

Republic of the Philippines  
Supreme Court  
Manila

EN BANC

**PHILIPPINE INVESTMENT  
TWO (SPV-AMC), INC.,**  
Petitioner,

**G.R. Nos. 238729-30**

Present:

- versus -

**KATHRINA L. SEBASTIAN,**  
Respondent.

**GESMUNDO, C.J.,  
LEONEN,  
CAGUIOA,  
HERNANDO,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
GAERLAN,  
ROSARIO,  
LOPEZ,  
DIMAAMPAO,  
MARQUEZ  
KHO, JR.,  
SINGH,\* and  
VILLANUEVA, JJ.**

Promulgated:

April 8, 2026

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**DECISION**

**KHO, JR., J.:**

\* On leave, but left a concurring vote.

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> dated September 7, 2017 and the Resolution<sup>3</sup> dated April 13, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 37898 and CA-G.R. SP No. 137469 which, *inter alia*, reversed and set aside the Order<sup>4</sup> dated August 27, 2015 of Branch 147, Regional Trial Court, Makati City (RTC Br. 147) and accordingly, reinstated the Order<sup>5</sup> January 23, 2015 and Joint Order<sup>6</sup> dated April 8, 2015 of Branch 66, Metropolitan Trial Court, Makati City (MeTC Br. 66) granting the public prosecutor's Motion to Withdraw Information<sup>7</sup> and dismissing the criminal case against respondent Kathrina L. Sebastian (Sebastian).

### The Facts

The instant case stemmed from a Complaint-Affidavit<sup>8</sup> before the Office of the City Prosecutor of Makati (OCP-Makati) filed by a certain Carlos Gaudencio M. Mañalac on behalf of petitioner Philippine Investment Two (SPV-AMC), Inc. (PI Two) against Sebastian, charging her with two counts of perjury, as defined and penalized under Article 183 of the Revised Penal Code (RPC). By virtue of Department Order No. 347 dated May 20, 2013, the preliminary investigation proceedings were transferred from the OCP-Makati to the main office of the Department of Justice (DOJ).<sup>9</sup>

Records show that at the time material to this case, PI Two was a global affiliate of Lehman Brothers Holdings, Inc. (Lehman Brothers), a corporation organized and existing under the laws of the state of New York, United States of America. Sebastian was the Associate Director for Origination and Client Coverage of Standard Chartered Bank (SCB).<sup>10</sup>

On August 17, 2007, Lehman Brothers and SCB's New York branch executed Group Facilities,<sup>11</sup> whereby: (a) SCB undertook to extend financial facilities in the form of loans to Lehman Brothers and its global affiliates, including PI Two; and (b) as a condition for its execution, Lehman Brothers executed a Guarantee<sup>12</sup> to secure its own obligations as well as those of its global affiliates to SCB. Later on, Lehman Brothers secured a Pledge

<sup>1</sup> *Rollo*, pp. 13-205.

<sup>2</sup> *Id.* at 212-232. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Manuel M. Barrios and Renato C. Francisco of the Ninth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 234-239. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Manuel M. Barrios and Renato C. Francisco of the Former Ninth Division, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 241-256. Penned by Presiding Judge Ronald B. Moreno of Branch 147, Regional Trial Court, Makati City.

<sup>5</sup> *Id.* at 258-264. Penned by Acting Presiding Judge Marcos C. Diasin, Jr. of Branch 66, Metropolitan Trial Court, Makati City.

<sup>6</sup> *Id.* at 266-272.

<sup>7</sup> *Id.* at 1423-1424.

<sup>8</sup> *Id.* at 692-720.

<sup>9</sup> *Id.* at 966.

<sup>10</sup> *Id.* at 213-214.

<sup>11</sup> *Id.* at 571-604.

<sup>12</sup> *Id.* at 662-665.

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Agreement<sup>13</sup> with collaterals dated September 12, 2008 in favor of SCB to further secure obligations arising from the Group Facilities. The collaterals included HD Supply Notes with a market value of USD 90 million. By virtue of the execution of the Group Facilities, PI Two obtained a loan from SCB in the amount of PHP 819 million.<sup>14</sup>

However, on September 15, 2008, Lehman Brothers filed a Petition for Bankruptcy before the United States Bankruptcy Court for the State of New York (US Bankruptcy Court), resulting in the US Bankruptcy Court's issuance of a Stay Order<sup>15</sup> dated September 16, 2008 which, *inter alia*, prevented Lehman Brothers's creditors from enforcing their claims against it. Meanwhile, on September 18, 2008, Metropolitan Bank and Trust Company, a creditor of PI Two, filed a Petition<sup>16</sup> for Corporate Rehabilitation before the Regional Trial Court of Makati (PH Rehabilitation Court) seeking the rehabilitation of PI Two.<sup>17</sup>

On account of the foregoing developments, SCB filed its Claims<sup>18</sup> before the US Bankruptcy Court as well as the PH Rehabilitation Court.<sup>19</sup> According to PI Two, Sebastian, acting on behalf of SCB, perjured herself in two pleadings submitted to the PH Rehabilitation Court.

*First*, PI Two alleged that SCB's Comment<sup>20</sup> on the Petition for Rehabilitation filed before the PH Rehabilitation Court which was verified by Sebastian, contained the following perjurious statement:

17. The loans granted by SCB to Philippine Investment Two amounting to Eight Hundred Nineteen Million [(PHP 819,000,000.00)], were made on the basis of the Second Amendment (Annex 6) and the Guarantee (Annex 7). With the filing by [Lehman Brothers] of a bankruptcy petition, the latter's ability to perform its obligations under the Guarantee has been impaired, the loans granted to Philippine Investment Two have become due and demandable, and there is a great possibility that it will not be able to pay its loans upon maturity.

.....

22. The fact that Philippine Investment Two was not able to furnish adequate guarantees or security in exchange for the inadequate [Lehman Brothers] guaranty, nor to fully comply with the request of SCB for documents upon demand (Annex 12), gives the latter the right to demand payment of the whole amount of the obligation.<sup>21</sup>

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<sup>13</sup> *Id.* at 667-675.

<sup>14</sup> *Id.* at 214.

<sup>15</sup> *Id.* at 676-678. Penned by United States Bankruptcy Judge James M. Peck.

<sup>16</sup> *Id.* at 2483-2508.

<sup>17</sup> *Id.* at 214.

<sup>18</sup> *Id.* at 2592-2600.

<sup>19</sup> *Id.* at 214-215.

<sup>20</sup> *Id.* at 681-691.

<sup>21</sup> *Id.* at 685-686.

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*Second*, PI Two also alleged that after it filed a Motion<sup>22</sup> to Disclose, SCB filed a Comment<sup>23</sup> thereon, which again was verified by Sebastian, containing the following perjurious statement:

2.1. For instance, was SCB able to enforce the Pledge Agreement and was [Lehman Brothers] able to pay the SCB claim? Based on the Rider to Proof of Claim, attached as Annex A to PI Two's Motion, it is clear that SCB was not able to enforce the Pledge Agreement and [Lehman Brothers] was not able to pay SCB's claim, considering that the Bankruptcy Court issued a Stay Order attached hereto as Annex A which prohibited SCB from enforcing any lien against [Lehman Brothers]. Also, how can SCB enforce upon the Collateral under the Pledge Agreement when [Lehman Brothers] failed to deliver the same, as manifested in paragraphs 17 and 18 of the Rider to Proof of Claim...<sup>24</sup>

Insofar as the statements in SCB's Comment on the Petition for Rehabilitation are concerned, PI Two alleged that Sebastian willfully and deliberately asserted a falsehood when she stated therein that SCB has not been furnished adequate guaranty or security for PI Two's loan, and that PI Two's ability to pay its loan to SCB had been impaired by the filing of the US Bankruptcy Case. According to PI Two, such statements, among others, deliberately concealed the Pledge Agreement with collaterals which is more than enough to pay for PI Two's loan with SCB.<sup>25</sup>

For her part, Sebastian maintained that she made the alleged perjurious statement in good faith as she was in the honest belief that PI Two's loan was inadequately secured, considering that the US Bankruptcy Court already issued a Stay Order enjoining Lehman Brothers's creditors from exercising their rights under the Guarantee, and that the Pledge Agreement with collateral was executed precisely to secure such Guarantee. Given this premise, Sebastian posits that since rights and/or claims under the Guarantee could no longer be enforced by virtue of the Stay Order issued by the US Bankruptcy Court, the specific mention of the Pledge Agreement with collaterals was already rendered unnecessary.<sup>26</sup>

Regarding the statement in SCB's Comment to the Motion to Disclose, PI Two insisted that the same is a willful and deliberate assertion of a falsehood, considering, among others, that the collaterals under the Pledge Agreement had already been delivered to SCB's own named account. On the other hand, Sebastian contended that the alleged perjurious statement was not an assertion of fact but a legal argument styled in question form by SCB's

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<sup>22</sup> *Id.* at 2582-2591.

<sup>23</sup> *Id.* at 2692-2704.

<sup>24</sup> *Id.* at 216.

<sup>25</sup> *Id.* at 970-972.

<sup>26</sup> *Id.* at 972-974.

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then-counsel of record. As such, she asserted that she should not be charged with perjury for an argument made by SCB's counsel.<sup>27</sup>

After due proceedings, the DOJ issued a Resolution<sup>28</sup> dated September 16, 2013 finding probable cause to indict Sebastian for perjury insofar as the Comment to the Petition is concerned, but dismissing the Complaint as regard the Comment to the Motion to Disclose.<sup>29</sup>

The DOJ found that Sebastian's statement in the Comment to the Petition, "*The fact that Philippine Investment Two was not able to furnish adequate guarantees or security in exchange for the inadequate [Lehman Brothers] guaranty...*"<sup>30</sup> appears to be a deliberate assertion of falsehood, considering that she knew that Lehman Brothers executed a Guarantee to secure, among others, the payment by PI Two of its PHP 832,336,437.78 outstanding debt to SCB, which was further secured by the Pledge Agreement with collaterals which had a value of USD 90 million; and hence, more than enough to cover such debt. In this regard, the DOJ opined that: (a) Sebastian's defense of good faith only confirms her knowledge of the existence of the Pledge Agreement with collaterals; and (b) by making the statement, she deliberately concealed such existence.<sup>31</sup>

Sebastian moved for Partial Reconsideration<sup>32</sup> but the same was denied in a Resolution<sup>33</sup> dated November 26, 2013. Aggrieved, Sebastian filed a Petition for Review<sup>34</sup> before the Secretary of Justice (SOJ).

Meanwhile, and pursuant to the aforesaid DOJ Resolutions, an Information<sup>35</sup> dated September 16, 2013 was filed before the Metropolitan Trial Court, charging Sebastian of Perjury, the accusatory portion of which reads:

That on or about [October 29, 2008], at Makati City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, feloniously, and knowingly make untruthful statements under oath upon a material matter before a competent person authorized to administer oath which the law so requires, *to wit*: the said accused verified, subscribed, and swore to Standard Chartered Bank's Comment to the Petition for Rehabilitation in which she alleged "*The fact that Philippine Investment Two was not able to furnish adequate guarantees or security in exchange for the inadequate [Lehman*

<sup>27</sup> *Id.* at 980-981.

<sup>28</sup> *Id.* at 966-983. Penned by Prosecution Attorney Caterina Isabel C. Caeg and approved by Senior Deputy State Prosecutor Richard Anthony D. Fadullion.

<sup>29</sup> *Id.* at 982.

<sup>30</sup> *Id.* at 686.

<sup>31</sup> *Id.* at 974-980.

<sup>32</sup> *Id.* at 9129-9169.

<sup>33</sup> *Id.* at 984-992.

<sup>34</sup> *Id.* at 994-1050.

<sup>35</sup> *Id.* at 1065-1066

*Brothers] guaranty[...],”* the said accused knowing fully well that the said material allegation or statement is false, thereby making a willful and deliberate assertion of falsehood.

CONTRARY TO LAW.<sup>36</sup>

The case was initially raffled to Branch 67, Metropolitan Trial Court, Makati City (MeTC Br. 67).<sup>37</sup>

On September 30, 2013, Sebastian filed an Omnibus Motion<sup>38</sup> for judicial determination of probable cause, deferment and/or suspension of proceedings, and production of the records of preliminary investigation, which was, however, denied by the MeTC Br. 67 in its Orders dated November 11, 2013<sup>39</sup> and January 8, 2014<sup>40</sup> (MeTC Br. 67 JDPC Resolutions). Sebastian filed a Petition for *Certiorari*<sup>41</sup> under Rule 65 dated February 13, 2014 before the Regional Trial Court (RTC) but the same was denied in a Decision<sup>42</sup> dated October 10, 2014.<sup>43</sup> Sebastian initially appealed to the CA but eventually withdrew said appeal.<sup>44</sup>

On February 17, 2014, Sebastian also filed a Motion to Quash the Information<sup>45</sup> against her, contending that the facts alleged therein do not constitute perjury and that the Information contains an averment which, if true, would constitute a legal excuse or justification for the statements she made. The MeTC Br. 67 denied the Motion,<sup>46</sup> prompting Sebastian to file a Petition for *Certiorari*<sup>47</sup> under Rule 65 dated March 31, 2014, which was raffled to Branch 138, RTC, Makati City (RTC Br. 138). However, in a Decision<sup>48</sup> dated August 6, 2014, the RTC Br. 138 denied the Petition, prompting Sebastian to elevate the matter to the CA,<sup>49</sup> docketed as **CA-G.R. SP No. 137469**.<sup>50</sup>

<sup>36</sup> *Id.* at 1065.

<sup>37</sup> *Id.* at 217.

<sup>38</sup> *Id.* at 1069–1114.

<sup>39</sup> *Id.* at 1201–1202. Penned by Presiding Judge Jackie Crisologo Saguisag of Branch 67, Metropolitan Trial Court, Makati City.

<sup>40</sup> *Id.* at 1203.

<sup>41</sup> *Id.* at 1204–1266.

<sup>42</sup> *Id.* at 1399–1413. Penned by Presiding Judge Carlito B. Calpatura of Branch 145, Regional Trial Court, Makati City.

<sup>43</sup> *Id.* at 44–45.

<sup>44</sup> *Id.* at 217. See also Motion to Withdraw Appeal; *id.* at 11501–11508

<sup>45</sup> *Id.* at 9173–9185.

<sup>46</sup> *Id.* at 9269–9270. Order dated March 20, 2014.

<sup>47</sup> *Id.* at 1267–1367.

<sup>48</sup> *Id.* at 1374–1394. Penned by Presiding Judge Josefino A. Subia of Branch 138, Regional Trial Court, Makati City.

<sup>49</sup> *Id.* at 1395–1398.

<sup>50</sup> *Id.* at 217–218.

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Subsequently, Sebastian filed a Motion for Voluntary Inhibition and Suspension of Proceedings, which the MeTC Br. 67 granted through an Order<sup>51</sup> dated May 28, 2014. The case was then raffled to the MeTC Br. 66.<sup>52</sup>

Meanwhile, the SOJ, in a Resolution<sup>53</sup> dated August 22, 2014, reversed and set aside the DOJ Resolutions finding probable cause against Sebastian and accordingly, directed the OCP-Makati to withdraw the Information filed against her.<sup>54</sup> The SOJ found that upon a careful examination of the evidence on record, there is insufficient evidence to indict Sebastian for the crime of perjury, noting the following circumstances: (a) the only security provided to directly secure PI Two's loan to SCB was the Guarantee executed by Lehman Brothers; (b) the Pledge Agreement secured Lehman Brothers's obligations to SCB under the Guarantee; (c) even before any amount of PI Two's loan to SCB became due, Lehman Brothers declared bankruptcy and instituted bankruptcy proceedings before the US Bankruptcy Court, which in turn, issued a Stay Order; (d) under the Stay Order, SCB could not enforce its claims against Lehman Brothers under the Guarantee and could not foreclose under any collaterals provided under the Pledge Agreement with collaterals; and (e) the Stay Order was still in effect at the time the Petition for Rehabilitation was filed before the PH Rehabilitation Court. Based on these circumstances, the SOJ concluded that it cannot be said that Sebastian made a willful and deliberate assertion of a falsehood when she stated in the Comment to the Petition that the Lehman Brothers Guarantee was inadequate because she merely relied in good faith on her simple understanding that no benefit could be derived from the Lehman Brothers Guarantee and the Pledge Agreement with collaterals as they are covered by the Stay Order issued by the US Bankruptcy Court. In this regard, the SOJ pointed out that *bona fide* belief in the truth of a statement is an adequate defense in a perjury suit.<sup>55</sup>

Pursuant to the SOJ's directive, the OCP-Makati filed a Motion to Withdraw Information<sup>56</sup> dated November 11, 2014, praying that the prosecution be given leave to withdraw the Information for perjury filed against Sebastian, and with the leave granted, consider said Information as withdrawn.<sup>57</sup> Expectedly, PI Two opposed the Motion to Withdraw.<sup>58</sup>

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<sup>51</sup> *Id.* at 1372-1373.

<sup>52</sup> *Id.* at 218-219.

<sup>53</sup> *Id.* at 1418-1422. Penned by Undersecretary Francisco F. Baraan III on behalf of the SOJ.

<sup>54</sup> *Id.* at 1422.

<sup>55</sup> *Id.* at 1420-1422.

<sup>56</sup> *Id.* at 1423-1424.

<sup>57</sup> *Id.* at 1423.

<sup>58</sup> *Id.* at 1425-1474. Comment [Re: Motion to Withdraw Information dated November 11, 2014].

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### The MeTC Br. 66 Ruling

In an Order<sup>59</sup> January 23, 2015, the MeTC Br. 66 granted the prosecution's Motion to Withdraw, and accordingly, dismissed the criminal case against Sebastian.

At the outset, the MeTC Br. 66 ruled that since the Information had already been filed before the courts, then it has control over the disposition over the same; and as such, despite the Motion to Withdraw filed by the OCP-Makati, the grant or denial of the same is still subject to the court's discretion.<sup>60</sup>

After a thorough and judicious review of the various pleadings raised and an independent assessment of the records of the case, including the submissions made after the issuance of the MeTC Br. 67 JDPC Resolutions, the MeTC Br. 66 found that the evidence on record failed to establish probable cause to sustain the continued prosecution for perjury against Sebastian.<sup>61</sup> The MeTC Br. 66 centered on the following paragraph of SCB's Comment to the Petition for PI Two's rehabilitation:

22. The fact that Philippine Investment Two was not able to furnish adequate guarantees or security in exchange for the inadequate [Lehman Brothers] guaranty, nor to fully comply with the request of SCB for documents upon demand (Annex 12), gives the latter the right to demand payment of the whole amount of the obligation.<sup>62</sup>

According to the MeTC Br. 66, this paragraph, stripped of modifiers, descriptive clauses, and conclusions, contains only two statements of facts, namely: (a) PI Two did not furnish any guarantee or security in exchange for the Lehman Brothers Guarantee; and (b) PI Two did not fully comply with SCB's request for documents. The MeTC Br. 66 pointed out that PI Two never refuted such facts, and that based on the evidence on record, PI Two indeed did not provide SCB with another form or security in exchange for the Lehman Brothers Guarantee. Relatedly, the MeTC Br. 66 found that the other security pertained to by PI Two, i.e., the Pledge Agreement with collaterals, was still provided for by Lehman Brothers and not by PI Two itself. Thus, it cannot be said that the aforesaid statements of facts are willful and deliberate assertions of falsehoods. Further, the MeTC Br. 66 also examined the SOJ Resolution dated August 22, 2014 and agreed with its conclusion that Sebastian had sufficiently and reasonably explained the circumstances surrounding her statement as may be gleaned above, and that she merely relied on several facts (i.e., the issuance of the Stay Order which covered the Lehman

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<sup>59</sup> *Id.* at 258-264.

<sup>60</sup> *Id.* at 260-261.

<sup>61</sup> *Id.* at 261.

<sup>62</sup> *Id.* at 686.

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Brothers Guarantee and Pledge Agreement with collaterals) which led her to *bona fide* believe that the aforesaid factual assertions are true.<sup>63</sup>

Aggrieved, PI Two filed a Motion for Reconsideration<sup>64</sup> and a Very Urgent Motion for Inhibition, both of which was denied by the MeTC Br. 66 in a Joint Order<sup>65</sup> dated April 8, 2015.

Notably, PI Two wrote letters dated April 21, 2015 and May 11, 2015 to the Office of the Solicitor General (OSG), seeking the latter's conformity to file such appeal. However, in its letters dated April 27, 2015<sup>66</sup> and May 25, 2015,<sup>67</sup> *the OSG declined to give such conformity to PI Two*, considering that: (a) in criminal cases, the client of the OSG is the People of the Philippines, i.e., the State; (b) the State, through the public prosecutor, had already opted to withdraw the Information against Sebastian pursuant to the SOJ's directive; and (c) the MeTC Br. 66, after an independent assessment and evaluation of the evidence of record, granted the Motion to Withdraw. The OSG then concluded that as far as the State is concerned, it has no more case against Sebastian.<sup>68</sup>

Notwithstanding the OSG's refusal to give its conformity, PI Two filed an appeal<sup>69</sup> which was raffled to RTC Br. 147.

Further, during the appeal proceedings before the RTC Br. 147, the OCP-Makati filed a Manifestation<sup>70</sup> dated June 8, 2015. *In this submission, the OCP-Makati explicitly informed the RTC Br. 147 that PI Two's appeal does not have the required conformity from either the OCP-Makati or the OSG, and as such, prayed that PI Two's appeal before the RTC Br. 147 be dismissed on the ground of lack of conformity from the State.*<sup>71</sup>

### The RTC Br. 147 Ruling

In an Order<sup>72</sup> dated August 27, 2015, the RTC Br. 147 reversed and set aside the assailed MeTC Br. 66 rulings, and accordingly, ordered the reinstatement of the Information against Sebastian as well as the remand of the criminal case to the court of origin for further proceedings.<sup>73</sup>

<sup>63</sup> *Id.* at 261–263.

<sup>64</sup> *Id.* at 1475–1520.

<sup>65</sup> *Id.* at 266–272.

<sup>66</sup> *Id.* at 2108–2109.

<sup>67</sup> *Id.* at 2107.

<sup>68</sup> *Id.* at 2108.

<sup>69</sup> *Id.* at 241.

<sup>70</sup> *Id.* at 1671–1672.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 241–256. Penned by Presiding Judge Ronald B. Moreno.

<sup>73</sup> *Id.* at 256.

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At the outset, the RTC Br. 147 pointed out that probable cause had already been previously determined in the MeTC Br. 67 JDPC Resolutions and that such finding was already affirmed by the RTC Br. 138 and already attained finality due to Sebastian's withdrawal of appeal before the CA — even before the SOJ issued its Resolution dated August 22, 2014 directing the withdrawal of the Information against Sebastian. Citing *Crespo v. Judge Mogul*,<sup>74</sup> the RTC Br. 147 opined that the public prosecutor should have just proceeded with the trial instead of filing the Motion to Withdraw as directed by the SOJ.<sup>75</sup>

Further, the RTC Br. 147 ruled that based on its assessment of the records, there exists a *prima facie* case against Sebastian for perjury. It added that the varying and opposing versions presented by the parties as to the supposed existence of good faith or bad faith as well as the materiality of the assertions, which are heavily factual in character, necessitate a full-blown trial.<sup>76</sup>

Finally, the RTC Br. 147 opined that PI Two may file the appeal before it even without the conformity of the OCP-Makati or the OSG. The RTC Br. 147 reasoned that Rule 122, Section 1 of the 2000 Revised Rules on Criminal Procedure allows “any party” to appeal from a final judgment or order in a criminal case.<sup>77</sup>

Dissatisfied, Sebastian appealed to the CA, docketed as **CA-G.R. CR No. 37898**.

### The CA Proceedings

In the Resolutions<sup>78</sup> dated October 19, 2016 and October 28, 2016, the CA ordered the consolidation of **CA-G.R. CR No. 37898** (the Motion to Withdraw incident) and **CA-G.R. SP No. 137469** (the Motion to Quash incident).<sup>79</sup>

Notably, the OSG filed a Comment<sup>80</sup> dated April 22, 2016 to Sebastian's petition in **CA-G.R. CR No. 37898**. In said submission, the OSG reiterated that PI Two's appeal before the RTC Br. 147 was made without its or the OCP-Makati's conformity. In this regard, the OSG posited that: (a) the phrase “any party” as provided under Rule 122, Section 1 of the 2000 Revised Rules on Criminal Procedure only pertains to either the prosecution or the accused, and does not refer to the private complainant, such as PI Two in this

<sup>74</sup> 235 Phil. 465 (1987) [Per J. Gancayco, *En Banc*].

<sup>75</sup> *Rollo*, pp. 245–249.

<sup>76</sup> *Id.* at 249–255.

<sup>77</sup> *Id.* at 255.

<sup>78</sup> *See id.* at 212.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 5658–5685.

case, considering that in criminal cases, the private complainant cannot be considered as a party thereto as its role is limited only to that of a witness for the prosecution; (b) at most, the private complainant's interest in a criminal case only relates to the latter's civil aspect; (c) there is no civil aspect in this case, considering that the dismissal of the criminal case against Sebastian was premised on lack of probable cause, it is safe to say that the criminal act from which the supposed civil liability arose does not exist; and (d) in any event, PI Two is appealing the criminal aspect of the case, and hence, it cannot do so without the conformity of the public prosecutor (i.e., OCP-Makati) or the OSG.<sup>81</sup>

Further, the OSG contended that under *Crespo*, despite the issuance of the MeTC Br. 67 JDPC Resolutions, the MeTC Br. 66 was not precluded from making a second assessment of the existence or non-existence of probable cause against Sebastian. The OSG posited that while the judicial determination of probable cause done for the purpose of issuance of a warrant of arrest which is *usually* before the arraignment of the accused, the fact that *Crespo* recognizes that a motion to dismiss and/or withdraw a case may be filed any time, that is even before or after arraignment, goes to show that the trial court is not barred from entertaining such motion and in making a re-assessment of the facts of the case based on the record and the submissions of the parties. Thus, if the trial court, after doing its independent re-evaluation of the evidence on record, exercises its discretion and subsequently grants or denies the motion filed by the public prosecutor, then such act is clearly within the trial court's competence and sanctioned by jurisprudence.<sup>82</sup>

Expectedly, Sebastian filed a Reply<sup>83</sup> dated May 16, 2016 seconding the OSG's contentions in its Comment, while PI Two filed its own Reply<sup>84</sup> dated June 3, 2016 refuting the same.

In a Decision<sup>85</sup> dated September 7, 2017, the CA ruled as follows: (a) in **CA-G.R. CR No. 37898**, the CA reversed and set aside the RTC Br. 147 ruling, and accordingly, reinstated the MeTC Br. 66 ruling granting the Motion to Withdraw and dismissing the criminal case for perjury against Sebastian; and (b) in **CA-G.R. SP No. 137469**, the CA dismissed the Petition as the same had been rendered moot and academic in light of its ruling in **CA-G.R. CR No. 37898**.<sup>86</sup>

Prefatorily, the CA ruled that PI Two, by itself and without the conformity of the public prosecutor or the OSG, had no legal personality to lodge the appeal before the RTC Br. 147 because it is only the State, through

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<sup>81</sup> *Id.* at 5666-5668, 5678.

<sup>82</sup> *Id.* at 5668-5683.

<sup>83</sup> *Id.* at 5687-5695.

<sup>84</sup> *Id.* at 5700-5742.

<sup>85</sup> *Id.* at 212-232.

<sup>86</sup> *Id.* at 231.

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the OSG, that has the legal personality to appeal the dismissal of criminal cases.<sup>87</sup>

As regard the propriety of the grant of the Motion to Withdraw, the CA held that the RTC Br. 147 erred in overturning the MeTC Br. 66 ruling on the matter. This is considering that upon a review of the records, it is clear that the MeTC Br. 66 had satisfied the requirement of making an independent assessment of available evidence and did not merely rely on the directive of the SOJ.<sup>88</sup>

Undaunted, PI Two moved for reconsideration,<sup>89</sup> but the same was denied in a Resolution<sup>90</sup> dated April 13, 2018. Hence, the present Petition.<sup>91</sup>

### **The Issue Before the Court**

The issue for the Court's resolution is whether the CA correctly reinstated the MeTC Br. 66 ruling which granted the OCP-Makati's Motion to Withdraw, and accordingly, dismissed the criminal case for perjury against respondent.

### **The Court's Ruling**

The Petition is without merit.

#### **I.**

At the outset, the Court notes that the instant case involves a *criminal action* which was dismissed by a first-level court and was consequently *appealed to a second-level court without the conformity of the State*, acting through the public prosecutor and/or the OSG. Given this crucial fact, the Court finds it appropriate to make an exposition on the nature of criminal cases as well as the parties involved therein.

#### ***Nature of Criminal Cases; Real Parties in Interest thereto; Legal Standing of Private Complainant***

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<sup>87</sup> *Id.* at 224–226.

<sup>88</sup> *Id.* at 226–231.

<sup>89</sup> *Id.* at 274–381.

<sup>90</sup> *Id.* at 234–239.

<sup>91</sup> *Id.* at 13–205.

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It is well-settled that criminal actions are instituted to determine the penal liability of the accused for having outraged the State with their crime.<sup>92</sup> It is designed to punish the offender in order to deter them and others from committing the same or similar offense, to isolate them from society, reform and rehabilitate them or, in general, to maintain social order.<sup>93</sup> As such, these actions are instituted *in the name of the State, i.e. People of the Philippines*, against the accused; and *the private complainant, if any, is regarded merely as a witness for the State*.<sup>94</sup>

This delineation becomes significant insofar as appeals involving criminal actions are concerned, given the wording of Rule 122, Section 1 of the 2000 Revised Rules on Criminal Procedure, which reads:

Section 1. *Who may appeal.* – *Any party* may appeal from a judgment or final order, unless the accused will be placed in double jeopardy. (Emphasis supplied)

Given the nature of criminal actions, it is only proper that the phrase “any party” as stated in the foregoing provision be construed as to include only those who are deemed as real parties in interest thereto, namely, the State (i.e., the People of the Philippines), the accused, *or in certain limited instances* (as will be discussed hereunder), the private complainant.<sup>95</sup>

### ***Appeals and Petitions for Certiorari involving criminal cases at the Court of Appeals and Supreme Court Levels***

Book IV, Title III, Chapter 12, Section 35(1) of the 1987 Administrative Code of the Philippines reads:

Section 35. *Powers and Functions.* – The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government[-]owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

<sup>92</sup> *Laurel v. Delute*, 880 Phil. 474, 489 (2020) [*Per Curiam, En Banc*], citing *Montelibano v. Yap*, 822 Phil. 262, 273 (2017) [Per J. Martires, Third Division].

<sup>93</sup> *Mobilia Products, Inc. v. Umezawa*, 493 Phil. 85, 107 (2005) [Per J. Callejo, Sr., Second Division], citing *Ramiscal Jr. v. Sandiganbayan*, 487 Phil. 384, 405 (2004) [Per J. Callejo, Sr., Second Division].

<sup>94</sup> *Laurel v. Delute*, 880 Phil. 474, 489 (2020) [*Per Curiam, En Banc*]. (Emphasis supplied)

<sup>95</sup> *JCLV Realty & Development Corporation v. Manguli*, 880 Phil. 267, 276 (2020) [Per J. Lopez, First Division], citing *Anhud Metal Recycling Corporation v. Ang*, 766 Phil. 676, 686 (2015) [Per C.J. Sereno, First Division].

(1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Emphasis supplied)

Thus, in a long line of cases,<sup>96</sup> which includes *Austria v. AAA*,<sup>97</sup> it has been consistently ruled that:

The rationale behind this rule is that in a criminal case, the state is the party affected by the dismissal of the criminal action and not the private complainant. The interest of the private offended party is restricted only to the civil liability of the accused. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal on the criminal aspect may be undertaken only by the State through the OSG. The private offended party may not take such appeal, but may only do so as to the civil aspect of the case. Differently stated, the private offended party may file an appeal without the intervention of the OSG, but only insofar as the civil liability of the accused is concerned. Also, the private complainant may file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his or her interest in the civil aspect of the case. Hence, the Court dismissed for lack of legal standing or personality the appeals or petitions for *certiorari* filed by the private offended parties before the SC and CA, without the consent or conformity of the OSG, questioning the dismissal of the criminal case or acquittal of the accused.<sup>98</sup>

Thus, *Austria* further ruled that appeals or petitions for *certiorari* involving the criminal aspect of the case or the right to prosecute which *exclusively* pertain to the State — i.e. **existence of probable cause**, venue or territorial jurisdiction, elements of the offense, prescription, admissibility of evidence, identity of the perpetrator of the crime, and other questions that will require a review of the substantive merits of the criminal proceedings or cause the reinstatement of the criminal action or meddle with the prosecution of the offense — should be filed by a private complainant with the conformity of the State, through the OSG.<sup>99</sup>

<sup>96</sup> See *JCLV Realty & Development Corporation v. Mangali*, 880 Phil. 267 (2020) [Per J. Lopez, First Division]; *Yokohama Tire Philippines, Inc. v. Reyes*, 870 Phil. 292 (2020) [Per C.J. Peralta, First Division]; *Cu v. Ventura*, 840 Phil. 650 (2018) [Per J. Peralta, Third Division]; *Cu v. Small Business Guarantee and Finance Corporation*, 815 Phil. 617 (2017) [Per J. Caguioa, First Division]; *Burgos, Jr. v. Spouses Naval*, 786 Phil. 881 (2016) [Per J. Perlas-Bernabe, First Division]; *Anlud Metal Recycling Corporation v. Ang*, 766 Phil. 676 (2015) [Per C.J. Sereno, First Division]; *People v. Piccio*, 740 Phil. 616 (2014) [Per J. Perlas-Bernabe, Second Division]; *Villareal v. Aliga*, 724 Phil. 47 (2014) [Per J. Peralta, Third Division]; *Bangayan, Jr. v. Bangayan*, 675 Phil. 656 (2011) [Per J. Mendoza, Third Division]; *Ong v. Genio*, 623 Phil. 835 (2009) [Per J. Nachura, Third Division]; *Jimenez v. Sorongon*, 700 Phil. 316 (2012) [Per J. Brion, Second Division]; *Mobilia Products, Inc. v. Umezawa*, 493 Phil. 85 (2005) [Per J. Callejo, Sr., Second Division].

<sup>97</sup> 924 Phil. 41 (2022) [Per J. M. Lopez, *En Banc*].

<sup>98</sup> *Id.* at 51–52.

<sup>99</sup> *Id.* at 52.

However, *Austria* recognized that in several cases,<sup>100</sup> the Court had allowed a private complainant to file an appeal or a petition for *certiorari*, even without the OSG's participation, questioning the acquittal of the accused, the dismissal of the criminal case, and interlocutory orders rendered in the criminal proceedings.<sup>101</sup> A perusal of these cases would show that such appeals or petitions for *certiorari* were allowed due to the presence of any of the following: (a) only the civil aspect of the criminal action is involved; (b) there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party; (c) there is grave error committed by the judge or the interest of substantial justice so requires;<sup>102</sup> or (d) there is grave abuse of discretion.<sup>103</sup>

Nonetheless, *Austria* was quick to clarify that these cases remain to be the exceptions to the general rule that appeals and petitions for *certiorari* involving criminal actions, and as such, should not be viewed as a blanket authority for a private complainant to question judgments and orders in criminal proceedings without the OSG's intervention.<sup>104</sup> In this regard, it again noted several cases<sup>105</sup> where the Court, instead of dismissing outright appeals or petitions for *certiorari* involving criminal actions, required the OSG to submit a comment first to determine whether or not the latter, on behalf of the State, is amenable to such appeal/petition.<sup>106</sup>

Finally, and in an effort to harmonize the foregoing case law on the matter, *Austria* provided a set of guidelines that should be observed with respect to the legal standing of a private complainant in assailing judgments or orders in criminal proceedings before the CA and the Court, to wit:

(1) The private complainant has the legal personality to appeal the civil liability of the accused or file a petition for *certiorari* to preserve his or her interest in the civil aspect of the criminal case. The appeal or petition for *certiorari* must allege the specific pecuniary interest of the private offended party. The failure to comply with this requirement may result in the denial or dismissal of the remedy.

The reviewing court shall require the OSG to file comment within a non-extendible period of thirty (30) days from notice if it appears that the

<sup>100</sup> See *People v. Judge Santiago*, 255 Phil. 851 (1989) [Per J. Gancayco, First Division]; *Dela Rosa v. Court of Appeals*, 323 Phil. 596 (1996) [Per J. Panganiban, Third Division]; *Perez v. Hagonoy*, 384 Phil. 322 (2000) [Per J. De Leon, Jr., Second Division]; *Narciso v. Sta. Romana-Cruz*, 385 Phil. 208 (2000) [Per J. Panganiban, Third Division]; *Flores v. Joven*, 442 Phil. 576 (2002) [Per J. Austria-Martinez, Second Division]; *Salvador v. Chua*, 764 Phil. 244 (2015) [Per J. Bersamin, First Division]; *Morillo v. People*, 775 Phil. 192 (2015) [Per J. Peralta, Third Division]; *David v. Marquez*, 810 Phil. 187 (2017) [Per J. Tijam, Third Division].

<sup>101</sup> *Austria v. AAA*, 924 Phil. 41, 99 (2022) [Per J. M. Lopez, *En Banc*].

<sup>102</sup> *Morillo v. People*, 775 Phil. 192, 211 (2015) [Per J. Peralta, Third Division].

<sup>103</sup> *Austria v. AAA*, 924 Phil. 41, 100 (2022) [Per J. M. Lopez, *En Banc*].

<sup>104</sup> *Id.* at 72-73.

<sup>105</sup> See *People v. Judge Nano*, 282 Phil. 164 (1992) [Per J. Bidin, Third Division]; *Labaro v. Panay*, 360 Phil. 102 (1998) [Per C.J. Davide, Jr., First Division]; *Merciales v. Court of Appeals*, 429 Phil. 70 (2002) [Per J. Ynares-Santiago, *En Banc*]; *Montañez v. Ciripriano*, 697 Phil. 586 (2012) [Per J. Peralta, Third Division]; *People v. Court of Appeals*, 755 Phil. 80 (2015) [Per J. Peralta, Third Division].

<sup>106</sup> *Austria v. AAA*, 924 Phil. 41, 74 (2022) [Per J. M. Lopez, *En Banc*].

resolution of the private complainant's appeal or petition for *certiorari* will necessarily affect the criminal aspect of the case or the right to prosecute (i.e., existence of probable cause, venue or territorial jurisdiction, elements of the offense, prescription, admissibility of evidence, identity of the perpetrator of the crime, modification of penalty, and other questions that will require a review of the substantive merits of the criminal proceedings, or the nullification/reversal of the entire ruling, or cause the reinstatement of the criminal action or meddle with the prosecution of the offense, among other things). The comment of the OSG must state whether it conforms or concurs with the remedy of the private offended party. The judgment or order of the reviewing court granting the private complainant's relief may be set aside if rendered without affording the People, through the OSG, the opportunity to file a comment.

(2) The private complainant has no legal personality to appeal or file a petition for *certiorari* to question the judgments or orders involving the criminal aspect of the case or the right to prosecute, unless made with the OSG's conformity.

The private complainant must request the OSG's conformity within the reglementary period to appeal or file a petition for *certiorari*. The private complainant must attach the original copy of the OSG's conformity as proof in case the request is granted within the reglementary period. Otherwise, the private complainant must allege in the appeal or petition for *certiorari* the fact of pendency of the request. If the OSG denied the request for conformity, the Court shall dismiss the appeal or petition for *certiorari* for lack of legal personality of the private complainant.

(3) The reviewing court shall require the OSG to file comment within a non-extendible period of thirty (30) days from notice on the private complainant's petition for *certiorari* questioning the acquittal of the accused, the dismissal of the criminal case, and the interlocutory orders in criminal proceedings on the ground of grave abuse of discretion or denial of due process.

(4) These guidelines shall be prospective in application.<sup>107</sup>

Verily, under *Austria*, the criminal aspect of a criminal action may only be elevated to a higher court via an appeal or a petition for *certiorari* by: (a) the accused; (b) the OSG; or (c) by the private complainant, but only if with conformity of the OSG.

On the other hand, the private complainant may file such appeal/petition even without the required OSG conformity but only if such appeal/petition only covers the civil aspect of the criminal action, and in this case, the private complainant must state their *specific pecuniary interest* therein. Nonetheless, if such appeal/petition, despite specifying the private complainant's pecuniary interest therein, will necessarily affect the criminal aspect of the criminal action, then the State, through the OSG, must be given an opportunity, through the filing of a comment, to explicitly state whether or not it is giving its conformity to such appeal/petition.

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<sup>107</sup> *Id.* at 83-84.

***Appeals and Petitions for Certiorari  
Involving Criminal Cases Filed  
Before Second-Level Courts  
Assailing the Ruling of First-Level  
Courts***

Admittedly, Book IV, Title III, Chapter 12, Section 35(1) of the 1987 Administrative Code of the Philippines, as well as relevant case law on the matter such as *Austria*, only delved on the legal personality of a private complainant to file appeals and/or petitions for *certiorari* involving criminal actions at the level of the CA and the Court. Hence, it appears that an argument may be raised — as what herein PI Two did in the instant Petition<sup>108</sup> — that the conformity of the State, through the OSG, is not required in appeals and/or petitions for *certiorari* involving criminal actions brought before the second-level courts (i.e., Regional Trial Courts) assailing the ruling of thereon by the first-level courts (i.e., Municipal Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Circuit Trial Courts).

However, and upon much consideration, such argument is untenable.

First and foremost, it bears reiterating the rule that in criminal actions, the “real” offended party is the State, i.e., the People of the Philippines, and insofar as the criminal aspect thereof is concerned, the private complainant is regarded as a mere witness. It is only in the civil aspect of the criminal action, if any, that the private complainant has an interest therein. This begs the question: *From whom will the private complainant obtain the requisite conformity of the State should they wish to file an appeal or petition for certiorari before the second-level courts from a ruling of a first-level court in a criminal action?*

The answer to this question is found in Republic Act No. 10071,<sup>109</sup> otherwise known as the Prosecution Service Act of 2010, the relevant provisions of which state:

Section 5. *The Prosecution Staff and its Functions.* – There shall be in the Office of the Secretary of Justice a prosecution staff that shall be composed of prosecuting officers in such number as herein below determined. It shall be headed by a Prosecutor General who shall be assisted by the following:

....

The Prosecution Staff, which shall be under the control and supervision of the Secretary of Justice, shall have the following functions:

<sup>108</sup> *Rollo*, pp. 83–84.

<sup>109</sup> An Act Strengthening and Rationalizing the National Prosecution Service (2010).

....

3. *Act as counsel for the People of the Philippines in any case involving or arising from a criminal complaint investigated by any of its prosecutors and pending before any trial court[.]*

....

Section 7. *Powers and Functions of the Regional Prosecutor.* – The Regional Prosecutor shall, under the control and supervision of the Secretary of Justice, have the following powers and functions:

....

c. *Prosecute any case arising within the region[.]*

....

Section 9. *Powers and Functions of the Provincial Prosecutor or City Prosecutor.* – The provincial prosecutor or the city prosecutor shall:

....

c. *Have charge of the prosecution of all crimes, misdemeanors and violations of city or municipal ordinances in the courts at the province or city and therein discharge all the duties incident to the institution of criminal actions, subject to the provisions of the second paragraph of Section 5 hereof. (Emphasis supplied)*

Thus, for appeals and petitions for *certiorari* to be filed before the second-level courts assailing the ruling of the first-level courts in criminal actions, the private complainant must seek the required conformity of the relevant officials of the National Prosecution Service (i.e., regional prosecutors, provincial prosecutor, city prosecutor) who are in charge of the specific area where such first- and second-level courts are located. After all, they are the ones duly authorized to represent the State in criminal actions being tried within their respective areas of assignment.

For this purpose, the Court finds it appropriate to extend the aforementioned *Austria* guidelines to appeals and petitions for *certiorari* involving criminal actions that will be filed by private complainants before the second level courts, with the *colatilla* that in such instances, the required conformity should be obtained not from the OSG, but rather, from the relevant officials of the National Prosecution Service in charge of the specific area where such first- and second- level courts are located, as the case may be.

Relevantly, in *Isturis-Rebuelta v. Rebuelta*,<sup>110</sup> the Court had the occasion to make a similar discussion, to wit:

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<sup>110</sup> 949 Phil. 1116 (2023) [Per C.J. Gesmundo, First Division].

However, the Court finds the occasion to refer to the ruling in the fairly recent case of *Austria v. AAA*, which presented a similar issue involving the legal personality of the private complainant in filing an appeal or a petition for *certiorari* before the CA and this Court. While the Court upheld the legal personality of the private complainant in filing a petition for *certiorari* with the CA, the Court nonetheless held that a private complainant is not vested with blanket authority to question judgments or orders of trial courts without the conformity of the Office of the Solicitor General (OSG). Hence, the Court laid down guidelines for the members of the bar and bench to observe whenever a private complainant would appeal or file a petition for *certiorari* before the CA and this Court. Those guidelines emphasized the need to involve and require the active participation of the OSG, as counsel of the State, in the private complainant's choice of remedy. The participation of the OSG ensures that the State is always heard on how its interest on the criminal aspect would be affected by the chosen remedy of the private complainant.

Notably, *Austria* only made reference to the authority of the OSG to represent the State where the appeal or petition for *certiorari* involving a criminal case is filed by the private complaint before the CA or this Court. It did not provide for an occasion where the same remedies are filed by the private complainant before the RTC, as in this case. It is pertinent to point this out in view of the delineation of functions between the OSG and the provincial or city prosecutors in acting as counsels for the State. As explained in *Fenequito v. Vergara, Jr.*, when the case is filed or pending in the RTC, it is the provincial or city prosecutor who should represent the State, but if it is with the CA or this Court, the OSG shall act as counsel for the People, *viz.*:

....

Presidential Decree No. 1275 which *Fenequito* cited as source of the authority of provincial and city prosecutors to represent the State in criminal actions before the RTC, has been repealed by Republic Act No. 10071 or the Prosecution Service Act of 2010. Regardless, Section 9(c) of Republic Act No. 10071 maintained the same function of the provincial or city prosecutor to take "charge of the prosecution of all crimes, misdemeanors and violations of city or municipal ordinances in the courts at the province or city and therein discharge all the duties incident to the institution of criminal actions." Clearly, despite the changes brought by Republic Act No. 10071, the duty of provincial and city prosecutors to appeal criminal actions to the RTC remains the same.

Thus, when the appeal or petition for *certiorari* is filed by the private complainant with the RTC, the provincial or city prosecutors shall act as counsel for the State, but if the same is filed with the CA or this Court, the OSG shall be the representative. In either case, both the public prosecutor and the OSG are expected to unceasingly defend the interests of the State, especially in exacting retribution for the transgressions to its laws and public order.

Consequently, there is reason to equally apply the ruling and guidelines laid down in *Austria* to appeals and *certiorari* petitions filed by the private complainant before the RTCs. Hence, the guidelines laid down in *Austria* are hereby restated to stress the participation of the State, through

the provincial or city prosecutors, in the event that the appeal or petition for *certiorari* is filed by the private complainant before the RTC:

- (1) The private complainant has the legal personality to appeal the civil liability of the accused or file a petition for *certiorari* to preserve his or her interest in the civil aspect of the criminal case. The appeal or petition for *certiorari* must allege the specific pecuniary interest of the private offended party. The failure to comply with this requirement may result in the denial or dismissal of the remedy.

The [RTC] shall require the [*provincial or city prosecutor*] to file [a] comment within a non-extendible period of thirty (30) days from notice if it appears that the resolution of the private complainant's appeal or petition for *certiorari* will necessarily affect the criminal aspect of the case or the right to prosecute (i.e. *existence of probable cause, venue or territorial jurisdiction, elements of the offense, prescription, admissibility of evidence, identity of the perpetrator of the crime, modification of penalty, and other questions that will require a review of the substantive merits of the criminal proceedings, or the nullification/reversal of the entire ruling, or cause the reinstatement of the criminal action or meddle with the prosecution of the offense, among other things*). The comment of the [*provincial or city prosecutor*] must state whether it conforms or concurs with the remedy of the private offended party. The judgment or order of the [RTC] granting the private complainant's relief may be set aside if rendered without affording the People, through the [*provincial or city prosecutor*], the opportunity to file a comment.

- (2) The private complainant has no legal personality to appeal or file a petition for *certiorari* to question the judgments or orders involving the criminal aspect of the case or the right to prosecute, unless made with the [*provincial or city prosecutor's*] conformity.

The private complainant must request the [*provincial or city prosecutor's*] conformity within the reglementary period to appeal or file a petition for *certiorari*. The private complainant must attach the original copy of the [*provincial or city prosecutor's*] conformity as proof in case the request is granted within the reglementary period. Otherwise, the private complainant must allege in the appeal or petition for *certiorari* the fact of pendency of the request. If the [*provincial or city prosecutor*] denied the request for conformity, the Court shall dismiss the appeal or petition for *certiorari* for lack of legal personality of the private complainant.

- (3) The [RTC] shall require the [*provincial or city prosecutor*] to file comment within a non-extendible period of thirty (30) days from notice on the private complainant's petition for *certiorari* questioning the acquittal of the accused, the dismissal of the criminal case, and the interlocutory orders in criminal proceedings on the ground of grave abuse of discretion or denial of due process.

- (4) These guidelines shall be prospective in application.<sup>111</sup>  
(Emphasis in the original)

### *Application to the Instant Case*

As may be gleaned from the facts of this case, after the MeTC Br. 66 dismissed the case against respondent, petitioner appealed such dismissal to the RTC *without the required conformity of the State*. Such lack of conformity is evinced by the following: (a) the OSG's letters dated April 27, 2015<sup>112</sup> and May 25, 2015<sup>113</sup> wherein the OSG categorically declined to give its conformity to petitioner's appeal; (b) the OCP-Makati's Manifestation<sup>114</sup> dated June 8, 2015 wherein the OCP-Makati explicitly informed the RTC Br. 147 that petitioner's appeal before it does not bear the State's conformity, and thus, prayed that the same be dismissed; and (c) the OSG's Comment<sup>115</sup> dated April 22, 2016 to respondent's Petition in **CA-G.R. CR No. 37898** wherein it reiterated the fact that petitioner's appeal before the RTC did not bear the State's conformity.

In the Court's considered view, the RTC Br. 147 should have already dismissed the appeal before it on this ground alone.

Nonetheless, petitioner insists that this case falls under the exceptions to the rule on State conformity,<sup>116</sup> as discussed above. To recapitulate, these exceptions are as follows: (a) only the civil aspect of the criminal action is involved; (b) there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party; (c) there is grave error committed by the judge or the interest of substantial justice so requires; or (d) there is grave abuse of discretion.

However, and as will be explained below, such exceptions do not obtain in this case.

## II.

To recapitulate, the MeTC Br. 66's dismissal of the criminal case against respondent was brought about by the OCP-Makati's filing of a Motion

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<sup>111</sup> *Id.* at 1127–1131.

<sup>112</sup> *Rollo*, pp. 2108–2109.

<sup>113</sup> *Id.* at 2107.

<sup>114</sup> *Id.* at 1671–1672.

<sup>115</sup> *Id.* at 5658–5685.

<sup>116</sup> *Id.* at 71–90.

to Withdraw Information<sup>117</sup> dated November 11, 2014, which was made pursuant to the SOJ's Resolution<sup>118</sup> dated August 22, 2014.

In this regard, it is well to stress that it is an elementary rule that once an information has been filed in court, the court acquires jurisdiction over the criminal case. As such, the dismissal of the criminal case, even when prodded by the prosecution through a Motion to Withdraw, depends on the court's independent assessment of the merits of the motion seeking such dismissal.<sup>119</sup> Otherwise stated, the courts should not blindly follow the resolutions issued by the DOJ and should determine the propriety of such dismissal on their own.<sup>120</sup> In the seminal case of *Crespo*,<sup>121</sup> the Court *en banc* eloquently elucidated on this matter, as follows:

The filing of a complaint or information in Court initiates a criminal action. *The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.*

The preliminary investigation conducted by the fiscal for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi[-]judicial discretion to determine whether or not a criminal case should be filed in court or not, *once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court.* The only qualification is that the action of the Court must not impair the substantial rights of the accused, or the right of the People to due process of law.

Whether the accused had been arraigned or not are whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.

<sup>117</sup> *Id.* at 1423-1424.

<sup>118</sup> *Id.* at 1418-1422.

<sup>119</sup> See *Debuque v. Nilson*, 902 Phil. 324, 337 (2021) [Per J. Hernando, Third Division]; *People v. Sandiganbayan*, 901 Phil. 608, 624 (2021) [Per J. Leonen, Third Division]; *Rural Bank of Mabitac, Laguna, Inc. v. Canicon*, 834 Phil. 346, 365-366 (2018) [Per J. Jardeleza, First Division]; *Martinez v. Court of Appeals*, 307 Phil. 592, 602 (1994) [Per C.J. Narvasa, Second Division]; *Crespo v. Judge Mogul*, 235 Phil. 465, 476 (1987) [Per J. Gancayco, *En Banc*].

<sup>120</sup> *Debuque v. Nilson*, 902 Phil. 324, 337 (2021) [Per J. Hernando, Third Division], citing *Summerville General Merchandising & Co., Inc. v. Eugenio*, 556 Phil. 121, 127 (2007) [Per J. Velasco, Jr., Second Division].

<sup>121</sup> *Crespo v. Judge Mogul*, 235 Phil. 465 (1987) [Per J. Gancayco, *En Banc*].

However, one may ask, if the trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possibly be designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can the fiscal be expected to handle the prosecution of the case thereby defying the superior order of the Secretary of Justice.

The answer is simple. The role of the fiscal or prosecutor as we all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite of his opinion to the contrary, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under such circumstances much less should he abandon the prosecution of the case leaving it to the hands of a private prosecutor for then the entire proceedings will be null and void. The least that the fiscal should do is to continue to appear for the prosecution although he may turn over the presentation of the evidence to the private prosecutor but still under his direction and control.

*The rule therefore in this jurisdiction is that once a complaint or information is filed in Court[,] any disposition of the case as its dismissal or the conviction or acquittal of the accused[,] rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court[,] he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.*<sup>122</sup> (Emphasis supplied)

Here, the Court agrees with the OSG's submission in its Comment dated April 22, 2016 to respondent's Petition in **CA-G.R. CR No. 37898** wherein it contended that despite the MeTC Br. 67 JDPC Resolutions, the MeTC Br. 66 was not precluded from making a second assessment of the existence or non-existence of probable cause against respondent. This is considering that *Crespo* itself authorizes the courts to scrutinize a motion to withdraw/dismiss filed by the public prosecutor — in this case the OCP-Makati — at any time, i.e., even before or after arraignment. Thus, so long as the MeTC Br. 66 does not blindly rely on the DOJ's assessment of the case and makes an independent re-evaluation of the evidence on record, then it may order the dismissal of the criminal Complaint.

<sup>122</sup> *Id.* at 474-476; citations omitted.

In this regard, a judicious scrutiny of the Order<sup>123</sup> dated January 23, 2015 of the MeTC Br. 66 readily shows that it indeed made an independent re-evaluation and assessment of the evidence on record which led to the grant of the OCP-Makati's Motion to Withdraw Information. Pertinent portions of such Order read:

After [a thorough] and judicious review of the various pleadings and arguments raised and after its independent assessment of the records of this case including the submissions made after the November 22, 2013 and January 8, 2014 Resolutions in this case, this Court grants the Public Prosecutor's Motion to Withdraw Information as it is this Court's opinion that the evidence on record fails to establish probable cause to sustain the continued prosecution of this case for Perjury against the Accused.

....

The Information in this case charges the Accused with perjury for having willfully and knowingly made untruthful statements under oath when she verified, subscribed[,] and swore to Standard Chartered Bank's Comment on the Petition for Rehabilitation, wherein it was materially alleged that: "*The fact that Philippine Investment Two was not able to furnish adequate guarantees or securities in exchange for the inadequate [Lehman Brothers] guaranty xxx.*"

Perjury is the willful and corrupt assertion of a falsehood under oath or affirmation administered by authority of law on a material matter[.]

....

The first element [of perjury] requires that the accused make a false assertion of an objective fact. The third element of perjury further requires that the accused had willfully and deliberately asserted such falsehood. As such, a mere assertion of a false objective fact is not sufficient for a finding of perjury as the assertion must be deliberate and willful.

Paragraph 22 of Standard Chartered Bank's Comment on the Petition for Rehabilitation, wherein the alleged untruthful statement is contained, reads in full:

"The fact that Philippine Investment Two was not able to furnish adequate guarantees or security in exchange for the inadequate [Lehman Brothers] guaranty, nor to fully comply with the request of SCB for documents upon demand, gives the latter the right to demand payment of the whole amount of the obligation." ...

To this Court, stripped of modifiers, descriptive clauses, and conclusions, the one-sentence paragraph 22 contains only two statements of fact, namely: (1) Philippine Investment Two, the Private Complainant, did not furnish guarantees or security in exchange for the [Lehman Brothers] guaranty, and (2) Philippine Investment Two, the Private Complainant, did not fully comply with Standard Chartered Bank's request for documents. It is only the first factual statement that is involved in this case and referred to

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<sup>123</sup> *Rollo*, pp. 258-264.

in the Information. Based on the records on file with this Court, Private Complainant has not refuted this particular fact as it has not claimed to have provided Standard Chartered Bank with another form of guarantee or security to replace or in exchange of the guarantee given by [Lehman Brothers] or Lehman Brothers Holdings, Inc. A perusal of the records of this case does not show any such additional or replacement guarantee or security provided by the Private Complainant. The only other security referred to by the parties in this case is the Pledge Agreement, which was, on its face, provided by [Lehman Brothers], not Philippine Investment Two. It appears to this Court, therefore, that falsity of the factual statement asserted by Standard Chartered Bank in its verified Comment on the Petition for Rehabilitation and referred to in the Information is not supported by any evidence on record. Rather, records prove that the same has not been denied and thus its truth impliedly admitted. With this alone, the evidence on record fails to establish probable cause to sustain the continued prosecution of this case for Perjury against the Accused.

In addition, this Court has examined the [SOJ] Resolution dated August 22, 2014 attached to the Public Prosecutor's Motion to Withdraw Information and concurs with the conclusions therein, especially in view of this Court's finding that the falsity of the factual assertion alleged to be perjurious (that is, "*The fact that Philippine Investment Two was not able to furnish adequate guarantees or securities in exchange for the inadequate [Lehman Brothers] guaranty xxx.*") has not been proven, not even *prima facie*. This Court agrees with the Secretary of Justice that the Accused has "sufficiently and reasonably explained the circumstances surrounding her statement in" the Standard Chartered Bank Comment on the Petition for Rehabilitation as she relied on several facts that led her to believe that the factual assertion in paragraph 22 of the said Comment was true and correct. The DOJ Resolution indicated such facts as "also admitted by complainant-appellee", or the Private Complainant. This Court notes that, in its Motion for Reconsideration from the DOJ Resolution, Private Complainant objects to the imputed admissions... And, though Private Complainant contends that said facts are irrelevant, self-serving and quoted verbatim from Accused's petition for review, this Court observes that Private Complainant does not deny said facts and does not contend any of them as false. This Court therefore honestly believes that the Secretary of Justice correctly concluded that the Accused acted in good faith, for which reason the Information for perjury should be withdrawn.

*In fine*, there are "two essential elements of proof of perjury: (1) the statement made by the defendants must be proven false; and (2) it must be proven that the defendant did not believe those statements to be true." ... The records in the case prove the absence of both essential elements and, thus, there is no evidence to support a finding of probable cause.<sup>124</sup>

As may be gleaned above, while the MeTC Br. 66 ultimately agreed with the disquisitions of the SOJ, it only did so after offering its own independent take on the case against respondent. To the Court, this satisfies the requirement that the trial court, in resolving a motion to dismiss/withdraw information filed by the public prosecutor, must make its own independent evaluation and assessment of the evidence on record before granting or denying the same.

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<sup>124</sup> *Id.* at 261-263.

Thus, the MeTC Br. 66's grant of the OCP-Makati's Motion to Withdraw Information and consequent dismissal of the criminal case against respondent was proper. Relatedly, petitioner's appeal to the RTC without State conformity was improper, considering that: *first*, it did not merely involve the civil aspect of the criminal action as it essentially prays for the reinstatement of the criminal case against respondent; *second*, denial of due process cannot be ascribed, especially considering that (a) even before the MeTC Br. 66 resolved the OCP-Makati's Motion to Withdraw Information, it gave petitioner the opportunity to oppose the same, (b) petitioner took said opportunity,<sup>125</sup> and (c) it was the State itself, through the OCP-Makati which acted under the SOJ's directive, that sought for the dismissal of the case; *third*, the MeTC Br. 66 did not commit a grave error; and *fourth*, such dismissal was not tainted with grave abuse of discretion.

In light of the foregoing, the Court holds that the CA correctly reversed and set aside the RTC Br. 147 ruling, and consequently, reinstated that of the MeTC Br. 66.

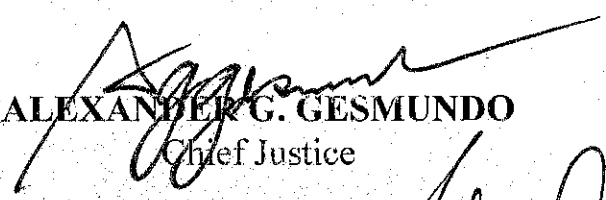
**ACCORDINGLY**, the Petition is **DENIED**. The Decision dated September 7, 2017 and the Resolution dated April 13, 2018 of the Court of Appeals in CA-G.R. CR No. 37898 and CA-G.R. SP No. 137469 are hereby **AFFIRMED**. Criminal Case No. 375840 for perjury against respondent Kathrina L. Sebastian is **DISMISSED**.

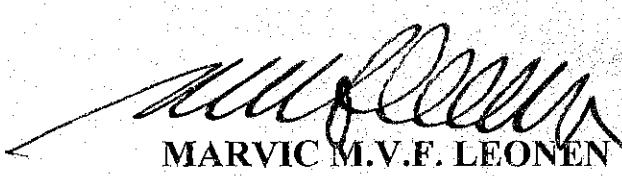
**SO ORDERED.**

  
**ANTONIO T. KHO, JR.**  
Associate Justice

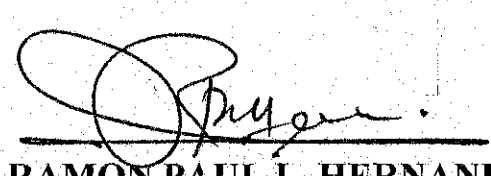
<sup>125</sup> *Id.* at 1425–1474. Comment [Re: Motion to Withdraw Information dated November 11, 2014].

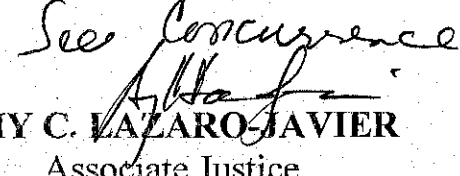
**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

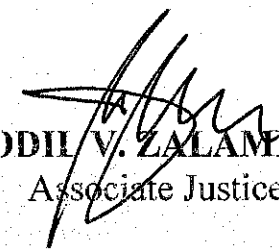
  
**MARVIC M.V.F. LEONEN**  
Senior Associate Justice

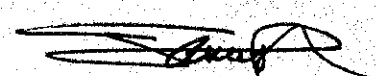
  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice


*See concurrence*  
  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

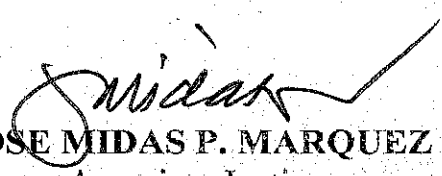
  
**RODIL V. ZALAMEDA**  
Associate Justice

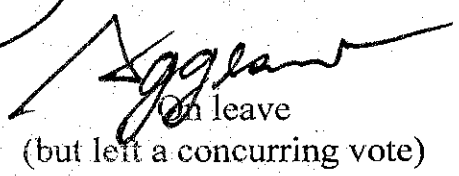
  
**SAMUEL H. GAERLAN**  
Associate Justice

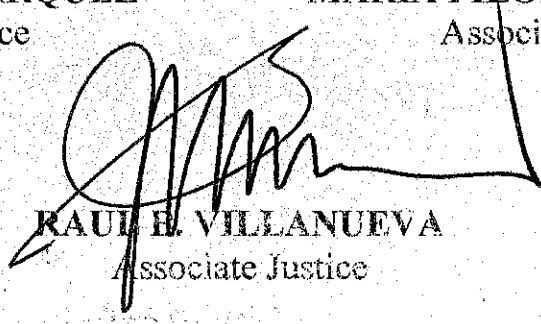
  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

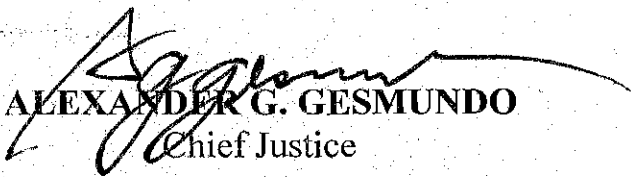
  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

  
*On leave*  
(but left a concurring vote)  
**MARIA FILOMENA D. SINGH**  
Associate Justice

  
**RAUL H. VILLANUEVA**  
Associate Justice

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, 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.



**ALEXANDER G. GESMUNDO**  
Chief Justice