

## SECOND DIVISION

[ G.R. No. 110844, April 27, 2000 ]

**ALFREDO CHING, PETITIONER, VS. HON. COURT OF APPEALS,  
HON. ZOSIMO Z. ANGELES, RTC - BR. 58, MAKATI, METRO  
MANILA, PEOPLE OF THE PHILIPPINES AND ALLIED BANKING  
CORPORATION, RESPONDENTS.**

### DECISION

**BUENA, J.:**

Confronting the Court in this instant petition for review on certiorari under Rule 45 is the task of resolving the issue of whether the pendency of a civil action for damages and declaration of nullity of documents, specifically trust receipts, warrants the suspension of criminal proceedings instituted for violation of Article 315 1(b) of the Revised Penal Code, in relation to P.D. 115, otherwise known as the "Trust Receipts Law".

Petitioner Alfredo Ching challenges before us the decision<sup>[1]</sup> of the Court of Appeals promulgated on 27 January 1993 in CA G.R. SP No. 28912, dismissing his "Petition for Certiorari and Prohibition with Prayer for Issuance of Temporary Restraining Order/ Preliminary Injunction", on the ground of lack of merit.

Assailed similarly is the resolution<sup>[2]</sup> of the Court of Appeals dated 28 June 1993 denying petitioner's motion for reconsideration.

As borne by the records, the controversy arose from the following facts:

On 04 February 1992,<sup>[3]</sup> petitioner was charged before the Regional Trial Court of Makati (RTC- Makati), Branch 58, with four counts of estafa punishable under Article 315 par. 1(b) of the Revised Penal Code, in relation to Presidential Decree 115, otherwise known as the "Trust Receipts Law".

The four separate informations<sup>[4]</sup> which were couched in similar language except for the date, subject goods and amount thereof, charged herein petitioner in this wise:

"That on or about the (18th day of May 1981; 3rd day of June 1981; 24th day of June 1981 and 24th day of June 1981), in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused having executed a trust receipt agreement in favor of Allied Banking Corporation in consideration of the receipt by the said accused of goods described as '12 Containers (200 M/T) Magtar Brand Dolomites'; '18 Containers (Zoom M/T) Magtar Brand Dolomites'; 'High Fired Refractory Sliding Nozzle Bricks'; and 'High Fired Refractory Sliding Nozzle Bricks' for which there is now due the sum of (P 278, 917.80; P 419,719.20; P 387, 551. 95; and P389, 085.14

respectively) under the terms of which the accused agreed to sell the same for cash with the express obligation to remit to the complainant bank the proceeds of the sale and/or to turn over the goods, if not sold, on demand, but the accused, once in possession of said goods, far from complying with his obligation and with grave abuse of confidence, did then and there, willfully, unlawfully and feloniously misappropriate, misapply and convert to his own personal use and benefit the said goods and/or the proceeds of the sale thereof, and despite repeated demands, failed and refused and still fails and refuses, to account for and/or remit the proceeds of sale thereof to the Allied Banking Corporation to the damage and prejudice of the said complainant bank in the aforementioned amount of ( P 278,917.80; P 419,719.20; P 387,551.95; and P 389,085.14)."

On 10 February 1992, an "Omnibus Motion<sup>[5]</sup> to Strike Out Information, or in the Alternative to Require Public Prosecutor to Conduct Preliminary Investigation, and to Suspend in the Meantime Further Proceedings in these Cases," was filed by the petitioner.

In an order dated 13 February 1992, the Regional Trial Court of Makati, Branch 58, acting on the omnibus motion, required the prosecutor's office to conduct a preliminary investigation and suspended further proceedings in the criminal cases.

On 05 March 1992, petitioner Ching, together with Philippine Blooming Mills Co. Inc., filed a case<sup>[6]</sup> before the Regional Trial Court of Manila (RTC-Manila), Branch 53, for declaration of nullity of documents and for damages docketed as Civil Case No. 92-60600, entitled "Philippine Blooming Mills, Inc. et. al. vs. Allied Banking Corporation."

On 07 August 1992, Ching filed a petition<sup>[7]</sup> before the RTC-Makati, Branch 58, for the suspension of the criminal proceedings on the ground of prejudicial question in a civil action.

The prosecution then filed an opposition to the petition for suspension, against which opposition, herein petitioner filed a reply.<sup>[8]</sup>

On 26 August 1992, the RTC-Makati issued an order<sup>[9]</sup> which denied the petition for suspension and scheduled the arraignment and pre-trial of the criminal cases. As a result, petitioner moved to reconsider<sup>[10]</sup> the order to which the prosecution filed an opposition.

In an order<sup>[11]</sup> dated 04 September 1992, the RTC-Makati, before which the criminal cases are pending, denied petitioner's motion for reconsideration and set the criminal cases for arraignment and pre-trial.

Aggrieved by these orders<sup>[12]</sup> of the lower court in the criminal cases, petitioner brought before the Court of Appeals a petition for certiorari and prohibition which sought to declare the nullity of the aforementioned orders and to prohibit the RTC-Makati from conducting further proceedings in the criminal cases.

In denying the petition,<sup>[13]</sup> the Court of Appeals, in CA G.R. SP No. 28912, ruled:

"X X X Civil Case No. 90-60600 pending before the Manila Regional Trial Court seeking(sic) the declaration of nullity of the trust receipts in question is not a prejudicial question to Criminal Case Nos. 92-0934 to 37 pending before the respondent court charging the petitioner with four counts of violation of Article 315, par. 1(b), RPC, in relation to PD 115 as to warrant the suspension of the proceedings in the latter X X X."

Consequently, petitioner filed a motion for reconsideration of the decision which the appellate court denied for lack of merit, via a resolution<sup>[14]</sup> dated 28 June 1993.

Notwithstanding the decision rendered by the Court of Appeals, the RTC-Manila, Branch 53 in an order dated 19 November 1993 in Civil Case No. 92-60600, admitted petitioner's amended complaint<sup>[15]</sup> which, inter alia, prayed the court for a judgment:

"X X X

"1. Declaring the 'Trust Receipts,' annexes D, F, H and J hereof, null and void, or otherwise annulling the same, for failure to express the true intent and agreement of the parties;

"2. Declaring the transaction subject hereof as one of **pure and simple loan without any trust receipt agreement and/or not one involving a trust receipt**, and accordingly declaring all the documents annexed hereto as mere loan documents XXX"(emphasis ours)

In its amended answer,<sup>[16]</sup> herein private respondent Allied Banking Corporation submitted in riposte that the transaction applied for was a "letter of credit/trust receipt accommodation" and not a "pure and simple loan with the trust receipts as mere additional or side documents", as asserted by herein petitioner in its amended complaint.<sup>[17]</sup>

Through the expediency of Rule 45, petitioner seeks the intervention of this Court and prays:

"After due consideration, to render judgment reversing the decision and resolution, Annexes A and B hereof, respectively, and ordering the suspension of Criminal Cases (sic) Nos. 92-0934 to 92-0937, inclusive, entitled "People of the Philippines vs. Alfredo Ching" pending before Branch 58 of the Regional Trial Court of Makati, Metro Manila, until final determination of Civil Case No. 92-600 entitled Philippine Blooming Mills Co. Inc. and Alfredo Ching vs. Allied Banking Corporation" pending before Branch 53 of the Regional Trial Court of Manila."

The instant petition is bereft of merit.

We agree with the findings of the trial court, as affirmed by the Court of Appeals, that no prejudicial question exists in the present case.

As defined, a prejudicial question is one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court but the jurisdiction to try and resolve the question must be lodged in another court or tribunal.<sup>[18]</sup>

It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.<sup>[19]</sup> It comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action 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.<sup>[20]</sup>

More simply, for the court to appreciate the pendency of a prejudicial question, the law,<sup>[21]</sup> in no uncertain terms, requires the concurrence of two essential requisites, to wit:

- a) The civil action involves an issue similar or intimately related to the issue raised in the criminal action; and
- b) The resolution of such issue determines whether or not the criminal action may proceed.

Verily, under the prevailing circumstances, the alleged prejudicial question in the civil case for declaration of nullity of documents and for damages, does not *juris et de jure* determine the guilt or innocence of the accused in the criminal action for estafa. Assuming *arguendo* that the court hearing the civil aspect of the case adjudicates that the transaction entered into between the parties was not a trust receipt agreement, nonetheless the guilt of the accused could still be established and his culpability under penal laws determined by other evidence. To put it differently, even on the assumption that the documents are declared null, it does not *ipso facto* follow that such declaration of nullity shall exonerate the accused from criminal prosecution and liability.

Accordingly, the prosecution may adduce evidence to prove the criminal liability of the accused for estafa, specifically under Article 315 1(b) of the Revised Penal Code which explicitly provides that said crime is committed:

"X X X (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property."

Applying the foregoing principles, the criminal liability of the accused for violation of Article 315 1(b) of the Revised Penal Code, may still be shown through the

presentation of evidence to the effect that: (a) the accused received the subject goods in trust or under the obligation to sell the same and to remit the proceeds thereof to Allied Banking Corporation, or to return the goods, if not sold; (b) that accused Ching misappropriated or converted the goods and/or the proceeds of the sale; (c) that accused Ching performed such acts with abuse of confidence to the damage and prejudice of Allied Banking Corporation; and (d) that demand was made by the bank to herein petitioner.

Presidential Decree 115, otherwise known as the "Trust Receipts Law", specifically Section 13 thereof, provides:

"The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code."

We must stress though, that an act violative of a trust receipt agreement is only one mode of committing estafa under the abovementioned provision of the Revised Penal Code. Stated differently, a violation of a trust receipt arrangement is not the sole basis for incurring liability under Article 315 1(b) of the Code.

In ***Jimenez vs. Averia***,<sup>[22]</sup> where the accused was likewise charged with estafa, this Court had occasion to rule that a civil case contesting the validity of a certain receipt is not a prejudicial question that would warrant the suspension of criminal proceedings for estafa.

In the abovementioned case, a criminal charge for estafa was filed in the Court of First Instance of Cavite against the two accused. The information alleged that the accused, having received the amount of P20,000.00 from Manuel Jimenez for the purchase of a fishing boat, with the obligation on the part of the former to return the money in case the boat was not purchased, misappropriated the said amount to the damage and prejudice of Jimenez.<sup>[23]</sup> Misspped

Before arraignment, the accused filed a civil case contesting the validity of a certain receipt signed by them. In the receipt, the accused acknowledged having received the aforesaid sum, in addition to the amount of P240.00 as agent's commission. The complaint, however, alleged that the accused never received any amount from Jimenez and that the signatures on the questioned receipt were secured by means of fraud, deceit and intimidation.

In ruling out the existence of prejudicial question, we declared:

"X X X It will be readily seen that the alleged prejudicial question is not determinative of the guilt or innocence of the parties charged with estafa, because even on the assumption that the execution of the receipt whose annulment they sought in the civil case was vitiated by fraud, duress or intimidation, their guilt could still be established by other evidence