

615 Phil. 53

FIRST DIVISION

[G.R. No. 157952, September 08, 2009]

JOWETT K. GOLANGCO, PETITIONER, JONE B. FUNG, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

We have before us a petition for review on *certiorari* seeking the review of the decision dated September 12, 2002 (dismissing the petitioner's petition for *certiorari*)^[1] and the resolution dated April 2, 2003 (denying the petitioner's motion for reconsideration),^[2] both promulgated by the Court of Appeals in C.A.-G.R. SP No. 66616 entitled *Jowett K. Golangco v. The Presiding Judge of Branch 53, Regional Trial Court of Manila and Jone B. Fung*.

Antecedents

C.A.-G.R. SP No. 66616 was a special civil action for *certiorari* commenced by the petitioner to assail the order issued by the Regional Trial Court (RTC), Branch 53, in Manila in Criminal Case No. 95-145703 entitled *People v. Jone B. Fung*, whereby the RTC declared the Prosecution to have terminated the presentation of further evidence and required the Prosecution to file a written offer of evidence within 20 days, furnishing a copy of the offer to the accused who in turn had to comment on the offer within 15 days from receipt.

Criminal Case No. 95-145703, a prosecution for libel initiated by the petitioner as the complainant against the respondent, was commenced in 1995.^[3] Allegedly, the respondent had issued an office memorandum dated May 10, 1995 maliciously imputing against the petitioner the commission of bribery and had sent copies of the memorandum to the petitioner's superiors in the Philippine Overseas Employment Administration (POEA) and to other public officers and personalities not connected with the POEA, causing damage and prejudice to the petitioner.^[4]

After almost 6 years, the Prosecution had presented only two witnesses in Criminal Case No. 95-145703. On February 16, 2001, the Prosecution requested that a subpoena *ad testificandum* be issued to and served on Atty. Oscar Ramos, Resident Ombudsman of the POEA, to compel him to testify in the criminal case on February 20, 2001. The hearing of February 20, 2001 was, however, reset to May 23, 2001 due to the unavailability of Atty. Ramos.

On May 23, 2001, the Prosecution still failed to present Atty. Ramos as its witness because no subpoena had been issued to and served on him for the purpose.

Consequently, the RTC judge issued an order terminating the Prosecution's presentation of evidence,^[5] as follows:

ORDER

When the case was called for hearing, the accused is in court with his lawyer Atty. Benigno Palamos. Private prosecutor Atty. Agripino Baybay is in court but he has no witnesses today. He manifested that he has to present Atty. Oscar Ramos, but since the last hearing on February 20, to this date he has not asked for any subpoena. Defense counsel moves to terminate the presentation of prosecution evidence in view of the failure of the prosecution to present witnesses despite numerous postponements. The private prosecutor asks for another continuance. The records show that on January 23, 2001 this Court gave a stern warning to the prosecutor that it is giving one final postponement for the production of witnesses. Yet the prosecution caused the service of the subpoena too late for the hearing on February 20. For the next three months, the prosecution simply did not apply for a subpoena. The Court finds that the intention to delay the proceedings is evident. As prayed for, the prosecution is declared to have terminated further evidence.

The prosecution is given 20 days from today to make its formal offer with copy furnished the defense counsel who is given 15 days from receipt to make his comment and thereafter the offer will be deemed submitted for resolution.

SO ORDERED.

The petitioner, by his lonesome, assailed on *certiorari* in the Court of Appeals the order dated May 23, 2001, claiming that the RTC judge thereby committed grave abuse of discretion for not issuing the subpoena to require Atty. Ramos to appear and testify in the May 23, 2001 hearing. He contended that his prior request for the subpoena for the February 20, 2001 hearing should have been treated as a continuing request for the subpoena considering that the *Rules of Court* did not require a party to apply for a subpoena again should it not be served in the first time.^[6]

In its decision dated September 12, 2002, the Court of Appeals rebuffed the petitioner and dismissed the petition for *certiorari*, holding:

Axiomatically, any request for a subpoena to a witness must indicate the date and time when the witness must appear in court to give his or her testimony. It is on the basis of that request that the court personnel prepares the subpoena indicating the title of the case, the date and time for the appearance of the intended witness. This is where petitioner fell into error. His urgent request for subpoena (Annex "A") failed to contain the date

and time when the intended witness, Atty. Oscar Ramos, must appear in court to testify.

Even then, granting that the subpoena issued for February 20, 2001 hearing was properly served but which hearing was later on postponed, there is still a need to ask for a new subpoena to the same witness for the next scheduled hearing. The court cannot be tasked to guess whether or not petitioner still intends to present the witness at the next hearing. An intention to still present the witness necessarily requires another request for a subpoena.

Moreover, the case was last heard on January 23, 2001 prior to the February 20, 2001 hearing. *Apropos*, to ask for a subpoena to his next witness on February 16, 2001, for the hearing on February 20, 2001 was rather late. As the complainant in the case, petitioner should have exercised due diligence or proper zeal in the prosecution of his case which has long been pending for five (5) years, let alone that it was the last chance given by the court to the prosecution to the prosecution to produce its witness on February 20, 2001 on account of its previous failure to do so.

Then, again, as correctly observed by the *court a quo*, from February 20, 2001 to May 23, 2001, a good three (3) months period passed without the prosecution requesting for a subpoena for its intended witness. When the respondent court, as a consequence, deemed the prosecution evidence terminated and required it to formally offer its evidence, it was not committing any error nor abuse of discretion. Here, petitioner created its own predicament and should suffer from its adverse effect.^[7]

Hence, this appeal.

Issue

The issue is whether the Court of Appeals correctly ruled on the petition for *certiorari* of the petitioner.

Ruling of the Court

We find no reversible error on the part of the Court of Appeals.

I

Before dealing with the petition for review, we point out the gross procedural misstep committed by the petitioner in the Court of Appeals.

The petitioner did not join the People of the Philippines as a party in his action for

certiorari in the Court of Appeals. He thereby ignored that the People of the Philippines were indispensable parties due to his objective being to set aside the trial court's order dated May 23, 2001 that concerned the public aspect of Criminal Case No. 95-145703. The omission was fatal and already enough cause for the summary rejection of his petition for *certiorari*.

The petitioner did not also obtain the consent of the Office of the Solicitor General (OSG) to his petition for *certiorari*. At the very least, he should have furnished a copy of the petition for *certiorari* to the OSG prior to the filing thereof,^[8] but even that he did not do. Thereby, he violated Section 35(I), Chapter 12, Title III of Book IV of Executive Order No. 292 (*The Administrative Code of 1987*), which mandates the OSG to represent "the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party."

Although the petition for *certiorari* bore the conformity of the public prosecutor (*i.e.*, Assistant City Prosecutor Danilo Formoso of Manila), that conformity alone did not suffice. The authority of the City Prosecutor or his assistant to appear for and represent the People of the Philippines was confined only to the proceedings in the trial court.

II

Even on the merits, the petition for review fails.

The criminal case had been pending since 1995 and the petitioner as the complainant had presented only two witnesses as of the issuance of the assailed order. The trial court had not been wanting in giving warnings to the Prosecution on the dire consequences should the Prosecution continue to fail to complete its evidence. The Prosecution had retained the duty to ensure that its witnesses would be present during the trial, for its obligation to the administration of justice had been to prove its case *sans* vexatious and oppressive delays. Yet, the warnings of the trial court had gone unheeded. Instead, the Prosecution would deflect the responsibility for the delays to the failure of the trial court to issue the subpoena to its proposed witness and to cause the subpoena to be served. Such attitude of the Prosecution, which included the petitioner as the complainant, manifested a lack of the requisite diligence required of all litigants coming to the courts to seek redress.

We find that the trial judge did not act capriciously, arbitrarily or whimsically in issuing the assailed order. Thus, the Court of Appeals properly dismissed the petition for *certiorari*. The petitioner now needs to be reminded that *certiorari* is an extraordinary remedy to correct a grave abuse of discretion amounting to lack or excess of jurisdiction when an appeal, or any plain, speedy and adequate remedy in the ordinary course of law is not available. In this regard, grave abuse of discretion implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction whenever the power is exercised in an arbitrary or despotic manner by reason of

passion, prejudice or personal aversion amounting to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.^[9]

Also, it does not escape our notice that the trial court's assailed order terminating the Prosecution's presentation of evidence was merely interlocutory. This fact surely adds justification to the Court of Appeals' rejection of the petition for *certiorari*, because it is the settled rule that *certiorari* does not lie to review an interlocutory order, but only a final judgment or order that terminates the proceedings. *Certiorari* will be refused where there has been no final judgment or order and the proceeding for which the writ is sought is still pending and undetermined in the lower court. Indeed, a writ of *certiorari* is not intended to correct every controversial interlocutory ruling unless the ruling is attended by grave abuse of discretion or tainted by whimsical exercise of judgment equivalent to lack of jurisdiction, for the function of *certiorari* is limited to keeping an inferior court within its jurisdiction and to relieving persons from its arbitrary acts - acts that courts or judges have no power or authority in law to perform.

Instead, the proper remedy for the petitioner was to proceed in the action until judgment, which, once rendered, might then be reviewed on appeal, along with the assailed interlocutory order.^[10] As long as the trial court acted within its jurisdiction, its alleged error committed in the exercise of its jurisdiction amounted to nothing more than an error of judgment that was reviewable by a timely appeal, not by a special civil action of *certiorari*.^[11]

WHEREFORE, we affirm the decision dated September 12, 2002 rendered in CA-G.R. SP No. 66616.

Costs of suit to be paid by the petitioner.

SO ORDERED.

*Puno, CJ., (Chairperson), Carpio, Leonardo- De Castro, and Del Castillo, * JJ., concur.*

* Additional member per raffle list of 24 August 2009.

^[1] *Rollo*, pp. 20-25.

^[2] *Id.*, p 30.

^[3] *Id.*, p. 21.

^[4] *Id.*, p. 10.

^[5] *Id.*, pp. 17 & 21.

^[6] *Id.*, p. 22.

[7] *Id.*, pp. 23-24.

[8] *Mangahas v. Court of Appeals*, G.R. No. 173375, September 25, 2008; *Salazar v. Romaquin*, G.R. No. 151068, May 21, 2004, 429 SCRA 41, 47-48.

[9] *Urbanes, Jr. v. Court of Appeals*, G.R. No. 117964, March 28, 2001, 355 SCRA 537, 538-539.

[10] *Denso (Phils.), Inc. v. Intermediate Appellate Court*, L-75000, February 27, 1987, 148 SCRA 280; *Investments, Inc. v. Court of Appeals*, G.R. No. 60036, Jan. 27, 1987, 147 SCRA 334.

[11] *Refugia v. Alejo*, G.R. No. 138674, June 22, 2000, 334 SCRA 230.



Source: Supreme Court E-Library
This page was dynamically generated
by the E-Library Content Management System (E-LibCMS)