

## THIRD DIVISION

[ G.R. No. 200465, April 20, 2015 ]

**JOCELYN ASISTIO Y CONSINO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND MONICA NEALIGA, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Assailed in this petition for *certiorari* under Rule 65 of the Rules of Court are the Court of Appeals (CA) Decision<sup>[1]</sup> dated August 31, 2011 and its Resolution<sup>[2]</sup> dated January 31, 2012 in CA-G.R. CR No. 32363. The dispositive portion of the Decision reads:

**WHEREFORE**, premises considered, the assailed Orders dated 14 October 2008 and 12 February 2009 of Branch 40, Regional Trial Court of Manila, in Criminal Case No. 01-197750, are hereby **REVERSED** and **SET ASIDE**. Accordingly, let the records of this case be **REMANDED** to Branch 40 of the Regional Trial Court of Manila, for further appropriate proceedings.

**SO ORDERED.**<sup>[3]</sup>

The factual and procedural antecedents are as follows:

Petitioner Jocelyn Asistio y Consino was charged with violation of Section 46 of the Cooperative Code of the Philippines (Republic Act No. [RA] 6938).<sup>[4]</sup> The accusatory portion of the Information filed against her reads:

That on or about July 27, 1998, in the City of Manila, Philippines, the said accused, being then the Chairperson and Managing Director of A. Mabini Elementary School Teachers Multi-Purpose Cooperative, and as such, have a complete control and exclusively manage the entire business of A. Mabini Elementary School Teachers Multi-Purpose Cooperative, did then and there willfully, unlawfully and feloniously acquires, in violation of her duty as such and the confidence reposed on her, personal interest or equity adverse to A. Mabini Elementary School Teachers Multi-Purpose Cooperative by then and there entering into a contract with Coca Cola Products at A. Mabini Elementary School Teachers Multi-Purpose Cooperative in her own personal capacity when in truth and in fact as the said accused fully well knew, the sale of Coca-Cola products at A. Mabini Elementary School Teachers Multi-Purpose Cooperative should have accrued to A. Mabini Elementary School Teachers Multi-Purpose Cooperative to the damage and prejudice of A. Mabini Elementary School Teachers Multi-Purpose Cooperative.

CONTRARY TO LAW.<sup>[5]</sup>

Upon her arraignment, petitioner entered a plea of "not guilty." Trial on the merits ensued.

The prosecution sought to prove that petitioner, then Chairperson of the A. Mabini Elementary School Teachers Multi-Purpose Cooperative, had entered into an exclusive dealership agreement with Coca-Cola Bottlers Philippines, Inc., (*Coca Cola*) for the sale of softdrink products at the same school. By virtue of a Memorandum of Agreement between the school and the Cooperative, Dr. Nora T. Salamanca, the school principal, directed petitioner to submit her financial reports during her tenure as Chairperson. Instead, petitioner claimed that the principal had no business and authority to require her to produce financial statements, and that the said reports had been posted on the school bulletin board.

The school principal then created an audit committee to look into the financial reports of the Cooperative. The committee was composed of Aurora Catabona (Chairperson), Monica Nealiga (member), with Noemi Olazo (Chairperson-auditor) and Sylvia Apostol (auditor), who later executed their respective affidavits in support of the charge against petitioner. Based on the documents obtained from Coca-Cola, including the records of actual deliveries and sales, and the financial statements prepared by petitioner, the audit committee found that petitioner defrauded the Cooperative and its members for three (3) years in the following amounts: School Year (S.Y.) 1998-1999 - P54,008.00; S.Y. 1999-2000 - P40,503.00; and S.Y. 2000-2001 - P8,945.00. Despite requests for her to return to the Cooperative the amounts she had allegedly misappropriated, petitioner failed and refused to do so. Thus, the Cooperative issued a Board Resolution authorizing the filing of criminal charges against petitioner.

After the presentation and offer of evidence by the prosecution, petitioner moved to dismiss the case by way of Demurrer to Evidence with prior leave of court. She argued, among other matters, that the Regional Trial Court (RTC) of Manila, Branch 40, does not have jurisdiction over the case, as the crime charged (*Violation of Section 46 of RA 6938*) does not carry with it a sanction for which she can be held criminally liable.

On October 14, 2008, the RTC dismissed the case for lack of jurisdiction, thus:

Considering that the MeTCs, MTC, MCTCs have exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offense or predicated thereon, and considering that violation of [Sec] 46 of R.A. 6938 would be punishable by imprisonment of not less than six (6) months nor more than one (1) year and a fine of not less than one thousand pesos (P1,000.00), or both at the discretion of the Court, this Court (RTC) has no jurisdiction to hear and determine the instant case which properly pertains to the first level courts.

**WHEREFORE**, premises considered, this Court finds and holds that it has no jurisdiction over the offense charged. Accordingly, the instant case is

hereby **DISMISSED**. This Court having no jurisdiction, further discussions over the defense' allegation that there was a violation of the principle of primary jurisdiction and that the private complainants used a falsified resolution to purposely empower them to file the instant case become moot and academic.

IT IS SO ORDERED.<sup>[6]</sup>

On February 12, 2009, the RTC denied for lack of merit the private prosecutor's motion for a reconsideration of the order of dismissal.<sup>[7]</sup> The RTC held:

Nowhere in said [Sec] 46 of R.A. 6938 does it provide for penal sanctions/liability for violation of acts or omission prescribed therein. If ever, the liability is only for damages and for double the profits which otherwise would have accrued to the cooperative. It is a fundamental rule in law that an act or omission is not a crime unless there is a law making it so and providing a penalty therefor. Otherwise put, the facts charged in the information do not charge an offense. And even assuming *arguendo* that they do constitute an offense, the penalty therefor is that provided under paragraph 4 of [Section] 124 of R.A. [6938] which is "*imprisonment of not less than six (6) months nor more than one (1) year and a fine of not less than one thousand pesos (P1,000.00), or both at the discretion of the court,*" which falls under the exclusive jurisdiction of the first, not the second level court.

Another factor which strongly militates against the cause of the prosecution is the undisputed fact that before this case was filed in Court, conciliation/mediation process for the amicable settlement of the dispute was not availed of by the private complainants who are all members (directors) of the A. Mabini Elementary School Teachers Multi-Purpose Cooperative in accordance with the by-laws of the Cooperative and the Cooperative Code itself and the Guidelines for the Implementation of Conciliation/Mediation of Cooperative dispute (*Memo Circular No. 2007-05, Series of 2007*). The dispute involving the parties is certainly a dispute and issue between and among directors, officers or members of the A. Mabini Elementary School Teachers Multi-Purpose Cooperative which is governed by the Guidelines.

Prior availment and exhaustion of administrative remedies until the Office of the President as outlined in the Cooperative Code and in its implementing rules not having been resorted to by the complainants, the rule on primary jurisdiction was violated and this Court acquired no jurisdiction to hear and determine the present case.<sup>[8]</sup>

Dissatisfied, the People of the Philippines, represented by the Office of the Solicitor General (OSG), appealed the order of dismissal to the CA.

On August 31, 2011, the CA rendered a Decision reversing and setting aside the RTC Orders dated October 14, 2008 and February 12, 2009 and remanded the case records to the RTC for further proceedings. On January 31, 2012, the CA denied petitioner's motion for reconsideration of its decision.<sup>[9]</sup>

Aggrieved, petitioner filed this petition for *certiorari* under Rule 65 of the Rules of Court, raising the following issues:

1. WHETHER IN REVERSING THE REGIONAL TRIAL COURT'S DECISION OF DISMISSAL, HAS THE HON. COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE CLEAN, UNAMBIGUOUS AND CATEGORICAL PROVISION OF PARAGRAPH 4 OF [SECTION] 124 OF RA-6938 IN REFERENCE TO THE PENAL SANCTION FOR VIOLATION OF [SEC] 46 OF THE COOPERATIVE [CODE], RA-6938 AND ADOPTING FOR ITS DECISION ONE DERIVED FROM ITS INTERPRETATION OF A SUPPOSED STATUTORY CONSTRUCTION WHICH INTERPRETATION, EVEN SUBJECT PETITIONER TO A HIGHER PENALTY OF 5 YEARS TO 10 YRS. WHICH WAS TO JUSTIFY THAT TFIE RTC SHOULD NOT HAVE DISMISSED THE CASE AND USED IT AS A GROUND TO REVERSE THE DECISION OF THE HON. REGIONAL TRIAL COURT.

2. WHETHER THE HON. COURT OF APPEALS IGNORED THE OTHER GROUNDS ASSIGNED FOR THE DISMISSAL OF THE CRIMINAL CHARGE OTHER THAN THE VIOLATION OF [SECTION] 46 OF RA-6938, (COOPERATIVE CODE). THAT THERE WAS A VIOLATION OF THE RULE ON PRIMARY JURISDICTION - EXHAUSTION OF ADMINISTRATIVE REMEDIES IN THE COOPERATIVE LEVEL BEFORE GOING TO COURT.

3. WHETHER THE HON. COURT OF APPEALS' ORDER REMANDING THE CASE BACK TO THE REGIONAL TRIAL COURT FOR FURTHER PROCEEDINGS IGNORED THE RULE THAT DISMISSAL OF THE CHARGE ON DEMURRER TO EVIDENCE AMOUNTS TO AN ACQUITTAL, AND THE DISMISSAL IS NOT APPEALABLE.

4. WHETHER REMANDING THE CASE BACK TO THE REGIONAL TRIAL COURT FOR FURTHER PROCEEDINGS SUBJECT THE PETITIONER-ACCUSED TO DOUBLE JEOPARDY AND TO HIGHER PENALTY HAS NOT BEEN CONSIDERED.

5. [WHETHER THE RESPONDENT'S CONTENTION THAT A NEW AND AMENDED COOPERATIVE CODE RA-9520 COULD POSSIBLE APPLY TO THIS CASE AGAINST THE PETITIONER, VIOLATIVE OF EXPOSE (SIC) FACTO LAW.]<sup>[10]</sup>

The petition has no merit.

Prefatorily, the Court notes that petitioner filed a special civil action for *certiorari* under Rule 65 of the Rules of Court, as amended, instead of an appeal by *certiorari* under Rule 45, which the OSG points out as the proper remedy to assail the CA decision.

Petitioner asserts that she filed the petition pursuant to Rule 65, because the assailed CA decision is tainted with grave abuse of discretion. She posits that the Court ordered the exclusion of the CA as one of the party respondents, and considered the petition as one filed under Rule 45, since the focal issue raised in the petition is a question of law calling for an interpretation of Sections 46 and 124 of RA 6938, in relation to Batas Pambansa (B.P.) Blg. 129, or the Judiciary

Reorganization Act of 1980, as amended by RA 7691. She adds that had she chosen to file an appeal by *certiorari*, the Court would be faced with the same question of law.

Petitioner's contentions are untenable.

As a rule, the remedy from a judgment or final order of the CA is appeal via petition for review under Rule 45 of the Rules of Court.<sup>[11]</sup> In *Mercado v. Court of Appeals*,<sup>[12]</sup> the Court had again stressed the distinction between the remedies provided for under Rule 45 and Rule 65, to wit:

xxx [T]he proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not identical to a petition for *certiorari* under Rule 65. Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific ground therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that to be taken under Rule 45. xxx.<sup>[13]</sup>

In *Artistica Ceramica, Inc., v. Ciudad Del Carmen Homeowner's Association, Inc.*,<sup>[14]</sup> the Court explained that one of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. It is also well settled that a party cannot file a petition both under Rules 45 and 65 of the Rules of Court because said procedural rules pertain to different remedies and have distinct applications. The remedy of appeal under Rule 45 and the original action for *certiorari* under Rule 65 are mutually exclusive and not alternative or cumulative. Thus, when petitioner adopts an improper remedy, petition may be dismissed outright.

However, the Court may set aside technicality for justifiable reasons as when the petition before it is clearly meritorious and filed on time both under Rules 45 and 65.<sup>[15]</sup> In accordance with the liberal spirit which pervades the Rules of Court and in the interest of justice, the Court may treat the petition as having been filed under Rule 45. Here, no justifiable reasons were proffered by petitioner for a more liberal interpretation of procedural rules. Although it was filed on time both under Rules 45 and 65, the petition at bench lacks substantive merit and raises only questions of law which should have been duly made in a petition for review on *certiorari* under Rule 45.<sup>[16]</sup>

On the substantive issue of which court has jurisdiction over petitioner's criminal case for violation of Section 46 (Liability of Directors, Officers and Committee Members) of RA 6938, the Court affirms the CA ruling that it is the RTC, not the Metropolitan Trial Court (*MeTC*), which has jurisdiction over her case.

In criminal cases, the jurisdiction of the court is determined by the averments of the complaint or Information, in relation to the law prevailing at the time of the filing of