

THIRD DIVISION

[G.R. No. 220913, February 04, 2019]

**ALLEN C. PADUA AND EMELITA F. PIMENTEL, PETITIONERS, V.
PEOPLE OF THE PHILIPPINES, FAMILY CHOICE GRAINS
PROCESSING CENTER, INC., AND GOLDEN SEASON GRAINS
CENTER, INC., RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision^[1] dated July 22, 2015 and Resolution^[2] dated October 12, 2015 of the Court of Appeals in CA-G.R. SP No. 140567.

The facts are as follows: Juanito A. Tio (*Tio*), in his capacity as representative of Family Choice Grains Processing Center of Cabatuan, Isabela filed a complaint for estafa against now petitioners Allen Padua (*Padua*), Emelita Pimentel (*Pimentel*) and Dante Frialde (*Frialde*),^[3] as officials of Nviro Filipino Corporation (*Nviro*).^[4]

In the complaint, Tio accused petitioners of falsely claiming that they are in the business of power plant construction when their actual and authorized line of business only involves manufacturing and selling fertilizer. Tio claimed that petitioners obtained One Hundred Thirty Thousand Euros (€130,000.00) from Family Choice allegedly for "expat fees," yet failed to remit the same to their supplier. Tio also alleged that petitioners failed to make good of their promises to deliver the appropriate equipments and even demanded an additional P23,618,401.00 despite being paid nearly ninety percent (90%) of the agreed construction price. As a result of petitioners' swindling scheme, Tio claimed that Family Choice suffered actual damages amounting to P16,388,253.90 as of May 22, 2010.

Petitioners, on the other hand, denied the allegations against them. They claimed that said allegations were absurd, defamatory, libelous and wanting of any credible evidence. They alleged that the filing of the criminal cases was untimely and premature, and in violation of the provisions of their Memorandum of Agreement. They asserted that they never claimed to be in the business of power plant construction, and that they are only the accredited agent/developer of K.E.M A/S Energy and Environmental Technology Company of Denmark. While they admitted to have delivered a secondhand/incompatible equipment induction motor, they explained that the same was not due to the fault of Nviro but of the local supplier. Nviro asserted that the construction project was done in good faith and that they tried to complete the project in accordance with the terms and conditions of the construction contract.

In a Resolution^[5] dated July 25, 2010, Assistant Provincial Prosecutor Ferdimar A. Garcia found all the elements of the crime of estafa under paragraph 2(a), Article 315 of the Revised Penal Code (*RPC*) to be present, thus, the filing of four (4)

separate Informations against petitioners for estafa under Article 315 were recommended.

Subsequently, four (4) Informations dated July 30, 2010 docketed as Criminal Cases Nos. 7012, 7013, 7014 and 7016, respectively, all for estafa under paragraph 2(a), Article 315 of the RPC were filed against petitioners Padua, Pimentel and Frialde before the Regional Trial Court (RTC) of Cauayan City, Isabela, to wit:

Criminal Case No. 7012

That from May 2007 up to the 22nd day of May 2010, in the Municipality of Cabatuan[,] [P]rovince of Isabela, Philippines, and within the jurisdiction of the Honorable Court, the said accused[,] by acting as key officers of NVIRO FILIPINO CORPORATION, namely: ALLEN PADUA, EMELITA PIMENTEL and DANTE FRJALDE, confederating, conspiring and mutually helping one another, by means of false pretense[,] deceit and with intent to defraud[,] willfully[,] unlawfully and feloniously entered [into] contract with FAMILY CHOICE GRAINS PROCESSING CENTER[,] represented by JUANITO A. TIO, for the construction of 2.0 MW Rice Hull-Fired Cogen BioMass Power Plant, to be known as Family Choice Cogen Biomass Power Corporation, and by virtue of the said agreement[,] the herein accused collected and received the amount of One Hundred Thirty Thousand Euros (Euro 130,000.00) or equivalent [to] Eight Million Eight Hundred Forty Thousand Pesos (Php8,840,000.00) as "Expat Fees" to be remitted or intended for payment to K.E.M A/S Energy and Environmental Technology Com (Technology Supplier) knowing fully that at the time they (sic) collected under false pretense and deceit when they made various representation as duly authorized agent of KEM with full authority to disburse the said amount, when in truth and in fact the herein accused as key officers of NVIRO [are] not authorized or accredited agent. That for fear that some of the components of the intended power plant would not be install[ed] in the power plant under construction[,] Family Choice paid the accused the amount of One Hundred. Thirty Thousand Euros (Euro 130,000.00) or equivalent [to] Eight Million Eight Hundred Forty Thousand Pesos (Php8,840,000.00) as "Expat Fees," the said amount was not remitted or was not credited in the account of KEM which is suppose[d] to collect the said "Expat Fees" to the damage and prejudice of complainant FAMILY CHOICE in the amount of One Hundred Thirty Thousand Euros (Euro 130,000.00) or equivalent [to] Eight Million Eight Hundred Forty Thousand Pesos (Php8,840,000.00).

CONTRARY TO LAW.^[6]

Criminal Case No. 7013

That from January 2006 up to the 22nd day of May 2010, in the Municipality of Cabatuan[,] [P]rovince of Isabela, Philippines, and within the jurisdiction of the Honorable Court, the said accused[,] by acting as key officers of NVIRO FILIPINO CORPORATION, namely: ALLEN PADUA, EMELITA PIMENTEL and DANTE FRIALDE, confederating, conspiring and mutually helping one another, by means of false pretense[,] deceit and with intent to defraud[,] willfully, unlawfully and feloniously entered

[into] contract with FAMILY CHOICE GRAINS PROCESSING CENTER[,], represented by JUANITO A. TIO, for the construction of 2.0 MW Rice Hull-Fired Cogen BioMass Power Plant, to be known as Family Choice Cogen Biomass Power Corporation, knowing fully that at the time they entered into contract with Family Choice that it has no authority under its Articles of Incorporation to enter and or venture in the business of construction of power plant. That by falsely pretending themselves to have the qualification, credit and business and that they have the technical and industrial expertise to construct the said project[,], complainant was induced to enter and execute a contract with the herein accused when in truth and in [fact] they have no capacity to construct the power plant covered by a Feasibility Study presented to Family Choice. That from the time of the commencement of the construction of the power plant[,], Family Choice has already incurred the amount of Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty-Three [Pesos] and Ninety Centavos (Php6,648,253.90), this is (sic) in spite of the numerous demands for the completion and turn[-]over [of] the Power Plant[,], considering that the project [is] on a "turn key" basis, to the damage and prejudice of complainant Family Choice in the amount of to (sic) Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty-Three [Pesos] and Ninety Centavos (Php6,648,253.90).

CONTRARY TO LAW.^[7]

Criminal Case No. 7014

That from July 2009 and thereafter, in the Municipality of Cabatuan[,], [P]rovince of Isabela, Philippines, and within the jurisdiction of the Honorable Court, the said accused[,], by acting as key officers of NVIRO FILIPINO CORPORATION, namely: ALLEN PADUA, EMELITA PIMENTEL and DANTE FRIALDE, confederating, conspiring and mutually helping one another, by means of false pretense[,], deceit and with intent to defraud[,], willfully, unlawfully and feloniously[,], after receiving payment[s,] agreed and promised to install a complete set of condenser with its necessary pumps and pipes required in the operation of 2.0 MW Rice Hull-Fired Cogen BioMass Power Plant, which is the subject of an on-going construction project being undertaken by NVIRO FILIPINO CORPORATION for FAMILY GRAINS PROCESSING CENTER[,], represented by JUANITO A. TIO. That by falsely pretending themselves to have the qualification, credit and business and that they have the technical and industrial expertise to deliver and install the said complete set of condenser with pumps and pipes necessary for the completion of the project[,], complainant was induced to enter and execute a contract with the herein accused when in truth and in fact[,], they have no capacity to deliver as they failed to deliver and install the condenser amounting to Two Million Six Hundred [Thousand] Pesos (Php2,600,000.00)[,], the price quoted by the herein accused, to the damage and prejudice of the complainant FAMILY Choice in the amount of Two Million Six Hundred Thousand Pesos (Php2,600,000.00).

CONTRARY TO LAW.^[8]

Criminal Case No. 7016

That from January 2006 up to the 22nd day of May 2010, in the Municipality of Luna, [P]rovince of Isabela, Philippines, and within the jurisdiction of the Honorable Court, the said accused[,] by acting as key officers of NVIRO FILIPINO CORPORATION, namely: ALLEN PADUA, EMELITA PIMENTEL and DANTE FRIALDE, confederating, conspiring and mutually helping one another, by means of false pretense[,] deceit and with intent to defraud[,] willfully, unlawfully and feloniously entered [into] contract with GOLDEN SEASON GRAINS CENTER[,] represented by [LEANA T. TAN], for the construction of 2.0 MW Rice Hull-Fired Cogen Bio Mass Power Plant, to be known as GOLDEN SEASON Cogen Biomass Power Corporation, knowing fully that at the time they entered into the contract with Golden Season that it has no authority under its Articles of Incorporation to enter and or venture in the business of construction of power plant. That by falsely pretending themselves to have the qualification, credit and business and that they have the technical and industrial expertise to construct the said project[,] complainant was induced to enter and execute a contract with the herein accused when in truth and in [fact][,] they have no capacity to construct the power plant covered by a Feasibility Study presented to Golden Season. That from the time of the commencement of the construction of the power plant[,] Golden Season has already incurred the amount of Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty[-]Three [Pesos] and Ninety Centavos (Php6,648,253.90), this is (sic) in spite of the numerous demands for the completion and turn[-]over [of] the Power Plant considering that the project [is] on a "turn key" basis, to the damage and prejudice of complainant Golden Season in the amount of Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty-Three [Pesos] and Ninety Centavos (Php6,648,253.90).

CONTRARY TO LAW.^[9]

Consequently, a Warrant of Arrest^[10] dated August 6, 2010 was issued by Branch 20, RTC of Cauayan City, Isabela, in said Criminal Cases Nos. 7012, 7013, 7014 and 7016.

Four years after, or on July 21, 2014, petitioners Padua and Pimentel filed an Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail)^[11] wherein they alleged that their co-accused Frialde had died. They also alleged that it was only recently that they were able to find a lawyer who explained to them that they are entitled to bail under the law and under existing jurisprudence.

Petitioners asserted that the Informations only charged them with estafa under paragraph 2(a), Article 315 of the RPC. They claimed that the Informations failed to allege that the crimes charged against them had been amended by Presidential Decree No. 1689,^[12] hence, the penalty for estafa under paragraph 2(a), Article 315 of the RPC shall be in the range of *reclusion temporal*, as maximum. They averred that the Informations, likewise, failed to allege any aggravating circumstance which is necessary for the purpose of imposing the penalty of *reclusion perpetua*. Thus, petitioners averred that the imposable penalty cannot exceed twenty (20) years of imprisonment which is the maximum of *reclusion temporal*,

therefore, the charges in the Informations are bailable, and that they are entitled to bail for their provisional liberty.

On August 4, 2014, the trial court denied petitioners' omnibus motion, the pertinent portion of which reads:

Records show[,] however[,] that the accused continue to be at large, thus, the Court has no jurisdiction over their persons as they have not surrendered nor have been arrested[,] as such[,] the accused have no legal standing in Court and they are not entitled to seek relief from the Court.

WHEREFORE, in view of the foregoing, the Court hereby resolves to deny their motion due to lack of merit.

SO ORDERED.^[13]

Petitioners filed a Joint Motion for Reconsideration^[14] dated August 26, 2014. The trial court then directed the Office of the Provincial Prosecutor of Isabela in Ilagan City, Isabela and/or Cauayan City, Isabela, to file its Comment on/or Opposition to the Joint Motion for Reconsideration. Petitioners filed an Urgent *Ex-Parte* Motion for Early Resolution dated March 9, 2015.

In an Order^[15] dated March 19, 2015, the trial court denied the Joint motion for reconsideration, and we quote in full, to wit:

This resolves the Motion for Reconsideration of the Order dated August 4, 2014 filed by accused Allen Padua and Emelita Pimentel through counsel, Atty. Miguel D. Larida, denying the omnibus motion *ex-abundante ad cautelam* (to quash the warrant of arrest and to fix bail) on the ground that the Court has no jurisdiction over their persons as they have not surrendered nor have been arrested. As such[,] the accused have no legal standing in Court and they are not entitled to seek relief from the Court. A copy thereof was furnished to the Office of the Provincial Prosecutor, Ilagan City, Isabela.

In its motion, it was argued that the accused is entitled to bail as the penalty for the crime charged is not punishable by *reclusion perpetua*. The Court notes that while this may be true the proper remedy of the accused should have been to file a verified petition to fix bail and not a mere motion. Moreover, records show that the Information was filed on August 2, 2010 and a Hold Departure Order was issued on August 25, 2010. To date, all the accused continue to be at large. The grounds relied upon by the accused have already been passed upon by Court *a quo*. This Court finds no new, substantial arguments to warrant a reversal or modification thereof.

WHEREFORE, in view of the foregoing, the Court hereby resolves to deny the motion for reconsideration due to lack of merit.

SO ORDERED.

Thus, before the Court of Appeals, petitioners filed a Petition^[16] for *certiorari* alleging grave abuse of discretion amounting to lack of jurisdiction when the court *a*