

FIRST DIVISION

[G.R. NO. 148852, September 27, 2006]

**MARILYN VALDECANTOS, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND FERNANDO GOKIOCO, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Marilyn Valdecantos (petitioner) assailing the Resolutions dated December 7, 2000^[1] and June 22, 2001^[2] of the Court of Appeals (CA) which dismissed herein petitioner's petition for review and denied her motion for reconsideration, respectively, issued in CA-G.R. CR No. 24645.

Petitioner was charged in the Metropolitan Trial Court (MTC) of Caloocan City, Branch 49, with violation of *Batas Pambansa Bilang 22*, docketed as Criminal Case No. C-178508. The Information reads:

That on or about the 28th day of February, 1997 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously made and issue Check No. 035539 dated February 28, 1997 in the amount of P13,100.00 drawn against UNION BANK, to apply for value in favor of FERNANDO GOKIOKO, well knowing at the time of issue that she/he had no sufficient funds in or credit with the drawee bank for the payment of such check in full presentment, which check was subsequently dishonored for insufficiency of funds or credit, had not said accused, without any valid reason, ordered the bank to stop the payment of said check, and with intent to defraud, failed and still fails to pay said FERNANDO GOKIOKO the amount of P13,100.00 despite receipt of notice from the drawee bank that said check had been dishonored and had not been paid. ^[3]

Upon arraignment, petitioner entered a plea of not guilty. Trial thereafter ensued.

On June 30, 1999, the MTC rendered its Decision,^[4] the dispositive portion of which reads:

WHEREFORE, after a careful consideration of the foregoing evidence, the Court finds accused Marilyn Valdecantos y Valmoseña, GUILTY beyond reasonable doubt of the offense of issuing a worthless check defined and penalized in *Batas Pambansa Blg. 22* and hereby sentences the said accused to a penalty of imprisonment of six (6) months and to pay a fine of twenty-six thousand pesos (P26,000.00) with subsidiary imprisonment in case of insolvency.

Accused is further ordered to indemnify complainant Fernando Gokioko the amount of thirteen thousand one hundred pesos (P13,100.00) representing the amount of the dishonored check with interest thereon at the rate of 12% per annum starting February 28, 1997 until the amount is fully paid, to reimburse to the said complainant the amount of twenty-thousand pesos (P20,000.00) as and for attorney's fees and to pay the costs of this suit. [5]

Petitioner appealed the decision to the Regional Trial Court (RTC), Caloocan City, docketed as Criminal Case No. C-58312 and raffled to Branch 126. The RTC affirmed the MTC in its Decision dated July 24, 2000; [6] and denied petitioner's motion for reconsideration in its Order dated October 16, 2000. [7]

Dissatisfied, petitioner filed a petition for review with the CA on November 28, 2000, docketed as CA-G.R. CR No. 24645. On December 1, 2000, petitioner filed a "Submission of Verification and Certification Against Forum Shopping" [8] attaching thereto the Verification and Certification signed by petitioner on November 27, 2000.

On December 7, 2000, the CA issued the assailed Resolution dismissing the petition on the following grounds:

(a) The Regional Trial Court was not furnished a copy thereof as required by Section 1, Rule 42 of the present Rules of Court;

(b) It is not verified and failed to contain a non-forum shopping certification as mandated by Section 2, Rule 42, supra, and

(c) Only the two (2) lower court's decision and order denying the motion for reconsideration are attached without the other pleadings and material portion of the records as would support the allegations of the petition, such as, the information, position papers and appeal memoranda of the parties filed below, as provided for in Section 2, Rule 42, supra.

Section 3, Rule 42, same, considers the above omissions as sufficient grounds for the dismissal of the petition. [9]

Upon receipt of the CA Resolution on December 18, 2000, petitioner filed her Motion for Reconsideration stating that her counsel's failure to attach the verification and certification against forum shopping which she had already signed was due to inadvertence or oversight of the latter's secretary who forgot to attach the same to the petition; that three days after the filing of her petition with the CA, she filed on December 1, 2000 a "Submission of Verification and Certification Against Forum Shopping" where she had attached her verification and certification thereto. She likewise attached to her motion for reconsideration copies of the following documents: (a) Information in Criminal Case No. 178508; (b) Memorandum of petitioner's appeal in the RTC; (c) Memorandum of private respondent in the RTC; (d) Motion for Reconsideration of the decision of the RTC; (e) Opposition to the Motion for Reconsideration; (f) Transcript of Stenographic Notes of the testimony of Union Bank representative Ariel Puno taken on May 11, 1999; (g) Union Bank Check No. 035539 dated February 28, 1997 in the sum of P13,100.00; and the proof of

service of a copy of her petition which she furnished the RTC on December 19, 2000.

In a Resolution dated June 22, 2001, the CA denied petitioner's motion for reconsideration in this wise:

x x x

Petitioner seasonably submitted a Motion for Reconsideration claiming inadvertence and oversight of his secretary in failing to comply with the missing requirements and altogether attaching the pertinent documents including a verification and certification against forum-shopping.

It should be stressed, however, that failure to file a certificate of non-forum shopping is mandatory and failure to comply with this requirement cannot be excused by the fact that plaintiff is not guilty of forum shopping, and that subsequent compliance with the certification requirement on non-forum shopping cannot excuse a party's failure to comply in the first instance.^[10]

Hence, the instant Petition for Review on *Certiorari* anchored on the following issues:

- 1) Whether or not the Court of Appeals erred in dismissing petitioner's petition despite the fact that petitioner has submitted all the required documents, and instead ignored and disregarded the clear and manifest errors in the decisions of the MTC and RTC in convicting the petitioner.
- 2) Whether or not, on the basis of the evidence presented in the MTC, the petitioner could be convicted of having violated BP 22.^[11]

Petitioner reiterates her contentions raised in her motion for reconsideration filed before the CA. She also claims that it is the declared policy of the courts to afford every litigant amplest opportunity for determination of his case freed from constraints of technicalities. Petitioner likewise contend that although our jurisdiction is confined to questions of law, it may extend its hand to accord justice to petitioner considering that the decision of the MTC finding her guilty of BP 22 was not supported and was even contrary to the evidence on record.

A Comment was filed by the Office of the Solicitor General praying for the dismissal of the petition. The parties submitted their respective Memoranda as required by the Court.

Preliminarily, we find it necessary to give proper perspective to the instant petition. Originally filed as a petition for review on *certiorari* under Rule 45 of the Rules of Court, the same should be considered as a petition for *certiorari* under Rule 65 of the Rules of Court as there is nothing to review on the merits due to its outright dismissal by the CA, for being insufficient in form and substance.^[12] Ordinarily, the proper recourse of an aggrieved party from a decision of the CA is a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, if the error, subject of the recourse, is one of jurisdiction, or the act complained of was perpetrated by a court with grave abuse of discretion amounting to lack or excess of

jurisdiction, the proper remedy available to the aggrieved party is a petition for *certiorari* under Rule 65 of the said Rules.^[13] Inasmuch as the present petition principally assails the dismissal of the petition on ground of procedural flaws involving the jurisdiction of the court *a quo* to entertain the petition, it falls within the ambit of a special civil action for *certiorari* under Rule 65 of the Rules of Court.^[14]

The CA dismissed the petition for review due to petitioner's failure (1) to attach the required verification and the certification on non-forum shopping, (2) to furnish the RTC with a copy of the petition, and (3) to attach the pleadings and material portions of the records of the case pursuant to Sections 1, 2 and 3 of Rule 42 of the Rules of Court.^[15]

The Court grants the petition.

The requirement regarding verification of a pleading is formal, not jurisdictional.^[16] Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective.^[17] Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.^[18] The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.^[19]

While the lack of certification against forum shopping is generally not cured by its submission after the filing of the petition, and the submission of a certificate against forum shopping is deemed obligatory, it is not jurisdictional.^[20] Not being jurisdictional, the requirement has been relaxed under justifiable circumstances under the rule on substantial compliance.

In *Roadway Express v. CA*,^[21] the Court considered as substantial compliance the filing of a certification against forum shopping 14 days before the dismissal of the petition for review. In the same case, the Court stated that:

x x x If subsequent compliance, citing *Sanchez vs. CA*, G.R. 111255, February 7, 1994, First Division, Minute Resolution, with Circular 28-91, after a petition was dismissed for non-compliance was considered by the court as substantial compliance, citing *Fajardo, Jr. vs. CA*, G.R. 112558, en banc, Minute Resolution, with more reason should the petition for review be allowed in this case, in view of the compliance prior to the dismissal of the petition. ^[22]

In *Uy v. Landbank*,^[23] the Court dismissed Uy's petition for lack of verification and certification against non-forum shopping. However, the Court subsequently reinstated the petition after Uy submitted a motion to admit certification and non-forum shopping certification and justified the reinstatement.

In this case, on December 1, 2000, three days after petitioner filed her petition for