



Republic of the Philippines  
 Supreme Court  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**DANILO CALIVO CARIAGA,**  
 Petitioner,

**G.R. No. 223844**

- versus -

Present:

**EMMANUEL D. SAPIGAO and**  
**GINALYN C. ACOSTA,**  
 Respondents.

SERENO, *C.J.*, Chairperson,  
 LEONARDO-DE CASTRO,  
 DEL CASTILLO,  
 PERLAS-BERNABE, and  
 CAGUIOA, *JJ.*

Promulgated:

**JUN 28 2017**

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**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Resolutions dated June 17, 2015<sup>2</sup> and March 17, 2016<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 140206 dismissing petitioner Danilo Calivo Cariaga's (Cariaga) petition for review<sup>4</sup> before it on the ground of non-exhaustion of administrative remedies.

<sup>1</sup> *Rollo*, pp. 3-17.

<sup>2</sup> *Id.* at 19-23. Penned by Associate Justice Manuel M. Barrios with Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy concurring.

<sup>3</sup> *Id.* at 28-30.

<sup>4</sup> Dated April 24, 2015. *CA rollo*, pp. 3-12.

### The Facts

The instant case stemmed from a Complaint Affidavit<sup>5</sup> filed by Cariaga before the Office of the Provincial Prosecutor (OPP) – Urdaneta City, Pangasinan accusing respondents Emmanuel D. Sapigao (Sapigao) and Ginalyn C. Acosta (Acosta; collectively, respondents) of the crimes of Falsification of Public Documents, False Certification, and Slander by Deed, defined and penalized under Articles 171, 174, and 359 of the Revised Penal Code (RPC). In the said complaint, Cariaga alleged that respondents, in their respective capacities as Barangay Chairman and Secretary of Brgy. Carosucan Sur, Asingan, Pangasinan, made two (2) spurious entries in the barangay blotter, *i.e.*, (a) Entry No. 00054<sup>6</sup> dated August 3, 2012<sup>7</sup> stating that an unnamed resident reported that someone was firing a gun inside Cariaga’s compound, and that when Sapigao went thereat, he was able to confirm that the gunfire came from inside the compound and was directed towards the adjacent ricefields; and (b) Entry No. 00057<sup>8</sup> dated September 26, 2012 stating that a concerned but unnamed resident reported to Sapigao that Cariaga and his companions attended the funeral march of former Kagawad Rodrigo Calivo, Sr. (Calivo, Sr.) with firearms visibly tucked in their waists (blotter entries). According to Cariaga, the police authorities used the blotter entries to obtain a warrant for the search and seizure operation made inside his residence and cattle farm on December 18, 2012. While such operation resulted in the confiscation of a firearm and several ammunitions, the criminal case for illegal possession of firearms consequently filed against him was dismissed by the Regional Trial Court of Urdaneta City.<sup>9</sup> Claiming that the statements in the blotter entries were completely false and were made to dishonor and discredit him, Cariaga filed the said complaint, docketed as NPS-I-01e-INV-14B-00084.<sup>10</sup>

In his defense,<sup>11</sup> Sapigao denied the accusations against him, maintaining that the blotter entries were true, as he personally witnessed their details. In this regard, he presented the Joint Affidavit<sup>12</sup> executed by Barangay *Kagawads* Elpidio Cariaga, Metrinio Dela Cruz, Greg Turalba, and Ex-Barangay *Kagawad* Jaime Aguida attesting that: (a) during the funeral march of Calivo, Sr., they observed that Cariaga and his employees had handguns tucked into their waists; and (b) the firing of guns was a common occurrence in Cariaga’s farm.<sup>13</sup> For her part,<sup>14</sup> Acosta averred that she was merely performing her duties as Barangay Secretary when she

<sup>5</sup> Dated February 25, 2014. *Id.* at 45-47.

<sup>6</sup> *Id.* at 48.

<sup>7</sup> Erroneously dated “August 13, 2012” in the Complaint Affidavit (see *id.* at 46).

<sup>8</sup> *Id.* at 49.

<sup>9</sup> See Resolution in Crim. Case No. U-18895 dated October 21, 2013 issued by Presiding Judge Elizabeth L. Berdal; *id.* at 51-54 .

<sup>10</sup> See *id.* at 15-16 and 31-32.

<sup>11</sup> See Counter-Affidavit dated April 1, 2014; *id.* at 56-57.

<sup>12</sup> Dated April 1, 2014. *Id.* at 64.

<sup>13</sup> See *id.* at 16 and 32-33.

<sup>14</sup> See Counter Affidavit dated April 1, 2014; *id.* at 58.

certified as true copies the photocopies of the aforesaid blotter entries requested by the police authorities.<sup>15</sup>

### **The OPP's Ruling**

In a Resolution<sup>16</sup> dated April 10, 2014, the OPP dismissed the complaint for lack of probable cause. It found that the questioned blotter entries were all made in good faith and merely for recording purposes; done in the performance of respondents' official duties; and based on personal knowledge of what actually transpired. In this relation, the OPP pointed out that Cariaga's complaint and supporting affidavits, which mainly consist of a general and blanket denial of the incidents described in the blotter entries, could not prevail over the positive and categorical testimonies of Sapigao and his witnesses.<sup>17</sup>

Cariaga moved for reconsideration<sup>18</sup> which was, however, denied in a Resolution<sup>19</sup> dated July 28, 2014. Aggrieved, he filed a petition for review<sup>20</sup> before the Office of the Regional State Prosecutor (ORSP) – Urdaneta City, Pangasinan.<sup>21</sup>

### **The ORSP's Ruling**

In a Resolution<sup>22</sup> dated January 5, 2015, the ORSP affirmed the OPP's ruling. The ORSP found that absent any showing of ill-motive on respondents' part in making the blotter entries, there can be no basis to charge them of Falsification of Private Documents. This is especially so as the statements therein were supported by testimonies of several witnesses, and there is colorable truth to the same, since the search conducted by the police authorities in Cariaga's home and cattle farm resulted in the seizure of a firearm and several ammunitions and the eventual filing of a criminal case against Cariaga for illegal possession of firearms.<sup>23</sup> Further, the ORSP ruled that the blotter entries were not intended to malign, dishonor, nor defame Cariaga; as such, respondents could not be said to have committed the crime of Slander by Deed.<sup>24</sup> Finally, the ORSP pointed out that Acosta's mere

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<sup>15</sup> See id. at 16 and 33.

<sup>16</sup> Id. at 31-34. Penned by Assistant Provincial Prosecutor Adriano P. Cabida, recommended for approval by Assistant Provincial Prosecutor Ephraim S. Tomboc, and approved by Provincial Prosecutor Abraham L. Ramos II.

<sup>17</sup> See id. at 33-34.

<sup>18</sup> See Motion for Reconsideration with Prayer for Inhibition and to Assign Case to Another Investigating Prosecutor and Review Panel dated June 3, 2014; id. at 35-41.

<sup>19</sup> Id. at 42-43.

<sup>20</sup> Not attached to the records.

<sup>21</sup> See *rollo*, p.6.

<sup>22</sup> CA *rollo*, pp.15-20. Penned by Regional Prosecutor Nonnatus Caesar R. Rojas.

<sup>23</sup> See id. at 18.

<sup>24</sup> Id. at 19.

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authentication of the photocopies of the blotter entries cannot be equated to issuing a false certification so as to indict her of such crime.<sup>25</sup>

Undaunted, Cariaga moved for reconsideration,<sup>26</sup> but the same was denied in a Resolution<sup>27</sup> dated March 14, 2015. Thus, he filed a petition for review<sup>28</sup> before the CA, docketed as CA-G.R. SP No. 140206.

### **The CA Ruling**

In a Resolution<sup>29</sup> dated June 17, 2015, the CA dismissed Cariaga's petition before it. It held that the ORSP is not the final authority in the hierarchy of the National Prosecution Service, as one could still appeal an unfavorable ORSP ruling to the Secretary of Justice (SOJ). As such, Cariaga's direct and immediate recourse to the CA to assail the ORSP ruling without first filing a petition for review before the SOJ violated the principle of exhaustion of administrative remedies. Thus, the dismissal of Cariaga's petition for review is warranted.<sup>30</sup>

Unperturbed, Cariaga filed a motion for reconsideration,<sup>31</sup> but it was denied in a Resolution<sup>32</sup> dated March 17, 2016; hence, this petition.

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

The issue for the Court's resolution is whether or not the CA correctly dismissed Cariaga's petition for review before it on the ground of non-exhaustion of administrative remedies.

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

The petition must be denied.

#### **I.**

To recapitulate, Cariaga's petition for review before the CA was dismissed on the ground of non-exhaustion of administrative remedies as he did not elevate the adverse ORSP ruling to the SOJ before availing of judicial remedies.

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<sup>25</sup> See *id.* at 19-20.

<sup>26</sup> See motion for reconsideration dated February 3, 2015; *id.* at 21-25.

<sup>27</sup> *Id.* at 28-30.

<sup>28</sup> See *id.* at 3-14.

<sup>29</sup> *Rollo*, pp. 19-23.

<sup>30</sup> See *id.* at 20-23.

<sup>31</sup> Dated July 20, 2015. *Id.* at 24-26.

<sup>32</sup> *Id.* at 28-30.

The Department of Justice's (DOJ) Department Circular No. 70<sup>33</sup> dated July 3, 2000, entitled the "2000 NPS Rule on Appeal," which governs the appeals process in the National Prosecution Service (NPS), provides that resolutions of, *inter alia*, the RSP, in cases subject of preliminary investigation/reinvestigation shall be appealed by filing a verified petition for review before the SOJ.<sup>34</sup> However, this procedure was immediately amended by the DOJ's Department Circular No. 70-A<sup>35</sup> dated July 10, 2000, entitled "Delegation of Authority to Regional State Prosecutors to Resolve Appeals in Certain Cases," pertinent portions of which read:

DEPARTMENT CIRCULAR NO. 70-A

SUBJECT: Delegation of Authority to Regional State  
Prosecutors to Resolve Appeals in Certain Cases

In order to expedite the disposition of appealed cases governed by Department Circular No. 70 dated July 3, 2000 ("2000 NPS RULE ON APPEAL"), **all petitions for review of resolutions of Provincial/City Prosecutors in cases cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts**, except in the National Capital Region, **shall be filed with the Regional State Prosecutor concerned who shall resolve such petitions with finality** in accordance with the pertinent rules prescribed in the said Department Circular.

The foregoing delegation of authority notwithstanding, the Secretary of Justice may, pursuant to his power of supervision and control over the entire National Prosecution Service and in the interest of justice, review the resolutions of the Regional State Prosecutors in appealed cases. (Emphases and underscoring supplied)

As may be gleaned above, Department Circular No. 70-A delegated to the ORSPs the authority to **rule with finality** cases subject of preliminary investigation/reinvestigation appealed before it, provided that: (a) the case is not filed in the National Capital Region (NCR); and (b) the case, should it proceed to the courts, is cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts (MeTCs, MTCs, and MCTCs) – which includes not only violations of city or municipal ordinances, but also all offenses punishable with imprisonment **not exceeding six (6) years**, irrespective of the amount of fine, and regardless of other impossible accessory or other penalties attached thereto.<sup>36</sup> This is, however, without prejudice on the part of the SOJ to review the ORSP ruling should the former deem it appropriate to do so in the interest of justice. The foregoing amendment is further strengthened by a later issuance, *i.e.*, Department Circular No. 018-14<sup>37</sup> dated June 18, 2014, entitled "Revised

<sup>33</sup> (September 1, 2000).

<sup>34</sup> See Sections 1 and 4 of DOJ Circular No. 70.

<sup>35</sup> (September 1, 2000).

<sup>36</sup> See Section 32 of *Batas Pambansa Blg. 129*, entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," otherwise known as "THE JUDICIARY REORGANIZATION ACT OF 1980," as amended (August 14, 1981).

<sup>37</sup> (July 1, 2014).

Delegation of Authority on Appealed Cases,” pertinent portions of which read:

DEPARTMENT CIRCULAR NO. 018-14

SUBJECT: Revised Delegation of  
Authority on Appealed Cases

In the interest of service and pursuant to the provisions of existing laws with the objective of institutionalizing the Department’s Zero Backlog Program on appealed cases, the following guidelines shall be observed and implemented in the resolution of appealed cases on Petition for Review and Motions for Reconsideration:

1. Consistent with Department Circular No. 70-A, all appeals from resolutions of Provincial or City Prosecutors, except those from the National Capital Region, in cases cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, shall be by way of a petition for review to the concerned province or city. The Regional Prosecutor shall resolve the petition for review with finality, in accordance with the rules prescribed in pertinent rules and circulars of this Department. Provided, however, that the Secretary of Justice may, pursuant to the power of control and supervision over the entire National Prosecution Service, review, modify or reverse, the resolutions of the Regional Prosecutor in these appealed cases.
2. Appeals from resolutions of Provincial or City Prosecutors, except those from the National Capital Region, in all other cases shall be by way of a petition for review to the Office of Secretary of Justice.
3. Appeals from resolutions of the City Prosecutors in the National Capital Region in cases cognizable by Metropolitan Trial Courts shall be by way of a petition for review to the Prosecutor General who shall decide the same with finality. Provided, however that the Secretary of Justice may, pursuant to the power of control and supervision over the entire National Prosecution Service, review, modify or reverse, the resolutions of the Prosecutor General in these appealed cases.
4. Appeals from resolutions of the City Prosecutors in the National Capital Region in all other cases shall be by way of a petition for review to the Office of the Secretary.

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This Circular supersedes all inconsistent issuances, takes effect on 01 July 2014 and shall remain in force until further orders.

For guidance and compliance.

A reading of the foregoing provisions shows that the prevailing appeals process in the NPS with regard to complaints subject of preliminary

investigation would depend on two factors, namely: where the complaint was filed, *i.e.*, whether in the NCR or in the provinces; and which court has original jurisdiction over the case, *i.e.*, whether or not it is cognizable by the MTCs/MeTCs/MCTCs. Thus, the rule shall be as follows:

- (a) If the complaint is filed outside the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of petition for review before the ORSP, which ruling shall be with finality;
- (b) If the complaint is filed outside the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of petition for review before SOJ, which ruling shall be with finality;
- (c) If the complaint is filed within the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OCP may be appealable by way of petition for review before the Prosecutor General, whose ruling shall be with finality;
- (d) If the complaint is filed within the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OCP may be appealable by way of petition for review before the SOJ, whose ruling shall be with finality;
- (e) Provided, that in instances covered by (a) and (c), the SOJ may, pursuant to his power of control and supervision over the entire National Prosecution Service, review, modify, or reverse the ruling of the ORSP or the Prosecutor General, as the case may be.

In the instant case, Cariaga filed a complaint before the OPP in Pangasinan (*i.e.*, outside the NCR) accusing respondents of committing the crimes of Falsification of Public Documents, False Certification, and Slander by Deed, defined and penalized under Articles 171, 174, and 359 of the RPC. Of the crimes charged, only False Certification and Slander by Deed are cognizable by the MTCs/MeTCs/MCTCs,<sup>38</sup> while Falsification of Public Documents is cognizable by the Regional Trial Courts.<sup>39</sup> Applying the prevailing rule on the appeals process of the NPS, the ruling of the ORSP as

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<sup>38</sup> Both crimes of False Certification and Slander by Deed are punishable by *arresto mayor* in its maximum period to *prision correccional* in its minimum period, which is imprisonment for a period ranging from four (4) months and one (1) day to two (2) years and four (4) months. See Articles 174 and 359, in relation to Article 77 of the RPC.

<sup>39</sup> Falsification of Public Document is punishable by *prision mayor*, which is imprisonment for a period ranging from six (6) years and one (1) day to twelve (12) years. See Article 171, in relation to Article 27 of the RPC.

regards Falsification of Public Documents may still be appealed to the SOJ before resort to the courts may be availed of. On the other hand, the ruling of the ORSP pertaining to False Certification and Slander by Deed should already be deemed final – at least insofar as the NPS is concerned – and thus, may already be elevated to the courts.

Verily, the CA erred in completely dismissing Cariaga’s petition before it on the ground of non-exhaustion of administrative remedies, as only the ORSP ruling regarding the crime of Falsification of Public Documents may be referred to the SOJ, while the ORSP ruling regarding the crimes of False Certification and Slander by Deed may already be elevated before the courts. Thus, the CA should have resolved Cariaga’s petition on the merits insofar as the crimes of False Certification and Slander by Deed are concerned. In such an instance, court procedure dictates that the instant case be remanded to the CA for resolution on the merits. “However, when there is already enough basis on which a proper evaluation of the merits may be had — as in this case — the Court may dispense with the time-consuming procedure of remand in order to prevent further delays in the disposition of the case and to better serve the ends of justice.”<sup>40</sup> In view of the foregoing – as well as the fact that Cariaga prayed for a resolution on the merits – the Court finds it appropriate to resolve the substantive issues of this case.

## II.

In the recent case of *Hilbero v. Morales, Jr.*,<sup>41</sup> the Court reiterated the guiding principles in determining whether or not the courts may overturn the findings of the public prosecutor in a preliminary investigation proceedings on the ground of grave abuse of discretion in the exercise of his/her functions, viz.:

**A public prosecutor’s determination of probable cause — that is, one made for the purpose of filing an information in court — is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari*. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. While defying precise definition, grave abuse of discretion generally refers to a “capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.” Corollary, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. To note, the underlying principle behind the courts’ power to review a public prosecutor’s determination of probable cause is to ensure that the latter acts within the permissible**

<sup>40</sup> See *Sy-Vargas v. The Estate of Ogsos, Sr.*, G.R. No. 221062, October 5, 2016, citing *Gonzales v. Marmaine Realty Corporation*, G.R. No. 214241, January 13, 2016, 781 SCRA 63, 71.

<sup>41</sup> See G.R. No. 198760, January 11, 2017.

**bounds of his authority or does not gravely abuse the same.** This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government. x x x

x x x x

**In the foregoing context, the Court observes that grave abuse of discretion taints a public prosecutor's resolution if he arbitrarily disregards the jurisprudential parameters of probable cause.** In particular, case law states that probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. It does not mean "actual and positive cause" nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief and, as such, 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. As pronounced in *Reyes v. Pearlbank Securities, Inc.* [(582 Phil. 505, 591 [2008])]:

**A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.** In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.<sup>42</sup> (Emphases in the original.)

In the instant case, a judicious perusal of the records reveals that the ORSP correctly ruled that there is no probable cause to indict respondents of the crimes of Slander by Deed and False Certification. As aptly found by the ORSP, there was no improper motive on the part of respondents in making the blotter entries as they were made in good faith; in the performance of their official duties as barangay officials; and without any intention to malign, dishonor, or defame Cariaga. Moreover, the statements contained in the blotter entries were confirmed by disinterested parties who likewise witnessed the incidents recorded therein. On the other hand, Cariaga's insistence that the blotter entries were completely false essentially rests on mere self-serving assertions that deserve no weight in law.<sup>43</sup> Thus, respondents cannot be said to have committed the crime of Slander by Deed.

<sup>42</sup> See *id.*, citing *Aguilar v. DOJ*, 717 Phil. 789, 798-800 (2013).

<sup>43</sup> See *Reyes v. Nieva*, A.C. No. 8560, September 6, 2016, citing *People v. Mangune*, 698 Phil. 759, 771 (2012).

Furthermore, suffice it to say that the mere act of authenticating photocopies of the blotter entries cannot be equated to committing the crime of False Certification under the law. In sum, the ORSP correctly found no probable cause to indict respondents of the said crimes.

**WHEREFORE**, the petition is hereby **DENIED**.

**SO ORDERED.**

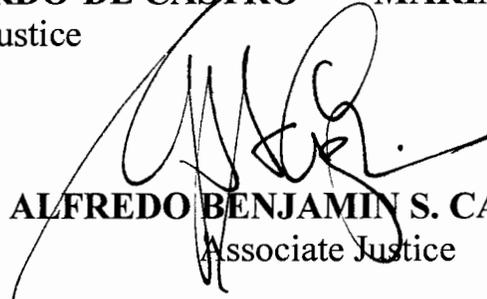
  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice

  
**TERESITA J. LEONARDO-DE CASTRO**  
 Associate Justice

  
**MARIANO C. DEL CASTILLO**  
 Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

### **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice