



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ROBERT KUA, CAROLINE N. KUA, G.R. No. 191237
and MA. TERESITA N. KUA,
Petitioners,

Present:

- versus -

SERENO, CJ.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

GREGORIO SACUPAYO and
MAXIMINIANO PANERIO,
Respondents.

Promulgated:

SEP 24 2014

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DECISION

PEREZ, J.:

We heed the urgings in this petition to reverse the Decision¹ of the Court of Appeals in CA-G.R. SP No. 01569-MIN which ordered the reinstatement of Criminal Case Nos. 2006-072, 2006-073 and 2006-074 pending before, and subsequently withdrawn by, the Regional Trial Court (RTC), Branch 20, Cagayan de Oro City.² Petitioners Robert, Caroline and Ma. Teresita, all surnamed Kua, were charged in the criminal cases for failure to remit Social Security System (SSS) contributions and payments on loans of respondents Gregorio Sacupayo and Maximiniano Panerio under Section 22 (a) and (d), in relation to Section 28 (e), of Republic Act (R.A.) No. 8282, the Social Security (SS) Law.

¹ Rollo, pp. 40-54; Penned by Associate Justice Ruben C. Ayson with Associate Justices Rodrigo F. Lim, Jr. and Leoncia Dimagiba concurring.

² Id. at 88-89; Penned by Judge Gregorio D. Pantanosas, Jr.

The Court of Appeals fairly summarizes the facts, to wit:

[Petitioners] Robert Kua, Engr. Juanito Pagcaliwagan, Caroline N. Kua, Cleofe P. Adiao, Ma. Teresita N. Kua and Francisco Alconis are members of the Board of Directors and the officers of Vicmar Development Corporation, a domestic corporation, x x x. [Respondents] Gregorio G. Sacupayo and Maximiliano Panerio were VICMAR employees since 1985 and 1995[,] respectively. Sacupayo was a foreman while Panerio was an assistant foreman.

As required by law, Vicmar, through its officers, deducted the Social Security System (SSS) contributions of [respondents] from their wages. It also deducted four hundred sixty eight pesos (Php468.00) per month from the wage of Sacupayo as his monthly amortization for a ten thousand peso (Php10,000.00) loan he obtained from the SSS on November 14, 2002. The deductions were remitted by Vicmar to the SSS at first.

Sometime in 2003 and 2004, unknown to [respondents] and despite the continued SSS deductions from their wages, Vicmar stopped remitting the same to the SSS. The un-remitted contributions for each [respondent] reached five thousand seven hundred sixty pesos (Php5,760.00) each. For the amortizations, a total of eleven thousand two hundred thirty two pesos (Php11,232.00) was deducted from the wages of Sacupayo as full payment for his loan. Yet only four thousand pesos (Php4,000.00) was remitted.

Meantime, on August 7, 2004 and August 9, 2004 respectively, Sacupayo and Panerio were dismissed from employment. Both filed complaints for illegal dismissal.

Panerio was thereafter afflicted with Chronic Persistent Asthma on September 28, 2004. But when he applied for sickness benefits before the SSS in October 2004, the same was denied for the reason that no contributions or payments were made for twelve (12) months prior to the semester of confinement. Sacupayo, for his part, filed another loan application before the SSS. But this was also denied outright for non-payment of a previous loan which should have been fully paid if not for the failure of Vicmar to remit the amounts due to the SSS.

x x x x

Aggrieved by the wrongful acts of Vicmar in failing to remit the amounts due to the SSS that were deducted from their wages, [respondents] filed complaints before the Office of the City Prosecutor in Cagayan de Oro City. Vicmar then remitted to SSS the contributions and loan payments of [respondents] sometime thereafter. Nevertheless, probable cause was found and three (3) separate Informations all dated June 6, 2005 were filed against [petitioners] officers of Vicmar for violation of Section 22 (a) in relation to Section 28 (e) of RA 8282 otherwise known as the Social Security Act of 1997. The cases were first

filed before the Municipal Trial Court in Cities but these were dismissed outright for lack of jurisdiction. However, the same was also filed before the RTC where the three (3) cases were given due course, raffled and consolidated to Branch 20 thereof.

[Petitioners] appealed the finding of probable cause against them before the Office of the Regional State Prosecutor (RSP). This was granted by the RSP in a Resolution dated July 14, 2005, which ordered the City Prosecutor to desist from filing the case or to withdraw the cases if one has already been filed for the following reason:

x x x x

Section 28 of RA 8282 above-cited merely lays down a disputable presumption that the members' contribution to the SSS is deemed misappropriated if the employer fails to remit the same to the SSS within 30 days from the date they became due. The full payment and remittance of the same destroys this presumption. Section 22 of R.A. 1161 even allowed delayed remittance and payment by providing for a 3% penalty. In this case, the full payment made by [petitioners] had never been rebutted nor questioned by [respondents]. x x x

[Petitioners] having already fully paid to the SSS the total and full membership dues for [respondents], there is no more reason to prosecute them under the aforecited section of RA 8282.

[Respondents] sought reconsideration thereto alleging lack of jurisdiction considering the prescribed penalty for the crimes charged. But the same was denied by the RSP in a Resolution dated August 9, 2005. Hence, [respondents] filed an appeal before the Department of Justice which seemingly remains un-acted upon to this day.

Pursuant to the Resolution of the RSP reversing the finding of probable cause by the City Prosecutor, [petitioners] filed a Motion to Dismiss dated February 13, 2006 before [the] RTC. The City Prosecutor likewise filed a Comment manifesting agreement to the withdrawal of the criminal cases pending resolution of the appeal with the DOJ. This was opposed by [respondents] for the reason that the RSP lacked jurisdiction to resolve the appeal of [petitioners]. In an Order dated May 17, 2006, the trial court deemed it best to momentarily suspend the proceedings considering the pending appeal before the DOJ.

On November 8, 2006, [petitioners] filed a second Motion to Dismiss alleging, among others, that [respondents] have already been paid the benefits due to them in the labor case. Moreover, the DOJ still has not acted upon on the appeal of [respondents]. [Petitioners] then argued that the cases should be withdrawn on the ground of fairness. The public prosecutor, pursuant to a directive of the RTC to comment on the Motion,

adopted *in toto* the earlier manifestation of the City Prosecutor espousing the withdrawal of the case.

This time, in the herein assailed Order dated December 5, 2006, the RTC granted the Motion of [petitioners] and ordered the withdrawal of the criminal cases x x x:

x x x x

Considering therefore the time that elapsed without any action taken by the Department of Justice and the manifestation of the Public Prosecutor withdrawing the case from the docket of the court and in as much as it is the Public Prosecutor that is in control of the prosecution of all criminal cases, the motion to withdraw case is hereby granted.³

WHEREFORE, Criminal Case Nos. 2006-072, 2006-073 and 2006-074 for violation of Sec. 22 (a) and (d) in relation to Sec. 28 (e) of R.A. 8282 is hereby ordered withdrawn from the dockets of the Court.⁴

Respondents filed a Petition for *Certiorari* and Mandamus under Rule 65 of the Rules of Court before the appellate court to annul and set aside the trial court's withdrawal of Criminal Case Nos. 2006-072, 2006-073 and 2006-074 from its docket.

As stated at the outset, the Court of Appeals granted respondents' petition, reversed and set aside the RTC's ruling, and reinstated the criminal cases against petitioners:

WHEREFORE, premises considered, the Order dated December 5, 2006 of the Regional Trial Court, Branch 20, Cagayan de Oro City is **REVERSED** and **SET ASIDE**. Criminal Case Nos. 2006-072, 2006-073 and 2006-074 are **REINSTATED**. The Presiding Judge of the Regional Trial Court, Branch 20, Cagayan de Oro City is **DIRECTED** to issue the corresponding warrants for the arrest of the accused therein [petitioners herein] and to proceed with the disposition of the said cases with dispatch.⁵

Hence, this appeal by *certiorari* of petitioners insisting on the withdrawal of the criminal cases against them.

³ Id. at 41-45.

⁴ Id. at 88.

⁵ Id. at 54.

In reversing the trial court, the appellate court found grave abuse of discretion in the trial court's withdrawal of the criminal cases from its docket by merely parroting the reasoning of the public prosecutor and not making its own independent assessment of the merits of the case.

The Court of Appeals summarized the trial court's reasoning:

1. The lapse of almost seven (7) months without any action taken by the DOJ; and
2. The manifestation to withdraw the case by the Public Prosecutor who is in control of the prosecution of all criminal cases.⁶

and found it "flawed and insufficient to effect a withdrawal of the criminal cases" because:

1. The suspension of arraignment of an accused, while authorized under Section 11,⁷ Rule 116 of the Rules of Court, is only for a period of 60 days reckoned from the filing of the petition with the reviewing office.
2. Its own failure to act for seven (7) months without arraigning the accused cannot be an excuse to dismiss the case, especially when the rules dictate that the deferment of arraignment in such case may only be done for a period of 60 days.
3. The controlling case of *Crespo v. Mogul*⁸ teaches us that, while the prosecution of criminal actions is under the discretion and control of the public prosecutor, once a complaint or information is filed, any disposition

⁶ Id. at 46.

⁷ Sec. 11. Suspension of arraignment – Upon motion by the proper party, the arraignment shall be suspended in the following cases:

- (a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose;
- (b) There exist a prejudicial question; and
- (c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; *Provided*, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office.

⁸ 235 Phil. 465, 472-473 (1987).

of the case, be it a dismissal or a conviction or acquittal of an accused, rests in the sound discretion of the court.

4. Well-settled in jurisprudence is the principle that trial judges ought to make its own independent assessment of the merits of the case and not abdicate its judicial power and act as a mere surrogate of the Secretary of Justice.

5. In any event, there exists probable cause to indict petitioners for violation of Sections 22 (a) and (d), in relation to Section 28 (e), of the SS Law.

6. R.A. No. 8282, a special law, requires employers to: (a) register its employees with the SSS; (b) deduct employee contributions from their salaries; and (3) remit these contributions to the SSS within a given period.⁹

7. Violation of R.A. No. 8282, a special law, is *mala prohibita*: criminal liability attaches, without regard to intent and good faith of the accused, once the law is violated.

8. The case in point is *Tan, et al. v. Ballena, et al.*¹⁰ where good faith and absence of malicious intent of the accused and the subsequent remittance of the SSS contributions and loan amortizations, held no sway over the accused's criminal liability under the SS Law for failure to remit SSS contributions and loan amortizations of accused's employees.

9. On the whole, petitioners' admission of their violations of the provisions of the SS Law clearly and readily established a *prima facie* case against them and the trial court should not have ordered the withdrawal of the criminal cases.

Against the foregoing, petitioners are adamant that:

41. In the case at bar, the Petitioners did not fail to remit the SSS contributions of the Respondents. They have, in fact, fully paid the same, albeit belatedly. Still, in this case, there was only delayed remittance of SSS contributions. There was no non-remittance thereof.

⁹ See Section 22 (a).

¹⁰ 579 Phil. 503, 527 (2008).

Thus, the presumption of misappropriation in the SSS law is effectively rebutted. In view thereof, no criminal liability attaches to the Petitioners.

42. The Office of the Solicitor General, in behalf of the State, joined the foregoing conclusion by stating thus[:]

Considering that [petitioners] had already fully paid and remitted [respondents'] SSS contributions, albeit belatedly, there is no more reason to hold them liable under Section 28 (e) of Republic Act No. 8282. In remitting [respondents'] contributions, it is safe to conclude that there was no malicious intent on the part of [petitioners] to misappropriate the same. As explained by [petitioners], their failure to remit the deductions on time was due to the financial crisis that the corporation suffered at that time. The presumption, therefore, that [petitioners] had intended to misappropriate the amounts deducted from the [respondents'] salaries had already been destroyed by their full payments of the same to the SSS.¹¹

The ruling of the appellate court is sound and backed by jurisprudence.

Sections 22 (a) and (d) and 28 (e) of R.A. No. 8282 read:

SEC. 22. *Remittance of Contributions.* - (a) The contribution imposed in the preceding section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: Provided, That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer.

x x x x

(d) The last complete record of monthly contributions paid by the employer or the average of the monthly contributions paid during the past three (3) years as of the date of filing of the action for collection shall be presumed to be the monthly contributions payable by and due from the

¹¹ *Rollo*, pp. 26-27.

employer to the SSS for each of the unpaid month, unless contradicted and overcome by other evidence: Provided, That the SSS shall not be barred from determining and collecting the true and correct contributions due the SSS even after full payment pursuant to this paragraph, nor shall the employer be relieved of his liability under Section Twenty-eight of this Act.

SEC. 28. *Penal Clause.* - x x x

(e) Whoever fails or refuses to comply with the provisions of this Act or with the rules and regulations promulgated by the Commission, shall be punished by a fine of not less than Five thousand pesos (P5,000.00) nor more than Twenty thousand pesos (P20,000.00), or imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years or both, at the discretion of the court: Provided, That where the violation consists in failure or refusal to register employees or himself, in case of the covered self-employed, or to deduct contributions from the employees' compensation and remit the same to the SSS, the penalty shall be a fine of not less than Five thousand pesos (P5,000.00) nor more than Twenty thousand pesos (P20,000.00) and imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years.

The elements of criminal liability under Section 22 (a) are:

1. The employer fails to register its employees with the SSS;
2. The employer fails to deduct monthly contributions from the salaries and/or wages of its employees; and
3. Having deducted the SSS contributions and/or loan payments to SSS, the employer fails to remit these to the SSS.

In this case, petitioners split hairs that they “did not fail to remit the SSS contributions of respondents;” they “fully paid the same, albeit belatedly.”

We affirm the finding of a *prima facie* case of petitioners' failure to remit the SSS contributions and loan amortization of respondents **for a period of approximately two (2) years, in 2003 and 2004**. In October 2004, after respondents were successively dismissed from employment by Vicmar in August 2004, they separately filed for SSS benefits, relating to sickness and procurement of a loan, which were both denied outright for lack of contributions or payments twelve months (12) prior to the semester of confinement and failure to pay a prior loan. After respondents filed criminal complaints against petitioners, the latter then remitted their SSS wage deductions and loan payments to the SSS.

The factual milieu obtaining herein does not denote a simple delay in payment. Again, petitioners initially failed to remit the SSS contributions and payments of respondents such that respondents were denied benefits under the SS Law which they wanted to avail of. It was only under threat of criminal liability that petitioners subsequently remitted what they had long deducted from the wages of respondents.

Indeed, the affidavit of Vicmar's Plant Manager, Juanito Pagcaliwagan, admits the fact of non-payment of contributions:

x x x "[W]hen funds became available, as Plant Manager, I immediately caused the payment to SSS [of] the contributions of the employees and the employer's share, together with the payment of loans of the employees,"¹² x x x.

In *Tan, et al. v. Ballena, et al.*¹³ likewise involving the determination of probable cause to indict petitioners therein for failing to remit SSS contributions and loan payments of their employees, we affirmed the Court of Appeals' and our power to intervene and exercise our own powers of review with respect to the DOJ's finding. We ruled that in the exceptional case in which grave abuse of discretion is committed, as when a clear sufficiency or insufficiency of evidence to support a finding of probable cause is ignored, the Court of Appeals may take cognizance of the case *via* a petition under Rules 65 of the Rules of Court.

More so in this instance when the trial court has already taken cognizance and acquired jurisdiction over the criminal cases against petitioners. On more than one occasion, we have declared that while the recommendation of the public prosecutor of the ruling of the DOJ Secretary is persuasive, it is not binding on courts.¹⁴ Here, the trial court abdicated its judicial power and refused to perform a positive duty enjoined by law, which is the independent resolution of the issue of probable cause. It is the court's bounden duty to assess independently the merits of the motion, and

¹² Id. at 95.

¹³ Supra note 10 at 526.

¹⁴ *Philippine National Bank v. Soriano*, G.R. No. 164051, 3 October 2012, 682 SCRA 243, 255.

the assessment must be embodied in a written order disposing of the motion.¹⁵ The trial court failed in that regard.

Significantly, we note that the issue before us is the validity of the order of the trial court directing the withdrawal from its dockets of “Criminal Case Nos. 2006-072, 2006-073 and 2006-074 for violation of Sec. 22 (a) and (d) in relation to Sec. 28 (e) of R.A. No. 8282.”

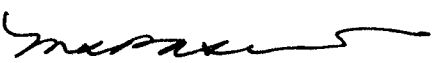
The culpability of the accused under the indictment is not yet before us. Yet to be determined during the ensuing trial are considerations such as the extent and reason for the delay, the date of actual remittance and all other circumstances that attended such remittance. All these are matters of defense that need proof during trial.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. SP No. 01569-MIN is **AFFIRMED**. Criminal Case Nos. 2006-072, 2006-073 and 2006-074 pending before the Regional Trial Court, Branch 20, Cagayan de Oro City are **REINSTATED** and the Presiding Judge thereof is **DIRECTED** to dispose of the cases with dispatch.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

¹⁵

Id.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
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
MARIA LOURDES P. A. SERENO
Chief Justice