

## **SPECIAL SECOND DIVISION**

**[ CA-G.R. SP No. 128018, June 17, 2014 ]**

**RUDY AQUINDE, PETITIONER, V. PEOPLE OF THE PHILIPPINES  
AND MANILA INTERNATIONAL AIRPORT TRANSPORT SERVICE  
AND MULTI-PURPOSE COOPERATIVE (MIATS-MPC),  
RESPONDENTS.**

### **D E C I S I O N**

**BRUSELAS, JR. J.:**

Before us is a petition for review under Rule 42 which seeks to reverse and set aside the *Decision*<sup>[1]</sup> and *Order*<sup>[2]</sup> of Branch 195 of the Regional Trial Court (RTC) of Parañaque that: (1) granted the private respondent's (complainant-appellant's therein) appeal; and (2) denied the motion for reconsideration of the petitioner (accused-appellee therein). The dispositive portions of the assailed decision and order read as follows:

"WHEREFORE, the instant appeal is granted. Let these cases be ordered remanded to the court *a quo* for appropriate proceedings.

SO ORDERED."<sup>[3]</sup>

xxx xxx xxx

"For reasons stated in the questioned decision, the instant motion for reconsideration thereof filed by accused thru counsel is hereby denied.

SO ORDERED."<sup>[4]</sup>

The instant petition sprung from the complaint for Batas Pambansa Blg. 22 (BP 22) filed by the Manila International Airport Transport Service and Multi-Purpose Cooperative ("MIATS-MPC"), thru their General Manager, Gerardo M. Regios ("Regios") against the petitioner Rudy Aquinde ("Aquinde"), for issuing two (2) unfunded checks.

Aquinde issued two (2) Philippine National Bank checks (numbered 0722852 and 0722853) that were due on 27 September 2010 and 25 October 2010, for Seventy Two Thousand Pesos (P 72,000.00) Pesos each or for the combined amount of One Hundred Forty-Four Thousand Pesos (P 144,000.00), both payable to the then Manila International Airport Transport Service Cooperative (MIATSC), now MIATS-MPC.

The said checks were issued as payment for the daily amortization of three (3) motor vehicles worth P 500.00 a day and management fee of P 300.00 a day for a period of six (6) months totaling to P144,000.00 for contribution to the cooperative of his brother, Aquilino.

Regios had the two (2) checks from Aquinde deposited at the Metrobank, NAIA branch on 30 September 2010 and on 27 October 2010, respectively. The bank, however, dishonored both checks on the ground of "DAIF" or Drawn Against Insufficient Funds and payment stopped.

Initial demand was made through a letter dated 12 May 2011 that was personally delivered to Aquinde by the cooperative's driver, Reynaldo Gatanela, on 19 May 2011. Aquinde received the demand letter and signed the same. A copy of said letter was also sent to Aquinde by registered mail, which, per the post office's certification, was received by the latter on 18 May 2011.

After the lapse of the five (5)-day period within which to settle the amount stated on the face of the check upon receipt of the Notice of Dishonor provided for under BP 22, Aquinde still failed to make any kind of communication with MIATS-MPC regarding the satisfaction of his obligation. Another demand letter was sent to Aquinde by MIATS-MPC's counsel, the Public Interest Law Center (PILC), that was personally delivered to Aquinde by the cooperative's staff, Cosme Osurman, on 08 July 2011. MIATSMPC again sent on 14 June 2011 through registered mail the said demand letter, which was received by Aquinde on 21 June 2011.

For the third time, a demand letter was personally served by two staff members of MIATS-MPC, Karla Santos and Ainee Marie, upon Aquinde on 22 July 2011. Despite receipt of said letters, Aquinde still failed to satisfy his obligation.

On 16 September 2011, Regios filed a complaint under Batas Pambansa Bilang 22 (BP 22) with the Office of the Prosecutor of Parañaque City. Assistant City Prosecutor Ramil G. Reyes then issued two (2) separate pieces of Information for violation of BP 22 against Aquinde.<sup>[5]</sup>

The Metropolitan Trial Court (MeTC) of Parañaque , Branch 78, took cognizance of the case and docketed the same as Criminal Cases Nos. 11-1758-59.

In an Order dated 20 October 2011, the MeTC dismissed the action thus,

"Upon careful evaluation of the Information and the affidavits of the private complainant, as well as the attached documents therein, the instant cases are hereby ordered DISMISSED pursuant to Sec. 12 (a) of the Revised Rule on Summary Procedure and Sec. 7 Rule 110 of The Revised Rules of Criminal Procedure.

SO ORDERED."<sup>[6]</sup>

On 25 January 2012, MIATS-MPC filed a Notice of Appeal from the Order dated 20 October 2011 of the MeTC. The RTC then rendered the assailed decision which granted the appeal. Aquinde consequently filed a motion for reconsideration but it was denied via the assailed order.

Hence, this petition.

Aquinde raises the following grounds in support of his petition:

"I.

THE RTC COMMITTED GRAVE ERRORS OF FACT AND LAW IN FAILING TO  
RULE THAT THERE IS NO PROBABLE CAUSE TO HOLD THE PETITIONER

## LIABLE FOR BOUNCING CHECKS;

### II.

#### THE RTC COMMITTED GRAVE ABUSE OF ERRORS OF FACT AND LAW IN FAILING TO RULE THAT THERE ARE VIOLATIONS OF THE RULES ON LITIS PENDENTIA AND FORUM SHOPPING."

The RTC in granting respondent MIATS-MPC's appeal, relied on ***Su Zhi Shan v. People***,<sup>[7]</sup> wherein the Supreme Court held that the erroneous designation in the Information of the name of the accused does not vitiate it if it is clearly proven that the person accused and brought to court is the person who committed the crime. Further, it found Aquinde to have admitted having issued the subject checks, but raising the defense of payment.

Petitioner Aquinde, via this instant petition, maintains that by legal operation of set-off or legal compensation under the Civil Code, MIATS-MPC lost its right to institute the case under BP 22. He questions the existence of probable cause for his alleged offense of violation of BP 22 because he had, purportedly, already paid his obligations covered by the subject checks thru his share in the dividends allegedly misappropriated by MIATS-MPC, subject of the *Estafa* case earlier filed with the court. Aquinde claims that he is entitled to the monetary benefit in the amount of P 157,163.20, insisting that it is now MIATS-MPC who owes him money.

Aquinde likewise argues that the mere fact that the resolution of the issues in the complaint for *estafa* is determinative of his innocence in the case for BP 22 is reason enough to dismiss the latter case to avoid contradicting outcomes.

#### **We fail to find merit in the petition.**

It is important to note that what was filed before us is an ordinary appeal via Rule 42 of the Rules of Court (*Petition for Review From the Regional Trial Courts to the Court of Appeals*), hence, the Court can only give due course thereto only when the petition shows, prima facie, that the lower court has committed an error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed.

We, however, find it necessary to first review the circumstances that led the instant petition to us.

The records of the petition show that the MeTC dismissed the BP 22 cases against Aquinde on the bases of Section 12 (a)<sup>[8]</sup> of the Revised Rules on Summary Procedure and Section 7,<sup>[9]</sup> Rule 110 of the Revised Rules of Criminal Procedure. The applicable rule, however, should have been Section 12 (b) of the Revised Rules on Summary Procedure because the BP 22 cases were commenced by the two (2) pieces of information filed before the MeTC pursuant to Section 11 of the same Rules. Sections 11 and 12 (b) provide:

"Sec. 11. *How commenced.*- The filing of criminal cases falling within the scope of this Rule shall be either by complaint or by information: ***Provided, however, that in Metropolitan Manila and in Chartered Cities, such cases shall be commenced only by information***, except when the offense cannot be prosecuted de officio. (emphasis ours)

Section 12. *Duty of the Court.*-

(b) *If commenced by information.*- When the case is commenced by information, or is not dismissed pursuant to the next preceding paragraph, the court shall issue an order which, together with copies of the affidavits and other evidence submitted by the prosecution shall require the accused to submit his counter-affidavit and the affidavits of his witnesses as well as any evidence in his behalf, serving copies thereof on the complainant and prosecutor not later than then (10) days from receipt of said order. The prosecution may file reply affidavits within ten (10) days after receipt of the counteraffidavits of the defense.

We agree with the Solicitor General's position that it was erroneous on the part of the MeTC to have dismissed the two (2) pieces of information on the basis of Section 12 (a) of the Revised Rules on Summary Procedure which recognizes, among other things, the discretionary nature of the function of determination of probable cause being primarily lodged with the executive branch of the government and non-inference therewith is adopted by the courts as a rule.

As we find that the applicable rule in the case at hand is Section 12 (b) of the same rules, the MeTC should have required Aquinde, thru an order, to submit his counter-affidavit and the affidavits of his witnesses as well as any evidence in his behalf, serving copies thereof on the private complainant and prosecutor not later than then (10) days from receipt of said order. The prosecution, on the other hand, could have filed reply affidavits within ten (10) days after receipt of the counter-affidavits of the defense.

Given that the above procedure was not followed, the MeTC's order of dismissal, nonetheless, was appealed to the Regional Trial Court (RTC) *via* Rule 40<sup>[10]</sup> of the Rules of Court by private complainant Regios, sans the supervision of the public prosecutor.

The rule is well-settled, however, that all criminal actions commenced by a complaint or information, as in this case, shall be prosecuted under the direction and control of the public prosecutor. While the private offended party may avail of the services of a private counsel, the prosecution of the case, however, remains under the control and supervision of the public prosecutor until the final termination of the case.<sup>[11]</sup> A public prosecutor who has been entrusted by law with the prosecution of criminal cases is duty-bound to take charge thereof until its final termination, for under the law, he assumes full responsibility for his failure or success since he is the one more adequately prepared to pursue it to its termination.<sup>[12]</sup>

In a criminal case in which the offended party is the State, the interest of the private complainant or the offended party is limited to the civil liability arising therefrom. Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the