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WHEREFORE, premises considered, the Petition is **DENIED.** The August 12, 2005 Decision and January 17, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 76994, which dismissed petitioner's complaint for specific performance and damages docketed as Civil Case No. MC99-826 before the Mandaluyong City Regional Trial Court, Branch 213, are hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), del Castillo,[*] *Villarama,*[**] and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180416. June 2, 2014]

ADERITO Z. YUJUICO and BONIFACIO C. SUMBILLA, *petitioners, vs.* **CEZAR T. QUIAMBAO and ERIC C. PILAPIL,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; CORPORATE BOOKS AND RECORDS; THE ACT OF REFUSING TO ALLOW INSPECTION OF THE STOCK AND TRANSFER BOOK OF A CORPORATION, WHEN DONE IN VIOLATION OF SECTION 74(4) OF THE CORPORATION CODE, IS PUNISHABLE AS AN OFFENSE UNDER SECTION 144 OF THE SAME CODE.— While Section 74 of the Corporation Code expressly mentions the application of Section 144 only in relation to the act of "*refus*[*ing*] *to allow any director, trustees*, [*the corporation's*]

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[*] Designated additional member in liue of Associate Justice Jose Catral Mendoza, per Raffle dated June 2, 2014.

[**] Designated Acting member, per Special Order No. 1691 dated May 22, 2014.

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records or minutes," the same does not mean that the latter section no longer applies to any other possible violations of the former section. It must be emphasized that Section 144 already purports to penalize "[*v*]*iolations*" of "*any provision*" of the Corporation Code "*not otherwise specifically penalized therein*." Hence, we find inconsequential the fact that Section 74 expressly mentions the application of Section 144 only to a specific act, but not with respect to the other possible violations of the former section. Indeed, we find no cogent reason why Section 144 of the Corporation Code cannot be made to apply to violations of the right of a stockholder to inspect the stock and transfer book of a corporation under Section 74(4) given the already unequivocal intent of the legislature to penalize violations of a parallel right, *i.e.*, the right of a stockholder or member to examine the other records and minutes of a corporation under Section 74(2), Certainly, all the rights quaranteed to corporations under Section 74 of the Corporation Code are mandatory for the corporation to respect. All such rights are just the same underpinned by the same policy consideration of keeping public confidence in the corporate vehicle thru an assurance of transparency in the corporation's operations. Verily, we find inaccurate the pronouncement of the RTC that the act of refusing to allow inspection of the stock and transfer book is not a punishable offense under the Corporation Code. Such refusal, when done in violation of Section 74(4) of the Corporation Code, properly falls within the purview of Section 144 of the same code and thus may be penalized as an offense.

2. ID.; ID.; ID.; A CRIMINAL ACTION BASED ON THE VIOLATION OF A STOCKHOLDER'S RIGHT TO EXAMINE OR INSPECT THE CORPORATE RECORDS AND THE STOCK AND TRANSFER BOOK OF A CORPORATION UNDER THE SECOND AND FOURTH PARAGRAPHS OF SECTION 74 OF THE CORPORATION CODE CAN ONLY BE MAINTAINED AGAINST CORPORATE OFFICERS OR ANY OTHER PERSONS ACTING ON BEHALF OF SUCH CORPORATION.— Criminal Case No. 89724 acuses respondents of denying petitioners' right to examine or inspect the *corporate records* and the *stock and transfer book* of STRADEC. It is thus a criminal action that is based on the violation of the second and fourth paragraphs of Section 74 of the Corporation Code.

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A perusal of the second and fourth paragraphs of Section 74, as well as the first paragraph of the same section, reveal that they are provision that *obligates* a **corporation**: they prescribe what books or records a **corporation** is required to keep; where the **corporation** shall keep them; and what are the other obligations of the **corporation** to its stockholders or members in relation to such books and records. Hence, by parity of reasoning, the second and fourth paragraphs of Section 74, including the first paragraph of the same section, can only be violated by a **corporation**. It is clear then that a criminal action based on the violation of the second or fourth paragraphs of Section 74 can only be maintained against corporate officers or such other persons that are *acting on behalf of the corporation.* Violations of the second and fourth paragraphs of Section 74 contemplates a situation wherein **a corporation, acting thru one of its officers or agents, denies the right of any of its stockholders to inspect the records, minutes and the stock and transfer book of such corporation.** The problems with the petitioners' complaint and the evidence that they submitted during preliminary investigation is that they do nit establish that respondents were acting on behalf of STRADEC. Quite the contrary, the scenario painted by the complaint is that the respondents are merely outgoing officers of STRADEC who, for some reason, withheld and refused to turn-over the company records of STRADEC; that it is the petitioners who are actually acting on behalf of STRADEC; and that STRADEC is actually merely trying to recover custody of the withheld records. In other words, petitioners are not actually invoking their right to inspect the records and the stock and transfer book of STRADEC under the second and fourth paragraphs of Section 74. **What they seek to enforce is the proprietary right of STRADEC to be in possession of such records and book.** Such right, though certainly legally enforceable by other means, cannot be enforced by a criminal prosecution based on a violation of the second and fourth paragraphs of Section 74. That is simply not the situation contemplated by the second and fourth paragraphs of Section 74 of the Corporation Code. For this reason, we affirm the dismissal of Criminal Case No. 89724 for lack of probable cause.

APPEARANCES OF COUNSEL

Tan Acut & Lopez Law Offices for respondents.

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D E C I S I O N

PEREZ, *J.*:

This case is a Petition for Review on *Certiorari*[1] from the *Orders*[2] dated 4 June 2007 and 5 November 2007 of the Regional Trial Court (RTC), Branch 154, of Pasig City in S.C.A. No. 3047.

The facts:

Background

Strategic Alliance Development Corporation (STRADEC) is a domestic corporation operating as a business development and investment company.

On 1 March 2004, during the annual stockholder's meeting of STRADEC, petitioner Aderito Z. Yujuico (Yujuico) was elected as president and chairman of the company.[3] Yujuico replaced respondent Cezar T. Quiambao (Quiambao), who had been the president and chairman of STRADEC since 1994.[4]

With Yujuico at the helm, STRADEC appointed petitioner Bonifacio C. Sumbilla (Sumbilla) as treasurer and one Joselito John G. Blando (Blando) as corporate secretary.[5] Blando replaced respondent Eric C. Pilapil (Pilapil), the previous corporate secretary of STRADEC.[6]

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[1] *Rollo*, pp. 10-65. Under Rule 45 of the Rules of Court.

[2] The Orders were penned by Judge Abraham B. Borreta. *Id*. at 66-84.

[3] Resolution of the Office of the City Prosecutor, Pasig City, dated 6 June 2006. *Id*. at 90.

[4] *Id*.

[5] *Id*.

[6] *Id*. at 91.

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The Criminal Complaint

On 12 August 2005, petitioners filed a criminal complaint[7] against respondents and one Giovanni T. Casanova (Casanova) before the Office of the City Prosecutor (OCP) of Pasig City. The complaint was docketed in the OCP as I.S. No. PSG 05-08-07465.

The complaint accuses respondents and Casanova of violating Section 74 in relation to Section 144 of Batas Pambansa Blg. 68 or the Corporation Code. The petitioners premise such accusation on the following factual allegations:[8]

l. During the stockholders' meeting on 1 March 2004, Yujuico—as newly elected president and chairman of STRADEC—demanded Quiambao for the turnover of the corporate records of the company, particularly the accounting files, ledgers, journals and other records of the corporation's business. Quiambao refused.

2. As it turns out, the corporate records of STRADEC were in the possession of Casanova-the accountant of STRADEC. Casanova was keeping custody of the said records on behalf of Quiambao, who allegedly needed the same as part of his defense in a pending case in court.

3. After the 1 March 2004 stockholders' meeting, Quiambao and Casanova caused the removal of the corporate records of STRADEC from the company's offices in Pasig City.

4. Upon his appointment as corporate secretary on 21 June 2004, Blando likewise demanded Pilapil for the turnover of the stock and transfer book of STRADEC. Pilapil refused.

5. Instead, on 25 June 2004, Pilapil proposed to Blando to have the stock and transfer book deposited in a safety deposit box with Equitable- PCI Bank, Kamias Road,

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[7] *Id*. at 100-104.

[8] *Id*.

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Quezon City. Blando acceded to the proposal and the stock and transfer book was deposited in a safety deposit box with the bank identified. It was agreed that the safety deposit box may only be opened in the presence of both Quiambao and Blando.

6. On 30 June 2004, however, Quiambao and Pilapil withdrew the stock and transfer book from the safety deposit box and brought it to the offices of the Stradcom Corporation (STRADCOM) in Quezon City. Quiambao thereafter asked Blando to proceed to the STRADCOM offices. Upon arriving thereat, Quiambao pressured Blando to make certain entries in the stock and transfer books. After making such entries, Blando again demanded that he be given possession of the stock and transfer book. Quiambao refused.

7. On 1 July 2004, Blando received an order dated 30 June 2004 issued by the RTC, Branch 71, of Pasig City in Civil Case No. 70027, which directed him to cancel the entries he made in the stock and transfer book. Hence, on even date, Blando wrote letters to Quiambao and Pilapil once again demanding for the turnover of the stock and transfer book. Pilapil replied thru a letter dated 2 July 2004 where he appeared to agree to Blando's demand.

8. However, upon meeting with Pilapil and Quiambao, the latter still refused to turnover the stock and transfer book to Blando. Instead, Blando was once again constrained to agree to a proposal by Pilapil to have the stock and transfer book deposited with the RTC, Branch 155, of Pasig City. The said court, however, refused to accept such deposit on the ground that it had no place for safekeeping.

9. Since Quiambao and Pilapil still refused to turnover the stock and transfer book, Blando again acceded to have the book deposited in a safety deposit box, this time, with the Export and Industry Bank in San Miguel Avenue, Pasig City.

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Petitioners theorize that the refusal by the respondents and Casanova to turnover STRADEC's corporate records and stock and transfer book violates their right, as stockholders, directors and officers of the corporation, to inspect such records and book under Section 74 of the Corporation Code. For such violation, petitioners conclude, respondents may be held criminally liable pursuant to Section 144 of the Corporation Code.

Preliminary investigation thereafter ensued.

Resolution of the OCP and the Informations

After receiving the counter-affidavits of the respondents and Casanova, as well as the other documentary submissions[9] by the parties, the OCP issued a Resolution[10] dated 6 January 2006 in I.S. No. PSG 05-08- 07465. In the said resolution, the OCP absolved Casanova but found probable cause to hail respondents to court on two (2) offenses: (1) for removing the stock and transfer book of STRADEC from its principal office, and (2) for refusing access to, and examination of, the corporate records and the stock and transfer book of STRADEC at its principal office.

Pursuant to the resolution, two (2) informations[11] were filed against the respondents before the Metropolitan Trial Court (MeTC) of Pasig City. The informations were docketed as Criminal Case No. 89723 and Criminal Case No. 89724 and were raffled to Branch 69.

Criminal Case No. 89723 is for the offense of removing the stock and transfer book of STRADEC from its principal office. The information reads:[12]

On and/or about the period between March 1 and June 25, 2004, inclusive, in Pasig City and within the jurisdiction of this Honorable

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[9] *Id*. at 172-187; 136-152; 154-159.

[10] *Id*. at 89-98.

[11] *Id*. at 85-88.

[12] *Id*. at 85.

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Court, the above accused, being then members of the Board of Directors and/or officers, as the case maybe, of Strategic Alliance Development Corporation (STRADEC, for short), conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously, remove the stock and transfer book of the said STRADEC at its principal office at the 24th Floor, One Magnificent Mile- CITRA City Bldg., San Miguel Avenue, Ortigas Center, Pasig City, where they should all be kept, in violation of the aforesaid law, and to the prejudice of the said complainants.

Criminal Case No. 89724, on the other hand, covers the offense of refusing access to, and examination of, the corporate records and the stock and transfer book of STRADEC at its principal office. The information reads:[13]

On and/or about the period between March 1 and June 25, 2004, inclusive, in Pasig City, and within the jurisdiction of this Honorable Court, the above accused, being then members of the Board of Directors and/or officers, as the case maybe, of Strategic Alliance Development Corporation (STRADEC, for short), conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously, refuse to allow complainants Bonifacio C. Sumbilla and Aderito Z. Yujuico, being then stockholders and/or directors of STRADEC, access to, and examination of, the corporate records, including the stock and transfer book, of STRADEC at its principal office at the 24th Floor, One Magnificent Mile-CITRA Bldg., San Miguel Avenue, Ortigas Center, Pasig City, where they should all be kept, in violation of the aforesaid law, and to the prejudice of the said complainants.

Urgent Omnibus Motion and the Dismissal of Criminal Case No. 89723

On 18 January 2006, respondents filed before the MeTC an *Urgent Omnibus Motion for Judicial Determination of Probable Cause and To Defer Issuance of Warrants of Arrest* (Urgent Omnibus Motion).[14]

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[13] *Id*. at 87.

[14] *Id*. at 667-685.

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On 8 May 2006, the MeTC issued an order[15] partially granting the Urgent Omnibus Motion. The MeTC dismissed Criminal Case No. 89723 but ordered the issuance of a warrant of arrest against respondents in Criminal Case No. 89724.

In dismissing Criminal Case No. 89723, the MeTC held that Section 74, in relation to Section 144, of the Corporation Code only penalizes the act of *"refus[ing] to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from the records or minutes of the corporation"*[16] and that act is already the subject matter of Criminal Case No. 89724. Hence, the MeTC opined, Criminal Case No. 89723-which seeks to try respondents for merely removing the stock and transfer book of STRADEC from its principal office-actually charges no offense and, therefore, cannot be sustained.[17]

Anent directing the issuance of a warrant of arrest in Criminal Case No. 89724, the MeTC found probable cause to do so; given the failure of the respondents to present any evidence during the preliminary investigation showing that they do not have possession of the corporate records of STRADEC or that they allowed petitioners to inspect the corporate records and the stock and transfer book of STRADEC.[18]

Unsatisfied, the respondents filed a motion for partial reconsideration[19] of the 8 May 2006 order of the MeTC insofar as the disposition in Criminal Case No. 89724 is concerned. The MeTC, however, denied such motion on 16 August 2006.[20]

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[15] *Id*. at 295-301.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*. at 725-732.

[20] *Id*. at 302-304.

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Certiorari Petition and the Dismissal of Criminal Case No. 89724

After their motion for partial reconsideration was denied, respondents filed a *certiorari* petition,[21] with prayer for the issuance of a temporary restraining order (TRO), before the RTC of Pasig City on 27 September 2006. The petition was docketed as S.C.A. No. 3047.

On 16 November 2006, the RTC issued a TRO enjoining the MeTC from conducting further proceedings in Criminal Case No. 89724 for twenty (20) days.[22]

On 4 June 2007, the RTC issued an *Order*[23] granting respondents' *certiorari* petition and directing the dismissal of Criminal Case No. 89724. According to the RTC, the MeTC committed grave abuse of discretion in issuing a warrant of arrest against respondents in Criminal Case No. 89724.

The RTC found that the finding of probable cause against the respondents in Criminal Case No. 89724 was not supported by the evidence presented during the preliminary investigation but was, in fact, contradicted by them:[24]

1. The RTC noted that, aside from the complaint itself, no evidence was ever submitted by petitioners to prove that they demanded and was refused access to the corporate records of STRADEC between 1 March to 25 June 2004. What petitioners merely submitted is their letter dated 6 September 2004 demanding from respondents access to the corporate records of STRADEC.
2. The allegations of petitioners in their complaint, as well as 6 September 2004 letter above-mentioned, however, are contradicted by the sworn statement dated 1 July

[21] *Id*. 761-796.

[22] *Id*. 803-804.

[23] *Id*. at 66-82.

[24] *Id*.

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2004 of Blando[25] wherein he attested that as early as 25 June 2004, Pilapil already turned over to him "*two binders containing the minutes, board resolutions, articles of incorporation, copies of contracts, correspondences and other papers of the corporation, except the stock certificate book and the stock and transfer book.*"

3. The RTC also took exception to the reason provided by the MeTC in supporting its finding of probable cause against the respondents. The RTC held that it was not incumbent upon the respondents to provide evidence proving their innocence. Hence, the failure of the respondents to submit evidence showing that they do not have possession of the corporate records of STRADEC or that they have allowed inspection of the same cannot be taken against them much less support a finding of probable cause against them.

The RTC further pointed out that, at most, the evidence on record only supports probable cause that the respondents were withholding the *stock and transfer book* of STRADEC. The RTC, however, opined that refusing to allow inspection of the stock and transfer book, as opposed to refusing examination of *other* corporate records, is not punishable as an offense under the Corporation Code.[26] Hence, the directive of the RTC dismissing Criminal Case No. 89724.

The petitioners moved for reconsideration,[27] but the RTC remained steadfast.[28]

Hence, this petition by petitioners.

The Instant Petition

In their petition, petitioners claim that Criminal Case No. 89724 may still be sustained against the respondents insofar

[25] *Id.* at 131-132.

[26] *Id.* at 66-82.

[27] *Id.* at 903-925.

[28] *Id.* at 83-84.

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as the charge of refusing to allow access to the stock and transfer book of STRADEC is concerned. They argue that the RTC made a legal blunder when it held that the refusal to allow inspection of the stock and transfer book of a corporation is not a punishable offense under the Corporation Code. Petitioners contend that such a refusal still amounts to a violation of Section 74 of the Corporation Code, for which Section 144 of the same code prescribes a penalty.

OUR RULING

The RTC indeed made an inaccurate pronouncement when it held that the act of refusing to allow inspection of the stock and transfer book of a corporation *is not* a punishable offense under the Corporation Code. Such refusal, when done in violation of Section 74(4) of the Corporation Code, properly falls within the purview of Section 144 of the same code and thus may be penalized as an offense.

The foregoing gaffe nonetheless, We still sustain the dismissal of Criminal Case No. 89724 as against the respondents.

A criminal action based on the violation of a stockholder's right to examine or inspect the *corporate records* and the *stock and transfer book* of a corporation under the second and fourth paragraphs of Section 74 of the Corporation Code-such as Criminal Case No. 89724—can only be maintained against corporate officers or any other persons *acting on behalf of such corporation.* The submissions of the petitioners during the preliminary investigation, however, clearly suggest that respondents are neither in relation to STRADEC.

Hence, we deny the petition.

The act of ref using to allow inspection of the stock and transfer book of a corporation, when done in violation of Section 74(4) of the Corporation Code, is punishable as an offense under Section 144 of the same code.

We first address the inaccurate pronouncement of the RTC.

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Section 74 is the provision of the Corporation Code that deals with the books a corporation is required to keep. It reads:

Section 74. *Books to be kept; stock transfer agent.* — Every corporation shall keep and carefully preserve at its principal office a record of all business transactions and minutes of all meetings of stockholders or members, or of the board of directors or trustees, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. Upon the demand of any director, trustee, stockholder or member, the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the yeas and nays must be taken on any motion or proposition, and a record thereof carefully made. The protest of any director, trustee, stockholder or member on any action or proposed action must be recorded in full on his demand.

The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: Provided, That if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and Provided, further, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

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Stock corporations must also keep a book to be known as the "stock and transfer book," in which must be kept a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. **The stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open for inspection by any director or stockholder of the corporation at reasonable hours on business days.**

No stock transfer agent or one engaged principally in the business of registering transfers of stocks in behalf of a stock corporation shall be allowed to operate in the Philippines unless he secures a license from the Securities and Exchange Commission and pays a fee as may be fixed by the Commission, which shall be renewable annually: Provided, That a stock corporation is not precluded from performing or making transfer of its own stocks, in which case all the rules and regulations imposed on stock transfer agents, except the payment of a license fee herein provided, shall be applicable. (51a and 32a; P.B. No. 268.) (Emphasis supplied)

Section 144 of the Corporation Code, on the other hand, is the general penal provision of the Corporation Code. It reads:

Section 144. *Violations of the Code.* — Violations of any of the provisions of this Code or its amendments **not otherwise specifically penalized therein** shall be punished by a fine of not less than one thousand (₱1,000.00) pesos but not more than ten thousand (₱10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code. (190 1/2 a) (Emphasis supplied)

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In the assailed *Orders*, the RTC expressed its opinion that the act of refusing to allow inspection of the stock and transfer book, even though it may be a violation of Section 74(4), is not punishable as an offense under the Corporation Code.[29] In justifying this conclusion, the RTC seemingly relied on the fact that, under Section 74 of the Corporation Code,the application of Section 144 is expressly mentioned only in relation to the act of *"refus[ing] to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from [the corporation's]* ***records or minutes****"* that excludes its stock and transfer book.

We do not agree.

While Section 74 of the Corporation Code expressly mentions the application of Section 144 only in relation to the act of *"refus[ing] to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from [the corporation's] records or minutes,"* the same does not mean that the latter section no longer applies to any other possible violations of the former section.

It must be emphasized that Section 144 already purports to penalize *"[v]iolations"* of *"any provision"* of the Corporation Code *"not otherwise specifically penalized therein."* Hence, we find inconsequential the fact that that Section 74 expressly mentions the application of Section 144 only to a specific act, but not with respect to the other possible violations of the former section.

Indeed, we find no cogent reason why Section 144 of the Corporation Code cannot be made to apply to violations of the right of a stockholder to inspect the stock and transfer book of a corporation under Section 74(4) given the already unequivocal intent of the legislature to penalize violations of a parallel right, *i.e.*, the right of a stockholder or member to examine the other records and minutes of a corporation under Section 74(2). Certainly, all the rights guaranteed to corporators under

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[29] *Id*. at 66-82.

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Section 74 of the Corporation Code are mandatory for the corporation to respect. All such rights are just the same underpinned by the same policy consideration of keeping public confidence in the corporate vehicle thru an assurance of transparency in the corporation's operations.

Verily, we find inaccurate the pronouncement of the RTC that the act of refusing to allow inspection of the stock and transfer book is not a punishable offense under the Corporation Code. Such refusal, when done in violation of Section 74(4) of the Corporation Code, properly falls within the purview of Section 144 of the same code and thus may be penalized as an offense.

A criminal action based on the violation of a stockholder's right to examine or inspect the corporate records and the stock and transfer hook of a corporation under the second and fourth paragraphs of Section 74 of the Corporation Code can only he maintained against corporate officers or any other persons acting on behalf of such corporation.

The foregoing notwithstanding, and independently of the reasons provided therefor by the RTC, we sustain the dismissal of Criminal Case No. 89724.

Criminal Case No. 89724 accuses respondents of denying petitioners' right to examine or inspect the *corporate records* and the *stock and transfer book* of STRADEC. It is thus a criminal action that is based on the violation of the second and fourth paragraphs of Section 74 of the Corporation Code.

A perusal of the second and fourth paragraphs of Section 74, as well as the first paragraph of the same section, reveal that they are provisions that *obligates* a **corporation**: they prescribe what books or records a **corporation** is required to keep; where the **corporation** shall keep them; and what are the other obligations of the **corporation** to its stockholders or

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members in relation to such books and records. Hence, by parity of reasoning, the second and fourth paragraphs of Section 74, including the first paragraph of the same section, can only be violated by a **corporation**.

It is clear then that a criminal action based on the violation of the second or fourth paragraphs of Section 74 can only be maintained against corporate officers or such other persons that are *acting on behalf of the corporation.* Violations of the second and fourth paragraphs of Section 74 contemplates a situation wherein **a corporation, acting thru one of its officers or agents, denies the right of any of its stockholders to inspect the records, minutes and the stock and transfer book of such corporation.**

The problem with the petitioners' complaint and the evidence that they submitted during preliminary investigation is that they do not establish that respondents were acting on behalf of STRADEC. Quite the contrary, the scenario painted by the complaint is that the respondents are merely outgoing officers of STRADEC who, for some reason, withheld and refused to tum-over the company records of STRADEC; that it is the petitioners who are actually acting on behalf of STRADEC; and that STRADEC is actually merely trying to recover custody of the withheld records.

In other words, petitioners are not actually invoking their right to inspect the records and the stock and transfer book of STRADEC under the second and fourth paragraphs of Section 74. **What they seek to enforce is the proprietary right of STRADEC to be in possession of such records and book.** Such right, though certainly legally enforceable by other means, cannot be enforced by a criminal prosecution based on a violation of the second and fourth paragraphs of Section 74. That is simply not the situation contemplated by the second and fourth paragraphs of Section 74 of the Corporation Code.

For this reason, we affirm the dismissal of Criminal Case No. 89724 for lack of probable cause.

WHEREFORE, premises considered, the petition is hereby **DENIED.** The Orders dated 4 June 2007 and 5 November 2007

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of the Regional Trial Court, Branch 154, of Pasig City in S.C.A. No. 3047, insofar as said orders effectively dismissed Criminal Case No. 89724 pending before Metropolitan Trial Court, Branch 69, of Pasig City, are hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, Peralta,[*] and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 182839. June 2, 2014]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **JOSE GARCIA and CHILDREN NORA GARCIA, JOSE GARCIA, JR., BOBBY GARCIA and JIMMY GARCIA and HEIRS OF ROGELIO GARCIA NAMELY: CELEDONIO GARCIA, DANILO GARCIA, ELSA GARCIA, FERMIN GARCIA, HEHERSON GARCIA, GREGORIO GARCIA, IMELDA GARCIA and JANE GARCIA,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; CONJUGAL PARTNERSHIP OF GAINS; THE SUBJECT PROPERTY IN CASE AT BAR IS CONJUGAL; ALL PROPERTY ACQUIRED DURING MARRIAGE IS PRESUMED CONJUGAL.— Since Jose Sr. and Ligaya were married prior to the effectivity of the Family Code, their property relations

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[*] Per Raffle dated 30 May 2014.