

103 Phil. 213

[G. R. No. L-8831. March 28, 1958]

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. FELICISIMO ARROZAL, ETC., DEFENDANT AND APPELLANT.

D E C I S I O N

BENGZON, J.:

In the Manila court of first instance, in March 1954, Philippine National Bank sued Pelicisimo Arrozal, doing business under the name and style of F. Arrozal & Co. to collect the unpaid balance of a debt amounting to P2,485.56 as of February 26, 1954.

Admitting the existence of his principal obligation, the defendant claimed the balance to be much smaller, the plaintiff having erroneously applied his remittance of P1,985.09 to the special excise tax of 17 per cent by Republic Act 601, instead of crediting it to his account and/or his debt. As counterclaim he alleged that plaintiff had, without any reason, caused his prosecution for *estafa*, by the City Fiscal of Manila, prosecution which subsequently was abandoned. For this he demanded compensation for damages to his business to the extent of P100,000, moral damages amounting to P100,000, attorneys fees of P5,000 and other losses in the sum of P620.

The case was submitted partly on a stipulation of facts and partly on testimonial and documentary evidence. The Hon. Gregorio S. Narvasa, Judge, held the 17 per cent excise tax was not due, but that defendant could not recover on the counterclaim there having been no malicious prosecution at the plaintiff's request. Therefore he rendered judgment "ordering plaintiff to apply the amount collected as excise tax to defendant's trust receipt account; ordering defendant to pay plaintiff the resulting unpaid balance, if any, of his said trust receipt account with the corresponding agreed interest, and dismissing defendant's counterclaim, without special pronouncement as to costs."

Their motions for reconsideration having been overruled both parties presented a joint record on appeal, the plaintiff insisting on the 17 per cent excise tax, and the defendant on

his counterclaim for damages.

On the first tax issue, the parties agreed in the stipulation of facts:

“1. That the defendant admits that there were released to him by the plaintiff on September 8, 1948 under trust receipt, 28 parcels of refrigeration supplies and general merchandise coating \$5,190.57 or P10,381.14,

“2. That the cost of said goods amounting to P10,381.14 was advanced by the plaintiff to the Pacific Marine Refrigeration Company of Oakland 6, California, U. S. A. prior to the release of the said goods to the herein defendant; that the covering draft Exh. “B” attached to the original complaint has been accepted by the defendant and became due on September 21, 1949 after extension.

“3. That the defendant has made payments on the said account of P10,381.14 leaving an unpaid balance of P2,515.19 as of September 9, 1953, and reduced to P2,485.56 as of February 26, 1954, still unpaid despite demands; among said payments was the sum of P1,802.15 representing 17 per cent excise tax on this item plus the sum of P182.94, representing 17 per cent excise tax on another shipment or a total of P1,985.09 instead of P1,990.09 which payments of excise tax were made on April 27, 1951, and protested by the defendant as per his letter dated May 7, 1951, a copy of which is hereto attached as Exhibit ‘1’. * * *.”

Pointing out that the cost of the goods had been remitted to the Pacific Marine Refrigeration Co. on or about September 8, 1948, *more than one year* prior to the approval of Republic Act 601 imposing a special tax of 17 per cent on foreign exchange sold after the approval thereof, the defendant objected to the collection or payment of said tax. The plaintiff however took the position that the sale of foreign exchange (U. S. dollars) takes place on the date “the debtor (defendant) finally pays or liquidates its obligation.” It admits that the legal question herein involved is fundamentally the same as in *Philippine National Bank vs. Jose C. Zulueta*, 101 Phil., 1117. In this case we ruled against the imposition of the excise tax,^[1] inasmuch as the draft was issued and became payable before the enactment of Republic Act No. 601. This should be enough to dispose of plaintiff’s appeal.

In this connection, defendant urges that legal interest should be paid by plaintiff upon the sum of P1,985.09 which it had applied to the 17 per cent excise tax. We think that,

inasmuch as the sum should be credited to the draft as of the time of its delivery-and the corresponding interest on the debt thereby reduced-there is no need to charge plaintiff with this additional liability.

On the second issue, defendant's appeal, the above stipulation contains these statements:

"5. That on July 1, 1950, the plaintiff herein filed a criminal complaint in the City Fiscal's Office against the herein defendant for estafa with respect to 5 separate accounts of the said defendant with the said plaintiff, among which is the one in question, but with the subsequent settlement of the 4 accounts, said criminal complaint was definitely dismissed with respect to the said accounts leaving only the account in question which was provisionally dismissed but later on revived. In support of the complaint which was revived, the plaintiff herein filed a memorandum with the investigating fiscal, Mr. Melecio M. Aguayo, dated September 4, 1953, a certified copy of which is hereto attached and marked as Exh. '2'.

* * * * *

"7. That on January 15, 1954, the plaintiff herein wrote to the City Fiscal requesting the withdrawal of Criminal Case No. 24556 against the herein defendant as per certified copy of the said letter hereto attached marked as Exhibit '4', and acting on said request, Asst. Fiscal Aguayo, moved for the dismissal which was granted on January 22, 1954."

The above-mentioned memorandum submitted by the plaintiff to the City Fiscal urged prosecution due to Arrozal's "failure either to account for the goods received by him in trust 'or' to turn over the proceeds thereof to the Philippine National Bank." There is no question that under the trust receipts signed by Arrozal, his failure above described would be a good ground for prosecution. To recover on his counterclaim for "malicious prosecution" defendant should have proved that there was no such failure, and that plaintiff knowingly or recklessly made a false statement of facts to induce the fiscal to prosecute.

The record yields no satisfactory proof on the matter. Defendant says, there was "flagrant misrepresentation" because "most of the goods with current market value of about P17,000 were in the store of the defendant-appellant when the complaint for estafa was filed (t. s. n.

p. 40); plaintiff made no demand for the defendant-appellant to account for or turn over the goods; the defendant-appellant offered to turn over so much of the goods to cover the balance of the account but the plaintiff refused.”

However, the plaintiff urged prosecution not only for failure to account for the goods,^[2] but also for failure to account for all *the proceeds of such goods* as have been sold. It was no excuse for defendant to offer the goods unsold in exchange for such proceeds, because the Bank wanted the *proceeds*—not the goods. Again the defendant-appellant contends that it was not true that he had “failed to turn over the proceeds of the goods sold.” Yet he points to no evidence except that he had made periodical payments and reduced his account. To win on this counter-claim, he should have shown that he had sold so many refrigerators only, and that *all the proceeds of such sales* had been delivered to the Bank. He seems to take the position that his duty to pay the *whole account* only arose after he had disposed of *all the* refrigerators; even if the refrigerators he had sold yielded enough money to pay the whole account. This position is of course erroneous. In the trust receipt he had signed he promised “to hold said merchandise in storage as the property of said bank, with the liberty to sell the same for cash for its account and to hand the proceeds thereof to the said bank to be applied against its acceptance on account of the undersigned and/or under the terms of the letter of credit noted below; and further agrees to hold said merchandise and the proceeds thereof in trust for the payment of said acceptance and of any other indebtedness of the undersigned to the said bank.”

“It would not have been prosecuted,” defendant maintains, “because I had made partial payments on account.” Supposing that he is legally right—which is not^[3]—still he does not make a case for malicious prosecution unless he proves that plaintiff falsely denied such payments, or unlawfully neglected so to inform the fiscal.

It appears that after the prosecution had started, the defendant made additional partial payments to the Bank. For this reason said Bank afterwards requested the City Fiscal to dismiss the criminal case—which was done. Now argues appellant, “*this insistence* on the part of the plaintiff bank on the filing of the estafa case against the defendant, notwithstanding the partial payments made by him, and thereafter when the charge was filed in Court, for the same bank to request for the withdrawal of the same on the ground that such partial payments have been made, *indicates malicious* prosecution.”

On the contrary, the request for withdrawal indicates leniency on the part of the bank. If as the cases hold, payment of the amount misappropriated does not extinguish criminal

liability,^[4] the defendant should be grateful that the Bank had asked for dismissal of the case against him. He should not presently turn around and demand damages for malicious prosecution.

The appealed decision is affirmed without costs. So ordered.

Paras, C. J., Padilla, Reyes, A., Bautista Angelo, and Felix, JJ., concur.

REYES, J. B. L., J.:

I concur except on the question of the excise tax.

^[1] August 30, 1957.

^[2] Some were missing. Allegedly stolen, p. 52 Record on Appeal. Evidently the Bank did not believe in the theft, and so it urged prosecution.

^[3] Payments subsequent to the commission of the crime of estafa do not alter the crime, nor relieve defendant. *People vs. Velasco*, 42 Phil., 75; *Javier vs. People*, 70 Phil., 550.

^[4] See *Velasco* and *Javier* cases, *supra*.