



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**PRISCILLA Z. ORBE,**  
 Petitioner,

**G.R. No. 217777**

- versus -

Present:

CARPIO, J., Chairperson,  
 PERALTA,  
 PERLAS-BERNABE,  
 CAGUIOA,\* and  
 REYES, JR., JJ.

**LEONORA O. MIARAL,**  
 Respondent.

Promulgated:

16 AUG 2017  
 J. C. Abad  
 x

**DECISION**

**CARPIO, J.:**

**The Case**

This petition for review on certiorari<sup>1</sup> under Rule 45 of the Rules of Court seeks to annul the 24 September 2014 Decision<sup>2</sup> and the 24 March 2015 Resolution<sup>3</sup> of the Court of Appeals in CA-G.R. SP No. 134555, which annulled and set aside the 27 August 2013<sup>4</sup> and 7 January 2014<sup>5</sup> Orders of the Regional Trial Court (RTC) of Quezon City, Branch 104.

The RTC Orders denied the Motion to Withdraw Information<sup>6</sup> for Estafa filed by Quezon City Prosecutor Donald T. Lee in Criminal Case Q-12-174206, entitled *People of the Philippines v. Leonora O. Miaral, et al.*

\* On official leave.

<sup>1</sup> Rollo, pp. 12-30.

<sup>2</sup> Id. at 37-51. Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Isaias P. Dicedican and Agnes Reyes-Carpio concurring.

<sup>3</sup> Id. at 53-54.

<sup>4</sup> Id. at 80-83. Penned by Presiding Judge Catherine P. Manodon.

<sup>5</sup> Id. at 84-85.

<sup>6</sup> Id. at 170.

**The Facts**

On 6 March 1996, Leonora O. Miaral (respondent) agreed to engage in the garment exportation business with her sister, Priscilla Z. Orbe (petitioner). They executed a partnership agreement<sup>7</sup> where they agreed to contribute Two Hundred Fifty Thousand Pesos (₱250,000.00) each to Toppo Co., Inc. and Miaral Enterprises, and to equally divide the profits they may earn. The partnership agreement reads:

**Agreement**

Agreement is executed [on the] 6<sup>th</sup> day of March 1996 by:

Mrs. Nora O. Miaral  
11-0 Legaspi Towers, Roxas Blvd., Mla.  
as (Party [A])

and Mrs. Priscilla Orbe of No. \_\_\_\_, Villa  
Verde Subd., Novaliches, Quezon City  
as (Party B).

Both parties agreed on the ff:

Both parties A & B shall invest ₱250,000.00 each in cash & or goods into a buying & selling of stock lots of garments to be exported to the United States particularly in Los Angeles, California. Authorized purchaser may be Party A or B;

That the exportation of garments shall be done by Toppo Co., Inc. using Toppo's available quota;

That the importation of garments shall be done by Miaral Enterprises in U.S.A.

That whatever income in sales both retail & wholesale shall be divided into equal share after deducting all expenses in export & import including taxes & sea/air freight expenses in connection with the buying and selling of stocks & garments.

That this Contract is renewable yearly as both parties may wish.

Conforme:

(Sgd.)  
Party A

(Sgd.)  
Party B

Signed in the presence of

\_\_\_\_\_

<sup>7</sup> Id. at 90-91.

Petitioner initially invested the amount of One Hundred Eighty-Three Thousand Nine Hundred Ninety-Nine Pesos (₱183,999.00).<sup>8</sup> She subsequently tendered the amount of Twenty Thousand Pesos (₱20,000.00) for the payment of salaries of the workers at the factory.<sup>9</sup>

On one trip to the United States of America in April of 1996, respondent told petitioner that petitioner could join respondent, her daughter Anne Kristine, and her granddaughter Ara in the trip to the United States. Respondent convinced petitioner to pay for the plane tickets of respondent, Anne Kristine and Ara amounting to Two Thousand Seventy One Dollars (US\$2,071.00) with a promise to pay petitioner once they arrive in the United States.<sup>10</sup>

Upon arrival, respondent issued three (3) checks drawn in a bank in the United States as payment. However, one of the checks was dishonored for having been drawn against insufficient funds.<sup>11</sup> Petitioner likewise discovered that there was no exportation of garments to the United States or any other transactions in the United States that took place.

Petitioner demanded from respondent and Anne Kristine the total payment of Two Hundred Three Thousand Nine Hundred Ninety-Nine Pesos (₱203,999.00) and One Thousand Dollars (US\$1,000.00). Despite demands, respondent and Anne Kristine failed to return the money.<sup>12</sup>

On 7 February 2011, petitioner filed a complaint<sup>13</sup> for estafa against respondent and Anne Kristine before the Office of the City Prosecutor (OCP) of Quezon City.

In their counter-affidavit,<sup>14</sup> respondent and Anne Kristine denied petitioner's allegations and claimed, among others, that the partnership agreement they entered into rules out a successful prosecution for estafa. They also claimed that the action had already prescribed since the complaint was filed 15 years after the agreement. They contended that it was petitioner who owed them the amount of Two Hundred Seven Thousand Eighty-Seven Pesos and Sixty-Five Centavos (₱207,087.65) because she issued several checks in the name of respondent and Anne Kristine. Lastly, they alleged that Anne Kristine could not be held liable because she was merely acting under her mother's direction.

In her reply-affidavit,<sup>15</sup> petitioner claimed that the twenty-four (24) checks amounting to Two Hundred Seven Thousand Eighty-Seven Pesos and

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<sup>8</sup> Id. at 92.  
<sup>9</sup> Id. at 93.  
<sup>10</sup> Id. at 14.  
<sup>11</sup> Id. at 94.  
<sup>12</sup> Id. at 96.  
<sup>13</sup> Id. at 87-89.  
<sup>14</sup> Id. at 98-100.  
<sup>15</sup> Id. at 107-108.



Sixty-Five Centavos (P207,087.65) were only borrowed from her as an accommodation party, and that it was respondent who ordered her to close her account with the Republic Planters Bank.

The OCP of Quezon City issued a Resolution dated 15 July 2011,<sup>16</sup> the dispositive portion of which reads:

WHEREFORE, it is respectfully recommended that, upon approval of this Resolution, the attached Information for Estafa under Article 315, paragraph 2(a) of the Revised Penal Code be filed against respondents Leonora O. Miaral and Anne Kristine O. Miaral.<sup>17</sup>

Respondent and Anne Kristine filed a Motion for Reconsideration with Motion for Inhibition<sup>18</sup> dated 27 January 2012, on the ground that petitioner failed to establish the elements of the crime charged. Subsequently, they filed a Motion to Suspend Proceedings and to Lift/Recall Warrant of Arrest<sup>19</sup> on 14 February 2012.

On 10 August 2012, the OCP of Quezon City issued a Resolution resolving the Motion for Reconsideration with Motion for Inhibition filed by respondent and Anne Kristine, assailing the 15 July 2011 Resolution, the dispositive portion of which reads:

Premises considered, the resolution dated July 15, 2011 is hereby set aside on the ground that the transaction between the parties is civil in nature. The attached Motion to Withdraw Information against movants in Crim. Case No. Q-12-174206 is to be filed in court for the purpose.<sup>20</sup>

Accordingly, the City Prosecutor filed with the RTC a Motion to Withdraw Information.<sup>21</sup> On 27 August 2013, the RTC issued an Order<sup>22</sup> denying the Motion to Withdraw Information, and directing the arraignment of respondent and Anne Kristine.

On 14 October 2013, respondent and Anne Kristine moved for the reconsideration of said Order.<sup>23</sup> On 30 October 2013, petitioner filed her corresponding comment,<sup>24</sup> contending that the alleged partnership entered into by the parties merely existed on paper. In fact, respondent and Anne Kristine deceived her into contributing substantial sums of money for a sham investment. The Motion for Reconsideration was denied by the RTC in its Order dated 7 January 2014.<sup>25</sup>

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<sup>16</sup> Id. at 112-115.  
<sup>17</sup> Id. at 115.  
<sup>18</sup> Id. at 116-120.  
<sup>19</sup> Id. at 147-148.  
<sup>20</sup> Id. at 166-169.  
<sup>21</sup> Id. at 170.  
<sup>22</sup> Id. at 80-83.  
<sup>23</sup> Id. at 171-184.  
<sup>24</sup> Id. at 203-207.  
<sup>25</sup> Id. at 84-85.

### The Ruling of the Court of Appeals

On 25 March 2014, respondent filed with the Court of Appeals a Petition for Certiorari<sup>26</sup> under Rule 65 of the Rules of Court, assailing the Orders of the RTC dated 27 August 2013 and 7 January 2014. In its Decision<sup>27</sup> dated 24 September 2014, the Court of Appeals granted the petition, and reversed and set aside the assailed Orders of the RTC. It further directed the RTC to issue an order for the withdrawal of the Information for estafa against respondent and Anne Kristine.<sup>28</sup>

Petitioner filed a Motion for Reconsideration<sup>29</sup> dated 18 October 2014 which was denied by the Court of Appeals on 24 March 2015.<sup>30</sup>

Hence, this petition.

### The Issues

Petitioner presents the following issues in this petition:

1. Whether the Court of Appeals committed reversible error in ruling that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction;
2. Whether the Court of Appeals committed reversible error in reversing and setting aside the 27 August 2013 and 7 January 2014 Orders of the RTC, and in directing the issuance of an Order for the Withdrawal of the Information for estafa against respondent and Anne Kristine; and
3. Whether the action for estafa penalized under Article 315 2(a) of the Revised Penal Code has been barred by prescription.

### The Ruling

The petition is meritorious.

***The Court of Appeals erred in overturning the Orders of the RTC and in ruling that the RTC gravely abused its discretion when it denied the Motion to Withdraw Information.***

Under Section 5, Rule 110 of the Rules of Court, all criminal actions

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<sup>26</sup> Id. at 55-79.

<sup>27</sup> Id. at 37-51.

<sup>28</sup> Id. at 53-54.

<sup>29</sup> Id. at 186-196.

<sup>30</sup> Id. at 53-54.

commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. As the representative of the State, the public prosecutor determines in a preliminary investigation whether there is probable cause that the accused committed a crime.<sup>31</sup> Probable cause is defined as “such facts and circumstances that will engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial.”<sup>32</sup>

The general rule is that in the conduct of a preliminary investigation, the prosecutor is given a wide latitude of discretion to determine what constitutes sufficient evidence as will establish probable cause.<sup>33</sup> However, when the respondent establishes that the prosecutor committed grave abuse of discretion amounting to lack or excess of jurisdiction in determining whether there is probable cause, the courts may interfere. Under the doctrine of separation of powers, the courts have no right to decide matters where full discretionary authority has been delegated to the Executive Branch, or to substitute their own judgements for that of the Executive Branch, in the absence of grave abuse of discretion.<sup>34</sup> The abuse of discretion must be “so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or hostility.”<sup>35</sup>

In this case, the OCP found that no probable cause existed against respondent and Anne Kristine for the commission of the crime of estafa. In its Resolution<sup>36</sup> dated 10 August 2012, relying mainly on the case of *United States v. Clarin*,<sup>37</sup> the OCP found that there was a partnership agreement between the parties, thus resolving that the failure of a partner to account for partnership funds may only give rise to a civil obligation, not a criminal case for estafa. The OCP held:

After a careful and more circumspect evaluation of the evidence on record in relation to the issues in the Motion for Reconsideration, provisions of law involved and pertinent jurisprudence on the matter, we find the existence of a partnership agreement between complainant and her sister, respondent Leonora O. Miaral to have been duly established. The Agreement signed by them on March 6, 1996 clearly speaks for itself, among others a ₱250,000.00 investment each with equal profit sharing minus all expenses. It also defined in unequivocal terms the buy and sell business, exporting of garments to be undertaken by respondent Leonora Miaral's Topy Co. Inc. and importation of garments by Miaral

<sup>31</sup> *Sanrio Company Ltd. v. Lim*, 569 Phil. 630, 639 (2008).

<sup>32</sup> *Metropolitan Bank and Trust Company v. Reynado*, 641 Phil. 208, 222 (2010), citing *Baviera v. Paglinawan*, 544 Phil. 107, 120 (2007).

<sup>33</sup> *Glaxosmithkline Philippines, Inc. v. Malik*, 530 Phil. 662, 668-669 (2006), citing *Punzalan v. Dela Peña*, 478 Phil. 771, 781 (2004).

<sup>34</sup> *Callo-Claridad v. Esteban*, 707 Phil. 172, 183 (2013), citing *Metropolitan Bank and Trust Company v. Tobias III*, 680 Phil. 173, 186 (2012).

<sup>35</sup> *Id.*

<sup>36</sup> *Rollo*, pp. 166-169.

<sup>37</sup> 17 Phil. 84 (1910).

Enterprises in the United States.

Such being the case, Estafa either by means of deceit or misappropriation will not lie against respondents, because “partners are not liable for estafa of money or property received for the partnership when the business commenced and profits accrued.” (U.S. vs. Clarin, 17 P[h]il. 85). It was further held in said case that “when two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves, a contract is formed which is a partnership.”

Furthermore, “failure of a partner to account for partnership funds may give rise to a civil obligation only not estafa.” (People vs. Alegre, Jr., C.A. 48 O.G. 5341) x x x.<sup>38</sup>

We disagree with the ruling of the Court of Appeals when it sustained the OCP on the issue of whether there is probable cause to file an Information. The OCP was in the best position to determine whether or not there was probable cause that the crime of estafa was committed. However, the OCP erred gravely, amounting to grave abuse of discretion, when it applied *United States v. Clarin*<sup>39</sup> as basis for dismissing the complaint for lack of probable cause. *United States v. Clarin* has already been superseded by *Liwanag v. Court of Appeals*.<sup>40</sup>

In *Clarin*, four individuals entered into a contract of partnership for the business of **buying and selling mangoes**. When one of the partners demanded from the other three the return of his monetary contribution, this Court ruled that “the action that lies with the [capitalist] partner x x x for the recovery of his money is not a criminal action for estafa, but a civil one arising from the partnership contract for a liquidation of the partnership and a levy on its assets, if there should be any.”<sup>41</sup> Simply put, if a partner demands his money back, the duty to return the contribution does not devolve on the other partners; the duty now belongs to the partnership itself as a separate and distinct personality.

In 1997, a case with similar circumstances was decided differently. In *Liwanag v. Court of Appeals*,<sup>42</sup> three individuals entered into a contract of partnership for the business of **buying and selling cigarettes**. They agreed that one would contribute money to buy the cigarettes while the other two would act as agents in selling. When the capitalist partner demanded from the industrial partners her monetary contribution because they stopped informing her of business updates, this time, this Court held the industrial partners liable for estafa.

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<sup>38</sup> *Rollo*, p. 168.

<sup>39</sup> *Supra* note 37.

<sup>40</sup> 346 Phil. 211 (1997).

<sup>41</sup> *Supra* note 37, at 86.

<sup>42</sup> *Supra* note 40.

In this case, the OCP erred gravely when it based its conclusion on the *Clarín* case. *Liwanag* applies to the partnership agreement executed between petitioner and respondent. Petitioner's initial contributions of ₱183,999.00 and ₱20,000.00 were all for specific purposes: for the **buying and selling of garments** and for the salaries of the factory workers, respectively. When respondent failed to account for these amounts or to return these amounts to petitioner upon demand, there is probable cause to hold that respondent misappropriated the amounts and had not used them for their intended purposes. The Information for estafa should thus proceed.

In *Liwanag*, this Court held:

Thus, even assuming that a contract of partnership was indeed entered into by and between the parties, **we have ruled that when money or property [had] been received by a partner for a specific purpose** (such as that obtaining in the instant case) **and he later misappropriated it, such partner is guilty of estafa.**<sup>43</sup> (Emphasis supplied)

Furthermore, the RTC made its own independent assessment whether or not probable cause exists that the crime was committed by respondent and Anne Kristine. When the RTC is confronted with a Motion to Withdraw Information on the ground of lack of probable cause, its duty is to make an independent assessment of the totality of the evidence presented by both parties, including affidavits, counter-affidavits, evidence appended to the complaint, and records produced by the OCP on court order.<sup>44</sup> "Independent assessment" does not mean mere approval or disapproval of the prosecution's stand; it also means that the RTC must itself be convinced that indeed there is or there is no sufficient evidence against the accused.<sup>45</sup>

Both the 27 August 2013 and 7 January 2014 Orders of the RTC were based on facts and allegations of both parties. The RTC held:

From the evidence adduced by the parties, the Court finds that there is probable cause that the crime charged was committed by the accused when they convinced the complainant to invest money in a business partnership which appears to be non-existent. It was not controverted that Leonora received the total amount of ₱183,999.00 from the complainant. **Accused failed to present evidence to show the existence of a business partnership apart from relying on the Agreement dated March 6, 1996. Neither was there any evidence presented showing that complainant's money was used to purchase garments to be sold abroad.** Basic is the rule that one who alleges must prove. In this case, the accused failed to establish, by clear and convincing evidence, their defense of partnership.<sup>46</sup> (Emphasis supplied)

<sup>43</sup> 346 Phil. 211, 217 (1997).

<sup>44</sup> *Ledesma v. Court of Appeals*, 344 Phil. 207, 217 (1997).

<sup>45</sup> *Fuentes v. Sandiganbayan*, 527 Phil. 58, 65 (2006).

<sup>46</sup> *Rollo*, p. 82



The question is not so much whether the RTC has the authority to grant or not to grant the OCP's Motion to Withdraw Information, because it has such authority, but whether, in the exercise of that authority, the RTC acted justly and fairly.<sup>47</sup> This Court finds that it did.

***The action for estafa penalized under paragraph 2(a), Article 315 of the Revised Penal Code has not yet been barred by prescription.***

Under Article 315 of the Revised Penal Code, the penalty for estafa shall be determined by the amount allegedly swindled by the accused. The first paragraph of Article 315 reads:

ART. 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1<sup>st</sup>. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and **if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years.** In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be. (Emphasis supplied)

The total amount allegedly swindled by respondent is ₱203,999.00 for the buying of garments and workers' salaries plus US\$1,000.00 for the plane tickets which exceeds ₱22,000.00. Taking into consideration the whole amount with the additional one year for each additional ₱10,000.00, the penalty imposable on respondent shall be *prision mayor* in its maximum period to *reclusion temporal*, the total penalty not exceeding twenty (20) years.

Under Article 25 of the Revised Penal Code, the penalties of *prision mayor* and *reclusion temporal* are included in the enumeration of afflictive penalties. Furthermore, Article 90 of the Revised Penal Code states that crimes punishable by afflictive penalties, such as the crime of estafa, prescribe in fifteen (15) years.

The said prescriptive period is computed under Article 91 of the Revised Penal Code, as follows:

ART. 91. *Computation of prescription of offenses*. - The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall

<sup>47</sup> Id. at 44-45.

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commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

x x x x

In this case, the fifteen-year prescriptive period commenced in April 1996 when the petitioner discovered that one of the checks that respondent issued as payment was dishonored for having been drawn against insufficient funds. At around that time, petitioner likewise discovered that there was no buying, selling and exportation of garments or any other transactions that took place in the United States.

The fifteen-year period was interrupted on 7 February 2011 when petitioner filed a complaint for estafa against respondent and Anne Kristine before the OCP of Quezon City. In *People v. Olarte*,<sup>48</sup> “the filing of the complaint, even if it be merely for purposes of preliminary examination or investigation, should and does interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on its merits.”

As of the filing of the complaint on 7 February 2011, the prescriptive period had run for fourteen (14) years and ten (10) months. Thus, the fifteen-year period has not yet prescribed.

**WHEREFORE**, we **GRANT** the petition. We **REVERSE** the 24 September 2014 Decision and the 24 March 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 134555. We **REINSTATE** the Orders of the Regional Trial Court of Quezon City, Branch 104, dated 27 August 2013 and 7 January 2014, directing the arraignment of Leonora O. Miaral and Anne Kristine Miaral. The case against Leonora O. Miaral and Anne Kristine Miaral may still proceed because prescription has not set in.

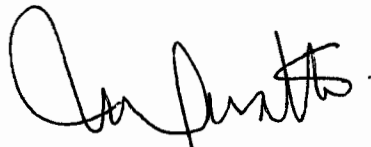
**SO ORDERED.**



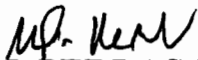
**ANTONIO T. CARPIO**  
Associate Justice

<sup>48</sup> 125 Phil. 895, 902 (1967).

**WE CONCUR:**



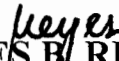
**DIOSDADO M. PERALTA**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice

(on official leave)

**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ANDRES B. REYES, JR.**  
Associate Justice

**ATTESTATION**


I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice