



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **December 7, 2022** which reads as follows:*

**“G.R. No. 257991 [Formerly UDK 16901] (PMFTC, Inc.,\* petitioner, v. Josielyn L. Flores, respondent.)** – The Court resolves to:

1. **GRANT** the motion of petitioner for extension of thirty (30) days from the expiration of the reglementary period within which to file a petition for review on *certiorari*; and

2. **NOTE** the comment dated June 29, 2021 of respondent on the petition.

Assailed in this Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 are the Decision<sup>2</sup> dated June 30, 2020 and the Resolution<sup>3</sup> dated February 4, 2021 of the Court of Appeals (CA) in CA-G.R. SP No. 159398, which dismissed the Petition for *Certiorari* (with Application for a Temporary Restraining Order and/or a Writ of Preliminary Injunction)<sup>4</sup> filed by petitioner PMFTC, Inc. (PMFTC). The Petition for *Certiorari* sought the nullification of two (2) Orders issued by the Regional Trial Court (RTC), Bauang, La Union, Branch 67 in Criminal Case No. 5447-BG, *viz.*: (1) Order<sup>5</sup> dated May 3, 2018, which directed the prosecutor to amend the Information to charge one of the accused as an accomplice instead of a principal and fixed the bail without a hearing; and (2) Order<sup>6</sup> dated December 3, 2018, which dismissed the Information against said accused and denied the motion for voluntary inhibition.

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\* Also referred to as “PMFTC Inc.” in some parts of the *rollo*.

<sup>1</sup> *Rollo*, pp. 81-122.

<sup>2</sup> *Id.* at 142-153. Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Mariflor P. Punzalan Castillo and Carlito B. Calpatura, concurring.

<sup>3</sup> *Id.* at 155-158.

<sup>4</sup> *Id.* at 175-235.

<sup>5</sup> *Id.* at 246-247. Penned by Judge Ferdinand A. Fe.

<sup>6</sup> *Id.* at 248-255.

### The Facts

This case stemmed from the filing of an Information<sup>7</sup> filed before the RTC charging respondent Josielyn L. Flores (Flores), as well as Joseph Onoza, Johndy Onoza, and John Does (Onoza, *et al.*), with the crime of Robbery with Homicide, as defined and penalized under Article 294 (1) of the Revised Penal Code, the accusatory portion of which reads:

That on or about the 12<sup>th</sup> day of February, 2018, in the Municipality of Bauang, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent to gain, with aggravating circumstances of treachery, abuse of superior strength and using fraud or craft and taking advantage of nighttime, and by means of motor vehicle and by means of force, violence, and intimidation, after gaining entrance into the Philip Morris Fortune Tobacco Corporation (PMFTC) Compound located at Brgy. Acao, Bauang, La Union, did then and there willfully, unlawfully and feloniously divest Security Guard Ricardo S. Fernandez of his firearm 9MM Armscor, Serial No. 1341091 valued at THIRTY THOUSAND PESOS (P30,000.00), to the damage and prejudice of the EAGLEONE Security Services, Inc.; that the accused entered the Administrative Building where a vault was located, partially torched the vault with acetylene to make it appear that it was the handiwork of another, when in truth the remittances/cash in the amount of THREE MILLION SIX HUNDRED SIX THOUSAND FOUR HUNDRED THIRTY PESOS and THIRTY CENTAVOS (P3,606,430.30) were taken from the vault by using the combination of lock of the vault known only to accused Josielyn Flores being the Vault Custodian; that accused likewise took and robbed the DVR of CCTV system worth FIFTEEN THOUSAND PESOS (P15,000.00), Security Log Book and Contractor's Log Book, Detachment Cellular phones, DEL LAPTOP worth TWENTY FIVE THOUSAND PESOS (P25,000.00) all belonging to PMFTC, against the will and without the consent of the said Corporation and to its damage and prejudice; that on the occasion of the said robbery and for the purpose of enabling them to take and steal the aforementioned money and personal properties of value, to facilitate their escape, to eliminate the eyewitness to the crime, and to secure their possession of the loot, the herein accused, confederating together and conspiring with one another, with intent to kill, did then and there willfully, unlawfully and feloniously stab the Ricardo S. Fernandez several times on the different parts of his body, thereby inflicting upon him multiple stab wounds which caused his death to the prejudice of his heirs.

CONTRARY to paragraph 1 of Article 294 of the Revised Penal Code, as amended by R.A. No. 7659.

On April 13, 2018, RTC Judge Ferdinand A. Fe (RTC judge) issued an Order,<sup>8</sup> finding probable cause against Onoza, *et al.*, except for Flores. After expressing his doubt about the complicity of Flores in the crime, the RTC

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<sup>7</sup> Id. at 344-345.

<sup>8</sup> Id. at 346.

judge instructed the public prosecutor to submit additional evidence to establish Flores' participation in the crime within five (5) days from receipt of the Order. The prosecution failed to comply with the RTC judge's instruction.<sup>9</sup>

On May 3, 2018, the RTC judge issued the first assailed Order<sup>10</sup> finding that respondent Flores should only be charged as an accomplice to the crime and ordering the prosecutor to amend the Information. The RTC judge ordered the issuance of a warrant for Flores' arrest and fixed the bail at ₱200,000.00.

Dissatisfied, the private prosecutor filed an Omnibus Motion for: (1) Partial Reconsideration (of the Order dated May 3, 2018); (2) Voluntary Inhibition; and (3) Suspension of Arraignment and Pre-trial.<sup>11</sup>

On December 3, 2018, the RTC judge issued the second assailed Order,<sup>12</sup> dismissing the Information against Flores. The RTC judge, emphasizing that a conspiracy without an overt act being committed is not a crime, said that the prosecution failed to show that Flores was at the scene of the crime or that she was the mastermind behind it. Moreover, Flores' absence during the commission of the crime can mean that she desisted from taking part therein.<sup>13</sup>

Acting on the Motion for Voluntary Inhibition, the RTC judge ruled that there is no reason for him to inhibit from the case. The RTC judge acknowledged his error in ordering that Flores be charged as an accomplice but explained that his mistake did not prejudice the prosecution especially considering that the error was eventually resolved. The RTC judge believed that he acted without bias or partiality, and that he can continue hearing the case with objectivity.<sup>14</sup>

PMFTC then filed a Petition for *Certiorari* (with Application for a Temporary Restraining Order and/or a Writ of Preliminary Injunction) before the CA seeking the nullification of the RTC Judge's May 3, 2018 and December 3, 2018 Orders.

PMFTC alleged that the RTC judge, in issuing the May 3, 2018 Order, arrogated unto himself the executive function of determining the existence of probable cause by ordering the amendment of the Information so that Flores can only be charged as an accomplice instead of a principal. PMFTC stressed that the discretion in amending the Information solely rests on the public

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<sup>9</sup> Id. at 152.

<sup>10</sup> Id. at 246-247.

<sup>11</sup> Id. at 256-279.

<sup>12</sup> Id. at 248-255.

<sup>13</sup> Id. at 251.

<sup>14</sup> Id. at 253-255.

prosecutor.<sup>15</sup> Similarly, in issuing the December 3, 2018 Order, the RTC judge resolved an issue that was not raised in the Omnibus Motion, *i.e.*, whether or not Flores should be charged of the crime.<sup>16</sup> Also, in *motu proprio* dismissing the Information, the RTC judge violated the prosecution's right to due process and hindered the power of the executive branch of government to prosecute offenders.<sup>17</sup> Worse, the RTC judge ordered the dismissal of the Information against Flores despite the facts, which point to Flores as a co-conspirator in the commission of the crime.<sup>18</sup>

Moreover, PMFTC asserted that the RTC judge showed bias and partiality in issuing the assailed Orders that favored Flores, which should justify his inhibition from the case.<sup>19</sup>

### The CA Ruling

In a Decision<sup>20</sup> dated June 30, 2020, the CA dismissed the Petition for *Certiorari* for lack of merit.

The CA agreed with the argument of PMFTC that the RTC judge erred in issuing the May 3, 2018 Order, specifically in ordering the amendment of the Information against Flores. However, the CA explained that a judge, in resolving a motion for reconsideration, is given the chance to review and correct errors that may have been committed. The RTC judge, in issuing the December 3, 2018 Order, rectified that error by ordering the dismissal of the Information against Flores due to lack of probable cause. The CA said that, once the Information is filed, the disposition of the case rests on the sound discretion of the court.<sup>21</sup>

Moreover, the CA discussed the theory of conspiracy advanced by PMFTC, stating that PMFTC is implicating Flores merely because of her relationship with accused Joseph Onoza. Allegedly, Flores divulged the combination code to him. However, the CA noted that Flores is not the sole custodian of the vault combination code. Moreover, the CA rejected the allegation of PMFTC that Flores's resignation or failure to report back for work after the incident is considered as flight, which proves her guilt. The CA clarified that flight, without other attending circumstances, is not a good indicator of one's guilt. The CA also took note of the fact that the prosecution failed to submit additional evidence as instructed by the RTC judge. Lastly, the CA affirmed the denial of the motion for inhibition, declaring that there is no proof of bias and partiality on the part of the RTC judge.<sup>22</sup>

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<sup>15</sup> Id. at 193-195.

<sup>16</sup> Id. at 195-196.

<sup>17</sup> Id. at 198.

<sup>18</sup> Id. at 201-202.

<sup>19</sup> Id. at 217-221.

<sup>20</sup> Id. at 142-153.

<sup>21</sup> Id. at 148-149.

<sup>22</sup> Id. at 150-152.

PMFTC filed a motion for reconsideration, which the CA denied in a Resolution<sup>23</sup> dated February 4, 2021; hence, this petition.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not the CA correctly dismissed the Petition for *Certiorari* for PMFTC's failure to prove grave abuse of discretion on the part of the RTC judge in issuing the May 3, 2018 and December 3, 2018 Orders.

### **The Court's Ruling**

The petition is denied.

#### **I.**

It is well-settled that the State, being the offended party in a criminal case, has the sole authority to question the acquittal of an accused or the dismissal of the criminal case before the CA and the Court through the Office of the Solicitor General (OSG). In the recent case of *Austria v. AAA*,<sup>24</sup> through Associate Justice Mario V. Lopez, the Court expounded on this rule, as follows:

In any criminal case or proceeding, only the OSG may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State before the Supreme Court (SC) and the CA. This is explicitly provided under Section 35(1), Chapter 12, Title III, Book III of the 1987 Administrative Code of the Philippines, thus:

Section 35. *Power and Functions.* — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the service of a lawyer. It shall have the following specific power and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme

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<sup>23</sup> Id. at 155-158.

<sup>24</sup> G.R. No. 205275, June 28, 2022 [Per J. Lopez, M., *En Banc*].

Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

**The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant.** The interest of the private offended party is restricted only to the civil liability of the accused. In the prosecution of the offense, the complainant's role is limited to that of a witness such that when a criminal case is dismissed by the trial court or if there is an acquittal, **an appeal on the criminal aspect may be undertaken only by the State through the OSG.** The private offended party may not take such appeal, but may only do so as to the civil aspect of the case. Differently stated, **the private offended party may file an appeal without the intervention of the OSG, but only insofar as the civil liability of the accused is concerned. Also, the private complainant may file a special civil action for certiorari even without the intervention of the OSG, but only to the end of preserving [their] interest in the civil aspect of the case.** x x x<sup>25</sup> (Emphases supplied)

Here, PMFTC filed the instant Petition without the concurrence of the OSG. As discussed above, PMFTC can do so only in relation to the civil aspect of the case. However, it appears that PMFTC has yet to present evidence and substantiate the alleged losses that it sustained as a result of the crime. Hence, the filing of the petitions before the CA and this Court is premature. Moreover, a careful perusal of the petition reveals the PMFTC delved into the criminal aspect of the case, which is beyond its authority to do in the absence of the intervention of the OSG.

Verily, the petition is already dismissible on this ground alone. Nonetheless, even if the Court brushes aside this infirmity and proceeds to resolve the case on the merits, the petition still ought to be dismissed.

## II.

“Grave abuse of discretion has a precise meaning in remedial law. It is not mere abuse of discretion but must be grave ‘as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross 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.’ In more concrete terms, not every error committed by a tribunal amounts to grave abuse of discretion. A misappreciation of the facts or a misapplication of the law does not, by itself, warrant the filing of a special civil action for *certiorari*. There must be a clear abuse of the authority vested in a tribunal. This abuse must be so serious and so grave that it warrants the interference of the court to nullify or modify the challenged action and to undo

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<sup>25</sup> Id.

the damage done.”<sup>26</sup> In this case, PMFTC imputes grave abuse of discretion against the RTC judge in issuing the May 3, 2018 and December 3, 2018 Orders.

A careful reading of the May 3, 2018 Order reveals that the RTC judge committed an error in ordering the prosecutor to amend the Information. However, as stated above, not every error constitutes grave abuse of discretion. Absent any indication of capriciousness and arbitrariness, the RTC judge merely made a reversible error. Fortunately, the RTC judge, in resolving the Omnibus Motion which sought the partial reconsideration of the first assailed Order, was given the opportunity to correct himself. In the second assailed Order dated December 3, 2018, the RTC judge owned up to his mistake and proceeded in dismissing the Information against Flores. In dismissing the case, the RTC judge acted in accordance with Section 5 (a), Rule 112 of the Revised Rules on Criminal Procedure, which provides:

Section 5. *When warrant of arrest may issue.* —

(a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. **He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.** If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information. (Emphasis supplied)

In *Maza v. Turla*,<sup>27</sup> through Senior Associate Justice Marvic M.V.F. Leonen, the Court elucidated on this provision as follows:

A plain reading of the provision shows that upon filing of the information, the trial court judge has the following options: (1) **dismiss the case if the evidence on record clearly fails to establish probable cause**; (2) issue a warrant of arrest or a commitment order if findings show probable cause; or (3) order the prosecutor to present additional evidence if there is doubt on the existence of probable cause.

The trial court judge’s determination of probable cause is based on her or his personal evaluation of the prosecutor’s resolution and its supporting evidence. The determination of probable cause by the trial court judge is a judicial function, whereas the determination of probable

<sup>26</sup> *G.V. Florida Transport, Inc. vs. Tiara Commercial Corporation*, 820 Phil. 235, 247 (2017) [Per J. Jardeleza, First Division].

<sup>27</sup> 805 Phil. 736 (2017) [Per J. Leonen, Second Division].

cause by the prosecutors is an executive function. x x x<sup>28</sup> (Emphasis supplied)

Contrary to the argument of PMFTC that a judicial determination of probable cause is restricted to the propriety of issuing a warrant of arrest, the Rules explicitly gives a judge the authority to dismiss the case if they find no probable cause against an accused, as what the RTC judge did in this case.

This Court also finds that the RTC had sufficient basis in dismissing the Information. It appears that the prosecution, in advancing the theory of conspiracy, implicated Flores essentially for her knowledge of the vault combination code and her intimate relationship with one of the accused. However, record shows that aside from Flores, there are two more PMFTC employees, namely: Karenina Cameyeng-Lardizabal and Marlon Estolas,<sup>29</sup> who could also access the vault. Evidently, the prosecution is singling out Flores because of her relationship with accused Joseph Onoza. In this regard, case law instructs that “[a]n assumed intimacy between two persons does not have any legal significance as far as conspiracy is concerned,”<sup>30</sup> and “[m]ere suspicion, speculation, relationship, association and companionship do not prove conspiracy.”<sup>31</sup> Hence, the prosecution cannot use the relationship between Flores and accused Joseph Onoza, in and of itself, as basis to support its theory of conspiracy. In the absence of any overt act that can prove her acquiescence and active participation in the commission of the crime, the prosecution’s theory of conspiracy between Flores and the other accused is utterly weak. Without proof of conspiracy, it follows that the prosecution had no basis to even construe Flores’ absence or resignation from work as flight to prove her guilt. Verily, the RTC judge’s decision to dismiss the Information against Flores, which is in accordance with Section 5 (a), Rule 112 of the Rules of Criminal Procedure, negates any imputation of grave abuse of discretion.

It is also worth mentioning that the RTC judge’s authority to dismiss the Information also proceeds from the principles that a court is not bound by the findings of the public prosecutor, and that the disposition of court cases rests on the sound discretion of the court. In *Summerville General Merchandising & Co., Inc. v. Hon. Eugenio, Jr.*,<sup>32</sup> through Associate Justice Presbitero J. Velasco, Jr., the Court declared:

We have ruled time and again that **once a case is filed with the court, any disposition of it rests on the sound discretion of the court.** This rule, however, is not without restrictions. We held in *Santos v. Orda, Jr.* that:

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<sup>28</sup> Id. at 756.

<sup>29</sup> *Rollo*, pp. 302-303.

<sup>30</sup> *People v. Ferras*, 351 Phil. 1020, 1036 (1998) [Per J. Kapunan, Third Division].

<sup>31</sup> *People v. Manijas*, 440 Phil. 425, 447 (2002) [Per J. Mendoza, Second Division]; *People v. Patano*, 447 Phil. 168, 192 (2003) [Per J. Austria-Martinez, *En Banc*]; *People v. Noroña*, 385 Phil. 1161, 1171 (2000) [Per J. Bellosillo, Second Division].

<sup>32</sup> 556 Phil. 121, 127 (2007) [Per J. Velasco, Jr., Second Division].



[T]he trial court is not bound to adopt the resolution of the Secretary of Justice since **it is mandated to independently evaluate or assess the merits of the case and it may either agree or disagree with the recommendation of the Secretary of Justice.** Reliance alone on the resolution of the Secretary of Justice would be an abdication of the trial court's duty and jurisdiction to determine a *prima facie* case.

Thus, the courts should not blindly follow the resolutions issued by the DOJ. On the contrary, **it should determine on its own whether there is probable cause to hold the accused for trial.** (Emphasis supplied)

Likewise, in *People v. Goyala*,<sup>33</sup> through Chief Justice Alexander G. Gesmundo, the Court enunciated:

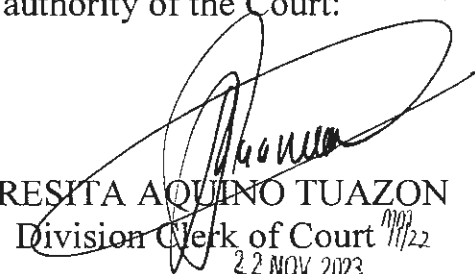
As explained in *Crespo v. Judge Mogul (Crespo)*, when an Information has been filed in court, the prosecutor would be stripped of the power to dismiss the case, *motu proprio*. Instead, **the court acquires the exclusive jurisdiction to decide what to do with the case even if it is against the position of the public prosecutor or even the Secretary of Justice.**<sup>34</sup> (Emphasis supplied.)

Regarding the motion for the voluntary inhibition, it is evident that allegations of bias and partiality are anchored on the erroneous perception of PMFTC that the RTC judge acted capriciously in issuing the assailed Orders. As discussed above, these allegations are completely unfounded.

**FOR THESE REASONS**, the petition is **DENIED**. The Decision dated June 30, 2020 and the Resolution dated February 4, 2021 of the Court of Appeals in CA-G.R. SP No. 159398 are hereby **AFFIRMED**.

**SO ORDERED."**

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court <sup>11/22</sup>  
22 NOV 2023

<sup>33</sup> G.R. No. 224650, July 15, 2020 [Per J. Gesmundo, Third Division].

<sup>34</sup> *Id.*

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(Crim. Case No. 5447-BG)

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