



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **July 20, 2022** which reads as follows:*

“G.R. No. 230546 (Pastor “Boy” Saycon, Virgilio F. Cruz and Wilfredo L. Velarde vs. Emerson Pascual). — Emerson Pascual (Pascual) filed a criminal complaint for *estafa* against Pastor “Boy” Saycon, Virgilio F. Cruz, and Wilfredo L. Velarde (Saycon, *et al.*) before the Office of the City Prosecutor, Gapan City, Nueva Ecija (OCP). Allegedly, Saycon, *et al.* misrepresented having influence over the Office of the President (OP) and the Bureau of Customs (BOC), and promised to help Pascual in securing the position of BOC Chief of the Intelligence, Investigation Service. Accordingly, Pascual paid Saycon, *et al.* ₱3,000,000.00 on various dates for the supposed assistance. However, Pascual discovered that the promised government position was already given to someone else. Pascual repeatedly demanded the return of the money but Saycon, *et al.* refused.¹ On the other hand, Saycon, *et al.* denied the accusation and explained that the meetings they had with Pascual were mostly social and political talks. Saycon, *et al.* disavowed the receipt of any amount from Pascual and the promise to help him secure a government position.²

On January 30, 2015, the OCP found probable cause against Saycon, *et al.* for *estafa*. The OCP held that Pascual would not have parted with his money had it not been for Saycon, *et al.*’s false pretenses. Also, Pascual’s positive assertion outweighed the negative averments and alibi of Saycon, *et al.*³ The OCP then filed the corresponding information before the Regional Trial Court, Gapan City, Nueva Ecija, Branch 87 (RTC). Aggrieved, Saycon, *et al.* moved for reconsideration from the OCP’s finding of probable cause.

¹ *Rollo*, pp. 101–102.

² *Id.* at 110; and 125–130.

³ *Id.* at 139–141.

Also, Saycon, *et al.* sought the inhibition of the OCP and moved to refer the investigation to the Department of Justice (DOJ).⁴ The OCP inhibited and the DOJ directed Assistant State Prosecutor Xerxes U. Garcia (ACP Garcia) to resolve Saycon, *et al.*'s motion for reconsideration.⁵

On July 2, 2015, ACP Garcia reversed the OCP's findings anchored on four observations. *First*, Pascual failed to deny that the position at the BOC had already been filled making it illogical to pay for something that was no longer available. *Second*, it was highly inconceivable that a political figure like Pascual would believe that an important government position can be guaranteed for ₱3,000,000.00. *Third*, the delay in filing the complaint for *estafa* was unexplained. *Fourth*, there was no showing that Pascual is qualified for the promised government position.⁶

Unsuccessful at a reconsideration, Pascual elevated the case to the Court of Appeals (CA) through a petition for *certiorari* docketed as CA-G.R. SP No. 142985. On December 16, 2016, the CA nullified ACP Garcia's findings which are based on assumptions and speculations,⁷ to wit:

A review of the facts shows that there is probable cause to pursue the case of Estafa against private respondent.

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A reading of petitioner's complaint shows that it measures up to the standards set forth by the rules. For one, petitioner managed to identify the persons who allegedly defrauded him of Php3,000,000.00, his ties with them, the date and circumstances surrounding the transaction, the place where it happened, and the purpose for which the money was released. The transaction may not be receipted, but with the affidavits of witnesses Alberto Figueroa, Jr., Manuel Calma and Pablito Pecato corroborating the payment, there is now a reasonable ground to believe that the exchange did occur and that the persons herein named as public respondents may have been involved therein. Moreover, Saycon himself admitted to meeting with petitioner at some point between 2010 and 2012, while Velarde and Cruz admitted to introducing petitioner to Saycon in 2010. This more or less coincides with the time during which the petitioner allegedly met with public respondents and handed over the amount to Saycon in 2011. Indeed, without necessary delving into the merits of the complaint, We find adequate reason or basis for the criminal case to push through.

We emphasize as did the Supreme Court in *Aguilar vs. Department of Justice* that probable cause is ascertained by weighing on the facts and circumstances of the case, **relying on common sense in order to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused**

⁴ Id. at 164.

⁵ Id. at 175–177.

⁶ Id. at 178–184.

⁷ Id. at 69–76. The Decision was penned by Associate Justice Stephen C. Cruz with the concurrence of Associate Justices Jose C. Reyes, Jr. (now a retired member of the Court), and Ramon Paul L. Hernando (now a member of the Court).

is probably guilty thereof and should be held for trial. By these standards, this Court is of the opinion that probable cause exists and that the DOJ acted with grave abuse of discretion in setting aside the OCP's Resolution against the public respondent.

To elaborate, the assailed Resolution of the DOJ shows that it is anchored on pure speculation that coincidentally echoes that of Saycon's, directly violating the rules set forth in *Aguilar*, viz.: (1) the DOJ assumed that petitioner knew of the appointment of Brig. Gen. Danilo Lim to the coveted office, thereby making it easier to point out the absurdity of paying the public respondents to clinch the position in petitioner's behalf; (2) the DOJ assumed that an educated person like petitioner would believe that an office position in government can be guaranteed by Saycon [that petitioner supposedly shelled out Php3,000,000.00 therefor shows that he did believe in the possibility of it]; (3) the DOJ assumed that the three[-]year gap between the commission of the crime and the filing of the case is an indication that the crime did not occur; and finally (4) the DOJ assumed that Saycon has no clout over powers-that-be in the government, even going so far as to diverged into the subject of public respondent's lack of qualification to appoint people into office, thereby overlooking the very component of the crime of Estafa, which is misrepresentation.

At this point, the DOJ needs reminding that the only job it has in finding probable cause is to examine the facts available to him without giving in to speculations no matter how tempting that might be. **Facts and circumstances must be taken into consideration and not assumptions that the public respondents fed.** As held in *Uniliver Philippines, Inc. vs. Tan*, the determination of probable cause must be based on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused. **Nowhere in said ruling does it say that speculations or assumptions may be entertained as well.**

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In this case, We are of the view that the DOJ overstepped its jurisdiction by overlooking the factual circumstances of the case by interjecting his own interpretation of the facts by relying entirely on assumptions.

WHEREFORE, premises considered, the instant petition is hereby GRANTED. Accordingly, the assailed Resolutions of Hon. Xerxes Garcia in his capacity as Acting City Prosecutor of Gapan City, Nueva Ecija dated July 2, 2015 and August 27, 2015 pursuant to Department Order No. 504 dated May 27, 2015 are NULLIFIED and SET ASIDE. Let the Resolution of the Office of the City Prosecutor of Gapan City, Nueva Ecija dated January 30, 2015 be ordered REINSTATED. The City Prosecutor is directed to inform this Court the fact of filing of the Information before the proper court as soon as practicable.

SO ORDERED.⁸ (Emphases supplied and citations omitted)

⁸ Id. at 73–76.

Saycon, *et al.* sought reconsideration but was denied.⁹ Hence, this recourse. Saycon, *et al.* contend that the CA erred in granting the petition for *certiorari* considering that Pascual may file a petition for review before the Secretary of Justice. Moreover, the Secretary of Justice and the public prosecutors cannot be compelled to file a criminal case if they believe that the evidence does not warrant a finding of probable cause.

The petition is unmeritorious.

“Probable cause, for purposes of filing a criminal information [is defined] as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent[s are] probably guilty thereof[.]”¹⁰ and should be held for trial.

The term does not mean “actual or positive cause”; nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a 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. x x x.¹¹

Notably, it is the policy of the courts not to interfere in the determination of probable cause which is essentially an executive function. Yet, this policy is not without exception. The Constitution allows court action where there is grave abuse of discretion which refers to “evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law [such] as when the [assailed decision or resolution] is not based on law and evidence but on caprice, whim and despotism.”¹²

Here, the CA correctly ruled that ACP Garcia committed grave abuse of discretion in dismissing the criminal complaint which Pascual filed against Saycon, *et al.* The Court agrees with the CA that the criminal complaint sufficiently alleged the elements of *estafa*. The complaint averred that Saycon, *et al.* misrepresented having connection in the OP and the BOC, and defrauded Pascual through a false promise that they will help him secure a position in the government. More importantly, Pascual would not have parted with his money had it not been for Saycon, *et al.*’s false pretenses. ACP Garcia overlooked these factual allegations. The Court reiterates that “[t]he determination of probable cause [must be based] on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused.”¹³ Obviously, ACP Garcia deviated from these standards and interjected his own assumptions and speculations against Pascual. ACP Garcia “[disregarded] the jurisprudential

⁹ *Id.* at 77–78, CA Resolution dated March 15, 2017.

¹⁰ *Sy v. Secretary of Justice*, 540 Phil. 111, 117 (2006).

¹¹ *Id.*, citing *Villanueva v. Secretary of Justice*, [512 Phil. 145, 159 (2005)].

¹² *TESDA v. COA Chairperson Tan*, 729 Phil. 60, 73 (2014); and *Yap v. Commission on Audit*, 633 Phil. 174, 195-196 (2010).

¹³ *Unilever Philippines, Inc. v. Tan*, 725 Phil. 486, 497 (2014).

parameters [in determining] probable cause” and merely relied on conjectures.¹⁴ This is plain arbitrariness correctible by *certiorari*. Verily, “[a] public prosecutor [who] grossly misinterprets to the point of distorting evidence x x x, [and turns] a blind eye to palpable indicators of criminal liability, [is guilty of] grave abuse of discretion.”¹⁵

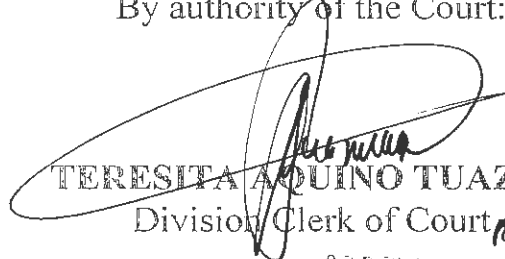
Lastly, it appears that the corresponding information against Saycon, *et al.* has been filed before the trial court. As such, “any disposition of the case [or] dismissal or the conviction or acquittal of the accused rests [within the exclusive jurisdiction, competence, and] discretion of the [trial] [c]ourt. x x x. The [trial] [c]ourt is the best and sole judge on what to do with the case before it.”¹⁶

In sum, there is a *prima facie* case against Saycon, *et al.* for *estafa*. They may disprove the accusation but such matters must be determined in a full-blown trial on the merits where the presence or absence of the elements of the crime may be thoroughly passed upon.¹⁷

FOR THESE REASONS, the Petition for Review on Certiorari¹⁸ is **DENIED**. The Court of Appeals’ Decision dated December 16, 2016 and Resolution dated March 15, 2017 in CA-G.R. SP No. 142985 are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *12/7*
07 DEC 2022

¹⁴ *Rural Bank of Mabitac, Laguna, Inc. v. Canicon*, 834 Phil. 346, 365 (2018).

¹⁵ *Reynes v. Office of the Ombudsman (Visayas)*, G.R. No. 223405, February 20, 2019, 894 SCRA 137, 142.

¹⁶ *Crespo v. Judge Mogul*, 235 Phil. 465, 476 (1987).

¹⁷ *Andres v. Justice Secretary Cuevas*, 499 Phil. 36, 49--50 (2005).

¹⁸ *Rollo*, pp. 13-65.

ATTY. ROGELIO N. VELARDE (reg)
Counsel for Petitioners
Unit 301-A, 3rd Floor, Panorama Bldg.
#480 Rizal Ave. Ext. bet. 9th & 10th Ave.
Grace Park, 1400 Caloocan City

REYES LAW OFFICE (reg)
(Atty. John Albert T. Reyes)
Counsel for Respondent
2/F, RP Bldg., Sto. Niño De Praga St.
Brgy. San Vicente, Gapan City
3105 Nueva Ecija

OFFICE OF THE CITY PROSECUTOR (reg)
Gapan City, Nueva Ecija
(Crim. Case No. 18181-15)

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 87
Gapan City, Nueva Ecija
(Crim. Case No. 18181-15)

HON. SECRETARY (x)
Department of Justice
P. Faura Street
Ermita, Manila
(NPS Docket No. III-06-INV-14J-00564)

JUDGMENT DIVISION (x)
Supreme Court, Manila

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PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. SP No. 142985

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