Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

THE LAW FIRM OF CHAVEZ MIRANDA AND ASEOCHE, represented by its Founding Partner, FRANCISCO I. CHAVEZ,	**G.R. No. 183014**
Petitioner,	Present:
	CARPIO, *J.*, Chairperson,
- versus -	BRION,
	DEL CASTILLO,
	PEREZ, and
	PERLAS-BERNABE, *JJ.*
ATTY. JOSEJINA C. FRIA,	
Respondent.	Promulgated:
	AUG 07 2013

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DECISION

PERLAS-BERNABE, *J.*:

This is a direct recourse to the Court from the Regional Trial Court of Muntinlupa City, Branch 276 (RTC), through a petition for review on *certiorari*,[1] raising a pure question of law. In particular, petitioner The Law Firm of Chavez Miranda and Aseoche (The Law Firm) assails the Resolution[2] dated January 8, 2008 and Order[3] dated May 16, 2008 of the RTC in S.C.A. Case No. 07-096, upholding the dismissal of Criminal Case No. 46400 for lack of probable cause.

The Facts

On July 31, 2006, an Information[4] was filed against respondent Atty. Josejina C. Fria (Atty. Fria), Branch Clerk of Court of the Regional Trial Court of Muntinlupa City, Branch 203 (Branch 203), charging her for the crime of Open Disobedience under Article 231[5] of the Revised Penal Code (RPC). The accusatory portion of the said information reads:

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1 *Rollo*, pp. 31-61.
2 Id. at 9-10. Penned by Acting Presiding Judge Romulo SG. Villanueva.
3 Id. at 27-28.
4 Id. at 243.
5 Article 231 of the RPC reads:

> The undersigned 2nd Assistant City Prosecutor accuses ATTY. JOSEJINA C. FRIA of the crime of Viol. of Article 231 of the Revised Penal Code, committed as follows:
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> That on or about the 2nd day of February, 2006, or on dates subsequent thereto, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer she being the Branch Clerk of Court of the Regional Trial Court Branch 203, Muntinlupa City, did then and there willfully, unlawfully and feloniously refused openly, without any legal justification to obey the order of the said court which is of superior authority, for the issuance of a writ of execution which is her ministerial duty to do so in Civil Case No. 03-110 entitled Charles Bernard Reyes, doing business under the name and style CBH Reyes Architects vs. Spouses Cesar and Mely Esquig and Rosemarie Papas, which has become final and executory since February 2, 2006, despite requests therefor, if only to execute/enforce said decision dated July 29, 2005 rendered within the scope of its jurisdiction and issued with all the legal formalities, to the damage and prejudice of the plaintiff thereof.
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> Contrary to law.
> Muntinlupa City, July 31, 2006.[6]

Based on the records, the undisputed facts are as follows:

The Law Firm was engaged as counsel by the plaintiff in Civil Case No. 03-110 instituted before Branch 203.[7] On July 29, 2005, judgment was rendered in favor of the plaintiff (July 29, 2005 judgment), prompting the defendant in the same case to appeal. However, Branch 203 disallowed the appeal and consequently ordered that a writ of execution be issued to enforce the foregoing judgment.[8] Due to the denial of the defendant's motion for reconsideration, the July 29, 2005 judgment became final and executory. [9]

In its Complaint-Affidavit[10] dated February 12, 2006, The Law Firm alleged that as early as April 4, 2006, it had been following up on the issuance of a writ of execution to implement the July 29, 2005 judgment. However, Atty. Fria vehemently refused to perform her ministerial duty of issuing said writ.

> ART. 231. *Open Disobedience*. – Any judicial or executive officer who shall openly refuse to execute the judgment, decision, or order of any superior authority made within the scope of the jurisdiction of the latter and issued with all the legal formalities, shall suffer the penalties of *arresto mayor* in its medium period to *prisión correccional* in its minimum period, temporary special disqualification in its maximum period and a fine not exceeding 1,000 pesos.

6 *Rollo*, p. 243.
7 Id. at 34.
8 Id. at 36.
9 Id. at 36-37.
10 Id. at 192-200.

In her Counter-Affidavit[11] dated June 13, 2006, Atty. Fria posited that the draft writ of execution (draft writ) was not addressed to her but to Branch Sheriff Jaime Felicen (Felicen), who was then on leave. Neither did she know who the presiding judge would appoint as special sheriff on Felicen's behalf.[12] Nevertheless, she maintained that she need not sign the draft writ since on April 18, 2006, the presiding judge issued an Order stating that he himself shall sign and issue the same.[13]

On July 31, 2006, the prosecutor issued a Memorandum[14] recommending, *inter alia*, that Atty. Fria be indicted for the crime of Open Disobedience. The corresponding Information was thereafter filed before the Metropolitan Trial Court of Muntinlupa City, Branch 80 (MTC), docketed as Criminal Case No. 46400.

The Proceedings Before the MTC

On September 4, 2006, Atty. Fria filed a Motion for Determination of Probable Cause[15] (motion) which The Law Firm opposed[16] on the ground that the Rules on Criminal Procedure do not empower trial courts to review the prosecutor's finding of probable cause and that such rules only give the trial court judge the duty to determine whether or not a warrant of arrest should be issued against the accused.

Pending resolution of her motion, Atty. Fria filed a Manifestation with Motion[17] dated November 17, 2006, stating that the Court had rendered a Decision in the case of *Reyes v. Balde II* (*Reyes*)[18] – an offshoot of Civil Case No. 03-110 – wherein it was held that Branch 203 had no jurisdiction over the foregoing civil case.[19] In response, The Law Firm filed its Comment/Opposition,[20] contending that Atty. Fria already committed the crime of Open Disobedience 119 days before the *Reyes* ruling was rendered and hence, she remains criminally liable for the afore-stated charge.

In an Omnibus Order[21] dated January 25, 2007, the MTC ordered the dismissal of Criminal Case No. 46400 for lack of probable cause. It found that aside from the fact that Atty. Fria is a judicial officer, The Law Firm failed to prove the existence of the other elements of the crime of Open

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11 Id. at 202-208.
12 Id. at 204-205.
13 Id. at 206.
14 Id. at 237-242. Issued by 2nd Assistant City Prosecutor Leopoldo B. Macinas and approved by City Prosecutor Edward M. Togonon.
15 Id. at 246-250.
16 Id. at 264-281. See Opposition dated October 10, 2006.
17 Id. at 282-286.
18 G.R. No. 168384, August 7, 2006, 498 SCRA 186.
19 Id. at 196-197.
20 *Rollo*, pp. 287-294. Filed on December 21, 2006.
21 Id. at 296-304. Penned by Presiding Judge Paulino Q. Gallegos.

Disobedience.[22] In particular, the second element of the crime, *i.e.*, that there is a judgment, decision, or order of a superior authority made within the scope of its jurisdiction and issued with all legal formalities, unlikely existed since the Court already declared as null and void the entire proceedings in Civil Case No. 03-110 due to lack of jurisdiction. In this regard, the MTC opined that such nullification worked retroactively to warrant the dismissal of the case and/or acquittal of the accused at any stage of the proceedings.[23]

Dissatisfied, The Law Firm moved for reconsideration[24] which was, however, denied in a Resolution[25] dated July 13, 2007. Accordingly, it elevated the matter on *certiorari*.[26]

The RTC Ruling

In a Resolution[27] dated January 8, 2008, the RTC affirmed the MTC's ruling, finding no grave abuse of discretion on the latter's part since its dismissal of Criminal Case No. 46400 for lack of probable cause was "in full accord with the law, facts, and jurisprudence."[28]

Aggrieved, The Law Firm filed a Motion for Reconsideration[29] which was equally denied by the RTC in an Order[30] dated May 16, 2008. Hence, the instant petition.

The Issue Before the Court

The essential issue in this case is whether or not the RTC erred in sustaining the MTC's dismissal of the case for Open Disobedience against Atty. Fria, *i.e.*, Criminal Case No. 46400, for lack of probable cause.

The Court's Ruling

The petition is bereft of merit.

Under Section 5(a) of the Revised Rules of Criminal Procedure, a trial court judge may immediately dismiss a criminal case if the evidence on record clearly fails to establish probable cause, *viz*:

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22 Id. at 302.
23 Id. at 303.
24 Id. at 305-319. Motion for Reconsideration dated February 19, 2007.
25 Id. at 295 and 330.
26 Id. at 335-366.
27 Id. at 9-10.
28 Id. at 10. Dated January 30, 2008.
29 Id. at 11-26
30 Id. at 27-28.

> Sec. 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 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 and underscoring supplied)

It must, however, be observed that the judge's power to immediately dismiss a criminal case would only be warranted when the lack of probable cause is clear. In *De Los Santos-Dio v. CA*,[31] the Court illumined that a clear-cut case of lack of probable cause exists when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged, *viz*:

> While a judge's determination of probable cause is generally confined to the limited purpose of issuing arrest warrants, Section 5(a), Rule 112 of the Revised Rules of Criminal Procedure explicitly states that a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause x x x.
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> In this regard, so as not to transgress the public prosecutor's authority, it must be stressed that **the judge's dismissal of a case must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause – that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged**. On the contrary, if the evidence on record shows that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial. In doubtful cases, however, the appropriate course of action would be to order the presentation of additional evidence.
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> In other words, once the information is filed with the court and the judge proceeds with his primordial task of evaluating the evidence on record, he may either: (*a*) issue a warrant of arrest, if he finds probable cause; (*b*) **immediately dismiss the case, if the evidence on record clearly fails to establish probable cause**; and (*c*) order the prosecutor to submit additional evidence, in case he doubts the existence of probable cause. [32] (Emphasis and underscoring supplied; citations omitted)

Applying these principles to the case at bar would lead to the conclusion that the MTC did not gravely abuse its discretion in dismissing Criminal Case No. 46400 for lack of probable cause. The dismissal ought to be sustained since the records clearly disclose the unmistakable absence of

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31 G.R. Nos. 178947 and 179079, June 26, 2013.

32 Id.

the integral elements of the crime of Open Disobedience. While the first element, *i.e.*, that the offender is a judicial or executive officer, concurs in view of Atty. Fria's position as Branch Clerk of Court, the second and third elements of the crime evidently remain wanting.

To elucidate, the second element of the crime of Open Disobedience is that there is a judgment, decision, or order of a superior authority made ***within the scope of its jurisdiction*** and issued with all legal formalities. In this case, it is undisputed that all the proceedings in Civil Case No. 03-110 have been regarded as null and void due to Branch 203's lack of jurisdiction over the said case. This fact has been finally settled in *Reyes* where the Court decreed as follows:

> WHEREFORE, in view of the foregoing, the instant petition is DENIED. x x x The Presiding Judge of the **Regional Trial Court of Muntinlupa City, Branch 203** is PERMANENTLY ENJOINED from proceeding with **Civil Case No. 03-110** and **all the proceedings therein are DECLARED NULL AND VOID**. x x x The Presiding Judge of the Regional trial Court of Muntinlupa City, Branch 203 is further DIRECTED to dismiss Civil Case No. 03-110 for **lack of jurisdiction**.[33] (Emphasis and underscoring supplied)

Hence, since it is explicitly required that the subject issuance be made within the scope of a superior authority's jurisdiction, it cannot therefore be doubted that the second element of the crime of Open Disobedience does not exist. Lest it be misunderstood, a court – or any of its officers for that matter – which has no jurisdiction over a particular case has no authority to act at all therein. In this light, it cannot be argued that Atty. Fria had already committed the crime based on the premise that the Court's pronouncement as to Branch 203's lack of jurisdiction came only after the fact. Verily, Branch 203's lack of jurisdiction was not merely a product of the Court's pronouncement in *Reyes*. The said fact is traced to the very inception of the proceedings and as such, cannot be accorded temporal legal existence in order to indict Atty. Fria for the crime she stands to be prosecuted.

Proceeding from this discussion, the third element of the crime, *i.e.*, that the offender, without any legal justification, openly refuses to execute the said judgment, decision, or order, which he is duty bound to obey, cannot equally exist. Indubitably, without any jurisdiction, there would be no legal order for Atty. Fria to implement or, conversely, disobey. Besides, as the MTC correctly observed, there lies ample legal justifications that prevented Atty. Fria from immediately issuing a writ of execution.[34]

In fine, based on the above-stated reasons, the Court holds that no grave abuse of discretion can be attributed to the MTC as correctly found by the RTC. It is well-settled that an act of a court or tribunal can only be

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[33] Supra note 18, at 197.
[34] *Rollo*, pp. 303-304.

considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion 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 and hostility."[35] Consequently, the dismissal of Criminal Case No. 46400 for lack of probable cause is hereby sustained.

WHEREFORE, the petition is **DENIED**. The Resolution dated January 8, 2008 and Order dated May 16, 2008 of the Regional Trial Court of Muntinlupa City, Branch 276 in S.C.A. Case No. 07-096 are hereby **AFFIRMED**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest 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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

[35] *Dy v. Reyes-Carpio*, G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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