

EIGHTH DIVISION

[CA-G.R. SP No. 132646, April 23, 2014]

JUCILYN^[1] N. VALENCIANO, PETITIONER, VS. HON. MARIA THERESA G. SAN JUAN-LOQUILLANO, PRESIDING JUDGE, BRANCH 10, REGIONAL TRIAL COURT, LEGAZPI CITY, PEOPLE OF THE PHILIPPINES, AND VOLTAIRE GAMBOA, RESPONDENTS.

DECISION

LOPEZ, J.:

The existence of a prejudicial question is the primary issue in this case.

The facts are undisputed.

On October 11, 2012, Voltaire Gamboa filed a complaint against Jucilyn Valenciano at the Office of the Provincial Prosecutor of Albay for estafa under Article 315, paragraph 2(d)^[2] of the Revised Penal Code.

While the complaint was under preliminary investigation, Gamboa filed a petition for foreclosure of real estate mortgage against Valenciano before Branch 5 of the Regional Trial Court of Legazpi City (RTC Branch 5), docketed as Special Civil Action No. 11109. Valenciano countered by filing, on November 29, 2012, a complaint for specific performance and damages against Gamboa. The case was raffled before the same court and docketed as Civil Case No. 11114.^[3] These cases were subsequently consolidated.^[4]

On March 20, 2013, an Information for Estafa was filed against Valenciano before Branch 10 of the Regional Trial Court of Legazpi City (RTC Branch 10), to wit:

That on or about the 1st day of June, 2011 at Barangay Cabangan, Municipality of Camalig, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit or false pretenses executed prior to or simultaneously with the commission of fraud, did then and there willfully, unlawfully and feloniously draw, issue and deliver to VOLTAIRE N. GAMBOA, in exchange for cash, the following postdated MetroBank Checks, to wit;

Check No.	Date	Amount
1602600230378728	June 15, 2011	P130,000.00
1602600230378732	June 15, 2011	121,500.00
1602600230378733	June 15, 2011	130,000.00
1602600230378730	June 20, 2011	95,375.00
1602600230378729	June 20, 2011	95,375.00
1602600230378735	June 28, 2011	95,375.00

knowing fully well at the time she issued said checks that she has no sufficient funds in or credit with the drawee bank, which fact was not known to the complainant; that when said checks were presented for payment on due dates, the same were dishonored for reason of "ACCOUNT CLOSED"; that despite demands made upon the accused whether verbal or written to make good the checks, she failed and/or refused to settle her obligation within the required period, to the latter's damage and prejudice in the total amount of SEVEN HUNDRED SIXTY THREE THOUSAND PESOS (P763,000.00), Philippine Currency.

ACTS CONTRARY TO LAW.^[5]

Before arraignment, Valenciano filed a motion to suspend the criminal proceedings due to the existence of a prejudicial question. She pointed out that the checks subject of the estafa case are the same checks involved in Civil Case No. 11114. The resolution of the civil action would necessarily determine her innocence or guilt, considering that payment is an absolute defense in estafa under Article 315, paragraph 2(d) of the Revised Penal Code. Furthermore, the Information for estafa was filed only on March 20, 2013 or months after Civil Case No. 11114 was filed.^[6]

On August 5, 2013, RTC Branch 10 issued an Order denying the motion to suspend proceedings, ratiocinating thus:

First of all, the instant Criminal Case is deemed instituted ahead of Civil Case No. 11114. As stated at the outset, the Criminal Complaint docketed as V-08-INV-12-00178 was filed on October 11, 2012 while Civil Case No. 11114 was filed more than a month after or on November 29, 2012.

Although the actual Information was filed only on March 20, 2013, the court considers the filing of the complaint before the Provincial Prosecution Office of the criminal complaint as the proper reckoning period to determine which of the two cases has been filed ahead. xxx

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As to the second requisite, although accused essayed to make out a case for overpayment in Civil Case No. 11114, the same could hardly determine her guilt or innocence of the crime imputed against her. The main issue in this criminal case is whether the unfunded checks knowingly issued by accused were the moving factors that convinced complainant to part with his money and thus be defrauded. Having overpaid one's creditor (which is a matter of evidence) does not automatically translate to no deceit.

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Above premises considered, the instant motion is hereby DENIED for lack of merit. Arraignment for accused is hereby set on August 8, 2013 at 8:30 o'clock in the morning, of which accused and her counsel have prior

notice.

SO ORDERED.^[7]

Valenciano moved for reconsideration but it was denied.^[8] Consequently, she filed the instant petition for certiorari with an application for the issuance of a temporary restraining order and/or preliminary writ of injunction.^[9] On November 15, 2013, this Court issued a Resolution holding the issuance of a temporary restraining order in abeyance and directing respondent Gamboa to file his Comment on the Petition.^[10] The Comment was filed on December 5, 2013.^[11] This case is now submitted for decision.

Petitioner posits that the preliminary investigation is not a judicial function; hence, not part of the judicial proceedings. In contrast, the act of determining the existence of a prejudicial question under Section 7, Rule 111 of the Rules of Court^[12] is purely a judicial function. Consequently, the filing of the Information in court, and not the Complaint before the prosecutor, is the reckoning point in determining the actual institution of the criminal action. Also, if judgment is made in Civil Case No. 11114 that the loans and just interests represented by the seven Metrobank Checks are deemed fully paid, then the prima facie presumption of deceit, as well as the element of damage could no longer be established in the criminal case.^[13]

Respondent counters that Section 6, Rule 111 allows the suspension of preliminary investigation due to a prejudicial question. Hence, the Rules recognizes that the criminal action is already instituted upon the filing of the complaint before the prosecutor. Furthermore, the proceedings in the civil case would not affect the criminal case since the presence of deceit is the subject in the latter.^[14]

The petition lacks merit.

Sections 6 and 7, Rule 111 of the Rules of Court provide for the suspension of criminal actions due to prejudicial question as follows:

Section 6. Suspension by reason of prejudicial question. - **A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation.** When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.

Section 7. Elements of prejudicial question. - The elements of a prejudicial question are: (a) the **previously instituted civil action** involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed. (Emphasis Ours).

There is no dispute that the civil action must precede the criminal action in a prejudicial question. But, the issue is when the criminal action is deemed instituted to reckon the filing of the civil action. In this case, the civil action was instituted

after the filing of the Complaint at the Provincial Prosecutor's Office and before the filing of the Information at RTC Branch 10.^[15] The petitioner contends that the criminal action was instituted by the Information while the respondent argues that it was instituted by the Complaint. This issue is answered by Section 1, Rule 110, in relation to Section 1, Rule 112 of the Rules of Court, to wit:

Rule 110, Sec. 1. Institution of criminal actions. - Criminal actions shall be instituted as follows:

(a) For the offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

(b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.

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Rule 112. Sec. 1. Preliminary investigation defined; when required. -

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Except as provided in section 7 of this Rule, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard of the fine. (Emphasis Ours.)

Considering that the petitioner was charged with estafa by postdating checks amounting to P763,000.00, the penalty prescribed by law^[16] for this offense is more than four (4) years, two (2) months and one (1) day. Thus, a preliminary investigation is required to be conducted and the criminal action is deemed instituted by filing the Complaint before the Provincial Prosecutor. In other words, the criminal action here preceded the civil action for specific performance; hence, no prejudicial question exists.

Unconvinced, petitioner argues that the criminal action was instituted by the Information because the determination of a prejudicial question is a purely judicial function under Section 7 of Rule 111. This is specious. In the first place, nothing in Section 7 indicates that only a court can determine the existence of prejudicial question. Indeed, Section 6 of Rule 111 plainly states that a petition for suspension of criminal action due to prejudicial question may be filed in the office of the prosecutor. Moreover, it is a principle in statutory construction that a statute should be construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system.^[17] Section 1 of Rule 110 should be harmonized with Sections 6 of Rule 111. Specifically, the authority of the prosecutor to suspend the criminal action due to prejudicial question under Section 6 of Rule 111 complements the provision that