

THIRD DIVISION

[G.R. NO. 164904, October 19, 2007]

JOSE ANTONIO U. GONZALEZ, PETITIONER, VS. HONGKONG & SHANGHAI BANKING CORPORATION, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

In this petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court, as amended, petitioner Jose Antonio U. Gonzalez (Gonzalez) seeks; 1) the reversal of the 13 January 2004 *Decision*,^[2] and 6 August 2004 *Resolution*,^[3] both of the Court of Appeals in CA-G.R. SP No. 75469; and 2) the dismissal of the complaint^[4] for violation of Presidential Decree No. 115, otherwise known as the "Trust Receipts Law," in relation to Article 315(1)(b) of the Revised Penal Code, filed by respondent Hongkong & Shanghai Banking Corporation (HSBC) against him before the City Prosecutor of Makati and docketed as I.S. No. 00-G-24734-35.

The Court of Appeals, in its assailed decision and resolution, found no grave abuse of discretion on the part of the Secretary and the succeeding Acting Secretary, both of the Department of Justice (DOJ), in their denial of petitioner Gonzalez's petition for review and motion for reconsideration, respectively. Consequently, the appellate court affirmed the 17 October 2002,^[5] and 14 January 2003^[6] twin resolutions of the DOJ, which in turn affirmed the 13 September 2000 Resolution,^[7] of the City Prosecutor of Makati, recommending the filing of an Information for violation of Presidential Decree No. 115, in relation to Article 315(1)(b) of the Revised Penal Code against petitioner Gonzalez.

The case stemmed from a complaint filed by respondent HSBC against petitioner Gonzalez for estafa, more particularly, the violation of Presidential Decree No. 115, in relation to Art. 315(1)(b) of the Revised Penal Code.

The antecedents of the present petition are beyond dispute. They are:

At the time of the incident subject of the case at bar, petitioner Gonzalez was the Chairman and Chief Executive Officer of Mondragon Leisure and Resorts Corporation (MLRC). MLRC is the owner, developer and operator of Mimosa Leisure Estate^[8] located at the Clark Special Economic Zone (CSEZ), Clark Field, Pampanga. On 1 August 1997, petitioner Gonzalez, for and in behalf of MLRC, acknowledged receipt of various golfing equipments and assorted Walt Disney items, and signed the corresponding two Trust Receipt agreements, *i.e.*, Trust Receipt No. 001-016310-205,^[9] covering the various golfing equipments, and Trust Receipt No. 001-016310-206,^[10] covering the assorted Walt Disney items, both in favor of respondent HSBC.

The due date for Trust Receipt No. 001-016310-205, for the value of HK\$85,540.00,

was on 1 September 1997, while that of Trust Receipt No. 001-016310-206, for the value of HK\$143,993.90, was on 28 January 1998.

When the due dates of subject Trust Receipts came and went without word from MLRC, respondent HSBC, through Paula L. Felipe (Felipe), Vice-President of respondent HSBC's Credit Control Department, in a letter^[11] dated 28 March 2000, demanded from MLRC the turnover of the proceeds of the sale of the assorted goods covered by the Trust Receipts or the return of said goods. Despite demand, however, MLRC failed to return the assorted goods or their value. Consequently, Felipe, for respondent HSBC, filed a criminal complaint for estafa, *i.e.*, for violation of Presidential Decree No. 115, the "Trust Receipts Law," in relation to Art. No. 315(1) (b) of the Revised Penal Code against petitioner Gonzalez before the Office of the City Prosecutor of Makati, docketed as I.S. No. 00-G-24734-35. The complaint-affidavit contained the following allegations:

4. On August 1, 1997, Mr. Antonio U. Gonzalez, Chairman and Chief Executive of Mondragon, executed in favor of the Bank Trust Receipt No. 001-016310-205, by virtue of which he acknowledged receipt from the Bank of "(Sporting Goods) Golf Equipments" (sic) with the value of HK\$85,540.00. Under this trust receipt, Mr. Gonzalez bound himself to turn over to the Bank the proceeds of the sale of the goods or to return them in case of non-sale on January 28, 1998.

x x x x

5. On August 1, 1997, Mr. Gonzalez executed in favor of the Bank Trust Receipt No. 001-016310-206, by virtue of which he acknowledged receipt from the Bank of "Assorted Disney Items" with the value of HK\$143,993.90. Under this trust receipt, Mr. Gonzalez bound himself to turn over to the Bank the proceeds of the sale of the goods or to return them in case of non-sale on September 1, 1997.

x x x x

6. All the abovementioned trust receipts x x x executed by the respondents (sic) contain the following provisions:

'1. The Document and the goods and/or proceeds to which they relate ("The Goods") will be held for your [HSBC] benefit and the entrustee will receive the Documents and take delivery of the Good exclusively for the purpose of selling the Goods unless you [HSBC] shall direct otherwise.

2. The Documents, the Goods and the proceeds of their sale are and will be held by the entrustee in trust for you [HSBC] as entruster and solely to your [HSBC] order and the entrustee shall pay the proceeds to you [HSBC], immediately on receipt thereof or of each portion thereof, as the case may be, without set-off or any deduction. The records of the entrustee shall properly record your [HSBC] interest in the Goods.

x x x x

10. This Trust Receipt shall be governed and construed in all respects in accordance with P.D. 115 otherwise known as Trust Receipts Law.'

7. Despite repeated oral and written demands upon respondent, respondent has not turned over to the Bank a single centavo of the proceeds of the sale of the abovementioned goods covered by the Trust Receipts, or returned any of the goods.^[12]

In his defense, petitioner Gonzalez countered that:

2. At the outset, it must be stressed that the transactions subject of the instant Complaint are between the complainant bank and Mondragon Leisure and Resorts Corporation ("MLRC") and that the officers of the latter, including respondent herein, in all of their official acts and transactions, are not acting in their own personal capacity but, rather, are merely acting on behalf of the corporation and performing a valid corporate act pursuant to a validly enacted resolution of the Board of Directors.
3. Moreover, it is clear that I cannot be held criminally responsible for alleged violation of the Trust Receipts subject hereof. The aforesaid transactions, while reportedly denominated as "Trust Receipts" were not really intended by the parties to be trust receipt transaction within the purview of P.D. 115. At best, they are loan transactions, for which the respondent cannot be held criminally liable.

x x x x

6. x x x respondent, who merely performed a valid corporate act may not be held personally and criminally liable therefore (sic), absent a clear showing of fault or negligence on his part x x x.
7. x x x it is required that the person charged with estafa pursuant to a trust receipt transaction must be proved to have misappropriated, misused or converted to his own personal use to the damage of the entruster, the proceeds of the goods covered by the trust receipts. Thus, mere failure to pay the amounts covered by the trust receipts does not conclusively constitute estafa as defined under P.D. 115 and the Revised Penal Code.
8. x x x. [W]hile respondent may have failed on behalf of MLRC (which is actually the debtor) to make payments on the due dates, such failure is neither attributable to respondent or due to his wrongdoing or fault but on account of circumstances concerning the corporation x x x.

x x x x

13. x x x there was a tacit agreement among the parties that defendant, being a stable company with good credit standing, would be accorded leniency and given enough leeway in the settlement of its obligations.

x x x x

17. x x x the unlawful closure of the Casino by CDC and PAGCOR, coupled with the Asian economic crisis, severely affected its ability to pay its creditors, including complainant bank herein, which have an aggregate exposure of about P5.3 Billion in Mondragon. These events rendered it impossible for MLRC to duly comply with its financial obligations. These events barred plaintiff bank from declaring MLRC's obligation due and demandable, and consequently from declaring MLRC in default. Thus, since MLRC is not in default, respondents herein cannot be charged for estafa as the obligations on the basis of which they are being charged are not yet due and demandable.^[13]

Following the requisite preliminary investigation, in a Resolution dated 13 September 2000, the City Prosecutor found probable cause to hold petitioner Gonzalez liable for two counts of estafa, more specifically, the violation of Presidential Decree No. 115, in relation to Art. 315(1)(b) of the Revised Penal Code. The City Prosecutor recommended that:

WHEREFORE, premises considered, it is respectfully recommended that respondent Jose Antonio U. Gonzalez be indicted with two (2) counts of Violation of P.D. 115 and that the attached Information for that purpose be approved for filing in court.^[14]

In finding probable cause to prosecute petitioner Gonzalez for the crime supposedly committed, the City Prosecutor held that:

After study, assessment and thorough evaluation of the evidence obtaining in this case at bar, the undersigned finds probable cause to warrant respondent's indictment with the offense charge (sic) all the elements of which are obtaining under the aforementioned circumstances. This is so because respondent admitted having executed the trust receipts subject matter of the case in point. The defense raised by the respondent though it appears to be meritorious are (sic) matters of defense best left for the court to consider and appreciate during trial of the case. As shown above, the failure of the entrustee/respondent to account for the goods covered by the two (2) Trust Receipts which he received after notice and demand caused him to be liable for two (2) counts of violation of P.D. 115.^[15]

On 24 October 2000, petitioner Gonzalez appealed the foregoing resolution of the City Prosecutor to the DOJ by means of a petition for review.

In a Resolution dated 17 October 2002, Honorable Hernando B. Perez, then Secretary of the DOJ, denied said petition. In affirming the resolution of the City Prosecutor of Makati, the Secretary held that:

The gravamen of violation of PD 115 is the failure to account, upon demand, for fund or property held in trust by virtue of a trust receipt x x x. This failure, being clearly present in the instant case, prima facie evidence of misappropriation lies. A fortiori, the charges of dishonesty and abuse of confidence will hold.^[16]

Further, the Secretary ruled that:

The allegation of respondent that he cannot be made liable for the offense as he was just performing a valid corporate act is untenable x x x. The respondent being the Chairman and Chief Executive Officer and the person who signed the trust receipts, there can be no doubt that there is no other person who can be considered as more responsible than him. He appears to be the most responsible person contemplated under the aforesaid provision of P.D. 115.

Finally, we agree with the Prosecutor's findings that the other defenses raised by the respondent are evidentiary in nature and best left to the sound appreciation of the court in the course of the trial.^[17]

The dispositive of the resolution provides:

WHEREFORE, the assailed resolution is hereby AFFIRMED and consequently, the petition is DENIED.^[18]

Subsequently, on 14 January 2003, Hon. Merceditas N. Gutierrez, then Acting Secretary of the DOJ, denied the motion for reconsideration of petitioner Gonzalez.

Undaunted, petitioner Gonzalez went to the Court of Appeals *via* a Petition for Review under Rule 43^[19] of the Rules of Court, as amended.

On 13 January 2004, the Court of Appeals promulgated its Decision denying petitioner Gonzalez's recourse for lack of merit.

The appellate court, notwithstanding the procedural infirmity, as the petition filed under Rule 43 of the Rules of Court, as amended, was the wrong mode of appeal, took cognizance of and proceeded to resolve the petition based on substantive grounds. In holding that no grave abuse of discretion amounting to lack or excess of jurisdiction tainted the actions of the Secretary as well as the Acting Secretary of the DOJ in denying petitioner Gonzalez's petition, the decision explained that:

In the case at bar, it is decisively clear that petitioner executed the trust receipts in behalf of MLRC and that there was a failure to turn over the proceeds from the goods sold and the goods themselves subject of the trust receipts despite demand from the respondent bank. Such failure to account or turn over the proceeds or to return the goods subject of the trust receipts gives rise to the crime punished under the Trust Receipts Law. [Citation omitted.] Petitioner is ventilating before us the merits of his causes or defenses, but this is not the occasion for the full and exhaustive display of evidence. The presence or absence of the elements of the crime is evidentiary in nature and shall be passed upon after a full-