Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JHON KENNETH M. PORTO, CHENNIE ANN ROSE ELCA, and JOMAR JONHEDEL B. BRUTO (represented by MARIFE B. BRUTO),	**G.R. No. 257446**
Petitioners,	Present:
- versus -	CAGUIOA,* *J.*, INTING,** *Acting Chairperson*, GAERLAN, DIMAAMPAO, *and* SINGH, *JJ.*
GRANT INSTITUTE OF TRADE & TECHNOLOGY, INC., and/or ITS BOARD OF DIRECTORS, namely: DR. RUEL REYES, ATTY. JANET JOY A. REYES, LISHA ALYANNA A. REYES, JESSE R. REYES, and NESTOR R. MIRANDA,	
Respondents.	Promulgated: October 12, 2022

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DECISION

GAERLAN, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] filed by Jhon Kenneth M. Porto, Chennie Ann Rose R. Elca, and Jomar Jonhedel B. Bruto (represented by Marife B. Bruto) (collectively, petitioners) to assail the Resolutions dated November 20, 2020[2] and June 14, 2021[3] of the Court of Appeals (CA) 2nd Division in CA-G.R. SP No. 165836.

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* On official leave.

** Designated as Acting Chairperson per Special Order No. 2918 dated October 5, 2022.

1 *Rollo*, pp. 8-26.

2 Id. at 50-55; penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Fernanda Lampas Peralta and Walter S. Ong, concurring.

3 Id. at 71-75.

Said Resolutions dismissed outright petitioners' Joint Petitions for *Certiorari*[4] that sought to assail the Resolution[5] dated January 20, 2020 of the Office of the Regional Prosecutor (ORP) for Region IV, which reversed and set aside the indictments for *Estafa* against petitioners in the Resolution[6] dated September 30, 2019 the Office of the City Prosecutor (OCP) of San Pablo City, Laguna in National Prosecution Service (NPS) Docket Nos. IV-18-INV-19F-00214 to 00218, and 00222.

Factual Antecedents

Seven complainants, including petitioners, filed consolidated Complaints for *Estafa* and Falsification in 2019 before OCP-San Pablo City with the allegation that they availed of, and completed, the Cruise Ship Management Course offered by Grant Institute of Trade & Technology (GITT). Said institution is located in Greenvalley Subdivision, *Barangay* San Jose, San Pablo City, Laguna, and is managed by Dr. Ruel Reyes, Atty. Janet Joy A. Reyes, Lisha Alyanna A. Reyes, Jesse R. Reyes, and Nestor R. Miranda (private respondents) as its Board of Directors. Petitioners and the other complainants eventually found out that GITT did not have authority from the Technical Education & Skills Development Authority (TESDA) to offer the said course upon verification with the TESDA Laguna Provincial Office.[7]

Only private respondents Dr. Ruel Reyes and Atty. Janet Joy A. Reyes submitted their Counter-Affidavit, which asserted that the Complaints were baseless and intended for mere harassment, that the Complainants failed to substantiate their claim; and that GITT performed in good faith all its duties to provide complainants proper education, competence, training, and necessary skills. Additionally, they disavow any deception or damage done to Complainants, who had indeed successfully completed their courses at GITT.[8]

Ruling of OCP-San Pablo City

On September 30, 2019, OCP-San Pablo City promulgated its Resolution relative to the consolidated Complaints, the dispositive portion of which reads as follows:

> Accordingly, the undersigned Associate City Prosecutor respectfully recommends that seven (7) Information[s] for *estafa* as defined and penalized under Article 315, par. 2(a) of the Revised Penal Code be FILED against

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4 Id. at 34-47.
5 Id. at 88-95 (Note that the said Resolution is mistakenly entitled "Petition for Review").
6 Id. at 76-87.
7 Id. at 76-78 (Resolution of OCP-San Pablo City dated September 30, 2019).
8 Id. at 78-79.

> Respondents Ruel Reyes, Janet Joy Reyes, Lisha Alyanna A. Reyes, Jesse Reyes and Nestor R. Miranda as Officers and Directors of Grant Institute of Trade and Technology, Inc.
>
> Further, the case for Falsification under Article 172 in relation to Article 171 of the Revised Penal Code is hereby DISMISSED for the reason that said act complained of is already absorbed in the crime of *estafa*, since it is a necessary consequence or after-effect of the act committed by the Respondents.
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> September 30, 2019, San Pablo City.[9]

OCP-San Pablo City reasoned that complainants (petitioners included) relied on GITT's false pretenses that it had all the requisite government licenses, authorities, and accreditation to offer and conduct Cruise Ship Management Courses that Complainants availed of and completed — even if the said false pretenses were not intentionally directed at them. The letter to complainants' (and petitioners') counsel dated May 23, 2019 from the TESDA Provincial Director stating that GITT had no approval to offer the said course was most determinative of the case. Also, GITT's good faith in bundling of three other existing courses (*i.e.*, Cookery NC II, Food & Beverage Services NC II, and Housekeeping NC II) into their Cruise Ship Management Course did not excuse its lack of the requisite TESDA authority.[10]

OCP-San Pablo City thus found private respondents liable as members of GITT's Board of Directors having direct control over GITT's operations.[11]

Ruling of ORP-Region IV

Private respondents apparently filed a Petition for Review with the ORP-Region IV, which as stated, reversed and set aside the ruling of OCP-San Pablo City in the following manner:

> WHEREFORE, premises considered, the instant Petition is hereby GRANTED and the Resolution of the Office of the City Prosecutor of San Pablo [City] is hereby REVERSED. The Office of the City Prosecutor is ordered to WITHDRAW, WITH LEAVE OF COURT, the Informations that, forthwith, have been filed.
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> City of San Pablo, 20 January 2020.[12]

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9 Id. at 87.
10 Id. at 81-83.
11 Id. at 84-87.
12 Id. at 94.

ORP-Region IV reasoned that even if GITT falsely misrepresented itself to have the requisite TESDA authority to offer the Cruise Ship Management Course, clear and convincing evidence was needed in establishing that private respondents were fully aware of the same. It noted GITT's application for the requisite TESDA authority during the years of complainants' enrollment, and its entrusting of the said application to its school registrar/assessment center manager, but the latter failed to secure the same and neglected to inform GITT of the fact. GITT and its Board of Directors, according to ORP-Region IV, were thus in good faith in its belief that it had the requisite TESDA authority to offer the course in question. Moreover, ORP-Region IV noted the absence of proof of payment of complainants' tuition fees, since no receipts were presented and that complainants merely relied on their assessment forms. Finally, ORP-Region IV made note of the undisputed fact that complainants received their education from GITT in the form of the bundled course package, that allowed them to find jobs here in the Philippines and abroad.[13]

It appears that petitioners filed their motion for reconsideration relative to the said Resolution of ORP-Region IV, but the same was denied in a Resolution dated March 12, 2020. No copy of the said Resolution on Petitioners' motion for reconsideration is attached to the records.

Ruling of the CA

Aggrieved, petitioners elevated the case to the CA *via* their Joint Petitions for *Certiorari*, which prayed for the reversal of the ORP-Region IV's dismissal of the charges against private respondents on grounds of grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioners argued below that ORP-Region IV basically ignored the evidence on record and exonerated Private Respondents completely from their acts of offering courses without the requisite TESDA authority or accreditation.

In its Resolution dated November 20, 2020, the CA 2nd Division dismissed the Joint Petitions, *viz.*:

> **WHEREFORE**, premises considered, the Joint Petitions for *Certiorari* are hereby **DISMISSED**.
>
> **SO ORDERED**.[14] (Emphases in the original)

The CA found multiple procedural deficiencies that warranted the outright dismissal of the case: 1) Petitioners' failure to pay the requisite docket

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13 Id. at 90-92.
14 Id. at 54-55.

fee at the time of filing of the Joint Petitions; 2) Petitioners' failure to attach and submit the requisite sworn verification and certification against forum-shopping; 3) Petitioners' failure to indicate their actual, current, and complete addresses; 4) Petitioners' failure to furnish ORP-Region IV with copies of their Joint Petitions; and 5) Petitioners' (and/or counsel's) failure to sign the Joint Petitions in accordance with the Rules of Court.

Petitioners duly filed their Joint Motion for Reconsideration,[15] which prayed for the CA's liberality, considering the difficulties presented by the ongoing coronavirus disease 2019 (COVID-19) pandemic, and petitioners' substantial compliance with the Rules of Court.

In its Resolution dated June 14, 2021, the CA affirmed its dismissal of the case in the following manner:

> **WHEREFORE**, premises considered, the Joint Motion for Reconsideration is **DENIED**.
>
> **SO ORDERED**.[16] (Emphases in the original)

While agreeing in principle with petitioners as to their plea for a liberal application of procedural rules in the interest of substantive justice, the CA still found one major flaw in the Joint Petitions that would still have merited dismissal despite an application of procedural leniency: petitioners' apparent failure to appeal the Resolutions of ORP-Region IV to the Secretary of Justice in accordance with Department of Justice (DOJ) Department Circular No. 70 (dated July 3, 2000), otherwise known as the 2000 NPS Rule on Appeal. The CA simply cites Section 1 thereof, which states that "[t]his Rule shall apply to appeals from resolutions of the Chief State Prosecutor, Regional State Prosecutors, and Provincial/City Prosecutors in cases subject of preliminary investigation."

Having purportedly failed to exhaust a plain and adequate remedy available in the ordinary course of law, the CA ruled that the extraordinary remedy of *certiorari* was thus an improper recourse for Petitioners to undertake, since a petition for *certiorari* cannot be used as a substitute for a lost appeal.

Hence, the instant Petition.

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15 Id. at 56-66.
16 Id. at 75.

Arguments of the Parties

Petitioners basically allege that the CA erred in dismissing their Joint Petitions for *Certiorari* on the ground of failure to exhaust the DOJ-NPS appellate process, and in failing to consider the main issue of ORP-Region IV's alleged grave abuse of discretion in ordering the withdrawal of the informations in court against private respondents. Petitioners pray for the reversal and setting aside of the Resolutions of the CA, and for the remand of the case to the CA for further proceedings on the Joint Petitions' merits.

Crucially, petitioners point out that the 2000 NPS Rule on Appeal had been amended by DOJ Department Circular No. 70-A[17] (dated July 10, 2000), which delegated to the Regional State Prosecutors the authority of the Secretary of Justice to resolve with finality appeals from preliminary investigations outside Metro Manila relating to cases cognizable before first-level trial courts. Petitioners argue that the same has been affirmed and recognized by the Court in *Cariaga v. Sapigao*.[18] Thus, the CA should have taken cognizance of their Joint Petitions and considered their merits, which would have prompted the CA's finding of grave abuse of discretion on the part of ORP-Region IV in reversing OCP-San Pablo City's indictments.

In their Comment/Opposition,[19] private respondents allege that petitioners still have not yet paid the corresponding docket fees for their Joint Petitions for *Certiorari*, and reiterate the reasoning of the CA in dismissing the Joint Petitions on the ground of failure to exhaust available remedies in the DOJ-NPS appellate process. Private respondents also cite the scope and coverage of DOJ Department Circular No. 70 as basis, but curiously left out any mention of DOJ Department Circular No. 70-A.

Issues

The two issues for the Court's determination and resolution are: 1) whether or not the CA erred in dismissing the Joint Petitions for *Certiorari* outright; and 2) whether or not the CA erred in dismissing the Joint Petitions for *Certiorari* on the additional ground of failure to exhaust the DOJ-NPS appellate process.

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17 DELEGATION OF AUTHORITY TO REGIONAL STATE PROSECUTORS TO RESOLVE APPEALS IN CERTAIN CASES.

18 811 Phil. 819 (2017).

19 *Rollo*, pp. 102-106.

Ruling of the Court

The instant Petition must be denied.

At the outset, this Court notes and affirms that the CA was indeed correct in dismissing the Joint Petitions for *Certiorari* outright to begin with. To recapitulate, the earlier dismissal was grounded on: 1) petitioners' failure to pay the requisite docket fee at the time of filing of the Joint Petitions; 2) petitioners' failure to attach and submit the requisite sworn verification and certification against forum-shopping; 3) petitioners' failure to indicate their actual, current, and complete addresses; 4) petitioners' failure to furnish ORP-Region IV with copies of their Joint Petitions; and 5) petitioners' (and/or counsel's) failure to sign the Joint Petitions in accordance with the Rules of Court.

In their Joint Motion for Reconsideration before the CA, petitioners offered the following assertions in support of their plea for the CA's liberality and consideration:

1. Petitioners assert that their exact and complete addresses were part of their verification and certification against non-forum shopping;

2. Petitioners further note that the address of their counsel should suffice for substantial compliance with the Rules of Court, since notice upon counsel is constructive notice upon a party;

3. Petitioners did not intentionally or negligently avoid the payment of the CA's docket fees due to the "fortuitous event" that is the COVID-19 pandemic and the CA's physical closure during the time their counsel was supposed to pay the said fees, which is why they filed their "Urgent Motion to Pay Docket Fee Later"[20] due to their uncertainty as to what the total sum of the filing fees would be;

4. Petitioners' counsel personally checked with CA staff after the said closure, and said counsel was apparently told to await further instructions since the CA had not yet received the Joint Petitions yet;

5. Petitioners' counsel is also a person of advanced years, *i.e.*, 70 years old at the time of the filing of the Joint Petitions, which presented difficulty in his mobility outside his place of residence;

6. Petitioners and their counsel assert that the copies of the Joint Petitions they filed had their last two pages, *i.e.*, the signature page

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[20] Id. at 96-97.

and the verification and certification against non-forum shopping, which they insist that they duly signed in accordance with the Rules of Court;

7. Petitioners insist that their alleged non-compliance with the requirement of a certification against non-forum shopping cannot be a ground for a summary dismissal of the Joint Petitions by the CA without a hearing; and

8. Petitioners finally note that ORP-Region IV, being merely a nominal party, need not be furnished a copy of the Joint Petitions.

The CA, in its Resolution[21] dated June 14, 2021, uses the following phrasing *vis-à-vis* its theoretical accommodation of petitioners' plea for procedural leniency: "We agree with petitioners that a liberal application of procedural rules may be allowed in some cases to give way to substantial justice. Nevertheless, even if We overlook the procedural defects noted in the Petitions, the same must still be dismissed for being substantially flawed."[22] The CA then goes on to discuss petitioners alleged non-exhaustion of available remedies in the DOJ-NPS appellate process.

The Court must point out that the CA was already correct in its first Resolution. To reiterate, the multiple procedural defects it pointed out were enough for the Joint Petitions' outright dismissal. Firstly, Section 3, Rule 46 of the Rules of Court requires the mandatory disclosure of the actual addresses of all petitioners in an original case filed before the CA. A perusal of the addresses stated in the Joint Petitions, specifically in their verification and certification against non-forum shopping, however, reveals that petitioners did ***not*** put any addresses at all. What they merely indicated are their identification numbers, contrary to what their Joint Motion for Reconsideration before the CA states. With no explanation for this seeming inadvertence, the Court is not inclined to excuse this negligence on their part.

Secondly, petitioners cannot utilize their counsel's address as their own address for purposes of filing the Joint Petitions. The Court has already ruled in *Atianzar v. Heirs of Bangoy*[23] that it is mandatory to have the actual addresses of all petitioners in a petition for *certiorari* before the CA to be contained therein. Again, the Court finds petitioners' non-compliance here inexcusable.

Thirdly, the Court does not deem the COVID-19 pandemic as a fortuitous event *vis-à-vis* petitioners' failure to file the CA's docket fees. The

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21 Id. at 71-75.
22 Id. at 73.
23 G.R. No. 247815, March 2, 2020.

Court takes judicial notice of its own Administrative Circular No. 41-2020 dated May 29, 2020, which mandated the full operation of all courts in the National Capital Judicial Region beginning June 1, 2020. Item 10 of the same states that "[t]here shall no longer be extensions in the filing of petitions, appeals, complaints, motions, pleadings and other court submissions that will fall due beginning 1 June 2020."

Petitioners' counsel did admit that that he personally went to the CA premises after the stated closure for disinfection purposes (*i.e.*, from July 20 to 22, 2020), and inquired if he could already pay the docket fees. He, however, merely took the supposed advice of the CA staff and simply awaited further instructions since the Joint Petitions had not yet been received by the appellate court.[24]

The Court cannot excuse this inadvertence of petitioners' counsel. While petitioner's counsel was already in the CA premises, he should have brought with him the requisite copies of the Joint Petitions for their immediate filing in person, which would have allowed the immediate assessment of the full docket fees and the latter's payment on the spot. And even earlier, he could have availed of the postal money order services of the Philippine Postal Corporation and paid any deficiency later on once determined by the CA. Petitioners did not even allege that postal operations in the Province of Laguna had suspended operations during the time, and the Court cannot make any assumptions with regard to such fact.

Indeed, in their present Motion for Extension to File Petition,[25] petitioners enclosed a manager's check payable to the Court to cover the instant Petition's docket fees, as well as a postal money order check that they replaced with another's manager's check (as stated in their Compliance[26] addressed to the Court's Judicial Records Office). The Court thus fails to see why petitioners did not attempt to do the same whilst initiating their Joint Petitions below.

Thus, the Court views petitioners' "Urgent Motion to Pay Docket Fee Later"[27] as insufficient and unhelpful to their case. The record is also bereft of any indication that petitioners had already paid the CA's docket fees even up to the present, as pointed out by private respondents in their Comment. To the Court, this failure to at least pay a portion of the CA's docket fees creates a jurisdictional issue that is fatal to the instant Petition. Verily, the Court has held that "in both original and appellate cases, the court acquires jurisdiction over

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24 *Rollo*, p. 61.
25 Id. at 3-4.
26 Id. at 111.
27 Id. at 96-97.

the case only upon the payment of the prescribed docket fees."[28] Again, with no palpable excuse seen here, the Court will not excuse petitioners' negligence *vis-à-vis* their attempted initiation of *certiorari* proceedings below.

Fourthly, the age and mobility issues of petitioners' counsel will not excuse him from compliance with procedural rules that are jurisdictional in nature. Granting that petitioners' counsel could not easily go about his professional duties due to the added risk of contracting COVID-19 beset by his advanced years, he surely should have sought help in his work from hired staff or clerks—especially in the carrying out of court transactions such as the payment of docket fees. But his admission that he was able to reach the CA premises to inquire if he could pay the said docket fees belies his supposed excuse. He could—and should—have accomplished the payment already by himself, but he did not. Liberality will not be applied in instances where a party had every opportunity to comply with procedural requirements—especially if they are jurisdictional. As the Court stated in *Colarina v. Court of Appeals*,[29]

> While the payment of docket fees, like other procedural rules, may have been liberally construed in certain cases if only to secure a just and speedy disposition of every action and proceeding, it should not be ignored or belittled lest it scathes and prejudices the other party's substantive rights. The payment of the docket fee in the proper amount should be followed subject only to certain exceptions which should be strictly construed.[30]

Fifthly, the Court is inclined to believe the CA's note that its record of the case did not have the Joint Petitions' signature page and petitioners' verification and certification against non-forum shopping. Petitioners' attempt to persuade the Court to believe otherwise falls on deaf ears, since their mere assertion that the CA staff their counsel dealt with showed him the CA's original copy of the Joint Petitions as having a signature page and petitioners' verification and certification against non-forum shopping appears to be without any accompanying proof. With no record of petitioners' verification and certification, and without their counsel's signature, what was actually filed before the CA was a mere scrap of paper. Petitioners cannot now come before the Court and assert that the copy of the Joint Petitions they attached to the instant Petition—which has a signature page and their verification and certification—is what the CA actually has in its records and possession. Without proof as to their assertion, and without any valid explanation for their missing pages, the Court again cannot excuse their negligence.

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28 *Bases Conversion and Development Authority v. Commissioner of Internal Revenue*, 833 Phil. 734, 739 (2018).

29 363 Phil. 271 (1999).

30 Id. at 278.

Sixthly, the CA is correct in invoking *Robina Farms Cebu v. Villa*[31] in stating that the abject failure to file the mandatory certification against non-forum shopping along with an initiatory pleading cannot be cured by a later submission, and is in fact fatal to an original petition. Despite the Court's many previous rulings in the past that allowed for the belated filing of certificates of non-forum shopping,[32] the Court must emphasize that the CA did not see any verification or certification at all in the record. Petitioners did not even submit the same when it had an opportunity to do so, which was when they filed their Joint Motion for Reconsideration. Further, Petitioners forget that the pertinent procedure for the CA's dismissal of cases is the same Rule 46, Section 3 of the Rules of Court, which prescribes that original petitions filed before the CA must be accompanied by a certification against non-forum shopping, and failure to comply with the same shall be sufficient to merit the case's dismissal ***without need of any hearing upon motion***.

Lastly, while it is true that a public respondent need not appear or file any pleading *vis-à-vis* a petition for *certiorari*, a public respondent is still required to be ***impleaded***. This means that a public respondent, while not participants in *certiorari* proceedings, is still required to be made a party thereto. And the only way for this to happen is to furnish said public respondents with a copy of the *certiorari* petition. While the Court has recently held in *Heirs of Guiambangan v. Municipality of Kalamansig, Sultan Kudarat*[33] that the failure to implead a public respondent is not a ground for the dismissal of the filed action, the CA's earlier dismissal of the case based on the previous grounds is found by the Court to be sufficient for present purposes.

Thus, to reiterate, the Court holds that the CA was correct in its dismissal of the Joint Petitions due to the multiple procedural deficiencies discussed in detail above. While the CA may have indicated that it could have sided with petitioners' plea for procedural leniency, it was correct in not actualizing the same, since it merely posited the brushing aside of the said procedural deficiencies as a way to emphasize another ground for the cases' dismissal.

Going now to the issue of petitioners' alleged non-exhaustion of administrative remedies, however, the Court finds that the CA committed grave error when it ruled that petitioners still had to elevate the case to the Secretary of Justice before resorting to judicial remedies.

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31 784 Phil. 636, 647 (2016).

32 *China Banking Corp. v. Mondragon International Philippines, Inc.*, 511 Phil. 760 (2005); *Ateneo de Naga University v. Manalo*, 497 Phil. 635 (2005); *Vicar International Construction, Inc. v. FEB Leading and Finance Corp.*, 496 Phil. 467 (2005); *Wack Wack Golf & Country Club v. National Labor Relations Commission*, 496 Phil. 180 (2005); *General Milling Corp. v. National Labor Relations Commission*, 442 Phil. 425 (2002); *Havtor Management Philippines, Inc. v. National Labor Relations Commission*, 423 Phil. 509 (2001); *Uy v. Land Bank of the Philippines*, 391 Phil. 303, 313 (2000); *Roadway Express, Inc. v. Court of Appeals*, 332 Phil. 733 (1996).

33 791 Phil. 518 (2016).

As correctly pointed out by petitioners, the NPS Rule on appeal was amended by DOJ Department Circular No. 70-A. It must also be noted that in its Resolution dated June 14, 2021 that resolved petitioners' joint motion for reconsideration, the CA actually noted in its Footnote no. 12 that the NPS Rule on Appeal was amended by the same circular, which is quoted below in full for reference:

> DEPARTMENT CIRCULAR NO. 70-A
>
> SUBJECT: DELEGATION OF AUTHORITY TO REGIONAL STATE PROSECUTORS TO RESOLVE APPEALS IN CERTAIN CASES
>
> In order to expedite the disposition of appealed cases governed by Department Circular No. 70 dated July 3, 2000 ("2000 NPS RULE ON APPEAL"), all petitions for review of resolutions of Provincial/City Prosecutors in cases cognizable by the Metropolitan Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, except in the National Capital Region, shall be filed with the Regional State prosecutor concerned, who shall resolve such petitions ***with finality*** in accordance with the pertinent rules prescribed in the said Department Circular.[34]
>
> The foregoing delegation of authority notwithstanding, the Secretary of Justice may, pursuant to his power of supervision and control over the entire National Prosecution Service and in the interest of justice, review the resolutions of the Regional State Prosecutors in appealed cases.
>
> This circular shall be published once in two (2) newspapers of general circulation, after which it shall take effect on September 1, 2000.
>
> (Signed)
> ARTEMIO G. TUQUERO
> Secretary of Justice

This critical DOJ issuance has been reiterated over the years in subsequent DOJ Department Circulars clarifying the same. DOJ Department Circular No. 18 (dated June 18, 2014) notes in its first provision the following:

> 1. Consistent with Department Circular No. 70-A, all appeals from resolutions of Provincial or City Prosecutors, except those from the National Capital Region, in cases cognizable by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, shall be by way of a petition for review to the concerned province or city[35] [sic]. **The Regional Prosecutor shall resolve the petition for review with finality**, in accordance with the rules prescribed in pertinent rules and circulars of this Department. *Provided, however*, that the Secretary of Justice may, pursuant to the power of control and supervision over the entire National Prosecution

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34 Emphasis, underscoring, and italics supplied.

35 This should be "Office of the Regional Prosecutor."

> Service, review, modify, or reverse the resolutions of the Regional Prosecutor in these appealed cases. (Emphasis and underscoring supplied)

Despite the fact that DOJ Department Circular No. 3[36] (dated January 4, 2017) ostensibly reorganized the DOJ-NPS appellate process to the effect that petitions for review (*vis-à-vis* resolutions in preliminary investigations of cases cognizable by first-level trial courts) were to be assigned to the Assistant Secretaries of the DOJ at the time, DOJ Department Circular No. 3-A (dated January 9, 2017) was almost immediately promulgated thereafter with the following text:

> DEPARTMENT CIRCULAR NO. 003-A
>
> SUBJECT: CLARIFICATION ON D.C. NO. 003, s. 2017
>
> Notwithstanding the provisions of D.C. No. 003, s. 2017, ***D.C. No. 70-A, s. 2000 on the Delegation of Authority to Regional State Prosecutors to Resolve Appeals in Certain Cases is hereby affirmed***.[37]
>
> Accordingly, Regional Prosecutors remain authorized to resolve all petitions for review of resolutions of Provincial/City Prosecutors in cases cognizable by the Metropolitan Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts, except in the National Capital Region, in accordance with the aforementioned Circular.
>
> Please be guided accordingly.
>
> (Signed)
> VITALIANO N. AGUIRRE II
> Secretary

The Court notes that the abovementioned DOJ Department Circular was the pertinent DOJ issuance in force at the time of the filing of the Complaint, and at the time of the perfection of private respondents' Petition for Review with ORP-Region IV.

Another helpful issuance is DOJ Department Circular No. 5[38] (dated January 18, 2018), of which Section 7.1 mandates the immediate referral/ indorsement to the DOJ ORPs of petitions for review that were mistakenly elevated to the Office of the Secretary of Justice, *viz.*:

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36 GUIDELINES ON THE DISPOSITION OF PETITIONS FOR REVIEW/ AUTOMATIC REVIEW/ APPEALED CASES FILED FROM JULY 1, 2016 ONWARDS AND DELEGATION OF AUTHORITY TO SIGN OR APPROVE DECISIONS AND RESOLUTIONS THEREOF.

37 Emphasis, italics, and underscoring supplied.

38 REVISED DELEGATION OF AUTHORITY AND DISPOSITION OF PETITIONS FOR REVIEW AND CASES UNDER AUTOMATIC REVIEW.

> 7.1. The Undersecretary concerned is authorized to refer to the Regional Prosecutor concerned Petitions for Review filed in the Department ***which [are] under the Regional Office's jurisdiction, pursuant to D.C. No. 70-A, s. 2000***. As far as practicable, all indorsements shall be transmitted within seven (7) calendar days from the day the same was filed. (Emphasis, underscoring, and italics supplied)

The same spirit is found in DOJ Department Circular No. 34[39] (dated August 31, 2018), of which Section 9.1 provides the following:

> 9.1. The Assistant Secretaries mentioned above are authorized: (i) to resolve for outright dismissal Petitions for Review on the grounds provided by DC No. 70 (s. 2000) and DC No. 018 (s. 2017); and (ii) ***to refer to the Regional Prosecutor concerned Petitions for Review filed in the Department which is under the Regional Office's jurisdiction, pursuant to D.C. No. 70-A, s. 2000***, all in accordance with [these] Guidelines. (Emphasis, underscoring, and italics supplied)

And as an aside, DOJ Department Circular No. 70-A finds its most recent reiteration in DOJ Department Circular No. 27[40] (dated July 13, 2022), and Section 2 thereof states the following:

> Section 2. Resolutions of the Provincial/City prosecutors in cases cognizable by the Metropolitan Trial Court, Municipal Circuit Trial Court, Municipal Trial Court, and Municipal Trial Court in Cities shall be reviewed on appeal by the Prosecutor General in his/her capacity as the Regional State Prosecutor in the National Capital Region, and the Regional State Prosecutors with respect to their respective regions. Cases decided on appeal by the Prosecutor General and by the Regional State Prosecutors under this provision ***shall be considered final and no longer be [sic] appealable to the Office of the Secretary of Justice***. (Emphasis, underscoring, and italics supplied)

There have been implied repeals of DOJ Department Circular No. 70-A, such as DOJ Department Circular Nos. 9 (dated February 5, 2003), 54 (dated October 14, 2004), and 41 (dated January 26, 2005), which delegated to a specific DOJ Undersecretary (or Assistant Chief State Prosecutor, in the case of DOJ Circular No. 41) the resolution of petitions for review from resolutions of the Regional State Prosecutors *vis-à-vis* cases where the imposable penalty did not exceed six years. These instances of course cover criminal offenses cognizable before first-level trial courts outside Metro Manila. DOJ Department Circular No. 66 (dated August 31, 2010) is a little more explicit: it delegated to a specific DOJ Undersecretary the power to resolve petitions for review *vis-à-vis* resolutions of Regional State Prosecutors on an island-group

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[39] GUIDELINES ON THE DISPOSITION OF PETITIONS FOR REVIEW AND CASES UNDER AUTOMATIC REVIEW.
[40] 2022 NPS RULE ON APPEAL.

basis (*i.e.*, petitions for review coming from either Luzon, Visayas, or Mindanao) regardless of the imposable penalty. However, these have all been done away with upon the promulgation of the aforementioned DOJ Department Circular No. 18, which brought back the explicit reference to DOJ Department Circular No. 70-A as the definitive rule on determining the next steps in the DOJ-NPS appellate process when it comes to final resolutions of an ORP.

Thus, one would initially think that the key to the present case is the determination of whether the charges investigated and decided upon by OCP-San Pablo City and ORP-Region IV are appealable still to the Secretary of Justice. But a perusal of DOJ Department Circular No. 70-A, which is a direct and subsequent amendment to the NPS Rule on Appeal that was consistently reiterated by the DOJ since June 18, 2014, ***shows that the DOJ has done away with such step in the DOJ-NPS appellate process since it promulgated DOJ Department Circular No. 18***.

Thus, any request to the Secretary of Justice to review a resolution of an ORP, specifically one that already reviewed and passed upon the indictment or dismissal of charges cognizable before the first-level trial courts, is no longer part of the DOJ-NPS appellate process—even if such request were to be denominated as an appeal or petition for review. Said action is purely discretionary on the part of the Secretary of Justice, as DOJ Department Circular No. 70-A and its subsequent reiterations over the years have made it clear that a resolution on appeal of the ORP in a region outside Metro Manila (*vis-à-vis* preliminary investigations in cases cognizable before the first-level trial courts) is ***promulgated with finality***. This means that, as long as a motion for reconsideration on such final resolution was filed and ruled upon by the ORP, the case may then be brought to the CA on a special civil action for *certiorari* pursuant to Rule 65 of the Rules of Court.

As correctly pointed out by petitioners, the Court had previously stated in *Cariaga v. Sapigao*[41] (which the CA also cited in the same footnote) that the DOJ-NPS appellate process depends on two factors: "where the complaint was filed, *i.e.*, whether in the [National Capital Region] or in the provinces; and which court has original jurisdiction over the case, *i.e.*, whether or not it is cognizable by the MTCs/MeTCs/MCTCs."[42] The Court also promulgated the following simple rules in determining the next steps in the DOJ-NPS appellate process:

> (a) If the complaint is filed outside the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by

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41 Supra note 18.

42 Supra note 18, at 829.

way of [a] petition for review before the ORSP, which ruling shall be with finality;

(b) If the complaint is filed outside the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of [a] petition for review before [the] SOJ, which ruling shall be with finality;

(c) If the complaint is filed within the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OCP may be appealable by way of [a] petition for review before the Prosecutor General, whose ruling shall be with finality;

(d) If the complaint is filed within the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OCP may be appealable by way of [a] petition for review before the SOJ, whose ruling shall be with finality;

(e) Provided, that in instances covered by (a) and (c), the SOJ may, pursuant to his power of control and supervision over the entire National Prosecution Service, review, modify, or reverse the ruling of the ORSP or the Prosecutor General, as the case may be.[43]

However, in the same footnote, the CA noted that "[w]hile the subject of the Petitions are cases filed outside the NCR, the same pertain to cases of *estafa* and therefore not cognizable by MeTCs, MTCs, and MCTCs."[44]

This statement is no longer true with the enactment on August 29, 2017 of Republic Act (R.A.) No. 10951,[45] of which Section 85 amended the entire Article 315 of Act No. 3815, otherwise known as the Revised Penal Code (RPC), as follows:

Section 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

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

1st. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000), and if such amount exceeds the

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43 Supra note 18, at 829-830.

44 *Rollo*, p. 74.

45 AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS THE "REVISED PENAL CODE," AS AMENDED; signed on August 29, 2017.

> latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Two million pesos (P2,000,000); 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, and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal* as the case may be.
>
> 2nd. The penalty of *prisión correccional* in its minimum and medium periods, if the amount of the fraud is over One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).
>
> 3rd. The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period, if such amount is over Forty Thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).
> 4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (P40,000): *Provided*, That in the four cases mentioned, the fraud be committed by any of the following means:
>
> x x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) **By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits**.
>
> x x x x (Emphasis supplied)

Additionally, it is important to juxtapose the abovementioned with Section 32 of *Batas Pambansa Blg.* 129, otherwise known as the Judiciary Reorganization Act of 1980 (as amended by R.A. No. 7691[46]), which states that first-level trial courts exercise "[e]xclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value, or amount thereof x x x."

This means that first-level trial courts have exclusive original jurisdiction over offenses punishable up to *prisión correccional* in its maximum period,

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[46] AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS THE "JUDICIARY REORGANIZATION ACT OF 1980"; approved on March 25, 1994.

which roughly corresponds to the threshold amount of fraud of ₱2,400,000.00 as stated in the new Article 315 of the RPC.

A perusal of the Resolution of OCP-San Pablo City would yield the fact that petitioners alleged the payment of GITT tuition fees ranging from ₱18,000.00 to ₱27,000.00 per semester.[47] Assuming *arguendo* that each petitioner paid the full amount of ₱27,000.00 per semester, and given the fact that petitioners completed four semesters or two years in fulfillment of their academic requirements, the amount corresponding to petitioners' tuition fees that were allegedly defrauded from them would be ₱324,000.00, or ₱108,000.00 each, obviously falling under the jurisdiction of the first-level trial courts. ***Considering that there were seven (7) original Complainants before OCP-San Pablo City, the total amount allegedly defrauded from them would be ₱756,000.00—still well within the jurisdiction of the first-level trial courts***.

In other words, the CA was in error when it ordered the dismissal of the Joint Petitions for *Certiorari* on the additional ground of failure to exhaust administrative remedies. It was wrong when it dismissively ruled that cases of *estafa* were beyond the jurisdiction of first-level trial courts, which means that it should have proceeded to consider the Joint Petitions on their merits after brushing aside their procedural defects. Petitioners no longer had any plain, speedy, or adequate remedy in the ordinary course of the DOJ-NPS appellate process, and thus they were correct in elevating the case to the CA after ORP-Region IV denied their motion for reconsideration.

But even if the CA erred in this regard, its earlier dismissal of the Joint Petitions on grounds of the multiple procedural deficiencies it found therein bars the Court from remanding the case for further proceedings. The Court cannot ignore the multiple procedural deficiencies, particularly if relating to the CA's acquisition of jurisdiction over the Joint Petitions, that have rendered the case beyond the Court's power of review due to petitioners' negligence.

For present purposes, the Court merely sees the need to correct the CA's subsequent assertions in its Resolution dated June 14, 2021 regarding petitioners' exhaustion of administrative remedies available in the DOJ-NPS appellate process, and to sustain the dismissal of the Joint Petitions based on the CA's reasonings in its first Resolution dated November 20, 2020.

WHEREFORE, the instant Petition is **DENIED**. The Resolution dated November 20, 2020 of the Court of Appeals 2nd Division in CA-G.R. SP No. 165836 is hereby **AFFIRMED**, whereas the same Division's Resolution dated June 14, 2021 is hereby **REVERSED and SET ASIDE**.

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47 *Rollo*, pp. 78 and 92.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

(On official leave)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

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

HENRI JEAN PAUL B. INTING
Associate Justice
Acting Chairperson
(Per Special Order No. 2918-Revised dated October 12, 2022)

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice