

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

FIRST DIVISION

DANILO A. LIHAYLIHAY,

Complainant,

CTA Crim. No. O-302

(CTA Case No. 7515/EB No. 625)

For: Indirect Contempt under Rule 71 of the 1997 Rules of Civil Procedure with damages and violation of Article 221 of the Revised Penal Code.

- versus -

Members:

Acosta, *Chairperson*,

Uy, *and*

Fabon-Victorino, JJ.

ATTY. KIM S. JACINTO-HENARES

and John Does,

Promulgated:

Respondents.

NOV 20 2012 ; 4:00pm.

x ----- x

RESOLUTION

UY, J.:

Records show that on September 27, 2012, complainant Danilo A. Lihaylihay filed the instant Complaint charging herein respondents for : (1) Indirect Contempt under Rule 71 of the Revised Rules of Civil Procedure; and (2) Violation of Article 221 of the Revised Penal Code.

Subsequently, on October 12, 2012, said complainant filed a “MOTION TO DETERMINE PROBABLE CAUSE”, praying for the



determination of probable cause against respondents, and the issuance of arrest warrant/s against them, in the interest of the orderly administration of justice.

THE COURT'S RULING

On procedural grounds and for lack of jurisdiction, the instant case should be dismissed.

The charge for Indirect Contempt is not compliant with Section 4, Rule 71 of the 1997 Revised Rules of Civil Procedure.

The charge for Indirect Contempt filed in this case is flawed pursuant to Section 4, Rule 71 of the Revised Rules of Civil Procedure. Said Section reads:

Section 4, Rule 71 of the Revised 1997 Rules of Civil Procedure states:

“SEC. 4. *How proceedings commenced.*—Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the **petition** for contempt shall allege that fact but said **petition** shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.” *(Emphases supplied)*



Based on the foregoing, a person may be charged with indirect contempt by either of two ways, namely: (1) *motu proprio*, by the court against which the contempt was committed, by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt; or (b) **by a verified petition, if initiated by a party.**

Clearly therefore, **a charge of indirect contempt must be initiated by a verified petition**, unless the charge is directly made by the court against which the contemptuous act is committed.¹ Furthermore, the verified petition must be accompanied by “*supporting particulars and certified true copies of documents or papers involved therein*”.

In the instant case, the verified Complaint initiated by Danilo A. Lihaylihay, a private party, is not supported by certified true copies of documents or papers involved therein. Thus, it is clearly flawed and defective.

It must be remembered that in contempt proceedings, the prescribed procedure must be followed.²

This Court is without jurisdiction to entertain cases involving criminal offenses arising from violation of the Revised Penal Code.

The supposed criminal complaint in this case charges herein respondents for violation of Article 221 of the Revised Penal Code³, which reads as follows:

¹ *Roxas, et al. vs. Tipon, et al., etseq.*, G.R. Nos. 160641 and 160642, June 20, 2012.

² *Esperida, et al. vs. Jurado, Jr.*, G.R. No. 172538, April 25, 2012.

³ Act No. 3815.

“Art. 221. *Failure to make delivery of public funds or property.*- Any public officer under obligation to make payment from Government funds in his possession, who shall fail to make such payment, shall be punished by *arresto mayor* and a fine from 5 to 25 percent of the sum which he failed to pay.

This provision shall apply to any public officer who, being ordered by competent authority to deliver any property in his custody or under his administration, shall refuse to make such delivery.

The fine shall be graduated in such case by the value of the thing, provided that it shall not be less than 50 pesos.”

Additionally, the limited jurisdiction of the Court of Tax Appeals is defined under Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, and it reads as follows:

“SEC. 7. *Jurisdiction.*— The CTA shall exercise:

xxx xxx xxx

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: *Provided, however,* That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.

xxx xxx xxx.”



Based on the foregoing, this Court is vested with exclusive original jurisdiction only with respect to cases involving “*criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs*”. Thus, it cannot take cognizance of criminal offenses arising from violations of the Revised Penal Code, such as Article 221 thereof as above quoted.

Correspondingly, this Court is without jurisdiction to entertain the instant complaint.

It must be emphasized that jurisdiction is conferred by the sovereign authority that organized the court and is given only by law in the manner and form prescribed by law;⁴ and any judgment, order or resolution issued without jurisdiction is void and cannot be given any effect.⁵ Such being the case, this Court cannot entertain complainant’s Motion To Determine Probable Cause and must correspondingly be denied.

It is well-settled that lack of jurisdiction over the subject-matter is fatal, and subject to objection at any stage of the proceedings, either in the court below or on appeal, and, indeed, where the subject matter is not within the jurisdiction, the court may dismiss the proceeding *ex mero motu*.⁶

Be that as it may, not only is this Court without jurisdiction to entertain the present criminal case, the complainant likewise failed to observe certain

⁴ *Treñas vs. People of the Philippines*, G.R. No. 195002, January 25, 2012.

⁵ *Magno vs. People of the Philippines, et al.*, G.R. No. 171542, April 6, 2011.

⁶ *United States vs. De la Santa*, No. L-3181, October 10, 1907.



basic rules in the filing of a criminal case as discussed hereafter.

The complainant failed to observe certain procedural requirements in the filing of a criminal action.

Sections 1 and 5, Rule 110 of the Revised Rules of Criminal Procedure states:

“SECTION 1. *Institution of criminal actions.*— Criminal actions shall be instituted as follows:

(a) For offenses where a preliminary investigation is required pursuant to section 1 of the Rule 112, by filing the complaint with the proper officer for the purposes of conducting the requisite preliminary investigation.

(b) **For all other offenses, by filing** the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, **or the complaint with the office of the prosecutor.** In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.

xxx xxx xxx.” *(Emphases supplied)*

“SEC. 5. *Who must prosecute criminal actions.*—All criminal actions either commenced by a complaint or information **shall be prosecuted under the direction and control of a public prosecutor. xxx.”** *(Emphases supplied)*

Although it may be argued that the filing of the intended criminal action in this case does not require a preliminary investigation,⁷ the criminal action against respondents, should have been filed with the appropriate office

⁷ As a rule, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine (*Section 1, Rule 112 of the Revised Rules of Criminal Procedure*). It must be noted that violation of Section 221 of the Revised Penal Code is punishable only by *arresto mayor*, the duration of which is only one month and one day to six months (Refer to Article 27, Revised Penal Code).

of the prosecutor, and not directly with this Court. Furthermore, it is also required that the criminal aspect hereof should be prosecuted under the direction and control of a public prosecutor. It is apparent that these were not complied with in the present case.

Moreover, Section 2, Rule 110 of the Revised Rules of Criminal Procedure requires that the complaint or information must be filed in the name of the People of the Philippines. It reads:

“SEC. 2. *The complaint or information.*— The complaint or information shall be in writing, **in the name of the People of the Philippines** and against all persons who appear to be responsible for the offense involved.” (*Emphasis supplied*)

Evidently, the criminal complaint in his case is not in the name of the People of the Philippines, but in the name of the complainant himself, and must therefore be dismissed.

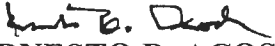
Lastly, granting *arguendo* that it be insisted that the herein complaint is intended merely as a charge for indirect contempt, the same will still be dismissed for being procedurally infirmed, as discussed earlier.

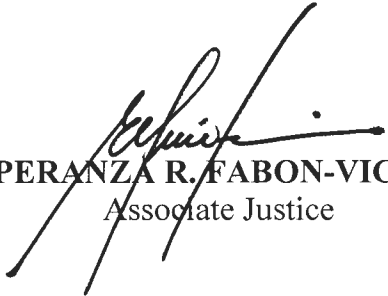
WHEREFORE, in light of the foregoing considerations, the **“MOTION TO DETERMINE PROBABLE CAUSE”** is hereby **DENIED**, and the above captioned case, both with respect to the charge for violation of Section 221 of the Revised Penal Code and for Indirect Contempt, is hereby **DISMISSED**.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice