Supreme Court E-Library

THIRD DIVISION

[G.R. No. 171435. July 30, 2008]

ANTHONY T. REYES, *petitioner, vs.* **PEARLBANK SECURITIES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE. — Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause 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. 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.

2. ID.; ID.; ID.; FINDINGS OF PROBABLE CAUSE FALL WITHIN THE JURISDICTION OF THE PROSECUTOR IN THE EXERCISE OF EXECUTIVE POWER. — These findings of probable cause fall within the jurisdiction of the prosecutor or fiscal in the exercise of executive power, which the courts do not interfere with unless there is grave abuse of discretion. The determination of its existence lies within the discretion

Supreme Court E-Library

of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Thus, the decision whether to dismiss a complaint or not is dependent upon the sound discretion of the prosecuting fiscal. He may dismiss the complaint forthwith, if he finds the charge insufficient in form or substance or without any ground. Or he may proceed with the investigation if the complaint in his view is sufficient and in proper form. To emphasize, the determination of probable cause for the filing of information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case. Ultimately, whether or not a complaint will be dismissed is dependent on the sound discretion of the Secretary of Justice.

3. ID.; ID.; ID.; ID.; COURTS DO NOT REVERSE THE SECRETARY OF JUSTICE'S FINDINGS AND CONCLUSIONS ON THE MATTER OF PROBABLE CAUSE EXCEPT IN CLEAR CASES OF GRAVE ABUSE OF DISCRETION. — For this reason, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion. The restraint exercised by this Court in interfering with the determination of probable cause by the prosecutor, unless there is grave abuse of discretion, is only consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule, none of which are obtaining in the case now before us.

4. ID.; ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, DEFINED. — In *D.M. Consunji, Inc. v. Esguerra*, we defined grave abuse of discretion in this wise: By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised

Supreme Court E-Library

in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

5. ID.; ID.; ID.; ID.; ID.; RIGHT TO PROSECUTE VESTS THE PROSECUTOR WITH DISCRETION OF WHETHER, WHAT AND WHOM TO CHARGE. — Suffice it to say that it is indubitably within the discretion of the prosecutor to determine who must be charged with what crime or for what offense. In *Webb v. De Leon* in which the petitioners questioned the non-inclusion of Alfaro in the Information for rape with homicide filed against them, despite Alfaro's alleged conspiratorial participation in the crime charged, this Court pronounced that: [T]he prosecution of crimes appertains to the executive department of government whose principal power and responsibility is to see that our laws are faithfully executed. A necessary component of this power to execute our laws is the right to prosecute their violators. The right to prosecute vests the prosecutor with a wide range of discretion—the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasboard of factors which are best appreciated by prosecutors x x x. While the right to equal protection of the law requires that litigants are treated in an equal manner by giving them the same rights under similar circumstances, it may not be perversely used to justify desistance by the authorities from prosecution of a criminal case, just because not all of those who are probably guilty thereof were charged.

6. ID.; ID.; PREJUDICIAL QUESTION. — A ***prejudicial question*** is defined as one which arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court, but the jurisdiction to try and resolve the question must be lodged in another court or tribunal. It is a question based on a fact distinct and separate from the crime, but so intimately connected with it that it determines the guilt or innocence of the accused; and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in

Supreme Court E-Library

the civil case, the guilt or innocence of the accused would necessarily be determined. It comes into play generally in a situation in which a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.

APPEARANCES OF COUNSEL

Poblador Bautista Reyes for petitioner.
Saulog De Leon Law Offices for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, petitioner Anthony T. Reyes prays for the reversal of the 26 October 2005 Decision[1] and 7 February 2006 Resolution[2] of the Court of Appeals in "*Anthony T. Reyes v. Secretary of the Department of Justice and Pearlbank Securities, Inc.,*" docketed as CA-G.R. SP No. 90006, ruling that the Secretary of the Department of Justice (DOJ) did not commit grave abuse of discretion in finding probable cause to charge petitioner Reyes with the crime of falsification of commercial and private documents.

Pearlbank Securities, Inc. (PEARLBANK) is a domestic corporation engaged in the securities business.

Westmont Investment Corporation (WINCORP) is a domestic corporation operating as an investment house. Among the services rendered by WINCORP to its clients in the ordinary course of its business as an investment house is the arranging and brokering

---

[1] Penned by Associate Justice Eliezer R. de los Santos with the concurrence of Associate Justices Eugenio S. Labitoria and Jose C. Reyes; *Rollo,* pp. 69-82.

[2] *Rollo,* p. 85.

Supreme Court E-Library

of loans. Petitioner Anthony T. Reyes was formerly the Vice President for Operations and Administration of WINCORP.[3]

PEARLBANK alleged that in March 2000, it received various letters from persons who invested in WINCORP demanding payment of their matured investments, which WINCORP failed to pay, threatening legal action. According to these investors, WINCORP informed them that PEARLBANK was the borrower of their investments. WINCORP alleged that it was unable to repay its investors because of the failure of its fund borrowers, one of which was PEARLBANK, to pay the loans extended to them by WINCORP. As proof of their claims, the investors presented Confirmation Advices,[4] Special Powers of Attorney and Certifications signed and issued to them by WINCORP.

The period covered by these Confirmation Advices was from 25 January 2000 to 3 April 2000, with said Confirmation Advices bearing the words "Borrower: PEARLBANK Securities, Inc."

PEARLBANK denied having any outstanding loan obligation with WINCORP or its investors.

In reaction to the accusations against it, PEARLBANK immediately wrote Antonio T. Ong, WINCORP President, demanding an explanation as to how and why PEARLBANK was made to appear to be involved in its transactions. According to PEARLBANK, it did not get any reply from WINCORP.

PEARLBANK alleged that WINCORP's acts of stating and making it appear in several Confirmation Advices, Special Powers of Attorney and Certifications that PEARLBANK was the borrower of funds from the lenders/investors of WINCORP constituted falsification of commercial and private documents.

While PEARLBANK admitted obtaining loans from WINCORP, it alleged that these accounts were settled by way

---

[3] From 1995 to November 2004.

[4] A Confirmation Advice is used by WINCORP to facilitate credit transactions. The Confirmation Advices subject of this case are standard forms with practically all the material details, such as the principal, interest rate, value date, maturity date, lender and borrower.

Supreme Court E-Library

of an offsetting arrangement. Thus, the promissory notes executed by PEARLBANK covering such loans were allegedly all stamped "cancelled." It denied obtaining loans from WINCORP or its lenders/investors from the period 11 December 1998 to 18 January 1999 due to the fact that there was "no valid and effective grant of a credit facility" in favor of PEARLBANK during the said period.

On 3 April 2000, PEARLBANK served on WINCORP a final demand letter asking for a full and accurate accounting of the identities and investments of the lenders/investors and the alleged loan obligations of PEARLBANK, with the supporting records and documents including the purported Confirmation Advices.

WINCORP, however, still did not heed the demands of PEARLBANK and failed to produce the loan agreement documents it allegedly executed with the latter.

On 7 April 2000, PEARLBANK filed two complaints with the Securities and Exchange Commission (SEC) against Ong and several John Does for full and accurate accounting of the investments of WINCORP and of PEARLBANK's alleged loan obligations to WINCORP and/or its investors. The cases were docketed as SEC Cases No. 04-00-6590 and 04-00-6591.

On 6 September 2000, Juanita U. Tan, Treasurer of PEARLBANK, filed a complaint on behalf of PEARLBANK for **falsification by private individuals of commercial and private documents** before the DOJ. The case was docketed as I.S. No. 2000-1491. Named respondents in the complaint were the officers and directors of WINCORP, to wit: petitioner herein Anthony T. Reyes, Antonio T. Ong, Gilda C. Lucena,[5] Nemesio R. Briones, Loida C. Tamundong,[6] Eric R.G. Espiritu, and **John** or **Jane** Does.

In answer to the complaint of PEARLBANK in I.S. No. 2000-1491, WINCORP, through Ong, explained that among

---

[5] Chief Legal Officer and Assistant Corporate Secretary.

[6] Assistant Manager – Legal Department.

Supreme Court E-Library

the services offered by WINCORP was the arranging and/or brokering of loans for clients. Upon application of PEARLBANK, WINCORP agreed to arrange and/or broker loans on behalf of the former. Thus, in a meeting of its Board of Directors on 28 November 1995, WINCORP approved a credit line in favor of PEARLBANK in the amount of ₱250M.

According to Ong, pursuant to this Credit Line Agreement, PEARLBANK was able to obtain, through the brokerage of WINCORP, loans from several lenders/investors in the total amount of ₱324,050,474.24 for which PEARLBANK issued promissory notes from 1995 to 1996. The Credit Line Agreement was renewed for another year or up to 25 October 1996. PEARLBANK made payments, leaving a balance of around ₱300M on the loan. On 28 April 1997, the Credit Line Agreement was amended and the credit line was increased from ₱250M to ₱850M. On 11 December 1998, PEARLBANK arranged with WINCORP to transact additional loans from lenders in the amount of ₱200M, the proceeds of which were deposited in the account of Farmix Fertilizers, Inc., a corporation wholly owned and/or controlled by Manuel Tankiansee and Juanita Uy Tan. Following the previous procedure, WINCORP prepared the promissory notes corresponding to the additional loans, totaling ₱200M, and forwarded said documents to PEARLBANK. WINCORP maintains, however, that the promissory notes were never returned. WINCORP issued the standard Confirmation Advices to the lenders of PEARLBANK for said loans. Although the promissory notes were stamped "terminated" or "cancelled," the renewal promissory notes were not sent back/returned by PEARLBANK to WINCORP.

From the foregoing, WINCORP asserted that PEARLBANK was accurately designated as the borrower from the lenders/investors. The Confirmation Advices, Special Powers of Attorney, and Certifications it issued to the lenders/investors, indicating PEARLBANK as the borrower, were prepared in good faith and in accordance with the records of WINCORP. Hence, the officers and directors named as respondents in I.S. No. 2000-1491 who prepared, signed, and reviewed such documents denied having falsified them.

Supreme Court E-Library

On 2 January 2001, Ong, Lucena, Briones, Tamundong and Espiritu filed a Motion to Admit Attached Memorandum before the DOJ, asserting that the criminal complaint against them should be dismissed for lack of probable cause or suspended due to the existence of a prejudicial question involving the SEC cases.

On 18 June 2001, Prosecutor Estherbella N. Rances of the DOJ Task Force on Financial Fraud issued a Review Resolution recommending the filing of Informations for falsification of commercial and private documents by private individuals against petitioner Reyes, Ong, Briones, Lucena, Espiritu, and Tamundong.

On 21 August 2001, prior to the expiry of the period to file a motion for reconsideration, Informations for Falsification of Commercial and Private Documents under paragraphs 1 and 2, Article 172,[7] in relation to paragraph 2 of Article 171[8] of the

[7] Article 172 of the Revised Penal Code punishes any private individual who shall commit any of the acts of falsification enumerated in Article 171 in any public or official document or letter of exchange or any other kind of commercial document and any person who, to the damage of a third party, or with intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in Article 171.

[8] Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall **falsify** a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;

2. **Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;**

3. Attributing to persons who have participated in any act or proceeding statements other than those in fact made by them;

4. Making untruthful statements in a narration of facts;

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

Supreme Court E-Library

Revised Penal Code, were filed against petitioner, Ong, Briones, Lucena, Espiritu, and Tamundong before Branch 2 of the Metropolitan Trial Court (MTC) of Manila apparently relying on the Rances resolution dated 18 June 2001. The cases were docketed as Criminal Cases No. 365255-88.

On 28 August 2001, petitioner filed a motion for reconsideration of the 18 June 2001 Resolution of Prosecutor Rances. He raised the issues earlier brought up by Ong, Briones, Lucena, Espiritu and Tamundong, contending there was lack of probable cause and that there existed a prejudicial question. The other respondents in the criminal complaint filed a separate joint motion for reconsideration on 4 September 2001.[9]

Meanwhile, on 13 November 2001, petitioner filed an Urgent Motion to Suspend Proceedings and to Defer Arraignment of Accused before the MTC of Manila where the criminal cases were pending, leading to the cancellation of the arraignment scheduled for 21 November 2001.

Citing no cogent reason to modify or reverse the assailed 18 June 2001 Resolution, Prosecutor Rances denied the two motions for reconsideration filed by petitioner and his co-respondents in a Resolution issued on 13 December 2001.

Ong, Briones, Lucena, Espiritu, and Tamundong appealed the 13 December 2001 Resolution[10] to the Office of the DOJ Secretary while petitioner filed a Petition for Review with the same office.[11]

On 27 June 2003, Undersecretary (Usec.) Ma. Merceditas N. Gutierrez (representing the Office of the DOJ Secretary) resolved the appeal and Petition for Review in a joint Resolution

---

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.

[9] CA *rollo*, p. 555.

[10] *Rollo*, pp. 646-695.

[11] *Id.* at 699-737.

Supreme Court E-Library

reversing the Resolutions dated 18 June 2001 and 13 December 2001 of Prosecutor Rances. In ruling that the complaint in I.S. No. 2000-1491 should be dismissed, Usec. Gutierrez took into consideration the following:

(1) That the confirmation advices were mere renewals forming part of the earlier loans of PEARLBANK under an existing credit line agreement;

(2) That [petitioner, Ong, Lucena, Briones, Tamundong, and Espiritu] are mere employees of WINCORP performing perfunctory functions in good faith;

(3) That Confirmation Advices are not commercial documents;

(4) That SEC Case No. 0400-6590, is a prejudicial question, involving issues which are intimately related to the issues in the present case.

Thus, the Office of the DOJ Secretary ordered the Office of the Chief State Prosecutor to move for the withdrawal of the Informations from the MTC.[12]

PEARLBANK filed a motion for reconsideration with the Office of the DOJ Secretary for the setting aside of its 27 June 2003 Resolution, with a motion[13] praying that DOJ Usec. Gutierrez inhibit herself from the proceedings.

On 4 December 2003, DOJ Secretary Simeon Datumanong issued a Resolution granting the motion for reconsideration of PEARLBANK.[14]

In effect, DOJ Secretary Datumanong reversed the 27 June 2003 Resolution of Usec. Gutierrez and reinstated the 18 June 2001 Resolution of Prosecutor Rances finding probable cause to charge petitioner and other respondents in I.S. No. 2000-149, except for Eric R. G. Espiritu, for the crime of falsification of commercial and private documents:

---

[12] *Id.*

[13] CA *rollo*, pp. 816-835; 17 July 2003.

[14] *Id.* at 51-57.

Supreme Court E-Library

WHEREFORE, the resolution dated 27 June 2003 (Resolution No. 283, Series of 2003) is hereby REVERSED and SET ASIDE. The Chief State Prosecutor's Review Resolution dated 18 June 2001 is hereby REINSTATED, with the MODIFICATION that respondent ERIC R.G. ESPIRITU should be excluded. The Chief State Prosecutor is directed to cause the amendment of the informations filed against said respondent Espiritu by excluding him therefrom, and to report the action taken hereon within ten (10) days from receipt hereof.[15]

In said Resolution, DOJ Secretary Datumanong explained that while Eric R. G. Espiritu was one of the signatories of the Certifications, considering the nature of the certifications in question and his duties and functions, it would appear that he was entitled to rely on the Certifications and representations of those in the Treasury group. The DOJ Secretary ratiocinated that there was no prejudicial question involved, since the existence of an outstanding obligation on the part of PEARLBANK under its Credit Line with WINCORP was irrelevant and immaterial to the falsification cases, and shall not be determinative of the outcome of said falsification cases. Explaining further, he said that it was clear from the admissions of respondents therein that the loans reflected in the Confirmation Advices, which appeared to be new loans, were matched against the alleged outstanding loans of complainant.

On 8 January 2004, petitioner filed a motion for reconsideration of the 4 December 2003 Resolution of the DOJ Secretary.[16]

On the other hand, his co-respondents filed a separate motion for reconsideration on 16 January 2004.[17]

On 1 March 2005, DOJ Secretary Datumanong denied both motions for reconsideration.

Petitioner sought recourse with the Court of Appeals *via* a Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Court, docketed as CA-G.R. No. 90006. Petitioner sought

---

[15] *Id.* at 57.

[16] *Id.* at 881-906.

[17] *Id.* at 907-922.

Supreme Court E-Library

the nullification of the 4 December 2003 DOJ Resolution based on the following arguments:

(a) petitioner did not make any untruthful statements in the Confirmation Advices since [PEARLBANK] allegedly has an outstanding obligation with Westmont Investment Corporation;

(b) WINCORP's Confirmation Advices subject of the falsification case were not commercial documents; and

(c) a prejudicial question exists warranting the suspension of proceedings in the falsification case.

During the pendency of the petition for *certiorari* with the Court of Appeals, petitioner filed an Urgent *Ex Parte* Motion to Suspend Further Proceedings before the same MTC Court on 11 July 2005, contending that Criminal Case Nos. 365255 to 88 should be suspended, since he had filed a pending Petition for *Certiorari* under Rule 65 of the Rules of Court with the Court of Appeals to annul the 4 December 2003 and 1 March 2005 Resolution of the DOJ.

On 26 October 2005, the Court of Appeals promulgated its Decision dismissing CA-G.R. No. 90006. The appellate court found that the DOJ Secretary did not commit grave abuse of discretion in finding that there was probable cause for holding that petitioner was guilty of the offense charged. It noted that the Informations were already filed against petitioner before Branch 2 of the MTC of the National Capital Region (NCR), and petitioner's liability for the crime of falsification of commercial and private documents could best be threshed out at the trial on the merits of the case.

On 7 February 2006, the Court of Appeals issued a Resolution denying petitioner's motion for reconsideration.

Petitioner thus filed this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, making the following assignment of errors:

Supreme Court E-Library

I.

THE COURT OF APPEALS SANCTIONED A DEPARTURE FROM ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT ALLOWED THE ARBITRARY AND CAPRICIOUS EXERCISE BY THE DOJ OF ITS POWER TO DETERMINE PROBABLE CAUSE. THE DOJ COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING ITS 4 DECEMBER 2003 AND 1 MARCH 2005 RESOLUTIONS.

II.

THE CONSTITUTION EXPRESSLY PROVIDES THAT NO PERSON SHALL BE DENIED THE EQUAL PROTECTION OF THE LAWS. HOWEVER, THE COURT OF APPEALS COUNTENANCED THE DOJ'S VIOLATION OF SUCH CONSTITUTIONAL RIGHT OF PETITIONER WHEN THE DOJ DISMISSED THE CHARGES AGAINST MR. ERIC R. G. ESPIRITU AND YET FOUND PROBABLE CAUSE AGAINST HEREIN PETITIONER EVEN AS BOTH ARE SIMILARLY SITUATED.

III.

THE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT UPHELD THE DOJ RESOLUTIONS WHICH DID NOT ONLY FAIL TO CONSIDER THE EVIDENCE ON RECORD. LIKEWISE, THE COURT OF APPEALS SANCTIONED THESE RESOLUTIONS WHICH WERE NOT IN ACCORD WITH EXISTING LAW AND SUPREME COURT DECISIONS ON PREJUDICIAL QUESTIONS.

IV.

THE COURT OF APPEALS COMMITTED SERIOUS LEGAL ERROR AND DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT UPHELD THE DOJ'S CLASSIFICATION OF THE CONFIRMATION ADVICES SUBJECT OF THE CASE *A QUO* AS COMMERCIAL DOCUMENTS, A CLASSIFICATION WHICH IS CONTRARY TO ITS OWN EARLIER DETERMINATION AND THAT OF THE DOJ.

Essentially, petitioner avers that his rights to due process and equal protection of the law were jeopardized when DOJ Secretary Datumanong issued his 4 December 2004 Resolution affirming the finding of probable cause against him and the

Supreme Court E-Library

other respondents in I.S. No. 2000-1491, and reversing the earlier 27 June 2003 Resolution of his Office, which ordered the dismissal of the complaint of PEARLBANK, there being no new evidence presented between the two Resolutions. He further accuses the DOJ Secretary of violating his right to the equal protection of the law by dismissing the charges against Espiritu, another respondent in I.S. No. 2000-1491, but not those against him. He insists that the charges against him must be dismissed, arguing that he and Espiritu are similarly situated.

Petitioner prays that the Court nullify and set aside the Court of Appeals Decision dated 26 October 2005 and Resolution dated 7 February 2006 in CA-G.R. No. 90006, there being no probable cause to charge him with the crimes of falsification of commercial and private documents. He further alleges that the proceedings in Criminal Cases No. 365255-88 should be suspended pending resolution of the two SEC Cases which have now been transferred to the jurisdiction of, and are now pending before, the Regional Trial Courts of Makati on the ground that these cases constitute a prejudicial question.

This Court finds the present petition to be without merit and accordingly denies the same.

The issues presented by petitioner may be narrowed down to two:

(a) whether or not there is probable cause to file an information for falsification of private and commercial documents against petitioner; and

(b) whether the two cases before the SEC are prejudicial questions which have to be resolved before the criminal cases may proceed.

Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof.[18] The term does not mean

---

[18] *Sy v. Secretary of Justice*, G.R. No. 166315, 14 December 2006, 511 SCRA 92, 96; *Metropolitan Bank and Trust Company v. Court of Appeals*, G.R. No. 154685, 27 November 2006, 508 SCRA 215, 224; *Cabrera v. Marcelo*,

Supreme Court E-Library

"actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause 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.[19]

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.[20] 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.[21] 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.

These findings of probable cause fall within the jurisdiction of the prosecutor or fiscal in the exercise of executive power,

---

G.R. No. 157835, 27 July 2006, 496 SCRA 771, 782; *Osorio v. Desierto*, G.R. No. 156652, 13 October 2005, 472 SCRA 559, 573; *Sarigumba v. Sandiganbayan*, G.R. Nos. 154239-41, 16 February 2005, 451 SCRA 533, 550; *Quiambao v. Desierto*, G.R. No. 149069, 20 September 2004, 438 SCRA 495, 508; *Serapio v. Sandiganbayan*, 444 Phil. 499, 531 (2003); *Fabia v. Court of Appeals*, 437 Phil. 389, 398-399 (2002); *Domalanta v. Commission on Elections*, 390 Phil. 46, 62-63 (2000); *Webb v. Hon. De Leon*, 317 Phil. 758, 779-780 (1995); *Pilapil v. Sandiganbayan*, G.R. No. 101978, 7 April 1993, 221 SCRA 349, 360.

[19] *Quiambao v. Desierto, id.*; *Fabia v. Court of Appeals, id.*; *Osorio v. Desierto, id.*

[20] *Sarigumba v. Sandiganbayan, supra* note 18; *Serapio v. Sandiganbayan, supra* note 18, citing *Webb v. De Leon, supra* note 18; *Domalanta v. Commission on Elections, supra* note 18, citing *Pilapil v. Sandiganbayan, supra* note 18.

[21] *Sarigumba v. Sandiganbayan, id.*

Supreme Court E-Library

which the courts do not interfere with unless there is grave abuse of discretion. The determination of its existence lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Thus, the decision whether to dismiss a complaint or not is dependent upon the sound discretion of the prosecuting fiscal.[22] He may dismiss the complaint forthwith, if he finds the charge insufficient in form or substance or without any ground. Or he may proceed with the investigation if the complaint in his view is sufficient and in proper form. To emphasize, the determination of probable cause for the filing of information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case.[23] Ultimately, whether or not a complaint will be dismissed is dependent on the sound discretion of the Secretary of Justice.[24] And unless made with grave abuse of discretion, findings of the Secretary of Justice are not subject to review.[25]

For this reason, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.[26]

---

[22] *Public Utilities Department v. Hon. Guingona, Jr.,* 417 Phil. 798, 804 (2001); *Joaquin, Jr. v. Drilon,* 361 Phil. 900, 907 (1999).

[23] *Advincula v. Court of Appeals,* 397 Phil. 641, 650 (2000); *Punzalan v. Dela Peña,* G.R. No. 158543, 21 July 2004, 434 SCRA 601.

[24] *Public Utilities Department v. Hon. Guingona, Jr., supra* note 22.

[25] *Id.*

[26] *First Women's Credit Corporation v. Perez,* G.R. No. 169026, 15 June 2006, 490 SCRA 774, 777.

Supreme Court E-Library

The restraint exercised by this Court in interfering with the determination of probable cause by the prosecutor, unless there is grave abuse of discretion, is only consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule,[27] none of which are obtaining in the case now before us.

In the present case, petitioner was not able to convince this Court to deviate from the general rule of non-interference. The Court of Appeals did not err in dismissing petitioner's application for a writ of *certiorari*, absent grave abuse of discretion on the part of the DOJ Secretary in finding probable cause against him for the falsification of commercial and private documents.

In *D.M. Consunji, Inc. v. Esguerra*,[28] we defined grave abuse of discretion in this wise:

> By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

Contrary to the claims of petitioner, the Court of Appeals did not perfunctorily or mechanically deny his Petition for *Certiorari* therein. A comprehensive review of the assailed Decision of the appellate court readily reveals that it considered and judiciously passed upon all the arguments presented by both parties before finally decreeing the dismissal of petitioner's Petition for *Certiorari*.

Although no new evidence was presented by the parties from the time the first Resolution was issued by DOJ Usec. Gutierrez on 7 June 2003 until the second Resolution was issued by DOJ

---

[27] *Id.* To afford adequate protection to the constitutional rights of the accused. (*Hernandez v. Albano*, 125 Phil. 513, 516-517 [1967].)

[28] 328 Phil. 1168, 1181 (1996).

Supreme Court E-Library

Secretary Datumanong on 4 December 2004, the DOJ Secretary is not precluded from making inferences of fact and conclusions of law which may be different from, contrary to, or even entirely abandoning, the findings made by DOJ Usec. Gutierrez although they were both faced with the same evidence and arguments.

First, it must be noted that DOJ Secretary Datumanong issued his Resolution of 4 December 2004 upon the filing by PEARLBANK of a motion for reconsideration of the Resolution dated 7 June 2003 of DOJ Usec. Gutierrez entirely dismissing its complaint. The 4 December 2004 Resolution, therefore, of DOJ Secretary Datumanong was the result of his acting on, and granting of, the motion for reconsideration of PEARLBANK. The purpose of a motion for reconsideration is precisely to request the court or quasi-judicial body to take a second look at its earlier judgment and correct any errors it may have committed therein.

Second, it cannot be said that DOJ Secretary Datumanong's final ruling is entirely without basis when, in fact, Reviewing Prosecutor Rances had earlier made a similar finding on 18 June 2001 that there was probable cause to believe that petitioner and the other respondents in I.S. No. 2000-1491 were guilty of falsification of commercial and private documents, based on essentially the same evidence and arguments.

And finally, DOJ Secretary Datumanong exhaustively presented in his 4 December 2004 the legal and factual reasons for his reversal of the 27 June 2003 Resolution of DOJ Usec. Gutierrez, which negated petitioner's assertion of capriciousness, whimsicality, or arbitrariness on his part.

Equally without merit is petitioner's assertion that upon dismissal of the charges against his co-respondent Espiritu, those against him must likewise be dismissed. Petitioner insists that if the charges against an accused rest upon the same evidence used to charge a co-accused, the dismissal of the charges against the former should benefit the latter.

This is flawed reasoning, a veritable *non sequitur*.

Supreme Court E-Library

Suffice it to say that it is indubitably within the discretion of the prosecutor to determine who must be charged with what crime or for what offense. In *Webb v. De Leon*[29] in which the petitioners questioned the non-inclusion of Alfaro in the Information for rape with homicide filed against them, despite Alfaro's alleged conspiratorial participation in the crime charged, this Court pronounced that:

> [T]he prosecution of crimes appertains to the executive department of government whose principal power and responsibility is to see that our laws are faithfully executed. A necessary component of this power to execute our laws is the right to prosecute their violators. The right to prosecute vests the prosecutor with a wide range of discretion—the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasboard of factors which are best appreciated by prosecutors x x x.

While the right to equal protection of the law requires that litigants are treated in an equal manner by giving them the same rights under similar circumstances,[30] it may not be perversely used to justify desistance by the authorities from prosecution of a criminal case, just because not all of those who are probably guilty thereof were charged.

Petitioner further insists that the proceedings in SEC Cases No. 04-00-6590 and No. 04-00-6591, now pending before the RTC of Makati[31] (civil cases), warrant the suspension of Criminal Cases No. 365255-88. (criminal cases).

We disagree.

Under Rule 111 of the Revised Rules of Court, a criminal action may be suspended upon the pendency of a prejudicial question in a civil action, to wit:

> Sec. 6. *Suspension by reason of prejudicial question.* — A petition for suspension of the criminal action based upon the pendency

---

[29] *Supra* note 18 at 800.

[30] *Loong v. Commission on Elections*, 326 Phil. 790, 805 (1996).

[31] RTC of Makati; Transfer of jurisdiction was made pursuant to the Securities Regulation Code, as amended.

Supreme Court E-Library

of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in court for trial, and shall be filed in the same criminal action at any time before the prosecution rests.

A ***prejudicial question*** is defined as one which arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal.[32]

The prejudicial question must be determinative of the case before the court, but the jurisdiction to try and resolve the question must be lodged in another court or tribunal. It is a question based on a fact distinct and separate from the crime, but so intimately connected with it that it determines the guilt or innocence of the accused; and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.[33]

It comes into play generally in a situation in which a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.[34]

---

[32] *Tuanda v. Sandiganbayan*, G.R. No. 110544, 17 October 1995, 249 SCRA 342, 351; *Yap v. Paras*, G.R. No. 101236, 30 January 1992, 205 SCRA 625, 629; *Donato v. Luna*, G.R. No. 53642, 15 April 1988, 160 SCRA 441, 445; *Quiambao v. Osorio*, G.R. No. L-48157, 16 March 1988, 158 SCRA 674, 678; *Ras v. Rasul*, G.R. Nos. 50441-42, 18 September 1980, 100 SCRA 125, 127.

[33] *People v. Consing, Jr.*, 443 Phil. 454, 459-460 (2003).

[34] *People v. Sandiganbayan*, G.R. Nos. 162748-50, 28 March 2006, 485 SCRA 473, 492-493, citing *Tuanda v. Sandiganbayan*, *supra* note 32.

Supreme Court E-Library

The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. Based on Section 7 of the same rule, it has two essential elements:

> Sec. 7. *Elements of prejudicial question.* — The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

In *Sabandal v. Tongco*,[35] this Court had the opportunity to further expound on the resolution of prejudicial questions in this manner:

> If both civil and criminal cases have similar issues or the issue in one is intimately related to the issues raised in the other, then a prejudicial question would likely exist, provided the other element or characteristic is satisfied. It must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that the resolution of the issues raised in the civil action would be necessarily determinative of the guilt or innocence of the accused. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or there is no necessity "that the civil case be determined first before taking up the criminal case," therefore, the civil case does not involve a prejudicial question. Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.

There is no prejudicial question here.

We note that the Informations filed in the criminal cases charge petitioner and his other co-accused with falsification of commercial and private documents under paragraph 1 of Article 172, in relation to paragraph 2 of Article 171 of the Revised Penal Code; and paragraph 2 of Article 172, in relation to paragraph 2 of Article 171 of the Revised Penal Code, in signing and/or issuing the questioned Confirmation Advices, Special Powers of Attorney and Certifications on behalf of WINCORP, stating therein that PEARLBANK owed the third parties (lenders and

---

[35] 419 Phil. 13, 18 (2001).

Supreme Court E-Library

investors). Each of the Informations[36] alleged that the therein named accused:

> x x x confederating and conspiring together, did then and there willfully, unlawfully and feloniously prepare, execute and sign a Confirmation Advice of WINCORP x x x to make it appear in the said commercial document that PEARLBANK SECURITIES, INC., a corporation legally established, is a borrower of WINCORP, having allegedly secured and granted a loan in the amount of x x x when in truth and in fact, the said accused well knew that PEARLBANK SECURITIES, INC. had not secured nor had been granted said loan on the date above-mentioned, and having falsified said document in the manner stated, the said accused issued a copy of the said document, which has not been notarized before a notary public or other person legally authorized to do so, the accused issued the said document to, and was received by one Tiu K. Tiac to the damage and prejudice of PEARLBANK SECURITIES, INC., represented by its Treasurer and Director Juanita U. Tan.

The principal issue to be resolved in the criminal cases is whether or not petitioner committed the acts referred to in the Informations, and whether or not these would constitute falsification of commercial and private documents under the law.

In contrast, the issues to be resolved in SEC Case No. 04-00-6591 are as follows:

(1) whether or not Tankiansee is entitled to the accounting and disclosure pursuant to Section 74, Tile VII of the Corporation Code of the Philippines;

(2) whether or not Tankiansee is entitled to be furnished copies of the records or documents demanded from WINCORP;

(3) whether or not WINCORP is liable to Tankiansee for damages.

SEC Case No. 04-00-6590 involves the following issues:

(1) whether or not PEARLBANK has loan obligations with WINCORP or its stockholders;

---

[36] CA *rollo*, pp. 654-673.

Supreme Court E-Library

(2) whether or not the subject Confirmation Advices and other related documents should be declared to be without force and effect or if PEARLBANK is entitled to be relieved of the legal effects thereof;

(3) whether or not defendants therein are liable for damages to PEARLBANK as a consequence of this alleged fraudulent scheme.[37]

A cursory reading of the above-mentioned issues would show that, although apparently arising from the same set of facts, the issues in the criminal and civil cases are clearly different from one another. Furthermore, the issues in the civil cases are not determinative of the issues in the criminal cases.

Petitioner particularly calls attention to the purported prejudicial issue in the civil cases: whether PEARLBANK has outstanding loan obligations to WINCORP or its stockholders/investors. Although said issue may be related to those in the criminal cases instituted against petitioner, we actually find it immaterial to the resolution of the latter.

That PEARLBANK does have outstanding loans with WINCORP or its stockholders/investors is not an absolute defense in, and would not be determinative of the outcome of, the criminal cases. Even if the RTC so rules in the civil cases, it would not necessarily mean that these were the very same loan transactions reflected in the Confirmation Advices, Special Powers of Attorney and Certifications issued by WINCORP to its stockholders/investors, totally relieving petitioner and his other co-accused from any criminal liability for falsification. The questioned documents specifically made it appear that PEARLBANK obtained the loans during the first four months of the year 2000. Hence, in the criminal cases, it is not enough that it be established that PEARLBANK has outstanding loans with WINCORP or its stockholders/investors, but also that these loans were acquired by PEARLBANK as WINCORP made it to appear in the questioned documents it issued to its stockholders/investors. This only demonstrates that the resolution of the two civil cases

[37] *Rollo*, p. 189.

Supreme Court E-Library

is not *juris et de jure* determinative of the innocence or guilt of the petitioner in the criminal cases.

Finally, we note that the criminal cases were already instituted and pending before the MTC. Petitioner would have the opportunity to present the arguments and evidence in his defense in the course of the trial of said cases which will now proceed by virtue of this Decision.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is *DENIED*. The Decision dated 26 October 2005 and Resolution dated 7 February 2006 of the Court of Appeals in CA-G.R. No. 90006 are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 172146. July 30, 2008]

RODOLFO CORNES, VIRGILIO CORNES, ENRIQUITO CORNES, ALFREDO CORNES, ELESEO CORNES, BENITO CORNES, CONSUELO "NITA" CORNES-VALENZUELA, MA. ALBERTA CORNES and her children CHERILYN, JONALYN, DIANALYN, MARIE-JOY, ERNESTO, JR., JERSON and ERIKA, all surnamed CORNES, (Ernesto, Jr., Jerson and Erika, being minors, are represented herein by their mother and guardian *ad litem,* Ma. Alberta Cornes), DONATO ROBLES, EDUARDO ROBLES, MARIA ROBLES and her children DONATO, EDUARDO, RIZALINO, EDWIN, VICENTE, JESSIE, ANICETO, JERRY, all