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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **July 22, 2015** *which reads as follows:*

"G.R. No. 167380 – *METROPOLITAN BANK AND TRUST CO., Petitioner, v. SECRETARY OF JUSTICE, ROGELIO REYNADO, JOSE C. ADRANEDA AND CELSO L. OLMOS, Respondents.*

The petitioner appeals the decision promulgated on December 14, 2004,[1] whereby the Court of Appeals (CA) sustained the dismissal by the Department of Justice (DOJ) of its complaint for *estafa* against its employees, herein respondents Rogelio Reynado, Jose C. Adraneda and Celso L. Olmos. It asserts that the CA thereby gravely abused its discretion amounting to lack or excess of its jurisdiction.

Antecedents

The CA rendered the factual and procedural antecedents as follows:

> On January 19, 1997, Alfredo B. Bolisay, an Assistant Area Supervisor of the Metro Manila Branch Banking Division Region IV-B of petitioner Metropolitan Bank and Trust Company (Metrobank for brevity) filed a Complaint Affidavit with the City Prosecutor's Office of Manila alleging that: in the course of his supervision of the Port Area Branch, he discovered anomalous transactions perpetrated by private respondents Rogelio Reynado, branch manager, Jose Adraneda, assistant branch manager, and Celso Olmos, branch accountant; acting in their official capacities, private respondents were bound to administer and/or hold the funds of the Port Area Branch, in trust for Metrobank; as branch

- over - eleven (11) pages .....

[1] *Rollo*, pp. 208-224; penned by Associate Justice Remedios A. Salazar-Fernando, with the concurrence of Associate Justice Danilo B. Pine (retired) and Associate Justice Monina Arevalo-Zenarosa (retired).

accountant, it was the duty of Olmos to check bank transactions and to report to the management any deviation from bank policies by the officers and staff of the branch; through fraud, deceit and abuse of confidence, private respondents extended unsecured loans to unqualified individuals and/or entities not only without prior approval of Metrobank management but also without complying with its policies and standard operating procedure; the granting of the aforementioned loans was done in consideration of commissions paid to the bank officers through Reynado; petitioner Metrobank suffered damages to the extent of at least ₱8 million from the following transactions, the recovery of which is now remote:

1. On June 3, 1996, Reynado released a loan in favor of Elizabeth Sumbillo, manager of Truscon Marketing, in the amount of ₱600,000.00. On the same date, Check No. 129991 for ₱6,000.00 drawn against the account of Truscon was deposited to Reynado's SA No. 3041-61554-0 with Metrobank, Port Area;

2. On three subsequent loan releases to Truscon, checks drawn against the account of Truscon were deposited to the said account of Reynado on the same dates the loan proceeds were released, namely:

DATE	CHECK NO.	AMOUNT
July 31, 1996	16930	13,750
July 31, 1996	16857	3,000
August 7, 1996	16931	13,750
August 8, 1996	16867	14,250
August 13, 1996	16871	14,250

3. Several other loans were released by the private respondents to the following unqualified borrowers:

CLIENT	DATE GRANTED
Marissa Cordero	May 12, 1996
Eufrocino Francisco	Jan. 12, 1996
Severina Manhilot	Mar. 21, 1996
Rosanie Mendoza	Apr. 22, 1996
Luciano Bayot	Apr. 14, 1996
Kaulayaw Espinosa	Apr. 15, 1996
Erlinda Almazor	May 21, 1996
Carmart Trading	Apr. 15, 1996

Adraneda and Olmos connived with Reynado in allowing the above-mentioned unauthorized releases of loans because:

1. Adraneda was one of only two voting members of the branch credit committee, the other being Reynado, authorized within well-defined limits to grant credit accommodations to various clients. He was also a co-signatory on all documents in branch transactions. The loans could not have been released without the approval and signature of Adraneda;

2. Olmos as accountant of the Port Area branch, deliberately failed to report the violations and offenses committed by Reynado and Adraneda;

3. Olmos was a member of the Branch Credit Committee (BCC) and acted as its secretary during its meeting;

4. With the frequency of irregular loan releases, it was unimaginable, if not impossible, for Olmos not to have the slightest doubt as to the propriety of the transactions;

5. Despite knowledge of the fraud being committed against Metrobank, Olmos fraudulently concealed such activities, thus participated in the perpetration of the fraud. The deliberate attempt by Olmos to conceal the irregularities was made more evident by the fact that the loan accounts unpaid as of due date were not immediately classified as "past due accounts."

x x x x

In his counter-affidavit, Reynado denied that he conspired with the Assistant Manager and Branch Manager to defraud Metrobank in the amount of at least ₱8,000,000.00; no estafa was committed, as the requisites or elements of the alleged crime are not present; he did not misappropriate or convert the money of Metrobank for personal use or benefit; there was no fraud, deceit and abuse of confidence when the alleged loans were granted to the alleged clients; said clients were good clients and had been valued customers of the branch for sometime and were granted loans in view of their good credentials; besides, the loans that were granted to them were all secured by post dated checks and guaranteed by promissory notes; the obligations incurred were merely civil in character as they were classified as "debts"; Metrobank was not prejudiced considering that the subject loans were already paid; he did not profit from the loan releases as the checks deposited in his account were payments for jewelries (sic) purchased from his wife and not as commissions; the allegation that he was paid commissions in July and August 1996 was improbable and ridiculous as the loan was granted on September 25, 1997; the affidavit complaint was not supported by any evidence; said complaint was presumably an eleventh hour attempt of Metrobank to thwart private respondents from filing illegal dismissal and criminal cases against it; Metrobank did not even demand from them the payment of the subject obligations, which rendered the filing of the complaint premature.

Jose Adraneda, in his counter-affidavit, asseverated that: Alfredo Bolisay discovered these transactions only during audit and not in the course of his supervision; most of the clients who were granted loans were personally solicited by Reynado to open and maintain an account with Metrobank, Port Area Branch, as such, Reynado was in a better position to know and evaluate the credit qualifications of borrowers; furthermore, Reynado, being the Branch Manager, was the one requesting and seeking approval from the higher officers of Metrobank concerning the subject loans; for several times, he called the attention of Reynado regarding the subject loans but the latter assured him that approval from the higher authorities was already secured; the borrowers negotiated directly to Reynado and were never referred to him; the processing and release of loan proceeds were done by Romina Canlas, the loan Clerk, upon the instructions of Reynado and with the assurance that they were verbally confirmed and/or approved by Mr. Antonio Jacinto, the Area Supervisor and Designated Senior Officer; the loan documents passed through the Branch Accountant for checking and recording before he signed the same; he personally informed Mr. Bolisay that some loan documents were already processed, released and checked by the accountant and signed by Reynaldo although, still without his signature, were already approved by Mr. Antonio Jacinto; he never had any knowledge that Reynado was receiving any commission out of the grant of the subject loans; he merely signed as witness to the Non-Negotiable Promissory Notes executed by the borrowers; Reynado did not consider his signature necessary in approving the loan as there were loan releases which did not bear his signature; he signed the "Disclosure Statement" merely to authenticate the signatures of the borrowers; the subject loans were duly reported to the Head Office of Metrobank thru its Operation Control Division by the Branch Accountant who submitted weekly and bimonthly report of the bank transactions; the loan clerk of Port Area Branch submitted "Schedule of Loans and Advances" to the Credit Department of Metrobank Head Office which contained the names of the borrowers, amounts of the loan, dates granted, due dates for payment, payments made if any, and the collateral; Messr. Jacinto and Bolisay, Area Supervisor and Asst. Area Supervisor, respectively, used to conduct inspection or visitation once or twice a month to check, control, monitor all banking transactions of the branch particularly the deposit level and the loan portfolio through the branch's proofsheet which contained the daily transactions of the branch; if there was really a violation of the bank's policy, it was suspicious why Messrs. Bolisay or Jacinto did not stop the granting of the loans when they allegedly knew or were supposed to know the daily banking transactions; upon verification from Mr. Bolisay, he learned that the loans which Reynado approved were not approved by higher officers of Metrobank; and the charge of fraud, deceit and abuse was not supported by clear and convincing evidence.

Celso Olmos, in his counter-affidavit, stated that as Branch Accountant of Metrobank Port Area Branch, he was a non-voting member of the committee that determined whether or not the client's request for loan should be granted; he had no participation whatsoever in

> the approval and release of the subject loans; conspiracy must be proved as indubitably as the crime itself through clear and convincing evidence and not merely by conjecture; the allegations of Metrobank were based on conjectures, hence, must be dismissed for lack of factual and legal merit; the alleged damages suffered by Metrobank should be specific for it is elementary in the crime of estafa that the punishment depends upon the amount of the property misappropriated.
>
> In a resolution dated December 4, 1997, Assistant Prosecutor Arthur O. Malabaguio recommended the dismissal of the complaint for insufficiency of evidence, the dispositive portion of which reads:
>
> > WHEREFORE, premises considered, it is respectfully recommended that present complaint be dismissed for insufficiency of evidence.[2]

After the DOJ denied its petition for review as well as its motion for reconsideration,[3] the petitioner filed a petition for *certiorari* and *mandamus* in the CA, insisting that the DOJ had gravely abused its discretion amounting to lack or excess of its jurisdiction.

On December 14, 2004, the CA promulgated its assailed decision dismissing the petition for *certiorari* and *mandamus*,[4] *viz.*:

> **WHEREFORE**, the petition is hereby **DENIED** for lack of merit and ordered **DISMISSED**.
>
> **SO ORDERED**.[5]

The petitioner moved for the reconsideration of the decision, but the CA denied the motion for reconsideration on May 8, 2005.[6]

Issue

Hence, this appeal by the petitioner, urging the review and reversal of the assailed decision of the CA. It argues that the Public Prosecutor's determination of probable cause was subject to judicial review when tainted with grave abuse of discretion;[7] that misappropriation includes

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2 Id. at 209-215.
3 Id.
4 Supra note 1.
5 Id. at 224.
6 *Rollo*, p. 226.
7 Id. at 20.

every act of disposition of another's property without right;[8] that the CA misconstrued the import of the term *misappropriation*;[9] that because no evidence had been presented by its respondent employees to prove that the transactions in question had been above board, then trial on the merits in the proper RTC was the appropriate venue to present such proof.[10]

Representing the DOJ,[11] the Office of the Solicitor General (OSG) submits that whoever alleges that a crime had been committed has the burden of proof to show not only the fact of existence of the crime but also its nature and extent; that the petitioner has not established the commission of the crime charged by its respondent employees; that it has also failed to prove that conspiracy was present; and that the DOJ did not commit any grave abuse of discretion.

In his comment submitted on July 27, 2007,[12] Reynado states that as the Manager of the petitioner's Port Area Branch, he utilized the questioned loan amount in the customary and lawful business transaction by lending the same to the bank's customers or clients; that the loans were already being paid by the borrowers by the time he was illegally dismissed; that all such amount of money allegedly misappropriated were received by the borrowers; that all the loans were secured by checks none of which was dishonored; and that the charge was pure and simple harassment intended to ease him out from his position as the Branch Manager.

On his part,[13] Adraneda contends that the Public Prosecutor who firmly believes that no crime was committed for lack of evidence cannot be compelled by *mandamus* to prosecute a criminal case especially after such belief has been confirmed by no less than the Secretary of Justice; that the determination of whether a crime was committed or not is an executive function; that it is the duty of the Public Prosecutor not only to protect the State from useless and expensive trials but also to protect an accused from a hasty, malicious and oppressive prosecution in order to save the latter from the trouble, expense and anxiety of a public trial; and that the protection should extend to him because he hardly had any participation in the acts complained of considering that it was Reynado who allegedly committed said acts as the Bank Manager.

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8 Id. at 27.
9 Id. at 26.
10 Id. at 30.
11 Id. at 306-328.
12 Id. at 302-303.
13 Id. at 332-339.

In his own comment,[14] Olmos avers that in his capacity as the recorder of the minutes of meetings he only performed purely ministerial functions, and had no voice in deciding whether any loan application should be granted or not; that he could not be held liable as an administrator because he had no power to decide where the funds should go or who should be allowed to avail of the same by way of loan; that because he did not receive the money in trust he could not be guilty of misappropriation, which required that he must have first received the money; that even assuming that the element of misappropriation was present, no evidence linked him to the misappropriation because the petitioner admitted that the loan proceeds were deposited in Reynado's account; that he submitted an inter-office letter informing about the supposed kiting activity by a bank client that ignited the investigation and audit of the questioned transactions; and that he reported once against some irregularities, including loans extended to unqualified borrowers.

The petitioner sent in a consolidated reply,[15] positing that at the preliminary stage of a criminal case it is enough that there is evidence showing that a crime was committed, and that the accused was probably guilty thereof; that the burden of evidence to prove that the supposed recipients of the loans were legitimate borrowers with debt-paying capacity belonged to the respondents; that Reynado's claim that the post-dated checks had been cleared for payment, and that the loans were already paid at the time of his dismissal was plain fiction; that Adraneda's comment is *pro forma*; and that Olmos has not considered that in a conspiracy the act of one is the act of all.

Ruling of the Court

We deny the petition.

In its assailed decision, the CA opined as follows:

> The determination of probable cause during a preliminary investigation is judicially recognized as an executive function and is exercised by the prosecutor. The primary objective of a preliminary investigation is to free respondent from the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt has been

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[14] Id. at 351-355.
[15] Id. at 368-377.

passed upon in a more or less summary proceeding by a competent officer designated by law for that purpose. Secondarily, such summary proceeding also protects the [S]tate from the burden of unnecessary expense and effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges.

Preliminary investigation is an inquiry or proceeding to determine whether there is **sufficient ground to engender a well-founded belief** that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. As such, the finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. It is not the occasion for full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.

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It must be emphasized, however, that in the determination of whether or not "the evidence presented during the preliminary investigation *engenders a well-founded belief* that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial," the investigating prosecutor and Secretary of Justice exercise their discretionary and not merely their ministerial function. Contrary to the position of petitioner Metrobank, the Secretary of Justice cannot be compelled to file the necessary information in court by mere issuance of a writ of mandamus. The Supreme Court in the case of D.M. Consunji, Inc. vs. Esguerra clarified that notwithstanding the several decisions allowing mandamus to apply, the rule is that the duty of the court is confined in determining whether the executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion. Although it is entirely possible that the investigating fiscal may erroneously exercise the discretion lodged in him by law, this does not render his act amenable to correction and annulment by extraordinary remedy of certiorari, absent of grave abuse of discretion amounting to excess of jurisdiction.

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After thorough and judicious evaluation of the record, this Court finds the resolutions of the investigating prosecutor and Secretary of Justice to be supported by law and jurisprudence. Contrary to the allegations of petitioner Metrobank, they merely exercised their discretion when they refused to file the information for estafa through misappropriation against the private respondents. It failed to prove that the investigating prosecutor and Secretary of Justice exercised their power in an arbitrary or despotic manner by reason of passion or personal hostility as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

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As correctly pointed out by the public respondent, petitioner Metrobank erroneously asserts that the element of misappropriation was sufficiently established. A cursory reading of the complaint easily reveals that it was the alleged "unqualified borrowers" who utilized the funds of the petitioner. Hence, even if it presumed that all the allegations in the complaint are correct and duly supported by concreted and convincing evidence, the crime of estafa could not have been deemed committed by the private respondents. The most that can be said is that the non-observance of the petitioner Metrobank's standard operating procedure rendered private respondents liable administratively.

While it is true that it was likewise alleged that some of the proceeds of the purported questionable loans were deposited to private respondent Reynado's account on the same day they were released, petitioner Metrobank failed to establish that private respondents actually misappropriated its funds. No evidence was presented to show as to how abuse of confidence were committed. All that could be glimpsed from the complaint is that private respondents extended unsecured loans to unqualified individuals and/or entities without prior approval of the petitioner Metrobank's management and without complying with it policies and standard operating procedure. The act of receiving part of the loan proceeds does not automatically lead to the conclusion that private respondents defrauded petitioner Metrobank and that the former misappropriated the funds of the latter. The allegations in the complaint and the evidence presented during the preliminary investigation simply failed to eliminate in any way the possibility that the deposits made in private respondent Reynado's account could have likewise been the result of a valid transaction. It was only during the review before public respondent secretary that petitioner Metrobank, realizing the missing connection between the allegation of deceit, fraud and misappropriation, and the deposit of some of the loan proceeds were deposited to private respondent Reynado's account, belatedly asserted that the promissory notes were simulated and spurious, and that the so-called borrowers did not actually avail of the loans from the bank.

While it is true that proof of previous agreement to commit a felony is not necessary to establish conspiracy, it being sufficient that the acts of the respondents, before, during, and after the commission of the felony could demonstrate its existence, the failure of the petitioner to show misappropriation negates the theory of conspiracy. If the complaint failed to show misappropriation, the more reason that the allegation of conspiracy should be discarded. Assuming that private respondents indeed failed to report the alleged irregularities in the granting of the subject loans, such failure is not constitutive of estafa through abuse of confidence.[16]

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[16] Id. at 217-224 (bold underscoring is part of the original text).

We adopt the foregoing discourse by the CA for being in full accord with the pertinent law and jurisprudence. In resolving not to prosecute the respondent employees, the DOJ only exercised its exclusive discretion to determine probable cause in order to charge them with *estafa*. It did so in contemplation of its sworn obligation not only to spare the Government from a useless and expensive trial of the employees that was likely to end in the dismissal of the charge for lack of evidence but also to save them from an oppressive prosecution in which they would be needlessly forced to incur expenses and to suffer anxiety during the trial. We hold, therefore, that the dismissal by the CA of the petition for *certiorari* and *mandamus* was fully warranted, and that the DOJ did not commit grave abuse of discretion that amounted to lack or excess of jurisdiction. Indeed, *grave abuse of discretion* connotes whimsical and capricious exercise of judgment as is equivalent to excess, or lack of jurisdiction.[17] The abuse must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[18] Obviously, the CA was not guilty of such actuations.

WHEREFORE, we **AFFIRM** the decision promulgated on December 14, 2004; and **ORDER** the petitioner to pay the costs of suit.

SO ORDERED." **SERENO, *C.J.***, on official leave; **PERALTA, *J.***, acting member per S.O. No. 2103 dated July 13, 2015. **LEONARDO-DE CASTRO, *J.***, on official leave; ***LEONEN, J.***, acting member per S.O. No. 2108 dated July 13, 2015.

Very truly yours,

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Division Clerk of Court

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[17] *Republic v. Sandiganbayan (Second Division)*, G.R. No. 129406, March 6, 2006, 484 SCRA 119, 127; *Litton Mills, Inc. v. Galleon Trader, Inc.*, G.R. No. L-40867, July 26, 1988, 163 SCRA 489, 494.
[18] *Angara v. Fedman Development Corporation,* G.R. No. 156822, October 18, 2004, 440 SCRA 467, 478; *Duero v. Court of Appeals*, G.R. No. 131282, January 4, 2002, 373 SCRA 11, 17.

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