

SIXTH DIVISION

[CA-G.R. SP NO. 80572, August 14, 2006]

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. HON. REBECCA R. MARIANO, IN HER CAPACITY AS THE PRESIDING JUDGE OF BRANCH 134 OF THE REGIONAL TRIAL COURT OF MAKATI CITY AND LIM JOSE ONG, LOURDES ONG AND LUISA O. CU, RESPONDENTS.

D E C I S I O N

TAGLE, J.:

This petition for certiorari^[1] seeks to annul and set aside the Orders issued by respondent RTC judge of Br. 134, Makati City, dated December 04, 2002^[2] and September 04, 2003^[3] dismissing Criminal Cases No. 02-891 to 02-897 filed against private respondents for violation of Article 315 (1)b of the Revised Penal Code in relation to P.D. No. 115, otherwise known as the Trust Receipts Law.

The operative facts are as follows:

Lim Jose Ong, Lourdes Ong Limson and Luisa O. Cu are the officers and the duly authorized representatives of Maria Theresa Commercial Inc. (MTCI), which had been a client of petitioner BPI since 1991. MTCI had a credit facility with petitioner bank in 1997.

In 1997 and 1998, MTCI imported eye care products, lens care lubricants and lens drops. These articles were delivered directly to MTCI. In payment of the goods delivered to it, MTCI availed of its P50M credit facility with petitioner-bank. Private respondents thereupon signed seven (7) Trust Receipts^[4] in favor of petitioner.

Due to the economic crisis that hit the business community in 1998, MTCI sought restructuring of its indebtedness in March 1999. Petitioner, however, refused the request of MTCI and when the latter failed to fulfill its obligation under the credit facility, the former filed seven (7) criminal cases for *estafa* under Article 315 par. 1(b) of the Revised Penal Code in relation to P. D. No. 115.

The City Prosecutor of Makati, after preliminary investigation of the cases, issued a Resolution dated May 20, 1999 dismissing the complaint.^[5] The prosecutor found that the allegations contained in the complaint of petitioner failed to show the existence of a trust receipt transaction between petitioner and MTCI as represented by private respondents. The subject trust receipts lacked the element of obligating MTCI to return the goods if unsold in accordance with the Trust Receipts Law. However, upon review by the Department of Justice, the aforesaid Resolution was set aside and the City Prosecutor was directed instead to file the necessary information against private respondents. The Secretary of Justice opined that the

obligation to return the unsold goods need not be expressly stated in the contract. It may be implied.^[6]

Before their arraignment, private respondents moved to quash the information on the ground that the allegations therein do not constitute the offense charged. Petitioner filed an opposition to the Motion to Quash, to which private respondents filed a reply.

On December 4, 2002, respondent judge issued an Order granting the motion to quash and dismissing the criminal cases against private respondents. Petitioner filed a motion for reconsideration but the same was denied in the Order dated September 04, 2003.

On November 17, 2003, petitioner repaired to this Court through a petition for certiorari.

Petitioner alleges that respondent judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing orders which are patent nullity and in complete disregard of the applicable law and jurisprudence. According to petitioner, respondent judge started on the wrong premise by declaring that what private respondents received from petitioner bank is money and not the goods, subject of the trust receipts, and therefore, the transaction was a simple loan. Petitioner asserts that monies referred to by the lower court are actually funds advanced by petitioner to private respondents under the letter of credit.

Petitioner also alleges that respondent judge failed to appreciate the clear import of the statement in the Trust Receipt to wit: "I/WE AGREE TO HOLD THE SAID GOODS IN TRUST FOR THE BANK AS ITS PROPERTY, with permission to sell them for its account." From this, it can be inferred that it was petitioner-bank that imported the goods through the letter of credit signed by private respondents. As stated in the trust receipts, the documents covering the goods subject of the trust receipts were received by private respondents; thereby, evincing that petitioner is the owner of the subject goods and not private respondents. Moreover, private respondents signed an undertaking to hold the goods in trust for petitioner with the duty to hand over to it the proceeds of the sale thereof. Thus, a trust relationship was established between them.

Petitioner likewise insists that the subject trust receipts duly complied with the essential and formal requisites of P.D. No. 115. It is apparent from the trust receipts that private respondents agreed to return the proceeds of the sale of the goods to petitioner. And, P.D. No. 115 clearly provides that "the failure of the entrustee to turn over the proceeds of the goods xxx shall constitute the crime of *estafa*." The failure of private respondents to return the proceeds therefore is not merely a collection claim for the indebtedness incurred as held by the lower court. Such failure to remit the proceeds constitutes the crime of *estafa* punishable under Article 315, par. (1)b of the Revised Penal Code.

On the part of private respondents, they opine that the instant petition should be dismissed outrightly for its defect in form and substance as shown by the following:

1. Ma. Cristina Asis who subscribed to the Verification and Certification of Non-Forum Shopping on November 14, 2003 was without authority to act for

petitioner. Her special power of attorney was executed only on November 17, 2003 or three (3) days after she subscribed to the verification and certification in question.

2. The Affidavit of Service, which is supposed to be attached to the petition, was executed ahead of the Special Power of Attorney.
3. The petition failed to state the date of filing of the Motion for Reconsideration of the assailed Order of the court *a quo*.
4. This Special Civil Action for Certiorari under Rule 65 was filed long after the finality of the assailed Order of September 04, 2003 and after the expiration of the fifteen (15) day period for appeal. As such, it is apparent that the instant petition is being availed of as a substitute for a lost appeal. The assailed order dismissing the criminal complaints is a final order and therefore cannot be attacked via a petition for certiorari. Basic is the rule that certiorari can only be resorted to if the assailed order is an interlocutory order or if there is no appeal, speedy and adequate remedy in the ordinary course of law. In this case, appeal should have been taken from the September 04, 2003 Order of the public respondent, which denied petitioner's motion for reconsideration of the dismissal order.

Respondents maintain that no grave abuse of discretion has been committed by the trial judge when she dismissed the criminal cases after finding that the transaction is a simple loan and not a trust receipt transaction. MTCI further insists that it is the owner of the goods, as evidenced by the delivery receipts and invoices in its name.

We find for private respondents.

Sufficient grounds exist to warrant the dismissal of the petition for certiorari.

Firstly, the petition is fatally deficient. In *Lapid vs. Laurea*,^[7] the Supreme Court pointed out that:

There are three material dates that must be stated in a petition for certiorari brought under Rule 65. *First*, the date when notice of the judgment or final order or resolution was received; *second*, the date when a motion for new trial or reconsideration was filed; and *third*, the date when notice of the denial thereof was received.^[8]

In the instant petition, the date of the filing of petitioner's motion for reconsideration of the dismissal order of the court *a quo* is not indicated in the petition. Thus, it cannot be determined whether the motion was filed within the reglementary period. In turn, the timeliness of the petition cannot be ascertained.

Moreover, the dates of the documents supporting the petition are rather confusing. The Special Power of Attorney authorizing Ms. Asis to represent petitioner was executed on November 17, 2003 or three (3) days after Ms. Asis executed and subscribed to the Verification and Certification against Forum Shopping on November 14, 2003. Also, the Affidavit of Service was executed ahead of the Special Power of Attorney.

The instant petition therefore may be treated as having been filed absent the required Verification and Certification against Forum Shopping as Ms. Asis was not duly authorized to file the same. Consequently, at the time the instant petition was filed, the duly authorized person to sign the Verification and Certification against Forum Shopping is actually Mr. Zosimo Kabigting as shown in the September 28, 2000 Corporate Secretary's Certificate.^[9]

Thus, as the instant petition lacks the required Certification against Forum Shopping signed by a person duly authorized by petitioner,^[10] there is already sufficient ground for the dismissal thereof.

It is also noteworthy that the People of the Philippines did not appeal from the Order of dismissal of the court *a quo*, particularly when the prosecution of offenses is the concern of the government prosecutors.^[11] Indeed, if the criminal cases against herein accused were to prosper, the Solicitor General should have taken steps to rectify the alleged erroneous Order of the lower court as only the Solicitor General may represent the People of the Philippines in appealing the criminal aspect of the case at bench. As a private complainant, petitioner's standing to file an appeal from the RTC Order is limited to the civil aspect only, which clearly is not the one being brought on review by petitioner herein.

Secondly, the subject of the petition is the final order of dismissal of the criminal cases, which is not proper in a certiorari proceeding. Certiorari cannot be availed of to attack or assail a final judgment or order. It can only be resorted to if the assailed order is interlocutory^[12] and there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Neither can certiorari be resorted to as substitute for a lost appeal.

Apparently, petitioner failed to distinguish the proper remedy that may be availed of from an Order denying a motion to quash to an Order granting a motion to quash. An Order denying a motion to quash is not appealable, being an interlocutory order.^[13] The general rule is that such Order may be reviewed in the ordinary course of law by an appeal from the judgment after trial and the exception thereto is certiorari under Rule 65.^[14]

On the other hand, an Order granting a motion to quash and dismissing the criminal cases against accused herein is a final order, which may be reviewed only by filing an appeal therefrom.^[15]

Thirdly, even if the petition is sufficient in form, no grave abuse of discretion was committed by respondent judge when she dismissed the criminal cases. It would be pure technicality for the court to close its eyes to the facts brought out by evidence presented by both parties and still give due course to the prosecution of the case already shown to be weak even to support possible conviction, and hold the accused to what would clearly appear to be a merely vexatious and expensive trial on her part, and a wasteful expense of precious time on the part of the court and of the prosecution.^[16]

The crucial issue resolved by the court *a quo* is whether the allegations contained in the informations filed constitute the elements of the crime of *estafa* in relation to