

SECOND DIVISION

[G.R. Nos. 174599-609, February 12, 2010]

PACIFICO R. CRUZ, PETITIONER, VS. THE SANDIGANBAYAN (FOURTH DIVISION), OFFICE OF THE OMBUDSMAN, OFFICE OF THE SPECIAL PROSECUTOR AND SPECIAL PRESIDENTIAL TASK FORCE 156, RESPONDENTS.

DECISION

ABAD, J.:

This case is about a public prosecutor's unilateral withdrawal of a motion to drop an accused from the information after a reinvestigation by his office found no probable cause against such accused and the effect of being relieved of liability in a tax case upon the accused's criminal liability in a related case.

The Facts and the Case

In 2001, acting on reports of irregularities, respondent Special Presidential Task Force 156 (Task Force) investigated the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (the One-Stop Center) of the Department of Finance (DOF). The Task Force found that certain officials of the One-Stop Center had been issuing tax credit certificates (TCCs) to entities that did not earn them through tax overpayments.

According to respondent Task Force, the Diamond Knitting Corporation (DKC), a Board of Investments-registered textile manufacturer, completely shut down its operations in 1993 yet the DOF's One-Stop Center issued to it TCCs totaling P131,205,391.00 from 1994 to 1997. DKC in turn sold a number of these TCCs to Pilipinas Shell Petroleum Corporation (Pilipinas Shell) with the approval of the One-Stop Center. Pilipinas Shell then used these TCCs to pay off its excise tax obligations to the Bureau of Internal Revenue (BIR).

Believing that petitioner Pacifico R. Cruz, the General Manager of Pilipinas Shell's Treasury and Taxation Department, was a party to the fraud, respondent Task Force included him in its complaint for plunder^[1] against certain officials of DKC and of the One-Stop Center^[2] before respondent Office of the Ombudsman (OMB).^[3]

On July 25, 2002 respondent OMB dismissed the plunder charge but caused the filing on August 7, 2002 of separate informations^[4] for multiple violations of Section 3(e) of the

Anti-Graft and Corrupt Practices Act against petitioner Cruz and the others with him.^[5] Before being arraigned, however, Cruz sought the reinvestigation of the cases,^[6] claiming that he had been unable to seek reconsideration because of the hasty filing of the informations. The Sandiganbayan granted his motion and ordered the OMB to submit a report of its reinvestigation within 60 days.^[7]

After reinvestigation, on October 7, 2002 respondent Office of the Special Prosecutor (OSP) submitted a memorandum to the OMB, recommending the dropping of the charges against Cruz^[8] for lack of evidence that he supplied the false documents used for processing the transfers to Pilipinas Shell of the subject fraudulently issued TCCs. The OSP found that Cruz could not have known that DKC had long stopped its business operations. Indeed, the OSP had in two similar cases^[9] recommended the dropping of charges against Cruz for the same reason. Upon review, the OMB approved respondent OSP's recommendation.

Respondent Task Force sought the reconsideration^[10] of respondent OSP's new stand on the case, which Cruz opposed.^[11] But the OSP did not resolve the motion. Instead, on November 28, 2002 it filed a motion^[12] with the Sandiganbayan, for the dropping of Cruz from the informations. Apparently, however, the Sandiganbayan sat long on this motion and did not act on it.

More than five months later or on May 9, 2003 respondent OSP, acting through Prosecutor Warlito F. Galisanao, filed a motion^[13] with the Sandiganbayan to hold in abeyance action on the OSP's motion to drop petitioner Cruz from the charges. At the hearing of the motion on May 15, 2003, when neither Cruz nor his counsel was present, Prosecutor Humphrey T. Monteroso orally moved to withdraw the OSP's motion to drop Cruz from the informations. The Sandiganbayan promptly granted Monteroso's oral motion. Yet, on May 26, 2003 the OSP still filed a motion to withdraw its motion to drop Cruz from the informations. The OSP set its withdrawal motion for hearing on June 4, 2003.^[14]

Meanwhile, unaware of the Sandiganbayan's May 15, 2003 order, petitioner Cruz opposed^[15] Galisanao's now abandoned motion to defer action on the withdrawal of the criminal charges. On May 30, 2003 Cruz eventually received the Sandiganbayan's May 15, 2003 order^[16] that already allowed the withdrawal of respondent OSP's dropping of Cruz from the informations.

On June 16, 2003 petitioner Cruz filed a motion for reconsideration^[17] of the Sandiganbayan's May 15, 2003 order on the ground that he had no notice of the hearing set on that date. He also complained of lack of notice respecting the formal withdrawal motion set on June 4, 2003. Cruz also challenged Galisanao and Monteroso's authority to countermand the OMB's approval of the dropping of the charges against him.

The Sandiganbayan gave the prosecution 15 days from June 20, 2003 or until July 5, 2003 within which to comment on petitioner Cruz's motion for reconsideration. It gave the latter the same period of time to file a reply and the prosecution 10 days from receipt of the reply to file its rejoinder.^[18] Surprisingly, before the various periods could play out or on July 3, 2003 Cruz received a June 4, 2003 order from the Sandiganbayan, denying Cruz's motion for reconsideration. This prompted him to file a motion seeking clarification but the Sandiganbayan never got to resolve this last motion.

At any rate, on February 10, 2004 the Sandiganbayan required Ombudsman Simeon V. Marcelo to tell the court whether or not he is upholding the action taken by his subordinates.^[19] It was Special Prosecutor Dennis M. Villa-Ignacio who affirmed the actions of Galisanao and Monteroso. He said that the prosecutors acted on verbal orders of Ombudsman Marcelo. Apparently, Ombudsman Marcelo later inhibited himself from the TCC cases and designated Villa-Ignacio to act on his behalf.^[20]

On July 17, 2006 the Sandiganbayan resolved to deny petitioner Cruz's motion for reconsideration.^[21] The court held that Cruz was not entitled to notice since it was the OSP's prerogative to withdraw its earlier motion to drop him from the charges. The Sandiganbayan also pointed out that Cruz ultimately had the opportunity to ventilate his objections since he filed a motion for reconsideration of the court's order granting the withdrawal. Consequently, any defect in earlier proceedings had been cured. As to Galisanao and Monteroso's lack of authority to act the way they did, the court ruled that the Special Prosecutor eventually affirmed their acts. Unsatisfied, Cruz filed the present petition for *certiorari* under Rule 65.

Meanwhile, on December 21, 2007, this Court rendered judgment in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*.^[22] The BIR assessed deficiency income taxes against Pilipinas Shell, given that it used for payment the fraudulently issued TCCs subject of this case. This Court nullified the assessment, finding that Pilipinas Shell was a transferee in good faith and for value and may thus not be unjustly prejudiced by the transferor's fraud committed in procuring the transfer of those TCCs.

Petitioner Cruz filed a manifestation invoking the Court's ruling in the above tax case as *res judicata* with respect to his alleged criminal liabilities relating to the subject TCCs.

The Issues Presented

Petitioner Cruz presents the following issues:

1. Whether or not the Sandiganbayan gravely abused its discretion in allowing respondent OSP to withdraw its earlier motion to drop petitioner Cruz from the criminal informations even after the OMB had approved such withdrawal on ground of lack of probable cause;

and

2. Whether or not the findings of the Court in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue* that Pilipinas Shell was a transferee in good faith and for value of the TCCs in question bar the prosecution of Cruz in the criminal cases subject of this petition.

The Rulings of the Court

FIRST. The Sandiganbayan pointed out that it was respondent OSP's prerogative, as public prosecutor, to withdraw the earlier motion it filed for the dropping of the charges against petitioner Cruz. Giving him notice of such motion, said the Sandiganbayan, was therefore not indispensable.

But respondent OSP did not ask the Sandiganbayan to drop petitioner Cruz from the charges filed in court out of pure whim or simply because the OSP changed its mind regarding his case. On motion of Cruz and upon orders of the Sandiganbayan, the OSP conducted a reinvestigation of the case. By its nature, a reinvestigation is nothing more than a continuation of the OMB's duty to conduct a preliminary investigation for the purpose of determining probable cause against a person charged with an offense falling under its jurisdiction.

Here, after respondent OSP considered the evidence anew at reinvestigation, it ruled that such evidence did not establish probable cause against petitioner Cruz. Said the OSP in its October 7, 2002 memorandum to the OMB:

Upon re-evaluation, a close scrutiny of the records revealed that the evidences at hand will not be sufficient to justify the inclusion of movant [Cruz] as one of the accused/co-conspirators in the above captioned cases. There is no evidence on record that movant has knowledge, consent nor participation in the preparation and submission of the falsified documents purportedly showing deliveries by PSPC to DKC of large volume of oil products and which documents were used as supporting documents in the processing for the transfer of subject TCCs from DKC to PSPC.

More so the allegations of movant appeared to have remained unrebutted during the entire proceedings in the Preliminary Investigation stage and as a matter of fact evidences (encashed checks and vouchers) later on gathered and attached by the Task Force 156 in their motion dated September 4, 2002 bolstered the position of herein movant. Said documents clearly showed that PSPC acquired subject TCCs thru purchase with ten (10%) discount and not with alleged supply of oil/fuel products.^[23]

Respondent OSP, therefore, recommended the dropping of petitioner Cruz's name from the charges already filed in court. And the OMB approved this recommendation. The necessary implication of this is that the OMB had, after reinvestigation, found no probable cause against Cruz. Based on its finding, therefore, the State did not have the right to prosecute him. With this result, it was a matter of duty for respondent OSP to apply with the Sandiganbayan for the withdrawal of the charges against Cruz. And this they did.

Respondent Task Force of course filed a motion for reconsideration of the new OMB resolution in the case. But the OMB implicitly denied the same when it nonetheless caused the filing of the motion to drop petitioner Cruz from the charges. The Task Force did not further pursue its remedies to oppose such dropping of charges. Respondent OSP, therefore, acted in violation of petitioner Cruz's right to due process of law when it impulsively and arbitrarily disregarded its previous finding of lack of probable cause without hearing.

And respondent OSP did not even pretend that it found new evidence that established Cruz's guilt. It offered no excuse for its turnabout. For its part, the Sandiganbayan did not bother to require the OSP to present a new finding with the OMB's approval that overruled, after appropriate hearing, the previous determination of lack of probable cause that they made.

Apparently, the Sandiganbayan forgot that, in ordering the reinvestigation of the charges against petitioner Cruz, it effectively acknowledged that he had not been accorded his full right to a preliminary investigation. And so it ordered a reinvestigation. Of course, the Sandiganbayan had, after the informations were filed with it, the discretion to assess the evidence on its own and determine what to do with the case before it.^[24] But the fact is that it opted to let the OMB conduct a reinvestigation, a power that the latter had.

As it happened, the OMB found after reinvestigation that no probable cause existed against petitioner Cruz. Under the circumstances, this entitled Cruz to the dismissal of the charges against him. Unfortunately, acting with grave abuse of discretion, the Sandiganbayan ignored Cruz's right to such a dismissal. It simply allowed respondent OSP to withdraw its motion to drop Cruz from those charges even if the OSP made no claim that the state of evidence had changed after it submitted its memorandum.

SECOND. Having reached the above conclusion, the Court would ordinarily be satisfied with annulling the Sandiganbayan's ruling that granted respondent OSP's motion to withdraw its application for the dropping of petitioner Cruz from the charges. And, as a result, the Court would then just direct the Sandiganbayan to pass upon the merits of the OSP's move to drop Cruz.

But this Court's recent ruling in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*^[25] - that Pilipinas Shell, of which petitioner Cruz was the responsible officer, was a transferee in good faith and for value of the same TCCs subject of the criminal cases--raises the issue of whether or not such ruling bars the prosecution of Cruz

in the criminal cases subject of this petition.

The *res judicata* rule bars the re-litigation of facts or issues that have once been settled by a court of law upon a final judgment on the merits. Section 47 (b) and (c) of Rule 39 of the Rules of Court establishes two rules:

(a) a judgment on the merits by a court of competent jurisdiction bars the parties and their privies from bringing a new action or suit involving the same cause of action before either the same or any other tribunal; and

(b) any right, fact or matter directly adjudged or necessarily involved in the determination of an action before a competent court that renders judgment on the merits is conclusively settled and cannot be litigated again between the parties and their privies, regardless of whether the claims, purposes or subject matters of the two suits are the same.

The first is commonly referred to as "bar by former judgment"; the second as "conclusiveness of judgment." It is the second that is relevant to this case.

Conclusiveness of judgment or *auter action pendent* ordains that issues actually and directly resolved in a former suit cannot be raised anew in any future case involving the same parties although for a different cause of action. Where the rule applies, there must be identity of issues but not necessarily identity in causes of action.^[26]

In the present case, the OMB charged petitioner Cruz, acting in conspiracy with others, of violating Section 3(e) of Republic Act 3019 in connection with the transfer of fraudulently issued TCCs to Pilipinas Shell.^[27] The main issue in this case is whether or not Cruz, Pilipinas Shell's Treasury head, connived with the officials of the One-Stop Center and others in unlawfully giving, through manifest partiality and bad faith, unwarranted benefits to DKC by processing and approving such transfers to Pilipinas Shell, knowing that DKC, the transferee, had been a dormant company.

This Court resolved substantially the same issue in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*.^[28] There, the Court categorically found that Pilipinas Shell, represented in its acquisition of the TCCs in question by petitioner Cruz, was a transferee in good faith and for value of those TCCs. This means that neither Pilipinas Shell nor Cruz was a party to the fraudulent issuance and transfer of the TCCs. Indeed, there existed, said the Court, no evidence that Pilipinas Shell was involved in the processing of the One-Stop Center's approval of the transfer of those TCCs to Pilipinas Shell.

The parties in the tax case and in the criminal cases are substantially the same. Although it was respondent Task Force that investigated the irregularities in the issuance and transfers

of the TCCs, the ultimate complainant in the criminal case--the party that suffered the injury--was the government, represented by the Commissioner of Internal Revenue. The latter also represented the government in the tax case against Pilipinas Shell. Petitioner Cruz, on the other hand, represented Pilipinas Shell in all the transactions in question. In short, the parties in the tax case and in the criminal cases represent substantially identical interests. The principle of *res judicata* through conclusiveness of judgment applies to bar the criminal actions against Cruz.

WHEREFORE, the Court **GRANTS** the petition and **DIRECTS** the Sandiganbayan Fourth Division to **DISMISS** Criminal Cases 27657, 27658, 27677, 27678, 27694, 27695, 27704, 27705, 27715, 27725 and 27736 against petitioner Pacifico R. Cruz.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Perez, JJ., concur.

[1] *Rollo*, pp. 129-146; docketed as OMB-0-01-0973.

[2] The others are: Antonio P. Belicena, Uldarico P. Andutan, Jr., Faustino T. Chingkoe, Gloria C. Chingkoe, Winston T. Chingkoe, Catalina A. Bautista, Amante F. Ares, Reynato C. Andaya, Celso L. Legarda and Rowena P. Malonzo.

[3] Violation of Republic Act 7080 or the Anti-Plunder Law.

[4] *Rollo*, pp. 149-168.

[5] Docketed as Criminal Case Nos. 27657, 27658, 27677, 27678, 27694, 27695, 27704, 27705, 27715, 27725 and 27736.

[6] *Rollo*, pp. 172-187.

[7] *Id.* at 189.

[8] *Id.* at 196-204.

[9] Criminal Case Nos. 25940-25962, entitled "*People v. Belicena, et al.*"

[10] Sandiganbayan records, Vol. II, pp. 133-135.

[11] *Id.* at 136-145.

[12] *Rollo*, pp. 192-194.

[13] *Id.* at 223-224.

[14] *Id.* at 238-241.

[15] *Id.* at 227-237.

[16] *Id.* at 91.

[17] *Id.* at 243-261.

[18] Sandiganbayan records, Vol. II, p. 150.

[19] *Id.* at 222-223.

[20] *Rollo*, pp. 306-308 and 310-311.

[21] *Id.* at 95-99.

[22] G.R. No. 172598, December 21, 2007, 541 SCRA 316.

[23] *Rollo*, p. 199.

[24] *Santos v. Orda, Jr.*, 481 Phil. 93, 107 (2004).

[25] *Supra* note 22.

[26] *Presidential Commission on Good Government v. Sandiganbayan*, G.R. No. 157592, October 17, 2008, 569 SCRA 360, 372-373.

[27] Except for the dates of commission of the offense, tax credit certificate numbers and corresponding face values, as well as amount of oil deliveries, the eleven (11) informations uniformly allege:

"That on or about x x x, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused ANTONIO P. BELICENA, former Assistant Secretary, Revenue Operation Group, Department of Finance, and as such was authorized to sign and approve Tax Credit Certificates issued by the

One-Stop Shop Tax Credit and Duty Drawback Center (CENTER), ULDARICO P. ANDUTAN, Jr., former Deputy Executive Director of the CENTER, and ROWENA P. MALONZO, Tax Specialist of the Center, taking advantage of their position and while in the performance of their function as such, conspiring and confederating with one another and with accused WINSTON T. CHINGKOE, GLORIA C. CHINGKOE, FAUSTINO T. CHINGKOE, CATALINA A. BAUTISTA, AMANTE F. ARES and REYNATO C. ANDAYA, and the Pilipinas Shell Petroleum Corporation, represented by PACIFICO R. CRUZ, through manifest partiality and evident bad faith, by processing, evaluating, and/or recommending the approval of the transfer/conveyance or disposition of Tax Credit Certificate No. x x x with face value in the amount of x x x from Diamond Knitting Industries, Inc. to Pilipinas Shell Petroleum Corporation as a consideration for the delivery of the latter of x x x liters of industrial oil used in the manufacture and production of textile, as in fact the transfer of the credit certificate was approved, when in truth and in fact, the accused knew fully well that there were no oil deliveries considering that Diamond Knitting could not have possibly received said oil deliveries from Shell and had no use of petroleum products on account of its (Diamond Knitting) closure by the Pollution Adjudication Board of the Department of Environment and Natural Resources for its failure to comply with the environmental requirements imposed by law as early as February 1993."

[28] Supra note 22.