



Republic of the Philippines
Court of Appeals
Manila

THIRTEENTH DIVISION

**ARIEL R. CUA and RICHARD
R. CUA,**
Petitioners,

CA-G.R. SP NO. 132719

Members:

- versus -

VILLON, J., *Chairperson*
ZALAMEDA, &
CORALES, JJ.

**PEOPLE OF THE PHILIPPINES
and Hon. GAMOR B. DISALO**
as Assisting Presiding Judge of
Regional Trial Court of
Valenzuela City, Branch 75,
Respondents.

Promulgated:

March 11, 2015

DECISION

CORALES, J.:

This is a Petition for *Certiorari*¹ under Rule 65 of the Rules of Court with application for temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) against the July 24, 2013² and September 27, 2013³ Orders of the Regional Trial Court (RTC), Branch 75, Valenzuela City in Criminal Case No. 36-V-04 entitled "*People of the Philippines v. Dr. Ariel R. Cua and Richard R. Cua*". The first assailed Order granted the People of the Philippines' motion for reconsideration and in effect reversed the RTC's November 24, 2004

¹ *Rollo*, pages 3-14.

² Penned by Assisting Presiding Judge Gamor B. Disalo, *ibid.*, pages 15-16.

³ *Ibid.*, page 17.

Order⁴ which quashed and set aside the Amended Information against petitioners Ariel and Richard R. Cua (the Cuas). The second assailed Order denied the motion for reconsideration of the Cuas.

The Antecedents

The Cuas were charged with violation of Section 155 in relation to Section 170 of Republic Act (R.A.) No. 8293, otherwise known as the Intellectual Property Code, under an Amended Information which reads:⁵

That on or about March 30, 2001 in Valenzuela City within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously used in commerce, without the consent of Ajinomoto Company, Inc., the owner of duly registered AJINOMOTO trademarks, reproductions, copies, counterfeits, or colorable imitations of said AJINOMOTO trademarks in connection with their possession of finished counterfeit AJINOMOTO Monosodium Glutamate ("Vetsin"), which all bear reproductions, copies, counterfeits, or colorable imitations of said AJINOMOTO trademarks and which possession of said articles constitutes a preparatory act necessary to carry out the sale or ordering for sale of said counterfeit Ajinomoto Vetsin, and which use is likely to cause confusion, or to cause mistake, or to deceive consumers to the damage and prejudice of Ajinomoto Company, Inc. and the public.

CONTRARY TO LAW. x x x (Underscoring appears in the original text of the Amended Information)

On September 18, 2004, petitioners moved to quash the Amended Information on the ground that the facts alleged therein do not constitute an offense. They argued that "possession" is not an element of the offense under Section 155.1 of R.A. No. 8293 and "it is the use in commerce ... in connection with the sale that makes the act punishable".⁶

⁴ Penned by Acting Presiding Judge Dionisio C. Sison, *ibid.*, pages 29-35.

⁵ *Ibid.*, pages 18-19.

⁶ See Motion to Quash Amended Information, *ibid.*, pages 20-28.

In its November 24, 2004 Order, the RTC initially granted the motion to quash and set aside the Amended Information based on the following ratiocination:⁷

x x x However, this Court finds no evidence in the records showing that during the search conducted by the search team the accused were indeed manufacturing, selling and distributing counterfeit [A]jinomoto products. But there is evidence in the records of the instant case that the accused were not engaged in the manufacture of counterfeit [A]jinomoto products and this is the Receipt For Property Seized issued on March 30, 2001 by the search team. x x x How could the accused manufacture vetsin if there are no such necessary equipments? With respect to the alleged selling and distribution of adverted counterfeit [A]jinomoto products, there is no evidence to prove the same illegal acts or in other words to show that the accused had “willfully, unlawfully and feloniously used in commerce” the reproductions, copies, counterfeit or colorable imitations of said [A]jinomoto trademarks and finished vetsin product (*sic*).

It is the contention of the prosecution that the possession of voluminous vetsin products found in the premises of the accused is prima facie evidence of the charge of Infringement. **But his contention is not tenable because the accused were able to satisfactorily explain to the satisfaction of this Court as to how the subject [A]jinomoto products came into their possession. The accused purchased the subject products from David Ho of Seng Hiap Trading and such purchase was duly covered by a receipt issued therefor. No evidence was submitted by the prosecution to controvert accused's evidence. Again, it must be emphasized that the quantum of evidence needed to convict the accused is evidence showing the guilt of the accused beyond reasonable doubt and not merely the existence of probable cause or prima facie evidence, more so when the latter evidence is refuted or controverted by the accused with sufficient credible and admissible evidence.** x x x

In view of the foregoing discussions, this Court is very much inclined to give due course to the accused's motion to quash the Amended Information on the ground that the facts charged do not constitute the offense.

⁷ *Supra*, at note 4.

WHEREFORE, the Amended Information in the instant case is hereby SET ASIDE.

The cash bond posted by the accused for their respective probational liberty is also CANCELLED.

SO ORDERED. (Emphasis supplied; citation omitted)

On January 24, 2005, the prosecution filed a Motion for Reconsideration⁸ arguing that the Amended Information contained allegations constitutive of the offense defined in Section 155 of R.A. No. 8293. It contended that possession of counterfeit goods bearing colorable imitations of the trademarks constituted a preparatory act necessary to carry out the sale or offering for sale of the counterfeit Ajinomoto products which would likely cause confusion or mistake or to deceive consumers. It further faulted the RTC for relying on evidence *aliunde*, considering the Cuas' defenses, and applying the quantum of evidence required for conviction, instead of determining the sufficiency of the allegations in the Amended Information.

The Cuas filed their Opposition⁹ on February 7, 2005.

The Assailed Rulings of the RTC

On July 24, 2013, the RTC rendered an Order¹⁰ reversing its earlier ruling and setting the case for arraignment. It stressed that the charge against the Cuas was not the mere possession of the alleged counterfeit products but rather the preparatory steps necessary to carry out the sale, which is one of the alternative acts mentioned in R.A. No. 8293 aside from sale, distribution, or advertising. It disposed the case as follows:

WHEREFORE, the Motion for Reconsideration is Granted being impressed with merit.

⁸ See Motion for Reconsideration, *rollo*, pages 36-42.

⁹ *Ibid.*, pages 43-47.

¹⁰ *Supra*, at note 2.

Accordingly, the case shall forthwith be set for arraignment.

SO ORDERED.

This time, the Cuas sought reconsideration insisting that the court, in resolving motion to quash, should consider facts apparent from the records and not denied by the prosecution. They claimed that there was no evidence showing that they have sold, offered for sale, or performed an overt act preparatory and necessary to carry out the sale of counterfeit Ajinomoto products. They also harped on their right to a speedy disposition of case and blamed the State for allowing the case to sleep for more than eight (8) years from the filing of the motion for reconsideration, allegedly in violation of the 30-day time limit between filing of Information and arraignment mandated under R.A. No. 8493.¹¹ They added that the State's failure to prosecute warrants the dismissal of the case against them.¹²

After submission of the People of the Philippines' comment/opposition,¹³ the RTC denied the Cuas' motion for reconsideration through its September 27, 2013 Order.¹⁴

Unfazed, the Cuas are now before Us *via* this petition for *certiorari* raising the following issues:¹⁵

I

The unjustified inaction or lack of interest on the part of the State to prosecute this case for an unreasonable length of time (8 1/2 years) is prejudicial to and violative of the right of the accused to a speedy trial, justifying dismissal of the criminal case.

¹¹ Section 7. *Time Limit Between Filing of Information and Arraignment and Between Arraignment and Trial.* – The arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. x x x

¹² See Motion for Reconsideration (of Order dated 24 July 2013), *rollo*, pages 48-54.

¹³ See Comment on and/or Opposition (to Motion for Reconsideration), *ibid.*, pages 55-63.

¹⁴ *Supra*, at note 3.

¹⁵ See pages 5-6 of Petition, *supra*, at note 1.

II

As aptly found by the Court in its Order dated 24 November 2004, *“this Court finds no evidence in the records showing that during the search conducted by the search team the accused were indeed manufacturing, selling and distributing counterfeit Ajinomoto products.”*

The Cuas insist on the dismissal of the criminal charges against them in view of the alleged deprivation of their constitutional right to a speedy trial and the failure of the Amended Information to allege facts constituting an offense. Substantially reiterating the arguments in their earlier motion for reconsideration, the Cuas add that the records merely showed seizure and confiscation of an alleged large quantity of counterfeit products, not the sale or offer for sale thereof or overt acts preparatory or necessary to such sale or offer. They pray for the issuance of a TRO to enjoin the RTC from enforcing its assailed Orders, as well as a WPI and/or prohibition against the continuation of the proceedings until the resolution of this petition.¹⁶

The Office of the Solicitor General (OSG), representing the People of the Philippines, counters that the delay in the proceedings *a quo* was neither unjust nor unreasonable and simply resulted from the pending incidents such as the motion to quash and the parties' respective motions for reconsideration of the November 24, 2004 and July 24, 2013 Orders. It urges Us to maintain a delicate balance between the demands of due process and the strictures of speedy trial on the one hand, and the right of the State to prosecute crimes and rid society of criminals on the other. It further asserts that the court cannot consider a situation contrary to that set forth in the criminal Information and facts constituting the defense of the accused must be proved during trial. It maintains that the Amended Information adequately charged the Cuas with preparatory act necessary to carry out a violation of R.A. No. 8293 and by moving to

¹⁶ See Petition, *supra*, at note 1.

quash the Amended Information, they hypothetically admitted the factual allegations therein.¹⁷

This Court's Ruling

The petition lacks merit.

A special civil action for *certiorari* under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. Grave abuse of discretion, as contemplated by the Rules of Court, is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that is so patent and gross that it amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order.¹⁸ It is therefore imperative for the petitioners to show that the RTC issued its assailed Orders with grave abuse of discretion.

The Cuas failed to discharge this burden. There is nothing in the petition which indicates how the RTC gravely abused its discretion in rendering the assailed Orders. They failed to show that the RTC has no legal power to determine the case or oversteps its authority as determined by law. In fact, the issues raised in this petition refer to the RTC's application of the law while the arguments pertain to the intrinsic correctness of the court a *quo's* findings. Misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion. The mere fact too that a court erroneously decides a case does not necessarily deprive it of jurisdiction.¹⁹ Our supervisory jurisdiction over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of the RTC's judgment on the basis

¹⁷ See Comment, *rollo*, pages 78-87.

¹⁸ See *Novateknika Land Corporation v. Philippine National Bank*, G.R. No. 194104. March 13, 2013.

¹⁹ See *People v. Nazareno*, G.R. No. 168982. August 5, 2009.

either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*.²⁰ *Certiorari* will issue only to correct errors of jurisdiction, and not errors or mistakes in the findings and conclusions of the trial court.²¹

Furthermore, there is no patent error in the assailed Orders warranting the issuance of the writ of *certiorari*.

Reconsideration of the Order Quashing the Amended Information: Proper

The fundamental test in determining whether the facts charged in the Information constitute an offense is simply the sufficiency of the averments therein. Matters extrinsic, or evidence *aliunde*, should not be considered.²² The Cuas claim that, by way of exception to the foregoing rule, the November 24, 2004 Order of the RTC was rightly premised on supposedly undeniable facts appearing on record, to the effect that they were not actually selling or offering for sale, or engaging in overt act preparatory to such sale of counterfeit products. This argument is specious. A cursory reading of the Amended Information readily shows that the alleged violation of Section 155²³ of R.A. No. 8293 constitutes act merely preparatory to

²⁰ *Ibid.*, citing Tagle v. Equitable PCI Bank, G.R. No. 172299. April 22, 2008.

²¹ See People v. Sandiganbayan (First Division), G.R. Nos. 168188-89. June 16, 2006.

²² See People v. Balao, G.R. No. 176819. January 26, 2011.

²³ Section 155. Remedies; Infringement. - Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services **including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive;** or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements **intended to be used in commerce** upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: *Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.* (Sec. 22, R.A. No 166a) (Emphasis supplied)

See also Ong v. People, G.R. No. 169440. November 23, 2011.

the sale or offering for sale of counterfeit products which is among the punishable instances under the law. Besides, despite the Cuas' insistence that the prosecution admitted material facts warranting the dismissal of the case, they failed to pinpoint such actual admission which may give rise to the application of the exceptions pleaded. Worse, they never denied having found in possession of the alleged counterfeit Ajinomoto products.

Moreover, the Cuas' denial of selling or offering for sale of the supposed counterfeit goods is a matter of defense which does not constitute proper grounds for a motion to quash. Such allegations must be proved during trial.²⁴

No Violation of Right to Speedy Trial or Disposition of Cases

The Constitutionally enshrined rights to speedy trial and disposition of cases is a relative and flexible concept. A mere mathematical reckoning of the time involved is not sufficient because judicial proceedings admittedly do not exist in a vacuum, it must contend with the realities of everyday life.²⁵ Particular regard must be taken of the facts and circumstances peculiar to each case. These rights are deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory. Thus, in determining whether or not the right to the speedy disposition of cases has been violated, the Supreme Court has laid down the following guidelines or the so-called "balancing test", viz.: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.²⁶

²⁴ See Soriano v. People, G.R. No. 159517. June 30, 2009.

²⁵ See Albert v. Sandiganbayan, G.R. No. 164015. February 26, 2009.

²⁶ See The Ombudsman v. Jurado, G.R. No. 154155. August 6, 2008; Perez v. People, G.R. No. 164763. February 12, 2008.

In this case, the records are bereft of any indication that the eight (8)-year delay in resolving the prosecution's motion for reconsideration was vexatious, capricious, or oppressive as to deprive the Cuas of their constitutional right to speedy disposition of cases. There is also no showing that the prosecution deliberately delayed the trial of the case as to hamper the defense of the accused or its inaction was the primary reason for the delay. Apparently, even the Cuas did not object to the prolonged lull in the proceedings or move for the immediate resolution of the motion for reconsideration. They have been silent for the last seven and a half (7½) years while awaiting further developments on the incident they themselves initiated. Such failure to timely question the delay implies acceptance thereof and a waiver of the right to question it. It bears stressing that the right to speedy trial, like virtually any other right, may be deemed waived when the party opts not to positively assert it.²⁷ It is also worthy to note that even though the Cuas invoked the right to speedy trial, they did not bother to adduce evidence of any peculiar prejudice that might have been caused by the delay. The passage of time alone, without a significant curtailment of liberty or impairment of the ability to defend oneself, is not absolute evidence of prejudice.²⁸

This Court could not allow the unsubstantiated invocation of the right to speedy trial to work against or preclude the People of the Philippines' equally important right to public justice.²⁹ It should not operate in depriving the State of its inherent prerogative to prosecute criminal cases or generally in seeing to it that all those who approach the bar of justice are afforded fair opportunity to present their side. For it is not only the State; more so, the offended party who is entitled to due process in criminal cases. The mistake of the prosecutor and the delay on the part of the RTC to resolve the pending incidents with dispatch should not prejudice the interest of the State to prosecute criminal offenses and, more importantly, defeat the right of the offended party to redress for its grievance.³⁰

²⁷ See *Perez v. People*, *ibid.*

²⁸ See *Uy v. Adriano*, G.R. No. 159098. October 27, 2006.

²⁹ See *Perez v. People*, *supra*, at note 26.

³⁰ See *Uy v. Adriano*, *supra*, at note 28.

Lest it be misunderstood, We are not condoning the RTC's unexplained delay in resolving the pending incidents before it. However, the right of the State, like any other litigant, to its day in court and to a reasonable opportunity to present its case should be recognized. After all, more than the mere convenience of the parties or of the courts, it is the judicious and deliberate determination of pending incidents in a case, with a genuine respect for the rights of all parties and requirements of procedural due process, that should be the primordial consideration in the full resolution of a case so that justice and fairness would be served.³¹

The merits of the main case having been already determined against the Cuas, there is no more need to rule on their application for injunctive reliefs. The issue of propriety of obtaining a preliminary injunction dies with the main case from which it logically sprang. Such a provisional remedy, like any other interlocutory order, cannot survive the main case of which it is but an incident.³²

WHEREFORE, the instant petition for *certiorari* is **DISMISSED** for lack of merit. The assailed July 24 and September 27, 2013 Orders of the Regional Trial Court, Branch 75, Valenzuela City in Criminal Case No. 36-V-04 are hereby **AFFIRMED**. The RTC, Branch 75 is directed to proceed with deliberate dispatch with the trial of the said criminal case.

SO ORDERED.

PEDRO B. CORALES

Associate Justice

³¹ See *Domondon v. First Division*, G.R. No. 16606. November 29, 2005.

³² *Presidential Commission On Good Government v. Sandiganbayan*, G.R. No. 152500. September 14, 2011 citing *G & S Transport Corporation v. Court of Appeals*, G.R. No. 120287. May 28, 2002.

WE CONCUR:

SESINANDO E. VILLON
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

SESINANDO E. VILLON
Associate Justice
Chairperson, Thirteenth Division