

SECOND DIVISION

[G.R. No. 130756, January 21, 1999]

ESTER B. MARALIT, PETITIONER, VS. JESUSA CORAZON L. IMPERIAL, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on certiorari of the decision, dated August 26, 1997, and the resolution, dated September 29, 1997, of the Regional Trial Court of Naga City (Branch 21) in Special Civil Case No. RTC '97-3744.

The facts are as follows:

Petitioner Ester B. Maralit filed three complaints for estafa through falsification of commercial documents through reckless imprudence against respondent Jesusa Corazon L. Imperial.^[1] Maralit alleged that she was assistant manager of the Naga City branch of the Philippine National Bank (PNB); that on May 20, 1992, June 1, 1992, and July 1, 1992 respondent Imperial separately deposited in her savings account at the PNB three United States treasury warrants bearing USTW Nos. 2034-91254963, 2034-91180047, and 2034-33330760 and on the same days withdrew their peso equivalent of P59,216.86, P130,743.60, and P130,326.00, respectively; and that the treasury warrants were subsequently returned one after the other by the United States Treasury, through the Makati branch of the Citibank, on the ground that the amounts thereof had been altered. Maralit claimed that, as a consequence, she was held personally liable by the PNB for the total amount of P320,287.30.

In her counter-affidavit, respondent claimed that she merely helped a relative, Aida Abengoza, encash the treasury warrants; that she deposited the treasury warrants in her savings account and then withdrew their peso equivalent with the approval of petitioner; that she gave the money to Aida Abengoza; that she did not know that the amounts on the treasury warrants had been altered nor did she represent to petitioner that the treasury warrants were genuine; and that upon being informed of the dishonor of the warrants she immediately contacted Aida Abengoza and signed an acknowledgment of debt promising to pay the total amount of the treasury warrants.

After preliminary investigation, the City Prosecutor of Naga City filed three informations against respondent in the Municipal Trial Court of Naga City (Branch 3).

On September 26, 1996, judgment was rendered as follows:

WHEREFORE, in view of the foregoing considerations, the Court finds no ground to hold the accused criminally liable for which she is charged,

hence Corazon Jesusa L. Imperial is ACQUITTED of all the charges against her. The accused however is civilly liable as indorser of the checks which is (sic) the subject matter of the criminal action.^[2]

The decision having become final and executory, the MTC, on November 11, 1996, ordered the enforcement of the civil liability against the accused arising from the criminal action.^[3] The writ of execution, dated December 9, 1996, directed the sheriff as follows:^[4]

NOW, THEREFORE, you are hereby commanded to cause the execution of the aforesaid judgment in the amount of THREE HUNDRED TWENTY THOUSAND TWO HUNDRED EIGHTY SIX & 46/100 (P320,286.46) ONLY, equivalent to the amount of the 3 three US\$ checks amounting to \$12,621.13, and to levy the goods and chattels of the defendant/s, except those which are exempt from execution and to make the sale thereat in accordance with the procedure outlined by Rule 39, Revised Rules of Court and such cases made and provided, together with all your lawful fees for the services of this writ.

Accordingly, the sheriff served a notice of garnishment on the PNB.

Respondent at first moved to declare her savings account exempt from execution on the ground that the same represented her salary as an employee of the Commission on Audit, which was not even sufficient for her expenses and that of her family. Later, she moved to quash the writ of execution on the ground "that the judgment did not order the accused to pay [a] specific amount of money to a particular person as it merely adjudicated the criminal aspect but not the civil aspect hence there was no judgment rendered which can be the subject of execution."

Both motions of respondent were denied by the MTC for lack of merit in its order, dated February 24, 1997.^[5] Accordingly, an alias writ of execution was issued.

On April 14, 1997, respondent filed a petition for certiorari and prohibition in the Regional Trial Court of Naga City, contending that the writ of execution issued by the MTC was at variance with the judgment in the criminal cases.

The RTC issued a writ of preliminary injunction enjoining enforcement of the writ of execution issued by the MTC. On August 26, 1997, it rendered a decision, which, among other things, made permanent the injunction. The RTC held that the decision of the MTC did not really find respondent liable for P320,286.46 because in fact it was petitioner who was found responsible for making the defraudation possible.

Petitioner moved for reconsideration alleging that respondent filed her petition for certiorari and prohibition more than three months after the MTC had ordered execution of its decision on November 11, 1996. However, her motion was denied on September 28, 1997.^[6] The RTC held that the three-month period should be counted from April 1, 1997, when the alias writ of execution was issued, or from April 7, 1997, when the MTC denied private respondent's motion for reconsideration of the order denying her motion to quash the writ of execution. The RTC likewise found the second ground of petitioner's motion for reconsideration, i.e., that its decision was contrary to law and jurisprudence, devoid of merit.

Hence, this petition. Petitioner raises the following issues:^[7]

1. Whether respondent's Petition for Certiorari and Prohibition under Rule 65 of the Rules of Court was filed out of time;
2. Whether this case warrants the relaxation of the rule that "Certiorari is not a substitute for a lost or lapsed appeal."
3. Whether or not the MTC committed grave abuse of discretion amounting to lack or excess of jurisdiction, when it issued the Order of Execution, Writ of Execution and Alias Writ of Execution to implement its final and executory civil judgment in Criminal Cases No. 68697, 68698 and 68699, which reads: ". . . *The accused however is civilly liable as indorser of the checks subject matter of the criminal action.*"
4. Whether or not the MTC merely adjudicated the criminal aspect but not the civil aspect of Criminal Cases 68697, 68698 and 68699.
5. Whether there was substantial variance as between the dispositive portion of the civil judgment and the writ of execution issued thereunder.
6. Whether or not a court exercising *certiorari* jurisdiction has the authority to modify or alter the final and executory decision of the lower court even by way of an *obiter dictum*.

Petitioner contends that the phrase "civilly liable" in the judgment part of the MTC's decision also connotes an order to pay on respondent's part.

It may fairly be assumed that the decision of the MTC was an adjudication of both the criminal and civil liability of respondent inasmuch as it does not appear that petitioner instituted a separate civil action or reserved or waived the right to bring such action. The question is whether the decision of the MTC finds respondent civilly liable and, in the affirmative, for how much. As already stated, the RTC held that the MTC did not really find respondent liable. In reaching that conclusion, the RTC said:

A mere reading of the dispositive portion of the judgment and the writ of execution will readily show that there is variance between the two. Whereas, the judgment pronounced [respondent herein] to be "civilly liable as indorser of the checks which is the subject matter of the criminal action," the writ of execution commanded the Sheriff "to cause the execution of the aforesaid judgment in the amount of THREE HUNDRED TWENTY THOUSAND TWO HUNDRED EIGHTY SIX & 46/100 (P320,286.46) ONLY, equivalent to the amount of the 3 three US\$ checks amounting to \$12,621.13," In the judgment, nothing is mentioned about the amount for which [respondent herein] is liable as indorser, but in the writ of execution, the civil liability of the [respondent herein] has already been fixed at P320,286.46. The variance, therefore, between the judgment and the writ of execution is substantial because it consists of