

FIRST DIVISION

[G.R. NO. 140842, April 12, 2007]

RUFINA CHUA, PETITIONER, VS. THE COURT OF APPEALS AND WILFRED N. CHIOK, RESPONDENTS.

DECISION

SANDOVAL-GUTIERREZ, J.:

For our resolution is a Petition for Certiorari^[1] assailing the Resolutions dated September 20, 1999^[2] and November 16, 1999 of the Court of Appeals in CA-G.R. SP No. 53340.

In 1989, Rufina Chua, petitioner, met Wilfred Chiok, respondent, who represented himself as a licensed stockbroker and an expert in the stock market. He encouraged petitioner to invest her money in stocks, requesting her to designate him as her stockbroker. On respondent's prodding, she agreed.

For several years, respondent acted as petitioner's stockbroker. She made profits out of their transactions, prompting her to trust respondent in handling her stock investments.

In 1995, respondent encouraged petitioner to purchase shares in bulk as this will increase her earnings. Hence, in June 1995, she entrusted to him the amount of P9,563,900.00 for the purpose of buying shares of stocks in bulk. Petitioner deposited P7,100,000.00 in respondent's account and personally gave him the remaining P2,463,900.00. Thereupon, he told petitioner to wait for one week. A week elapsed and respondent advised her to wait for another week. Then, there was no more news from respondent. Finally, when petitioner was able to contact him, respondent admitted that he spent the money. At any rate, he issued two checks as payment but when petitioner deposited them in the drawee bank, the checks were dishonored for insufficient funds.

In a letter dated October 25, 1995, petitioner demanded payment from respondent, but this remained unheeded.

Petitioner then came to know that respondent was not a licensed stockbroker but only a telephone clerk at Bernard Securities, Inc. Immediately, she caused the filing of an information for estafa against him with the Regional Trial Court, Branch 165, Pasig City, docketed as Criminal Case No. 109927.

During the arraignment, respondent, assisted by his counsel *de parte*, pleaded not guilty. Trial ensued.

Respondent denied the charge against him. He testified that he was not an employee of Bernard Securities, Inc.; that he buys and sells U.S. dollars and that

petitioner used to buy dollars from him; that what actually existed between them was an unregistered partnership; and that he received the amount of P9,563,900.00 as her investment in their partnership.

After the prosecution and the defense had presented their respective evidence, the trial court **set the promulgation of judgment on January 26, 1999. However, respondent and his counsel failed to appear on said date despite notice.** The trial court reset the promulgation of judgment on February 1, 1999, with notice to respondent. Again, respondent failed to appear. The trial court then promulgated its Decision **convicting respondent of estafa and sentencing him to suffer twelve (12) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum.** Respondent was likewise ordered to pay herein petitioner the amount of P9,563,900.00 with interest at the legal rate computed from October 25, 1995, the date of demand, until fully paid.

On the same day, February 1, 1999, the prosecution filed a motion for cancellation of bail on the ground that respondent might flee or commit another crime.

On February 13, 1999, respondent filed a motion for reconsideration of the judgment of conviction.

Meanwhile, or on February 15, 1999, the motion for cancellation of bail was set for hearing. The prosecution presented a Record Check Routing Form issued by the Bureau of Immigration showing that respondent has an Alien Certificate of Registration (ACR) and Immigrant Certificate of Residence (ICR). During that hearing, respondent admitted using the names "Mark Tan" and "Tong Wai Fat" as *aliases*.

Consequently, on **May 28, 1999**, the trial court issued an **Omnibus Order** (a) denying respondent's motion for reconsideration of the judgment of conviction; (b) **canceling his bail**; and (c) **giving him five (5) days from notice within which to appear before the trial court, otherwise he would be arrested.**

On June 18, 1999, respondent interposed an appeal to the Court of Appeals from the trial court's judgment of conviction and from the Omnibus Order insofar as it denied his motion for reconsideration of said judgment. The appeal was docketed as **CA-G.R. CR No. 23309.**

The following day, or on June 19, 1999, respondent filed with the Court of Appeals a petition for certiorari with application for a temporary restraining order (TRO) and a writ preliminary injunction assailing the trial court's Omnibus Order canceling his bail. The petition was docketed as **CA-G.R. SP No. 53340.**

On June 25, 1999, the trial court issued a warrant of arrest against respondent for his failure to appear despite the lapse of the 5-day period provided in the May 28, 1999 Omnibus Order. The warrant was returned unserved because he could not be found at his given address.

However, the Court of Appeals, in a Resolution dated July 27, 1999 issued a TRO enjoining the trial court from implementing its Omnibus Order of May 28, 1999.

On **September 20, 1999**, after hearing respondent's application for injunction, **the**

appellate court issued a writ of preliminary injunction enjoining the arrest of respondent, holding that the latter should not be deprived of his liberty pending resolution of his appeal as the offense for which he was convicted is a non-capital offense; and that the probability that he will flee during the pendency of his appeal is merely conjectural.

Petitioner then filed a motion for reconsideration but it was denied by the Court of Appeals in its Resolution dated November 16, 1999.

Hence, the instant petition for certiorari.

Petitioner contends that the Court of Appeals acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing the writ of preliminary injunction enjoining the arrest of respondent.

Private respondent counters that the petition should be dismissed for lack of merit.

The petition is meritorious.

Firstly, the petition for certiorari with prayer for a TRO and a writ of preliminary injunction (CA-G.R. SP No. 53340) is **not** the proper recourse in assailing the trial court's May 28, 1999 Omnibus Order canceling his bail. Section 5, Rule 114 of the Revised Rules of Criminal Procedure^[3] provides:

SEC. 5. *Bail, when discretionary.* — Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court,

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b) **That he has previously** escaped from legal confinement, evaded sentence, or **violated the conditions of his bail without valid justification;**