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THIRD DIVISION

[G.R. No. 178511. December 4, 2008]

MA. BELEN FLORDELIZA C. ANG-ABAYA, FRANCIS JASON A. ANG, HANNAH ZORAYDA A. ANG, and VICENTE G. GENATO, *petitioners, vs.* **EDUARDO G. ANG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; PROBABLE CAUSE; DEFINED AND CONSTRUED. — Probable cause, for purposes 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. It is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause;" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of 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. Precisely, there is a trial for the reception of prosecution's evidence in support of the charge."

2. ID.; ID.; ID.; ID.; DETERMINATION OF EXISTENCE THEREOF LIES WITHIN THE DISCRETION OF PROSECUTING OFFICER; EXPLAINED. — The determination of the existence of probable cause lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Their decisions are reviewable by the Secretary of Justice who may direct the filing of the corresponding information or to move for the dismissal of the case. In order that probable cause to file a criminal case may be arrived at, or in order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present. This is based on the principle that every crime is defined by its elements, without which there should be — at the most — no criminal offense.

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3. MERCANTILE LAW; CORPORATION CODE; STOCKHOLDER'S RIGHT TO INSPECT CORPORATE BOOKS, WHEN VIOLATED; ELEMENTS. — Thus, contrary to Eduardo's insistence, the stockholder's right to inspect corporate books is not without limitations. While the right of inspection was enlarged under the Corporation Code as opposed to the old Corporation Law (Act No. 1459, as amended), **It is now expressly required** as a condition for such examination that the one requesting it must not have been guilty of using improperly any information secured through a prior examination, or that the person asking for such examination must be acting in good faith and for a legitimate purpose in making his demand. In order therefore 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, the following elements must be present: 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; Third. 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, Fourth. Where the officer or agent of the corporation sets up the defense 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, the contrary must be shown or proved. Thus, in a criminal complaint for violation of Section 74 of the Corporation Code, the defense of improper use or motive is in the nature of a justifying circumstance that would exonerate those who raise and are able to prove the same. Accordingly, where the corporation denies inspection on the ground of improper motive or purpose, the burden of proof is taken from the shareholder and placed on the corporation. This being the case, it would be improper for the prosecutor, during preliminary investigation, to refuse or

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fail to address the defense of improper use or motive, given its express statutory recognition. In the past we have declared that if justifying circumstances are claimed as a defense, they should have at least been raised during preliminary investigation; which settles the view that the consideration and determination of justifying circumstances as a defense is a relevant subject of preliminary investigation.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; CONSTRUED.— A preliminary investigation is in effect a realistic judicial appraisal of the merits of the case; sufficient proof of the guilt of the criminal respondent must be adduced so that when the case is tried, the trial court may not be bound, as a matter of law, to order an acquittal. Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair; the officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused. After all, the purpose of preliminary investigation is not only to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent therein is probably guilty thereof and should be held for trial; it is just as well for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial. More importantly, in the appraisal of the case presented to him for resolution, the duty of a prosecutor is more to do justice and less to prosecute. If the prosecutor is convinced during preliminary investigation of the validity of the respondent's claim of a justifying circumstance, then he must dismiss the complaint; if not, then he must file the requisite information. This is his discretion, the exercise of which we grant sufficient latitude.

5. ID.; ID.; ID.; CHARACTERIZED AS A SUBSTANTIVE RIGHT; RATIONALE. — A preliminary investigation is the crucial sieve in the criminal justice system which spells for an individual the difference between months if not years of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other. Thus, we have characterized the right to a preliminary investigation as not a mere formal or technical

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right but a substantive one, forming part of due process in criminal justice. Due process, in the instant case, requires that an inquiry into the motive behind Eduardo's attempt at inspection should have been made even during the preliminary investigation stage, just as soon as petitioners set up the defense of improper use and motive.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioners.
Gonzales Batiller David Leabris Reyes for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the March 6, 2007 Decision[2] of the Court of Appeals in CA-G.R. SP No. 94708, which nullified and set aside the July 26, 2005 and March 29, 2006 Resolutions[3] of the Secretary of Justice in I.S. No. MAL-2004-1167 directing the withdrawal of the information filed against petitioners for violation of Section 74 of the Corporation Code. Also assailed is the June 19, 2007 Resolution[4] denying the Motion for Reconsideration.

Vibelle Manufacturing Corporation (VMC) and Genato Investments, Inc. (Genato) (collectively referred to as "the corporations") are family-owned corporations, where petitioners Ma. Belen Flordeliza C. Ang-Abaya (Flordeliza), Francis Jason A. Ang (Jason), Vincent G. Genato (Vincent), Hanna Zorayda A. Ang (Hanna) and private respondent Eduardo G. Ang

[1] *Rollo*, pp. 3-46.

[2] *Id.* at 51-63; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Remedios A. Salazar-Fernando and Jose C. Mendoza.

[3] *Id.* at 249-252 and 253.

[4] *Id.* at 65-66.

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(Eduardo) are shareholders, officers and members of the board of directors.

Prior to the instant controversy, VMC, Genato, and Oriana Manufacturing Corporation (Oriana) filed Civil Case No. 4257-MC, which is a case for damages with prayer for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction against herein respondent Eduardo, together with Michael Edward Chi Ang (Michael), and some other persons for allegedly conniving to fraudulently wrest control/management of the corporations.[5] Eduardo allegedly borrowed substantial amounts of money from the said corporations without any intention to repay; that he repeatedly demanded for increases in his monthly allowance and for more cash advances contrary to existing corporate policies; that he harassed petitioner Flordeliza to transfer and/or sell certain corporate and personal properties in order to pay off his personal obligations; that he attempted to forcibly evict petitioner Jason from his office and claim it as his own; that he interfered with and disrupted the daily business operations of the corporations; that Michael was placed on preventive suspension due to prolonged absence without leave and commission of acts of disloyalty such as carrying out orders of Eduardo which were detrimental to their business, using privileged information and confidential documents/data obtained in his capacity as Vice President of the corporations, and admitting to have sabotaged their distribution system and operations.

During the pendency of Civil Case No. 4257-MC, particularly in July, 2004, Eduardo sought permission to inspect the corporate books of VMC and Genato on account of petitioners' alleged failure and/or refusal to update him on the financial and business activities of these family corporations.[6] Petitioners denied the

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[5] *Id.* at 134-162, entitled "*Vibelle Manufacturing Corporation, Genato Investments, Incorporated, and Oriana Manufacturing Corporation v. Eduardo Genato Ang, Michael Edward Chi Ang, and John Does and Jane Does*." The case was raffled to Branch 74 of the Regional Trial Court of Malabon City.

[6] *Id.* at 124 and 125.

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request claiming that Eduardo would use the information obtained from said inspection for purposes inimical to the corporations' interests, considering that: "a) he is harassing and/or bullying the Corporation[s] into writing off ₱165,071,586.55 worth of personal advances which he had unlawfully obtained in the past; b) he is unjustly demanding that he be given the office currently occupied by Mr. Francis Jason Ang, the Vice-President for Finance and Corporate Secretary; c) he is usurping the rights belonging exclusively to the Corporation; and d) he is coercing and/or trying to inveigle the Directors and/or Officers of the Corporation to give in to his baseless demands involving specific corporate assets."[7]

Because of petitioners' refusal to grant his request to inspect the corporate books of VMC and Genato, Eduardo filed an Affidavit-Complaint[8] against petitioners Flordeliza and Jason, charging them with violation (two counts) of Section 74, in relation to Section 144, of the Corporation Code of the Philippines.[9] Ma. Belinda G. Sandejas (Belinda), Vincent, and

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[7] *Id.* at 221 and 223.

[8] *Id.* at 117-121: I.S. No. Mal. 2004-1167.

[9] Batas Pambansa Blg. 68 (1980),

Sec. 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.

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Hanna were subsequently impleaded for likewise denying respondent's request to inspect the corporate books.

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.

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.

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

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Petitioners filed a Joint Counter-Affidavit praying for the dismissal of the complaint for lack of factual and legal basis, or for the suspension of the same while Civil Case No. 4257-MC is still pending resolution.[10] They denied violating Section 74 of the Corporation Code and reiterated the allegations contained in their complaint in Civil Case No. 4257-MC. Petitioners blamed Eduardo's lavish lifestyle, which is funded by personal loans and cash advances from the family corporations. They alleged that Eduardo consistently pressured petitioner Flordeliza, his daughter, to improperly transfer ownership of the corporations' V.A.G. Building to him;[11] to disregard the company policy prohibiting advances by shareholders; to unduly increase his corporate monthly allowance; and to sell her Wack-Wack Golf proprietary share and use the proceeds thereof to pay his personal financial obligations. When the proposed transfer of the V.A.G. Building did not materialize, petitioners claim that Eduardo instituted an action to compel the donation of said property to him.[12] Furthermore, they claim that Eduardo attempted to forcibly evict petitioner Jason from his office at VMC so he can occupy the same; that Eduardo and his cohorts constantly created trouble by intervening in the daily operations of the corporations without the knowledge or consent of the board of directors.

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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.

[10] *Rollo*, pp. 67-74.

[11] The VAG Building was initially intended to be transferred or donated to Eduardo, subject to certain conditions pursuant to the request or suggestion of the late Belen K. Genato (*Rollo*, pp. 903-907); however, said transfer did not materialize (*Rollo*, pp. 190-191).

[12] Civil Case No. Q-0453241 filed with the Regional Trial Court of Quezon City, Branch 100. The case was dismissed in an Order of the RTC-QC dated January 6, 2006.

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Meanwhile, in Civil Case No. 4257-MC, the trial court rendered a Decision granting the permanent injunction applied for by the corporations.[13]

However, the Court of Appeals subsequently rendered a Decision[14] declaring that Eduardo, his son Michael, and the

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[13] *Rollo*, pp. 505-512, the dispostive portion of which, reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Permanently enjoining defendants Eduardo Genato Ang and Michael Edward Chi Ang, and/or any of their agents, representatives, lawyers, assignees, heirs, or any other persons acting under their authority or instructions, from:

a. Occupying, demanding, claiming or otherwise attempting to occupy any position or office in Plaintiff corporations, (except those concomitant to their rights as stockholders, as the case may be), without the consent of the boards of directors of plaintiff corporations;

b. Entering the offices of plaintiff corporations located at 18 J.P. Bautista Ave., Malabon City, Metro Manila, or any of plaintiff corporations' satellite offices, business centers, distribution offices, warehouses, or any other property belonging to plaintiff corporations or otherwise used by them, without consent of the boards of directors of plaintiff corporations;

c. Communicating with the officers and employees, clients, distributors, business associates of plaintiff corporations, as well as pertinent government agencies, for the purpose of sowing enmity between said persons and plaintiff corporations, or to otherwise disrupt the smooth operation and management of plaintiff corporations;

d. Usurping or exercising rights, privileges or property belonging to plaintiff corporations, or representing plaintiff corporations or acting for and in behalf of plaintiff corporations in any transactions or dealing with clients, distributors and banks of plaintiff corporations, or government agencies, or any other persons with business with plaintiff corporations;

e. Seizing, interfering with or otherwise disrupting the management, operations and/or business of plaintiff corporations, and other similar acts of harassment and extortion that would tend to cause damage to plaintiff corporations.

Further, defendants are hereby ordered to pay plaintiffs the amount of ₱500,000.00 for and as attorney's fees and costs of the suit.

SO ORDERED.

[14] CA-G.R. CV No. 84736, penned by Associate Justice Enrico A. Lanzanas and concurred in by Associate Justices Edgardo P. Cruz, and Jose C. Reyes, Jr.; *Rollo*, pp. 911-927.

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other persons impleaded in Civil Case No. 4257-MC, were imprudently declared in default by the trial court. The appellate court thus annulled the permanent injunction issued by the trial court and remanded the case for further proceedings. VMC, Genato, and Oriana corporations filed a Petition for Review on *Certiorari* before this Court, but the same was denied for failure to sufficiently show any reversible error in the Decision of the Court of Appeals.[15] The three corporations filed a Motion for Reconsideration, but the same was denied with finality on June 25, 2008.

Meanwhile, on February 3, 2005, the City Prosecutor's Office of Malabon City issued a Resolution[16] recommending that petitioners be charged with two counts of violation of Section 74 of the Corporation Code, but dismissed the complaint against Belinda for lack of evidence.[17] Petitioners filed a Petition for Review[18] before the Department of Justice (DOJ), which reversed the recommendation of the City Prosecutor of Malabon City.[19] The dispositive portion of the DOJ Resolution dated July 26, 2005, reads:

> Wherefore, premises considered, the assailed resolution is REVERSED and SET ASIDE. The City Prosecutor of Malabon City is hereby directed to cause the withdrawal of the corresponding information filed against respondents [herein petitioners] for violation of Section 74 of the Corporation Code of the Philippines and to report the action taken thereon within ten (10) days from the receipt hereof.
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> SO ORDERED.[20]

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[15] In G.R. No. 178586.

[16] *Rollo*, pp. 114-116; penned by 1st Assistant City Prosecutor Magno T. Pablo, Jr., as approved by Malabon City-Navotas Prosecutor Jorge G. Catalan, Jr.

[17] *Id.* at 116 and 220: The City Prosecutor of Malabon found that Ma. Belinda G. Sandejas was not present during the board meeting on September 4, 2004 and did not vote on the Resolution denying Eduardo's request to inspect the corporate books of VMC and GII;.

[18] *Id.* at 423-438.

[19] *Id.* at 249-252; penned by Undersecretary Ernesto L. Pineda.

[20] *Id.* at 252.

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The DOJ denied Eduardo's Motion for Reconsideration[21] in a Resolution[22] dated March 29, 2006. On appeal, the Court of Appeals rendered the assailed Decision, the dispositive portion of which states:

> WHEREFORE, the instant petition is partially GRANTED. The assailed Resolutions of public respondent dated July 26, 2005 and March 29, 2006 are hereby NULLIFIED and SET ASIDE. However, due to the present existence of a prejudicial question, the criminal case docketed I.S. No. MAL-2004-1167 is hereby SUSPENDED until Civil Case No. 4257-MC is decided on the merits with finality.[23]

The appellate court ruled that the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the Resolutions of the Malabon City Prosecutor and in finding that Eduardo did not act in good faith when he demanded for the examination of VMC and Genato's corporate books. It further held that Eduardo can demand said examination as a stockholder of both corporations; that Eduardo raised legitimate questions that necessitated inspection of the corporate books and records; and that petitioners' refusal to allow inspection created probable cause to believe that they have committed a violation of Section 74 of the Corporation Code.

On June 19, 2007, the Court of Appeals denied the Motions for Reconsideration filed by petitioners and the Secretary of Justice.[24] Hence, this petition raising the following issues:

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS WAS CORRECT IN ITS FINDING THAT THE HONORABLE JUSTICE SECRETARY'S REVERSAL OF THE MALABON CITY PROSECUTOR'S *RESOLUTION* FINDING PROBABLE CAUSE AGAINST HEREIN PETITIONERS WAS DONE CONTRARY TO THE APPLICABLE LAW AND JURISPRUDENCE TANTAMOUNT TO GRAVE ABUSE OF DISCRETION.

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[21] *Id.* at 395-406.

[22] *Id.* at 253.

[23] *Id.* at 62-63.

[24] CA *rollo*, pp. 513-532 and *Rollo*, pp. 672-683.

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WHETHER OR NOT THE HONORABLE JUSTICE SECRETARY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING THE RESOLUTION OF THE MALABON CITY PROSECUTOR FINDING PROBABLE CAUSE AGAINST PETITIONERS AFTER PRELIMINARY INVESTIGATION FOR VIOLATION OF SECTION 74 OF THE CORPORATION CODE OF THE PHILIPPINES.

WHETHER OR NOT THE HONORABLE JUSTICE SECRETARY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PETITIONERS ACTED IN GOOD FAITH WHEN THEY DENIED PRIVATE RESPONDENT'S DEMAND FOR INSPECTION OF CORPORATE BOOKS.[25]

We grant the petition.

Probable cause, for purposes 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. It is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause;" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of 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. Precisely, there is a trial for the reception of prosecution's evidence in support of the charge."[26]

The determination of the existence of probable cause lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Their decisions are reviewable by the Secretary of Justice who

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[25] *Rollo*, pp. 24-25.

[26] *Villanueva v. Secretary of Justice*, G.R. No. 162187, November 18, 2005, 475 SCRA 495, 511.

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may direct the filing of the corresponding information or to move for the dismissal of the case.[27]

In reversing the Resolutions of the Secretary of Justice directing the withdrawal of the information filed against petitioners for lack of probable cause, the Court of Appeals held that it was beyond the Secretary of Justice's authority to determine the motives of Eduardo in seeking an inspection of the corporations' books and papers.

In order that probable cause to file a criminal case may be arrived at, or in order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present.[28] This is based on the principle that every crime is defined by its elements, without which there should be – at the most – no criminal offense.

In *Gokongwei, Jr. v. Securities and Exchange Commission*,[29] this Court explained the rationale behind a stockholder's right to inspect corporate books, to wit:

> The stockholder's right of inspection of the corporation's books and records is based upon their ownership of the assets and property of the corporation. It is, therefore, an incident of ownership of the corporate property, whether this ownership or interest be termed an equitable ownership, a beneficial ownership, or a quasi-ownership. This right is predicated upon the necessity of self-protection. It is generally held by majority of the courts that where the right is granted by statute to the stockholder, it is given to him as such and must be exercised by him with respect to his interest as a stockholder and for some purpose germane thereto or in the interest of the corporation. **In other words, the inspection has to be germane to the petitioner's interest as a stockholder, and has to be proper and lawful in character and not inimical to the interest of the corporation**.[30]

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[27] *Advincula v. Court of Appeals*, 397 Phil. 641, 650-651 (2000).

[28] *Duterte v. Sandiganbayan*, G.R. No. 130191, April 27, 1998, 289 SCRA 721.

[29] 178 Phil. 266 (1979).

[30] *Id.* at 314-315, citing Fletcher Cyc, *Private Corporations*, Vol. 5, 1976 Rev. Ed., §. 2213, 2218 & 2222, pp. 693, 709, 725. (Emphasis supplied)

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In *Republic v. Sandiganbayan*,[31] the Court declared that the right to inspect and/or examine the records of a corporation under Section 74 of the Corporation Code is circumscribed by the express limitation contained in the succeeding proviso, which states that:

> [I]t 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**. (Emphasis supplied)

Thus, contrary to Eduardo's insistence, the stockholder's right to inspect corporate books is not without limitations. While the right of inspection was enlarged under the Corporation Code as opposed to the old Corporation Law (Act No. 1459, as amended),

> **It is now expressly required** as a condition for such examination that the one requesting it must not have been guilty of using improperly any information secured through a prior examination, or that the person asking for such examination must be acting in good faith and for a legitimate purpose in making his demand.[32] (Emphasis supplied)

In order therefore 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, the following elements must be present:

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;

Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under

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[31] G.R. Nos. 88809 and 88858, July 10, 1991, 199 SCRA 39.

[32] *Gonzales v. Philippine National Bank*, 207 Phil. 425, 430.

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this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and,

Fourth. Where the officer or agent of the corporation sets up the defense 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, the contrary must be shown or proved.

Thus, in a criminal complaint for violation of Section 74 of the Corporation Code, the defense of improper use or motive is in the nature of a justifying circumstance that would exonerate those who raise and are able to prove the same. Accordingly, where the corporation denies inspection on the ground of improper motive or purpose, the burden of proof is taken from the shareholder and placed on the corporation.[33] This being the case, it would be improper for the prosecutor, during preliminary investigation, to refuse or fail to address the defense of improper use or motive, given its express statutory recognition. In the past we have declared that if justifying circumstances are claimed as a defense, they should have at least been raised during preliminary investigation;[34] which settles the view that the consideration and determination of justifying circumstances as a defense is a relevant subject of preliminary investigation.

A preliminary investigation is in effect a realistic judicial appraisal of the merits of the case; sufficient proof of the guilt of the criminal respondent must be adduced so that when the case is tried, the trial court may not be bound, as a matter of law, to order an acquittal.[35]

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[33] 5A Fletcher Cyc. Corp. §. 2220, 2008.

[34] *People v. Caratao*, G.R. No. 126281, June 10, 2003, 403 SCRA 482; *People v. Dorado*, G.R. No. 122248, February 11, 1999, 303 SCRA 61; *People v. Ronquillo*, G.R. No. 96125, August 31, 1995, 247 SCRA 793; *People v. Salazar*, G.R. No. 84391, April 7, 1993, 221 SCRA 170; *People v. Vicente*, G.R. No. L-31725, February 18, 1986, 141 SCRA 347.

[35] *Perez v. Ombudsman*, G.R. No. 131445, May 27, 2004, 429 SCRA 357.

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Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair; the officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused.[36] After all, the purpose of preliminary investigation is not only to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent therein is probably guilty thereof and should be held for trial; it is just as well for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial.[37] More importantly, in the appraisal of the case presented to him for resolution, the duty of a prosecutor is more to do justice and less to prosecute.[38]

If the prosecutor is convinced during preliminary investigation of the validity of the respondent's claim of a justifying circumstance, then he must dismiss the complaint; if not, then he must file the requisite information. This is his discretion, the exercise of which we grant sufficient latitude.[39]

In the instant case, the Court finds that the Court of Appeals erred in declaring that the Secretary of Justice exceeded his authority when he conducted an inquiry on the petitioners' defense of improper use and motive on Eduardo's part. As a necessary element in the offense of refusal to honor a stockholder/member's right to inspect the corporate books/records, it was incumbent upon the Secretary of Justice to determine that all the elements

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[36] *Sales v. Sandiganbayan*, G.R. No. 143802, November 16, 2001, 369 SCRA 293.

[37] *Okabe v. Judge Gutierrez*, G.R. No. 150185, May 27, 2004, 429 SCRA 685, citing *People v. Poculan*, 167 SCRA 176 (1988).

[38] *Estrada v. Desierto*, G.R. Nos. 146710-15, March 2, 2001, 356 SCRA 108.

[39] *Camanag v. Guerrero*, G.R. No. 121017, February 17, 1997, 268 SCRA 473.

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which constitute said offense are present, in line with our ruling in *Duterte v. Sandiganbayan*.

A preliminary investigation is the crucial sieve in the criminal justice system which spells for an individual the difference between months if not years of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other. Thus, we have characterized the right to a preliminary investigation as not a mere formal or technical right but a substantive one, forming part of due process in criminal justice.[40] Due process, in the instant case, requires that an inquiry into the motive behind Eduardo's attempt at inspection should have been made even during the preliminary investigation stage, just as soon as petitioners set up the defense of improper use and motive.

Petitioners argue that Eduardo's demand for an inspection of the corporations' books is based on the latter's attempt in bad faith at having his more than ₱165 million advances from the corporations written off; that Eduardo is unjustly demanding that he be given the office of Jason, or the Vice Presidency for Finance and Corporate Secretary; that Eduardo is usurping rights belonging exclusively to the corporations; and Eduardo's attempts at coercing the corporations, their directors and officers into giving in to his baseless demands involving specific corporate assets. Specifically, petitioners accuse Eduardo of the following:

1. He is a spendthrift, using the family corporations' resources to sustain his extravagant lifestyle. During his incumbency as officer of VMC and Genato (from 1984 to 2000), he was able to obtain massive amounts by way of cash advances from these corporations, amounting to more than ₱165 million;

2. He is exercising undue pressure upon petitioners in order to acquire ownership, through the forced execution of a deed of donation, over the VAG Building in San Juan, which building belongs to Genato;

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[40] *Maza v. Gonzalez*, G.R. Nos. 172074-76, June 1, 2007, 523 SCRA 318.

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3. He is putting pressure on the corporations, through their directors and officers, for the latter to disregard their respective policies which prohibit the grant of cash advances to stockholders.

4. At one time, he coerced Flordeliza for the latter to sell her Wack-Wack Golf Proprietary Share;

5. In May 2003, without the requisite authority, he called a "stockholders' meeting" to demand an increase in his ₱140,000.00 monthly allowance from the corporation to ₱250,000.00; demand a cash advance of US$10,000; and to demand that the corporations shoulder the medical and educational expenses of his family as well as those of the other stockholders;

6. In November 2003, he demanded that he be given an office within the corporations' premises. In December 2003, he stormed the corporations' common office, ordered the employees to vacate the premises, summoned the directors to a meeting, and there he berated them for not acting on his requests. In January 2004, he returned to the office, demanding the transfer of the Accounting Department and for Jason to vacate his office by the end of the month. He likewise left a letter which contained his demands. At the end of January 2004, he returned, ordered the employees to leave the premises and demanded that Jason surrender his office and vacate his desk. He did this no less than four (4) times. As a result, the respective boards of directors of the corporations resolved to ban him from the corporate premises;

7. He has been interfering in the everyday operations of VMC and Genato, usurping the duties, rights and authority of the directors and officers thereof. He attempted to lease out a warehouse within the VMC premises without the knowledge and consent of its directors and officers; during the wake of the former President of VMC and Genato, he issued instructions for the employees to close down operations for the whole duration of the wake, against the corporate officers' instructions to attend the wake by batch, so as not to hamper business operations; he has caused chaos and confusion in VMC and Genato as a result;[41]

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[41] Court of Appeals *Rollo*, pages omitted, Joint Counter-Affidavit of Flordeliza Ang-Abaya and Jason Ang.

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8. He is out to sabotage the family corporations.[42]

These serious allegations are supported by official and other documents, such as board resolutions, treasurer's affidavits and written communication from the respondent Eduardo himself, who appears to have withheld his objections to these charges. His silence virtually amounts to an acquiescence.[43] Taken together, all these serve to justify petitioners' allegation that Eduardo was not acting in good faith and for a legitimate purpose in making his demand for inspection of the corporate books. Otherwise stated, there is lack of probable cause to support the allegation that petitioners violated Section 74 of the Corporation Code in refusing respondent's request for examination of the corporation books.

WHEREFORE, the Petition for Review on *Certiorari* is *GRANTED*. The March 6, 2007 Decision and June 19, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 94708 are *REVERSED* and *SET ASIDE*. The July 26, 2005 and March 29, 2006 Resolutions of the Secretary of Justice directing the withdrawal of the information filed against petitioners for violation of Section 74 of the Corporation Code are accordingly *REINSTATED* and *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Carpio Morales,[*] *Chico-Nazario,* and *Reyes, JJ.,* concur.

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[42] *Id.*, Joint Counter-Affidavit of Hannah Ang and Vincent Genato.

[43] *Lagon v. Hooven Comalco Industries, Inc.*, G.R. No. 135657, January 17, 2001, 349 SCRA 363.

[*] In lieu of Associate Justice Antonio Eduardo B. Nachura.