



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

**ELIDAD KHO AND VIOLETA
 KHO,**

Petitioners,

G.R. No. 213400

Present:

PERLAS-BERNABE, *SAJ.*,
Chairperson

HERNANDO,
 INTING,
 GAERLAN, and
 ROSARIO,* *JJ.*

- versus -

**SUMMERVILLE GENERAL
 MERCHANDISING & CO.,
 INC.,**

Respondent.

Promulgated:

AUG 04 2021

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DECISION

HERNANDO, J.:

Before this Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the October 1, 2013 Decision² and June 30, 2014 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 117835, which set aside and annulled the Regional Trial Court's (RTC) July 21, 2010⁴ and November 18, 2010⁵ Orders in Criminal Case No. 00-183261, directed the RTC to reinstate the Information for Unfair Competition before it and denied the petitioners' Motion for Reconsideration, respectively.

* Designated as additional Member per S.O. No. 2835 dated July 15, 2021.

¹ *Rollo*, pp. 3-31.

² *Id.* at 42-58; penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Japar B. Dimaampao and Elihu A. Ybañez.

³ *Id.* at 59-60.

⁴ *Id.* at 84-101.

⁵ *Id.* at 102-110.

Factual Antecedents:

The material and relevant facts are as follows:

Petitioners Elidad Kho (Elidad) and Violeta Kho (Violeta) were charged with Unfair Competition by respondent Summerville General Merchandising & Co., Inc., (Summerville) before the City Prosecutor's Office of Manila. On May 31, 2000, a Resolution⁶ was issued by the City Prosecutor's Office of Manila recommending the filing of an unfair competition case against petitioners. Thus, an Information⁷ for Unfair Competition was filed against petitioners before the RTC Branch 24 docketed as Crim. Case No. 00-183261.⁸

The charge as contained in the Information for Unfair Competition provides, *viz.*:

That on or about January 10, 2000 and for some time prior and subsequent thereto, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, then engaged in a business known as KEC Cosmetic Laboratory, located at 2407 Topacio Street and 2412 Raymundo Street, San Andres, this City, in an unfair competition, and for the purpose of deceiving/defrauding the public in general and the Summerville General Merchandising and Co. (Summerville) which is engaged, among others, in the importation and distribution of facial cream products with the trademark known as Chin Chun Su, herein represented by Victor Chua, its General Manager, did then and there willfully, unlawfully, knowingly and jointly sell/dispose and/or cause to be sold/disposed to the public facial cream products using tools, implements and equipments in its production, labeling and distribution, which give and depict the general appearance of the Chin Chun Su facial cream products and likely influence the purchasers to believe that the same are those of the said Summerville.

CONTRARY TO LAW.⁹

Petitioners filed a Petition for Review¹⁰ before the Department of Justice (DOJ) assailing the May 31, 2000 Resolution of the City Prosecutor's Office of Manila. The DOJ affirmed the May 31, 2000 Resolution in a Resolution¹¹ dated August 17, 2000. However, upon motion for reconsideration¹² of petitioners, the DOJ issued the June 18, 2001 Resolution¹³ which recalled and set aside the August 17, 2000 Resolution but did not rule on the propriety of the complaint. The June 18, 2001 Resolution merely stated that the case would be further reviewed and the corresponding resolution would be issued.

⁶ CA *rollo*, pp. 61-64.

⁷ *Rollo*, p. 34.

⁸ *Id.* at 33-34.

⁹ *Id.* at 7, 34.

¹⁰ CA *rollo*, p. 4.

¹¹ *Id.* at 77-83.

¹² *Id.* at 4.

¹³ *Id.*

Meanwhile, petitioners' arraignment¹⁴ pushed through on October 11, 2000 where they refused to enter a plea. Thus, pleas of not guilty were entered for them.¹⁵

On September 28, 2001, the DOJ issued a Resolution dismissing the complaint filed against petitioners, which respondent Summerville assailed through a Motion for Reconsideration.¹⁶ On the basis of the September 28, 2001 Resolution, the prosecution filed with the RTC Branch 24, a Motion to Withdraw Information.¹⁷ The RTC Branch 24 issued an Order¹⁸ dated October 24, 2001 withdrawing the Information against petitioners. A Motion for Reconsideration¹⁹ was filed by respondent Summerville before the trial court, while petitioners filed a supplemental motion²⁰ insisting that the case be dismissed on the ground of double jeopardy. On August 21, 2002, the RTC Branch 24 issued an Order²¹ holding that in view of its earlier Order withdrawing the Information, there is no necessity to order the dismissal of the case. According to it, the refileing of the Information would constitute double jeopardy.²²

On September 17, 2002, the DOJ issued a Resolution²³ granting the Motion for Reconsideration filed by respondent Summerville and ordered the Office of the City Prosecutor of Manila to file the appropriate Information for Unfair Competition against petitioners. Respondent Summerville also filed a Manifestation²⁴ before the trial court informing it of the September 17, 2002 Resolution of the DOJ, with prayer for the trial court to reinstate the case. The trial court issued an Order²⁵ dated April 2, 2003 holding that the revival of the case is barred by double jeopardy.²⁶

Respondent Summerville then filed a Petition for *Certiorari*²⁷ before the CA docketed as CA-G.R. SP No. 77180 but it was denied due course and dismissed by the appellate court in its Decision²⁸ dated May 26, 2004. Upon elevation of the case before this Court, a Resolution²⁹ dated August 7, 2007 was issued in G.R. No. 163741 giving due course to the Petition of respondent Summerville, annulling and setting aside the CA Decision dated May 26, 2004 as well as the RTC Branch 24 Orders dated August 21, 2002 and April

¹⁴ *Rollo*, p. 8.

¹⁵ *Id.*

¹⁶ *CA rollo*, pp. 84-92.

¹⁷ *Rollo*, p. 35.

¹⁸ *Id.* 6-8, 33-35.

¹⁹ *Id.* at 36.

²⁰ *Id.*

²¹ *CA rollo*, pp. 160-161.

²² *Rollo*, pp. 36-37.

²³ *CA rollo*, pp. 145-153.

²⁴ *Id.* at 167-168.

²⁵ *Id.* at 185.

²⁶ *Rollo*, pp. 35-36.

²⁷ *Rollo*, p. 33.

²⁸ *Id.* at 40.

²⁹ *Id.* at 9.

2, 2003.

The Court ordered the remand of the unfair competition case to the RTC Branch 24 to independently evaluate the merits thereof and to determine whether or not probable cause exists to hold the petitioners for trial.³⁰ It bears stressing that the Court in G.R. No. 163741 found that there was failure on the part of the RTC Branch 24 to independently evaluate and assess the case. The Court held that a remand of the case is proper to determine if a *prima facie case* exists against petitioners. On the issue of double jeopardy, the Court ruled that it does not bar the reinstatement of the Information and that double jeopardy has not yet set in.³¹

The case was remanded to RTC Branch 24 of Manila City but the presiding judge therein inhibited from handling the case. Thus, the case was raffled to RTC of Manila Branch 46 (RTC Branch 46).³²

The Ruling of the Regional Trial Court, Branch 46, Manila:

On July 21, 2010, the RTC Branch 46 issued an Order³³ finding no probable cause to hold petitioners for trial. The dispositive portion of the said Order reads:

WHEREFORE, premises considered in compliance to the resolution of the Supreme Court dated 07 August 2007, after evaluating and assessing the merits of the case, this Court finds that no probable cause exists to hold the accused for trial. Let the cash bond posted by the accused be released.

Notify the accused and the private complainant of this Order.

x x x x

SO ORDERED.³⁴

In arriving at the conclusion that no probable cause exists to hold the accused for trial for unfair competition, the RTC Branch 46 found that the accused never deceived the public into believing that the medical facial cream that they sold which is contained in a pink oval-shaped container with trademark of “Chin Chun Su”, were the same as those being imported by respondent Summerville; and petitioners acted in good faith without intent to deceive the public.

³⁰ Id. at 9, 40.

³¹ Id. at 39-40.

³² Id. at 43, 84, 89.

³³ Id. at 84-101.

³⁴ Id. at 101.

A Motion for Reconsideration³⁵ was filed by respondent but it was denied by the RTC in its Order³⁶ dated November 18, 2010.

Aggrieved, respondent Summerville filed a Petition for *Certiorari*³⁷ under Rule 65 of the Rules of Court against petitioners and the judge who rendered the RTC's assailed Orders. The case was docketed as CA-G.R. SP No. 117835.³⁸ Respondent filed its Comment.³⁹

Ruling of the Court of Appeals:

The appellate court in its assailed Decision⁴⁰ dated October 1, 2013 granted the Petition for *Certiorari* of respondent, the dispositive portion of which reads:

WHEREFORE, the Petition is **GRANTED**. The Order dated July 21, 2010 and the Order dated November 18, 2010 of the Regional Trial Court, Branch 46, Manila in Criminal Case No. 00-183261, are **SET ASIDE and ANNULLED**.

Upon the finality of this Decision, the Regional Trial Court of Manila, Branch 46, is directed to reinstate the Information for Unfair Competition under Section 168.3 (a) of Republic Act No. 8293, otherwise known as 'The Intellectual Property Code of the Philippines,' and proceed de novo with Criminal Case No. 00-183261.

SO ORDERED.⁴¹

The appellate court found that RTC Branch 46 committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it found no probable cause to indict petitioners for unfair competition; petitioners are charged with unfair competition and petitioners' product is confusingly similar to that of respondent; the ordinary purchaser would not normally inquire about the manufacturer of the product and therefore, petitioners' act of labeling their product with the manufacturer's name would not exculpate them from liability, especially as both products of petitioners and respondent bore the name "Chin Chun Su," in oval shaped containers;⁴² petitioners may have the right to use the oval-shaped container for their medicated facial cream but the mark "Chin Chun Su" imprinted thereon is beyond the authority of petitioners' copyright and patent registration; and there is no double jeopardy as it was even the Court in G.R. No. 163741 which directed the Manila RTC to independently evaluate the case to determine whether or

³⁵ Id. at 102-103.

³⁶ Id. at 102-110.

³⁷ Id. at 61-68.

³⁸ Id.

³⁹ Id. at 111-128.

⁴⁰ Id. at 42-58.

⁴¹ Id. at 57.

⁴² Id. at 49-51.

not probable cause exists to hold the accused for trial.⁴³

Petitioners filed a Motion for Reconsideration⁴⁴ but it was denied in the CA Resolution⁴⁵ dated 30 June 2014.

Hence, the Petition before Us.

Issues:

Petitioners raised the following grounds for the allowance of their Petition, *viz.*:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE TRIAL COURT ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION IN FINDING LACK OF PROBABLE CAUSE AGAINST PETITIONERS.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION WHEN IT CORRECTED ERRORS OF JUDGMENT IMPROPERLY RAISED IN A PETITION FOR CERTIORARI.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND VIOLATED PETITIONERS' RIGHT AGAINST DOUBLE JEOPARDY WHEN IT ORDERED THE CONDUCT OF TRIAL DE NOVO.⁴⁶

Simply put, the threshold issue before Us is whether or not the appellate court erred when it found probable cause to indict petitioners for Unfair Competition.

Our Ruling

The petition is bereft of merit.

We find no error on the part of the appellate court when it found grave abuse of discretion on the part of the RTC Branch 46 in finding that no probable cause exists to hold petitioners for trial in the unfair competition

⁴³ Id. at 54-57.

⁴⁴ Id. at 72-82.

⁴⁵ Id. at 59-60.

⁴⁶ Id. at 11.

case. The setting aside of the RTC's Orders dated July 21, 2010⁴⁷ and November 18, 2010⁴⁸ is warranted under the circumstance.

As held, "the trial court judge's determination of probable cause is based on his or her personal evaluation of the prosecutor's resolution and its supporting evidence. The determination of probable cause by the trial court judge is a judicial function xxx."⁴⁹

The term probable cause does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.

A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.⁵⁰

It bears to stress that –

a judge must always proceed with caution in dismissing cases due to lack of probable cause, considering the preliminary nature of the evidence before it. It is only when he or she finds that the evidence on hand absolutely fails to support a finding of probable cause that he or she can dismiss the case. On the other hand, if a judge finds probable cause, he or she must not hesitate to proceed with xxx trial in order that justice may be served.⁵¹

In the present case, We find that the acts complained of constituted probable cause to charge them with Unfair Competition.

Section 168 (3a) of the Intellectual Property Code provides:

SECTION 168. Unfair Competition, Rights, Regulation and Remedies.

— x x x

x x x x

⁴⁷ Id. at 84-101.

⁴⁸ Id. at 102-110.

⁴⁹ *Maza v. Turla*, 805 Phil. 756, 756 (2017).

⁵⁰ *Imingan v. The Office of the Honorable Ombudsman*, G.R. No. 226420, March 4, 2020, citing *Philippine Deposit Insurance Corp. v. Hon. Casimiro*, 768 Phil. 429 (2015).

⁵¹ *Mendoza v. People*, 733 Phil. 603, 615, (2014).

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose; x x x

The essential elements of an action for unfair competition are: (1) confusing similarity in the general appearance of the goods, and (2) intent to deceive the public and defraud a competitor.⁵² The confusing similarity may or may not result from similarity in the marks, but may result from other external factors in the packaging or presentation of the goods. Likelihood of confusion of goods or business is a relative concept, to be determined only according to peculiar circumstances of each case.⁵³ The element of intent to deceive and to defraud may be inferred from the similarity of the appearance of the goods as offered for sale to the public.⁵⁴

Here, petitioners' product which is a medicated facial cream sold to the public is contained in the same pink oval-shaped container which had the mark "Chin Chun Su," as that of respondent. While petitioners indicated in their product the manufacturer's name, the same does not change the fact that it is confusingly similar to respondent's product in the eyes of the public. As aptly found by the appellate court, an ordinary purchaser would not normally inquire about the manufacturer of the product.⁵⁵ Petitioners' product and that solely distributed by respondent are similar in the following respects "1. both are medicated facial creams; 2. both are contained in pink, oval-shaped containers; and 3. both contain the trademark "Chin Chun Su" x x x The similarities far outweigh the differences. The general appearance of (petitioners') product is confusingly similar to (respondent)."⁵⁶ Verily, the acts complained of against petitioners constituted the offense of Unfair Competition and probable cause exists to hold them for trial, contrary to the findings of RTC Branch 46.

⁵² *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365-66, December 10, 2018.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Rollo*, p. 49.

⁵⁶ *Id.* at 49-50.

Unfair competition is always a question of fact.⁵⁷ In line with this, We find that with the existence of probable cause on hand, it would serve the ends of justice if the parties would be able to present their respective claims and defenses in a full-blown trial. For now, it is sufficient that probable cause exists to hold petitioners for trial for the unfair competition case filed against them. Thus, the appellate court did not err when it directed the trial court to reinstate the Information and proceed with the criminal case before it.

The CA's directive to the RTC Branch 46 to reinstate the Information for Unfair Competition against petitioners did not violate the latter's right against double jeopardy.

The proscription against double jeopardy presupposes that an accused has been previously charged with an offense, and the case against him is terminated either by his acquittal or conviction, or dismissed in any other manner without his consent. As a general rule, the following requisites must be present for double jeopardy to attach: (1) a valid indictment, (2) before a court of competent jurisdiction, (3) the arraignment of the accused, (4) a valid plea entered by him, and (5) the acquittal or conviction of the accused, or the dismissal or termination of the case against him without his express consent.⁵⁸

In this case, petitioners failed to prove that the abovementioned requisites have been complied with. In fact, the issue of whether or not double jeopardy has set in has already been resolved by this Court in its Resolution dated August 7, 2007 in G.R. No. 163741.⁵⁹ This Court in G.R. No. 163741⁶⁰ made a clear pronouncement that reinstatement of the Information against petitioners is not barred⁶¹ and that double jeopardy has not set in.⁶²

From the foregoing disquisition, We find that the CA did not err in rendering its assailed Decision and Resolution.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The October 1, 2013 Decision and June 30, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 117835 are **AFFIRMED**.

⁵⁷ *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, supra.

⁵⁸ *Condrada v. People*, 446 Phil. 635, 641, (2003).

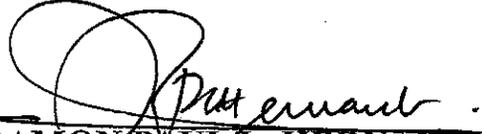
⁵⁹ *Rollo*, p. 33.

⁶⁰ *Id.*

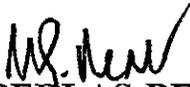
⁶¹ *Id.* at 39.

⁶² *Id.* at 40.

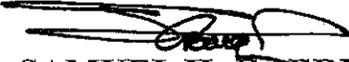
SO ORDERED.

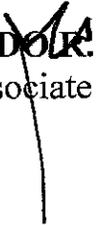

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

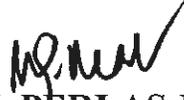

HENRI JEAN PAUL B. INTING
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice

ATTESTATION

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



ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

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



ALEXANDER G. GESMUNDO
Chief Justice