

## SECOND DIVISION

[ G.R. No. 128859, June 29, 2004 ]

**AIDA POBLETE AND HON. REUBEN P. DE LA CRUZ, PETITIONERS,  
VS. COURT OF APPEALS AND WILLIAM LU, RESPONDENTS.**

### R E S O L U T I O N

**TINGA, J.:**

Before this Court is a *Petition for Review on Certiorari* under Rule 45, seeking the review of the March 31, 1997 Court of Appeals' *Decision*<sup>[1]</sup> reversing the Order of the trial court granting petitioner bail.

The antecedents follow.

Sometime in 1995, upon complaint of private respondent William Lu, the Provincial Prosecutor of Rizal filed an *Information*<sup>[2]</sup> against the petitioner Aida Poblete, for Estafa under paragraph 2(d), Article 315 of the Revised Penal Code in relation to Presidential Decree No. 818.<sup>[3]</sup> The Information alleged that the petitioner committed the crime of estafa in relation to P.D. 818 by willfully and unlawfully making, drawing and issuing to William Lu, with deliberate intent to defraud and by means of deceit, false pretenses and fraudulent acts executed prior to or simultaneous with, checks amounting to Two Million Three Hundred Eighteen Thousand Forty Seven Pesos and Sixty Centavos (P2,318,047.60). The *Information* did not recommend bail.

On December 18, 1995, counsel for the petitioner, accused Aida Poblete, filed a *Motion for Reinvestigation*. She prayed therein that execution of the warrant of arrest be held in abeyance pending the reinvestigation of the case.<sup>[4]</sup>

On January 17, 1996, the lower court issued an Order denying accused's *Motion for Reinvestigation* and directing the issuance of a warrant of arrest, with the bail for her provisional liberty fixed at Forty Thousand Pesos (P40,000.00). The Order stated that the accused is entitled to bail as a matter of right since the offense charged is not punishable by death, *reclusion perpetua* or life imprisonment.<sup>[5]</sup>

In his *Motion for Reconsideration* dated February 9, 1996, private respondent sought the setting aside of the Order, stressing that the imposable penalty upon the accused in view of the amount involved would exceed thirty (30) years and that applying section 1 of P.D. 818<sup>[6]</sup> in relation to section 3 of Rule 114 of the Rules of Court,<sup>[7]</sup> bail would not be a matter of right. That being the case, hearing on any application for bail would be mandatory, he urged.

On May 2, 1996, the lower court issued an Order denying private respondent's *Motion for Reconsideration* for lack of merit.<sup>[8]</sup>

Undeterred, private respondent challenged the Order in a *Petition for Certiorari, Prohibition and Mandamus with Preliminary Injunction* with the Court of Appeals, imputing to the presiding judge<sup>[9]</sup> of the lower court grave abuse of discretion. In the meantime, trial on the merits of the criminal case proceeded.

On March 31, 1997 the Court of Appeals reversed the *Order* of the presiding judge and required him to conduct hearing on the bail issue. The appellate court ruled that P.D. 818 needs no further interpretation or construction, pointing out that the trial judge's pronouncement that the penalty for the crime charged at bar should be termed reclusion perpetua only in connection with the accessory penalties imposed under the Revised Penal Code is erroneous. In making the pronouncement and in granting bail ex parte, the Court of Appeals stressed, the trial judge committed grave abuse of discretion.

Hence, the petitioner elevated the Court of Appeals' *Decision* to this Court by a *Petition for Review on Certiorari*.

The issue in the case is simple. It was definitively resolved when the Court adopted Department of Justice (DOJ) Circular No. 74 ordaining that bail be allowed for the crime of Estafa under Art. 315, par. 2(d), as amended by P.D. 818, thru an En Banc Resolution dated February 26, 2002 in the case of *Jovencio Lim and Teresita Lim v. People of the Philippines et al.*, G.R. No. 149276. The salient portion of the *Resolution* reads:

"(3) Where the amount of fraud is P32,000.00 or over in which the imposable penalty is reclusion temporal to reclusion perpetua, bail shall be based on reclusion temporal maximum, pursuant to Par. 2(a) of the 2000 Bail Bond Guide, multiplied by P2,000.00 plus an additional of P2,000.00 for every P10,000.00 in excess of P22,000.00; Provided, however, that the total amount of bail shall not exceed P60,000.00."

Before deciding the case, the Court asked for the complete records of the case from the lower court. On May 7, 2004, the Branch Clerk of Court of the RTC, Branch 27 at Marikina complied with the directive.

The Court for the first time learned that the criminal case subject of this case was dismissed as early as October 15, 1999, when the lower court,<sup>[10]</sup> acting upon the accused's *Demurrer to Evidence*, issued an *Order*<sup>[11]</sup> acquitting the accused. With the acquittal of the accused, the instant case which involves the issue of bail for the provisional liberty of the accused has become moot and academic. This Court has no alternative but to dismiss the *Petition*.

A final note. From the records, it appears that the lawyers of the parties, Atty. Roberto T. Neri for petitioner and Atty. Arturo E. Balbastro for respondent, have both failed to inform this Court of the dismissal of the criminal case and the acquittal of the accused. Obviously, this case could have been dismissed much earlier had both or either counsel bothered to advise the Court about the Order dated October 15, 1999 of the lower court. Their failure to notify the Court may constitute indirect contempt of court<sup>[12]</sup>. Thus, they should be made to explain why they should not be held liable for indirect contempt of court.