

## THIRD DIVISION

[ G.R. No. 159186, June 05, 2009 ]

**JESSE Y. YAP, PETITIONER, VS. HON. MONICO G. CABALES,  
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 35,  
GENERAL SANTOS CITY; MUNICIPAL TRIAL COURT, BRANCH 1,  
GENERAL SANTOS CITY; COURT OF APPEALS, PEOPLE OF THE  
PHILIPPINES, JOVITA DIMALANTA AND MERGYL MIRABUENO,  
RESPONDENTS.**

### DECISION

**PERALTA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court with prayer for the issuance of a writ of *preliminary injunction* and/or issuance of *status quo order* seeking to annul and set aside the Resolution<sup>[1]</sup> of the Court of Appeals (CA) dated July 17, 2003 denying petitioner's motion for reconsideration of the Decision<sup>[2]</sup> dated April 30, 2003 in CA-G.R. SP No. 68250.

The facts of the case are as follows:

Petitioner Jesse Y. Yap and his spouse Bessie Yap are engaged in the real estate business through their company Primetown Property Group.

Sometime in 1996, petitioner purchased several real properties from a certain Evelyn Te (Evelyn). In consideration of said purchases, petitioner issued several Bank of the Philippine Islands (BPI) postdated checks to Evelyn. Thereafter, spouses Orlando and Mergyl Mirabueno and spouses Charlie and Jovita Dimalanta, rediscounted the checks from Evelyn.

In the beginning, the first few checks were honored by the bank, but in the early part of 1997, when the remaining checks were deposited with the drawee bank, they were dishonored for the reason that the "*Account is Closed.*" Demands were made by Spouses Mirabueno and Spouses Dimalanta to the petitioner to make good the checks. Despite this, however, the latter failed to pay the amounts represented by the said checks.

On December 8, 1997, Spouses Mirabueno filed a civil action for collection of sum of money, damages and attorney's fee with prayer for the issuance of a writ of preliminary attachment against petitioner before the Regional Trial Court (RTC) of General Santos City, docketed as Civil Case No. 6231.<sup>[3]</sup> On December 15, 1997, Spouses Dimalanta followed suit and instituted a similar action, which was docketed as Civil Case No. 6238.<sup>[4]</sup>

Subsequently, on various dates, the Office of the City Prosecutor of General Santos City filed several informations for violation of *Batas Pambansa Bilang (B.P. Blg.) 22*

against the petitioner with the Municipal Trial Court in Cities (MTCC), General Santos City. The criminal complaints were docketed as Criminal Case Nos. 34873, 34874, 34862 to 34869, and Criminal Case No. 35522-I.<sup>[5]</sup>

In the criminal cases, petitioner filed separate motions to suspend proceedings on account of the existence of a prejudicial question and motion to exclude the private prosecutor from participating in the proceedings.<sup>[6]</sup> Petitioner prayed that the proceedings in the criminal cases be suspended until the civil cases pending before the RTC were finally resolved.

The MTCC, in its Orders<sup>[7]</sup> dated June 21, 2000 and July 4, 2000, denied the motions for lack of merit. Petitioner filed a Partial Motion for Reconsideration<sup>[8]</sup> relative to Criminal Case Nos. 34873, 34874, 34862 to 34869 and a Motion for Reconsideration of the Part of the Order Denying the Motion to Suspend Proceedings on Account of the Existence of a Prejudicial Question relative to Criminal Case No. 35522-I.<sup>[9]</sup> The subsequent motions were denied in the Order<sup>[10]</sup> dated October 18, 2000.

Aggrieved, petitioner filed a Petition for *Certiorari* with a Prayer for the Issuance of a Writ of Preliminary Injunction<sup>[11]</sup> before the RTC, docketed as SPL. Civil Case No. 539, imputing grave abuse of discretion on the part of the MTCC Judge. On July 2, 2001, the RTC issued an Order<sup>[12]</sup> denying the petition.

Petitioner then filed a Motion for Reconsideration,<sup>[13]</sup> which was denied in an Order dated October 18, 2001.<sup>[14]</sup>

Thereafter, petitioner filed with the CA a Petition for *Certiorari Prohibition* and *Mandamus* with Urgent Prayer for the Issuance of *Status Quo* Order and Writ of Preliminary Injunction,<sup>[15]</sup> docketed as CA-G.R. SP No. 68250.

On April 30, 2003, the CA rendered a Decision<sup>[16]</sup> dismissing the petition for lack of merit. The CA opined that Civil Case Nos. 6231 and 6238 did not pose a prejudicial question to the prosecution of the petitioner for violation of B.P. Blg. 22.

The CA ruled:

In the instant case, a careful perusal of Civil Cases Nos. 6231 and 6238 reveals that the issue involved therein is not the validity of the sale as incorrectly pointed out by the petitioner, but it is, whether or not the complainants therein are entitled to collect from the petitioner the sum or the value of the checks which they have rediscounted from Evelyn Te. It behooves this Court to state that the sale and the rediscounting of the checks are two transactions, separate and distinct from each other. It so happened that in the subject civil cases it is not the sale that is in question, but rather the rediscounting of the checks. Therefore, petitioner's contention that the main issue involved in said civil cases is the validity of the sale stands on hollow ground. Furthermore, if it is indeed the validity of the sale that is contested in the subject civil cases, then, We cannot fathom why the petitioner never contested such sale by filing an action for the annulment thereof or at least invoked or prayed in

his answer that the sale be declared null and void. Accordingly, even if Civil Cases Nos. 6231 and 6238 are tried and the resolution of the issues therein is had, it cannot be deduced therefrom that the petitioner cannot be held liable anymore for violation of B.P. Blg. 22.<sup>[17]</sup>

Petitioner filed a Motion for Reconsideration,<sup>[18]</sup> which was denied in the Order<sup>[19]</sup> dated July 17, 2003.

Hence, the petition assigning the following errors:

1. THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THERE IS NO PREJUDICIAL QUESTION IN THE CIVIL CASES (FOR COLLECTION OF SUMS OF MONEY INSTITUTED BY PRIVATE RESPONDENTS OVER CHECKS ISSUED BY THE PETITIONER, CIVIL CASE NOS. 6238 AND 6231) THAT WOULD WARRANT SUSPENSION OF THE CRIMINAL CASES (CASE NO. 35522-1, FOR VIOLATION OF B.P. 22, SUBJECT OF WHICH ARE THE VERY SAME CHECKS).
2. THE HONORABLE COURT OF APPEALS ERRED IN NOT GRANTING THE PRAYER FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION AND/OR STATUS QUO ORDER.<sup>[20]</sup>

The main contention of the petitioner is that a prejudicial question, as defined by law and jurisprudence, exists in the present case. It is the petitioner's assertion that Civil Case Nos. 6231 and 6238 for collection of sum of money and damages were filed ahead of the criminal cases for violation of B.P. Blg. 22. He further alleged that, in the pending civil cases, the issue as to whether private respondents are entitled to collect from the petitioner despite the lack of consideration, is an issue that is a logical antecedent to the criminal cases for violation of B.P. Blg. 22. For if the court rules that there is no valid consideration for the check's issuance, as petitioner contends, then it necessarily follows that he could not also be held liable for violation of B.P. Blg. 22.

Petitioner further avers that B.P. Blg. 22 specifically requires, among other elements, that the check should have been issued for account or for value. There must be a valid consideration; otherwise, no violation of the said law could be rightfully pursued. Petitioner said that the reason for the dishonor of the checks was his order to the drawee bank to stop payment and to close his account in order to avoid necessary penalty from the bank. He made this order due to the failure of Evelyn to deliver to him the titles to the purchased properties to him.

On the other hand, the Office of the Solicitor General (OSG) contends that there is no prejudicial question in Civil Case Nos. 6231 and 6238 which would warrant the suspension of the proceedings in the criminal cases for violation of B.P. Blg. 22 against the petitioner. The issue in the civil cases is not the validity of the sale between the petitioner and Evelyn, but whether the complainants therein are entitled to damages arising from the checks. These checks were issued by the petitioner in favor of Evelyn, who, thereafter, negotiated the same checks to private complainants. The checks were subsequently dishonored due to insufficiency of funds. The OSG maintains that the resolution of such issue has absolutely no bearing on the issue of whether petitioner may be held liable for violation of B.P. Blg. 22.<sup>[21]</sup>

The present case hinges on the determination of whether there exists a prejudicial question that necessitates the suspension of the proceedings in the MTCC.

We find that there is none and, thus, we resolve to deny the petition.

A prejudicial question generally exists in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue that must be preemptively resolved before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (i) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (ii) the resolution of such issue determines whether or not the criminal action may proceed.<sup>[22]</sup>

If both civil and criminal cases have similar issues, or the issue in one is intimately related to the issues raised in the other, then a prejudicial question would likely exist, provided the other element or characteristic is satisfied. It must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that the resolution of the issues raised in the civil action would be necessarily determinative of the guilt or innocence of the accused. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or if there is no necessity that the civil case be determined first before taking up the criminal case, the civil case does not involve a prejudicial question.<sup>[23]</sup> Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.<sup>[24]</sup>

The issue in the criminal cases is whether the petitioner is guilty of violating B.P. Blg. 22, while in the civil case, it is whether the private respondents are entitled to collect from the petitioner the sum or the value of the checks that they have rediscounted from Evelyn.

The resolution of the issue raised in the civil action is not determinative of the guilt or innocence of the accused in the criminal cases against him, and there is no necessity that the civil case be determined first before taking up the criminal cases.

In the aforementioned civil actions, even if petitioner is declared not liable for the payment of the value of the checks and damages, he cannot be adjudged free from criminal liability for violation of B.P. Blg. 22. The mere issuance of worthless checks with knowledge of the insufficiency of funds to support the checks is in itself an offense.<sup>[25]</sup>

In *Jose v. Suarez*,<sup>[26]</sup> the prejudicial question under determination was whether the daily interest rate of 5% was void, such that the checks issued by respondents to cover said interest were likewise void for being *contra bonos mores*, and thus the cases for B.P. Blg. 22 will no longer prosper. In resolving the issue, We ruled that "whether or not the interest rate imposed by petitioners is eventually declared void for being *contra bonos mores* will not affect the outcome of the BP Blg. 22 cases because what will ultimately be penalized is the mere issuance of bouncing checks.