</sup> Rollo, pp. 238-239.

*Estafa* through misappropriation or conversion is defined and penalized under Article 315, paragraph 1(b) of the RPC, which states:

Art. 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

*1st.* The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x

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

The elements of *Estafa* under this provision are: (a) that money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same; (b) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another; and (d) that there is a demand made by the offended party on the offender.<sup>18</sup>

The conclusion reached by the CA is supported by ample evidence on record.

While there was indeed delay in the remittance of the required SSS monthly contributions, such was on account of serious business losses suffered by the corporation that appears to have caused the eventual closure of the restaurant.<sup>19</sup>

<sup>18</sup> *Lito Corpuz v. People of the Philippines*, G.R. No. 180016, April 29, 2014; *De Los Santos-Dio v. Court of Appeals*, G.R. No. 178947, June 26, 2013, 699 SCRA 614, 636-637; *Burgundy Realty Corporation v. Reyes*, G.R. No. 181021, December 10, 2012, 687 SCRA 524, 532-533; *Pamintuan v. People*, G.R. No. 172820, June 23, 2010, 621 SCRA 538, 546-547; *Gomba v. People*, 587 Phil. 169, 172-173 (2008).

<sup>19</sup> *Id.* at 622-626.

Private respondents' claim of lack of criminal intent to misappropriate is made more credible when one considers their offer to settle the obligations with the SSS as early as March 10, 2004, or prior to the institution of the criminal complaints in April-May 2004.<sup>20</sup> Notably, the records contain an SSS Certification dated May 27, 2004 stating that the corporation availed of the SSS Instalment Program and issued post-dated checks to cover its unpaid premiums and penalties.<sup>21</sup> Finally, on March 18, 2005, the SSS issued another Certification to the effect that the corporation remitted the premiums of its employees for the subject period, including the penalties thereon, and that it would no longer file any criminal case.<sup>22</sup>

Likewise, private respondents were charged with violation of R.A. No. 8282. However, the criminal cases were already dismissed by the trial court on March 8, 2006.<sup>23</sup> Upon reinvestigation, the City Prosecutor held that there is no concrete proof that private respondents intended to misappropriate the amount supposedly remitted to the SSS and, consequently, recommended the dismissal of the charges.<sup>24</sup> Upon petition for review, the Regional State Prosecutor affirmed such dismissal.<sup>25</sup>

**WHEREFORE**, premises considered, the Petition is **DENIED**. The November 29, 2006 Decision and January 31, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 01904, which sustained the Resolutions dated November 29, 2005 and June 15, 2006 of the DOJ finding no probable cause to indict private respondents for the crime of *Estafa* under Article 315, Paragraph 1(b) of the Revised Penal Code, are **AFFIRMED**. (*Jardeleza, J., on official leave; Del Castillo, J., designated Acting Member, per Special Order No. 1934 dated February 11, 2015*)

**SO ORDERED.**

Very truly yours,

  
**WILFREDO V. LAPITAN**  
Division Clerk of Court *3/2/15*

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<sup>20</sup> *Id.* at 317-318.

<sup>21</sup> *Id.* at 308-309.

<sup>22</sup> *Id.* at 625.

<sup>23</sup> *Id.* at 609.

<sup>24</sup> *Id.* at 600-608, 610-613.

<sup>25</sup> *Id.* at 614-621.

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