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FIRST DIVISION

[G.R. No. 195198. February 11, 2013]

LORELI LIM PO, *petitioner, vs.* **DEPARTMENT OF JUSTICE and JASPER T. TAN,** *respondents.*

[G.R. No. 197098. February 11, 2013]

ANTONIO NG CHIU, *petitioner, vs.* **COURT OF APPEALS, DEPARTMENT OF JUSTICE and JASPER T. TAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AN APPEAL TAKEN EITHER TO THE SUPREME COURT OR THE COURT OF APPEALS BY THE WRONG OR INAPPROPRIATE MODE SHALL BE DISMISSED.— Chiu filed his petition under Rule 65 of the Rules of Court when he should have resorted instead to Rule 45 thereof. An appeal taken either to us or the CA by the wrong or inappropriate mode shall be dismissed. Even if we were to be liberal and consider his petition as having been filed under Rule 45, it would still be susceptible of dismissal for non-compliance with Section 2 of the same rule. Chiu's counsel received a copy of the CA's resolution finally denying his petition on April 8, 2011. The petition now before us was filed on June 23, 2011, way beyond the 15-day period prescribed by Section 2 of Rule 45. Besides, what the petition essentially seeks is for us to re-evaluate the evidence upon which Secretary Agra anchored his findings in holding that probable cause exists to indict Chiu. The foregoing was affirmed by the CA. It is settled that a re-calibration of evidence cannot be done in a petition filed under Rule 45.

2. ID.; COURTS; CANNOT INTERFERE WITH THE DETERMINATION OF PROBABLE CAUSE FOR THE PURPOSE OF FILING AN INFORMATION IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION.— [E]ven if we were to take exception of Chiu's case by giving due course

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to his petition either under Rule 45 or Rule 65, still, the result is its dismissal. In *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III*, we stated that: "Under the doctrine of separation of powers, the courts have no right to directly decide matters over which full discretionary authority has been delegated to the Executive Branch of the Government, or to substitute their own judgments for that of the Executive Branch, represented in this case by the Department of Justice. The settled policy is that the courts will not interfere with the executive determination of probable cause for the purpose of filing an information, in the absence of grave abuse of discretion. x x x In this regard, we stress that a preliminary investigation for the purpose of determining the existence of probable cause is not part of a trial. At a preliminary investigation, the investigating prosecutor or the Secretary of Justice only determines whether the act or omission complained of constitutes the offense charged. Probable cause refers to facts and circumstances that engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. There is no definitive standard by which probable cause is determined except to consider the attendant conditions; the existence of probable cause depends upon the finding of the public prosecutor conducting the examination, who is called upon not to disregard the facts presented, and to ensure that his finding should not run counter to the clear dictates of reason."

3. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; NATURE. — [I]n a preliminary investigation, the prosecutor is bound to determine merely the existence of probable cause that a crime has been committed and that the accused has committed the same. The rules do not require that a prosecutor has moral certainty of the guilt of a person for the latter to be indicted for an offense after the conduct of a preliminary investigation. Further, we have repeatedly ruled that the determination of probable cause, for purposes of preliminary investigation, is an executive function. Such determination should be free from the court's interference save only in exceptional cases where the DOJ gravely abuses its discretion in the issuance of its orders or resolutions.

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APPEARANCES OF COUNSEL

Villanueva Tabucanon & Associates Law Offices for Loreli Lim Po.
Tanco & Partners and *Alexius P. Tang* for Antonio Ng Chiu.
The Solicitor General for public respondent.
De Leon & Desiderio for private respondent.

R E S O L U T I O N

REYES, *J.*:

Herein private respondent, Jasper T. Tan (Tan), is a stockholder of Coastal Highpoint Ventures, Inc. (CHVI), a real estate development company. Antonio Ng Chiu[1] (Chiu) is its President. Tan claimed that Loreli Lim Po[2] (Po) is Chiu's personal accountant. Po asserted otherwise and instead alleged that she is merely a consultant for CHVI.

Tan lamented that pertinent information relative to CHVI's operations were withheld from him. His repeated requests for copies of financial statements and allowance to inspect corporate books proved futile. Consequently, he filed before the Office of the City Prosecutor of Cebu a complaint against Chiu and Po for violation of Section 74(2),[3] in relation to

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[1] Petitioner in G.R. No. 197098.

[2] Petitioner in G.R. No. 195198.

[3] Sec. 74. Books to be kept; stock transfer agent. — x x x.

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, 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

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Section 144[4] of the Corporation Code of the Philippines, the origin of the two consolidated petitions now before us.

On October 16, 2008, Assistant City Prosecutor Anna Lou B. Fernandez-Cavada (Prosecutor Fernandez-Cavada) issued a Resolution[5] finding probable cause to indict Chiu and Po based on the following grounds:

> Complainant, as a stockholder, is entitled to inspect the corporate books and records of the CHVI. The record clearly shows that complainant had been demanding to inspect the corporate books, records of business and corporate reports since 13 June 2007. Noticeably, though several demands/requests for inspection of corporate records have been made by the complainant, the same werenot (sic) granted until after the month of April 2008 or roughly 10 months thereafter. The December 15, 2007 collective inspection cannot be regarded as compliance with the request as complainant has never agreed thereto.

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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. (Underlining ours)

[4] Sec. 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)

[5] *Rollo* (G.R. No. 197098), pp. 227-233.

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x x x x x x x x x

The allegation of the respondent Chiu that the complainant could easily secure copies of the corporate records for (sic) the Securities and Exchange Commission cannot justify the refusal of the latter's demand for inspection. As beneficial owner of the business, the complainant has the right to know not only the financial condition of the corporation but also how the corporate affairs are being managed, so that if they find the conditions unsatisfactory, they may be able to take the necessary measures to protect their investment.

Moreover, "records of all business transaction[s]" contemplated in Section 74 covers more than the reportorial requirements mandated by the SEC. *"Records of all business transaction[s]"* include books of inventories and balances, business correspondence, letters, telegrams, contracts, memoranda, *etc.*[,] as well as journals, ledgers and supporting documents fro (sic) tax purposes such as income tax returns, vouchers and receipts, financial statements and voting trust agreements.

From *records of business transaction[s]*, the stockholder can find out how his investment is being used and the actual financial condition of the corporation. x x x Considering that the records may be voluminous and that a stockholder may find it difficult to interpret them, the Supreme Court has held that a stockholder may make copies, extracts and memoranda of such records. x x x.

x x x [I]t is quite inexplicable why the complainant is not made to inspect the corporate records to the extent that is satisfactory to him. While the respondent alleged that complainant through the inspection team was allowed to view/inspect the following records, to wit:

x x x x x x x x x

No proof has been shown by respondents that these books/documents were indeed shown to the inspection team. A simple minute of the meeting/inspection signed by the inspection team would have conveniently supported this assertion. x x x.

x x x [T]he assertion of the complainant that the inspection team was limited to see the books of accounts for 2006 to 2007 with carry forward balances and not detailed schedules of accounts except for bank reconciliation, lapsing schedule and deposit on subscription has to be given credence considering that this was based on the communication sent by and (sic) independent accounting company

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which has no interest in the corporation and which does not stand to benefit from whatever transaction that the corporation may have.[6] (Citations omitted and underlining ours)

On April 30, 2009, Prosecutor Fernandez-Cavada issued a Resolution[7] denying Chiu and Po's motions to reconsider the foregoing.

A petition for review was filed before the Department of Justice (DOJ). On March 2, 2010, then Undersecretary Ricardo R. Blancaflor issued a resolution reversing Prosecutor Fernandez-Cavada's findings.

On April 30, 2010, then Acting DOJ Secretary Alberto C. Agra (Secretary Agra) issued a Resolution[8] granting Tan's motion for reconsideration. Secretary Agra reversed the Resolution dated March 2, 2010 and instead affirmed Prosecutor Fernandez-Cavada's earlier disquisition. Chiu and Po's motions for reconsideration were denied by Secretary Agra through a Resolution[9] dated June 21, 2010.

Chiu and Po each filed before the Court of Appeals (CA) a Petition for *Certiorari* under Rule 65 of the Rules of Court.[10] Po and Chiu's petitions were docketed as CA-G.R. SP Nos. 05351 and 05352, respectively.

On December 15, 2010, the CA dismissed with finality Po's petition on technical grounds,[11] *viz*:

While petitioner had complied with the requirement on competent evidence of her identity, she still failed to comply with the requirement on proper proof of service. Proper proof of personal service requires that the affidavit of the party serving must contain a full statement

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[6] *Id.* at 231-232.

[7] *Id.* at 212-218.

[8] *Id.* at 67-72.

[9] *Id.* at 73-74.

[10] *Id.* at 75-126; *rollo* (G.R. No. 195198), pp. 40-82.

[11] *Rollo* (G.R. No. 195198), pp. 37-39.

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of the date, place and manner of service. Petitioner's attached affidavit of service lacked these pertinent details. As for the proof of service by registered mail, post office receipts do not suffice for it is stated, specifically in Section 10, Rule 13 of the Rules of Court, that service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever is earlier. Verily, registry receipts cannot be considered as sufficient proof of service; they are merely evidence of the mail matter with the post office of the sender, not the delivery of said mail matter by the post office to the addressee.[12] (Citations omitted and underlining ours)

On the other hand, Chiu's petition was denied for lack of merit.[13] The CA declared that:

> Grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the DOJ was not shown in the present case.
>
> Here, the petitioner was criminally charged for violating Section 74 of the Corporation Code in relation to Section 144 of the same Code. The requisites in order for the penal provision under Section 144 of the Corporation Code to apply in a case of violation of a stockholder or member's right to inspect the corporate books/records as provided for under Section 74 of the Corporation Code, are enumerated in the recent case of *Sy Tiong Shiou, et al. v[.] Sy Chim, et al.,* citing *Ang-Baya, et al. v[.] Ang*:
>
> > First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes;
> >
> > Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts;
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> x x x x x x x x x
>
> The Court has reviewed the records and the pleadings of the parties and found that the requisites mentioned above are present. It is noted that private respondent on several occasions had expressed in writing his request to inspect CHVI's corporate books and records

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[12] *Id.* at 38.

[13] *Rollo* (G.R. No. 197098), pp. 50-64.

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but his written requests were turned down on the pretext that the petitioner needed more time to prepare the documents requested by the private respondent. The initial written demand was made on October 10, 2007 but it was only on April 24, 2008 that the audit team sent by the private respondent was able to inspect some of the documents of CHVI. However, it appears that the inspection was ineffective since the petitioner and Loreli Lim Po refused to present the other documents demanded by the inspection team. PO even prevented the team from copying the corporate books and records.

Petitioner repeatedly insists that private respondent's representatives were not refused inspection of the corporate book or records and the latter were even allowed to make copies of the documents during the meeting on April 24, 2008. These are defenses which could be properly threshed out in a full-blown trial. x x x [T]he purpose of determining probable cause is to ascertain that the person accused of the crime is probably guilty thereof and should be held for trial. A finding of probable cause needs only to rest on evidence showing that more likely than not[,] a crime has been committed and was committed by the suspect. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely, not on evidence establishing absolute certainty of guilt.

Finally, it is once more appropriate to apply the Supreme Court's general policy of non-interference with the prosecutor's discretion to file or not to file a criminal case. x x x The courts try and absolve or convict the accused but, as a rule, have no part in the initial decision to prosecute him. The possible exception to this rule is where there is an unmistakable showing of a grave abuse of discretion amounting to lack or excess of jurisdiction that will justify judicial intrusion into the precincts of the executive which is not the case herein.[14] (Citations omitted and underlining ours)

Po is before us now with a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court ascribing grave error on the part of the CA in (a) allegedly imposing upon her "an additional requirement of proof of service by registered mail of the actual receipt thereof by the addressee,"[15] and (b) "invoking

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[14] *Id.* at 61-63.

[15] *Rollo* (G.R. No. 195198), p. 12.

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Section 10,[16] Rule 13 of the Rules of Court on proof of service by registered mail when the applicable rule should have been Section 13[17] of the said Rule 13."[18]

On his part, Chiu filed before us a Petition for *Certiorari* under Rule 65 of the Rules of Court alleging that the CA gravely abused its discretion in denying his petition "considering that there are clear and sufficient elements allowing the courts to conduct a judicial review."[19]

We deny the instant consolidated petitions.

Chiu's petition is procedurally-flawed.

Chiu filed his petition under Rule 65 of the Rules of Court when he should have resorted instead to Rule 45 thereof. An appeal taken either to us or the CA by the wrong or inappropriate mode shall be dismissed.[20]

Even if we were to be liberal and consider his petition as having been filed under Rule 45, it would still be susceptible

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[16] Sec. 10. *Completeness of service*. — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier. (Underlining ours)

[17] Sec. 13. *Proof of service.* — Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee. (Underlining ours)

[18] *Rollo* (G.R. No. 195198), p. 12.

[19] *Rollo* (G.R. No. 197098), p. 26.

[20] Please see Circular No. 2-90 (Re: Guidelines to be Observed in Appeals to the Court of Appeals and to the Supreme Court) effective March 9, 1990.

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of dismissal for non-compliance with Section 2[21] of the same rule. Chiu's counsel received a copy of the CA's resolution finally denying his petition on April 8, 2011.[22] The petition now before us was filed on June 23, 2011, way beyond the 15-day period prescribed by Section 2 of Rule 45.[23] Besides, what the petition essentially seeks is for us to re-evaluate the evidence upon which Secretary Agra anchored his findings in holding that probable cause exists to indict Chiu. The foregoing was affirmed by the CA. It is settled that a re-calibration of evidence cannot be done in a petition filed under Rule 45. Thus, ***Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.***[24] is emphatic that:

> This rule [Rule 45] provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. **When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the recognized exceptions**[.][25] (Emphasis supplied and underlining ours)

Again, even if we were to take exception of Chiu's case by giving due course to his petition either under Rule 45 or Rule 65, still, the result is its dismissal. In *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III*,[26] we stated that:

> Under the doctrine of separation of powers, the courts have no right to directly decide matters over which full discretionary authority

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[21] Sec. 2. *Time for filing; extension.* — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. (Underlining ours)

[22] *Rollo* (G.R. No. 197098), pp. 65-66.

[23] *Id.* at 3-49.

[24] G.R. No. 190515, June 6, 2011, 650 SCRA 656.

[25] *Id.* at 660.

[26] G.R. No. 177780, January 25, 2012, 664 SCRA 165.

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has been delegated to the Executive Branch of the Government, or to substitute their own judgments for that of the Executive Branch, represented in this case by the Department of Justice. The settled policy is that the courts will not interfere with the executive determination of probable cause for the purpose of filing an information, in the absence of grave abuse of discretion. That abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. x x x.

In this regard, we stress that a preliminary investigation for the purpose of determining the existence of probable cause is not part of a trial. At a preliminary investigation, the investigating prosecutor or the Secretary of Justice only determines whether the act or omission complained of constitutes the offense charged. Probable cause refers to facts and circumstances that engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. There is no definitive standard by which probable cause is determined except to consider the attendant conditions; the existence of probable cause depends upon the finding of the public prosecutor conducting the examination, who is called upon not to disregard the facts presented, and to ensure that his finding should not run counter to the clear dictates of reason.[27] (Citations omitted and underlining ours)

In the case at bar, we find no grave abuse of discretion on the part of the CA when it rendered its Decision[28] dated January 11, 2011.

There is ample evidence on record to support the said decision. To name one, accountants Creest O. Morales and Jay Arr T. Hernandez, who were part of the Inspection Team sent by Tan to CHVI, executed a Joint Affidavit[29] stating that the documents made available to them for inspection were limited. Further, they claimed that on the day of the inspection, they brought a

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[27] *Id.* at 176-178.

[28] *Rollo* (G.R. No. 197098), pp. 50-63.

[29] *Id.* at 209-211.

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portable photocopying machine to CHVI's premises but they were not allowed to use the same. The offense punishable under Section 74, in relation to Section 144 of the Corporation Code, for which Chiu was indicted, requires the unjustified disallowance or refusal by a suspect, of a stockholder's written request to examine or copy excerpts of a corporation's books or minutes. The absence of any ascribed ill motives on the part of the aforementioned accountants to make statements adverse or unfavorable to Chiu lends credibility to their declarations.

Besides, as we ruled in *Metrobank*,[30] in a preliminary investigation, the prosecutor is bound to determine merely the existence of probable cause that a crime has been committed and that the accused has committed the same. The rules do not require that a prosecutor has moral certainty of the guilt of a person for the latter to be indicted for an offense after the conduct of a preliminary investigation. Further, we have repeatedly ruled that the determination of probable cause, for purposes of preliminary investigation, is an executive function. Such determination should be free from the court's interference save only in exceptional cases where the DOJ gravely abuses its discretion in the issuance of its orders or resolutions.

We likewise find no compelling reason to grant Po's petition.

Even if we were to declare that it was error to dismiss Po's petition on the ground that the registry return cards were not attached thereto, still, remanding the case to the CA would only prove circuitous. The crux of Po's petition filed with the CA was to seek for a review of Secretary Agra's findings. The CA had already done so in resolving Chiu's petition on the merits and no ground exists for us to once again review the same.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant consolidated petitions are **DENIED.** The Decision and Resolution of the Court of Appeals dated January 11, 2011 and April 8, 2011, respectively, relative to CA- G.R. SP No. 05352, and Resolutions issued on September 15, 2010 and December 15, 2010, relative to CA-G.R. SP No. 05351, are **AFFIRMED *in toto***.

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[30] *Supra* note 26.

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SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 197003. February 11, 2013]

NERIE C. SERRANO, *petitioner, vs.* **AMBASSADOR HOTEL, INC. and YOLANDA CHAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF *RES JUDICATA*; BAR BY PRIOR JUDGMENT; REQUISITES.— By the doctrine of *res judicata*, "a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit." To apply this doctrine in the form of a "bar by prior judgment," there must be identity of parties, subject matter, and causes of action as between the first case where the first judgment was rendered and the second case that is sought to be barred.

2. ID.; ID.; ID.; IMMUTABILITY OF FINAL JUDGMENTS; FINAL JUDGMENT MAY NO LONGER BE MODIFIED IN ANY RESPECT, EVEN IF THE MODIFICATION IS MEANT TO CORRECT ERRONEOUS CONCLUSIONS OF FACT AND LAW.— It need not be stressed that a final judgment may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law. In *Gallardo-Corro v. Gallardo*, We explained that this principle of the immutability of final judgments is an important aspect of the administration of justice as it ensures an end to litigations x x x. This precept has been reiterated,