

SECOND DIVISION

[G.R. No. 162336, February 01, 2010]

HILARIO P. SORIANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, BANGKO SENTRAL NG PILIPINAS (BSP), PHILIPPINE DEPOSIT INSURANCE AND CORPORATION (PDIC), PUBLIC PROSECUTOR ANTONIO C. BUAN, AND STATE PROSECUTOR ALBERTO R. FONACIER, RESPONDENTS.^[1]

DECISION

DEL CASTILLO, J.:

A bank officer violates the DOSRI^[2] law when he acquires bank funds for his personal benefit, even if such acquisition was facilitated by a fraudulent loan application. Directors, officers, stockholders, and their related interests cannot be allowed to interpose the fraudulent nature of the loan as a defense to escape culpability for their circumvention of Section 83 of Republic Act (RA) No. 337.^[3]

Before us is a Petition for Review on *Certiorari*^[4] under Rule 45 of the Rules of Court, assailing the September 26, 2003 Decision^[5] and the February 5, 2004 Resolution^[6] of the Court of Appeals (CA) in CA-G.R. SP No. 67657. The challenged Decision disposed as follows:

WHEREFORE, premises considered, the instant petition for certiorari is hereby **DENIED**.^[7]

Factual Antecedents

Sometime in 2000, the Office of Special Investigation (OSI) of the *Bangko Sentral ng Pilipinas* (BSP), through its officers,^[8] transmitted a letter^[9] dated March 27, 2000 to Jovencito Zuño, Chief State Prosecutor of the Department of Justice (DOJ). The letter attached as annexes five affidavits,^[10] which would allegedly serve as bases for filing criminal charges for Estafa thru Falsification of Commercial Documents, in relation to Presidential Decree (PD) No. 1689,^[11] and for Violation of Section 83 of RA 337, as amended by PD 1795,^[12] against, *inter alia*, petitioner herein Hilario P. Soriano. These five affidavits, along with other documents, stated that spouses Enrico and Amalia Carlos appeared to have an outstanding loan of P8 million with the Rural Bank of San Miguel (Bulacan), Inc. (RBSM), but had never applied for nor received such loan; that it was petitioner, who was then president of RBSM, who had ordered, facilitated, and received the proceeds of the loan; and that the P8 million loan had never been authorized by RBSM's Board of Directors and no report thereof had ever been submitted to the Department of Rural Banks, Supervision and Examination Sector of the BSP. The letter of the OSI, which was not

subscribed under oath, ended with a request that a preliminary investigation be conducted and the corresponding criminal charges be filed against petitioner at his last known address.

Acting on the letter-request and its annexes, State Prosecutor Albert R. Fonacier proceeded with the preliminary investigation. He issued a subpoena with the witnesses' affidavits and supporting documents attached, and required petitioner to file his counter-affidavit. In due course, the investigating officer issued a Resolution finding probable cause and correspondingly filed two separate informations against petitioner before the Regional Trial Court (RTC) of Malolos, Bulacan.^[13]

The first Information,^[14] dated November 14, 2000 and docketed as Criminal Case No. 237-M-2001, was for estafa through falsification of commercial documents, under Article 315, paragraph 1(b), of the Revised Penal Code (RPC), in relation to Article 172 of the RPC and PD 1689. It basically alleged that petitioner and his co-accused, in abuse of the confidence reposed in them as RBSM officers, caused the falsification of a number of loan documents, making it appear that one Enrico Carlos filled up the same, and thereby succeeded in securing a loan and converting the loan proceeds for their personal gain and benefit.^[15] The information reads:

That in or about the month of April, 1997, and thereafter, in San Miguel, Bulacan, and within the jurisdiction of this Honorable Court, the said accused **HILARIO P. SORIANO** and **ROSALINDA ILAGAN**, as principals by direct participation, with unfaithfulness or abuse of confidence and taking advantage of their position as President of the Rural Bank of San Miguel (Bulacan), Inc. and Branch Manager of the Rural Bank of San Miguel - San Miguel Branch [sic], a duly organized banking institution under Philippine Laws, conspiring, confederating and mutually helping one another, did then and there, willfully and feloniously falsify loan documents consisting of undated loan application/information sheet, credit proposal dated April 14, 1997, credit proposal dated April 22, 1997, credit investigation report dated April 15, 1997, promissory note dated April 23, 1997, disclosure statement on loan/credit transaction dated April 23, 1997, and other related documents, by making it appear that one Enrico Carlos filled up the application/information sheet and filed the aforementioned loan documents when in truth and in fact Enrico Carlos did not participate in the execution of said loan documents and that by virtue of said falsification and with deceit and intent to cause damage, the accused succeeded in securing a loan in the amount of eight million pesos (PhP8,000,000.00) from the Rural Bank of San Miguel - San Ildefonso branch in the name of Enrico Carlos which amount of PhP8 million representing the loan proceeds the accused thereafter converted the same amount to their own personal gain and benefit, to the damage and prejudice of the Rural Bank of San Miguel - San Ildefonso branch, its creditors, the Bangko Sentral ng Pilipinas, and the Philippine Deposit Insurance Corporation.

CONTRARY TO LAW.^[16]

The other Information^[17] dated November 10, 2000 and docketed as Criminal Case No. 238-M-2001, was for violation of Section 83 of RA 337, as amended by PD 1795. The said provision refers to the prohibition against the so-called DOSRI loans. The information alleged that, in his capacity as President of RBSM, petitioner indirectly secured an P8 million loan with RBSM, for his personal use and benefit, without the written consent and approval of the bank's Board of Directors, without entering the said transaction in the bank's records, and without transmitting a copy of the transaction to the supervising department of the bank. His ruse was facilitated by placing the loan in the name of an unsuspecting RBSM depositor, one Enrico Carlos.^[18] The information reads:

That in or about the month of April, 1997, and thereafter, and within the jurisdiction of this Honorable Court, the said accused, in his capacity as President of the Rural Bank of San Miguel (Bulacan), Inc., did then and there, willfully and feloniously indirectly borrow or secure a loan with the Rural Bank of San Miguel - San Ildefonso branch, a domestic rural banking institution created, organized and existing under Philippine laws, amounting to eight million pesos (PhP8,000,000.00), knowing fully well that the same has been done by him without the written consent and approval of the majority of the board of directors of the said bank, and which consent and approval the said accused deliberately failed to obtain and enter the same upon the records of said banking institution and to transmit a copy thereof to the supervising department of the said bank, as required by the General Banking Act, by using the name of one depositor Enrico Carlos of San Miguel, Bulacan, the latter having no knowledge of the said loan, and one in possession of the said amount of eight million pesos (PhP8,000,000.00), accused converted the same to his own personal use and benefit, in flagrant violation of the said law.

CONTRARY TO LAW.^[19]

Both cases were raffled to Branch 79 of the RTC of Malolos, Bulacan.^[20]

On June 8, 2001, petitioner moved to quash^[21] these informations on two grounds: that the court had no jurisdiction over the offense charged, and that the facts charged do not constitute an offense.

On the first ground, petitioner argued that the letter transmitted by the BSP to the DOJ constituted the complaint and hence was defective for failure to comply with the mandatory requirements of Section 3(a), Rule 112 of the Rules of Court, such as the statement of address of petitioner and oath and subscription.^[22] Moreover, petitioner argued that the officers of OSI, who were the signatories to the "letter-complaint," were not authorized by the BSP Governor, much less by the Monetary Board, to file the complaint. According to petitioner, this alleged fatal oversight violated Section 18, pars. (c) and (d) of the New Central Bank Act (RA 7653).

On the second ground, petitioner contended that the commission of estafa under paragraph 1(b) of Article 315 of the RPC is inherently incompatible with the violation

of DOSRI law (as set out in Section 83^[23] of RA 337, as amended by PD 1795),^[24] hence a person cannot be charged for both offenses. He argued that a violation of DOSRI law requires the offender to **obtain a loan** from his bank, without complying with procedural, reportorial, or ceiling requirements. On the other hand, estafa under par. 1(b), Article 315 of the RPC requires the offender to misappropriate or convert something that he **holds in trust, or on commission, or for administration**, or under any other obligation involving the duty to return the same.^[25]

Essentially, the petitioner theorized that the characterization of possession is different in the two offenses. If petitioner acquired the loan as DOSRI, he owned the loaned money and therefore, cannot misappropriate or convert it as contemplated in the offense of estafa. Conversely, if petitioner committed estafa, then he merely held the money in trust for someone else and therefore, did not acquire a loan in violation of DOSRI rules.

Ruling of the Regional Trial Court

In an Order^[26] dated August 8, 2001, the trial court denied petitioner's Motion to Quash for lack of merit. The lower court agreed with the prosecution that the assailed OSI letter was *not* the complaint-affidavit itself; thus, it need not comply with the requirements under the Rules of Court. The trial court held that the affidavits, which were attached to the OSI letter, comprised the complaint-affidavit in the case. Since these affidavits were duly subscribed and sworn to before a notary public, there was adequate compliance with the Rules. The trial court further held that the two offenses were separate and distinct violations, hence the prosecution of one did not pose a bar to the other.^[27]

Petitioner's Motion for Reconsideration was likewise denied in an Order dated September 5, 2001.^[28]

Aggrieved, petitioner filed a Petition for *Certiorari*^[29] with the CA, reiterating his arguments before the trial court.

Ruling of the Court of Appeals

The CA denied the petition on both issues presented by petitioner.

On the first issue, the CA determined that the BSP letter, which petitioner characterized to be a fatally infirm complaint, was not actually a complaint, but a transmittal or cover letter only. This transmittal letter merely contained a summary of the affidavits which were attached to it. It did not contain any averment of personal knowledge of the events and transactions that constitute the elements of the offenses charged. Being a mere transmittal letter, it need not comply with the requirements of Section 3(a) of Rule 112 of the Rules of Court.^[30]

The CA further determined that the five affidavits attached to the transmittal letter should be considered as the complaint-affidavits that charged petitioner with violation of Section 83 of RA 337 and for Estafa thru Falsification of Commercial Documents. These complaint-affidavits complied with the mandatory requirements

set out in the Rules of Court - they were subscribed and sworn to before a notary public and subsequently certified by State Prosecutor Fonacier, who personally examined the affiants and was convinced that the affiants fully understood their sworn statements.^[31]

Anent the second ground, the CA found no merit in petitioner's argument that the violation of the DOSRI law and the commission of estafa thru falsification of commercial documents are inherently inconsistent with each other. It explained that the test in considering a motion to quash on the ground that the facts charged do not constitute an offense, is whether the facts alleged, when hypothetically admitted, constitute the elements of the offense charged. The appellate court held that this test was sufficiently met because the allegations in the assailed informations, *when hypothetically admitted*, clearly constitute the elements of Estafa thru Falsification of Commercial Documents and Violation of DOSRI law.^[32]

Petitioner's Motion for Reconsideration^[33] was likewise denied for lack of merit.

Hence, this petition.

Issues

Restated, petitioner raises the following issues^[34] for our consideration:

I

Whether the complaint complied with the mandatory requirements provided under Section 3(a), Rule 112 of the Rules of Court and Section 18, paragraphs (c) and (d) of RA 7653.

II

Whether a loan transaction within the ambit of the DOSRI law (violation of Section 83 of RA 337, as amended) could also be the subject of Estafa under Article 315 (1) (b) of the Revised Penal Code.

III

Is a petition for certiorari under Rule 65 the proper remedy against an Order denying a Motion to Quash?

IV

Whether petitioner is entitled to a writ of injunction.

Our Ruling

The petition lacks merit.