

## CHAN KIAN, PLAINTIFF-APPELLANT, VS. ARSENIO ANGSIIN,

*G.R. No. L-28131. February 28, 1972*

Ponente: TEEHANKEE, J.

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### TEEHANKEE, J.:

Appeal from an order of dismissal of the Court of First Instance of Manila, certified to this Court by the Court of Appeals as involving a pure question of law.

The appellate court's resolution of certification of September 19, 1967 gives the following backgrounder on the facts of the case:

"Plaintiff's complaint before the CFI of Manila alleges, among other things, that on July 23, 1962, he entered into an agreement with defendant whereby, for and in consideration of the purchase price of P300.00 per drum, or a total of P120,000.00 which he received from defendant on the same date, he sold to defendant, for delivery on August 23, 1962, 400 drums of monosodium glutamate and that on August 23, 1962, he was ready to deliver the 400 drums of monosodium glutamate but defendant refused to accept delivery and insisted on the return of the P120,000.00 because the price of the said merchandise had already fallen in the local market, hence said complaint prays that defendant be ordered to receive from plaintiff 400 drums of monosodium glutamate, with damages:

"Arising from the same transaction is Criminal Case No. 67752, People vs. Chan Kian (herein plaintiff) before the same court, wherein herein defendant is the complainant, who accuses herein plaintiff with estafa involving the same 400 drums of monosodium glutamate and the sum of P120,000.00.

"On defendant's motion to dismiss plaintiff's complaint, which was opposed by plaintiff, and in view of the pendency of both criminal and civil cases between the same parties and over the same subject matter, the lower court ruled that the trial of the criminal case should take precedence over the civil case, 'not only because the procedure provided for the prosecution of offenses is more adequate than civil procedure, but because the judgment which may be rendered in the criminal action may dispose of the civil action.' The lower court also opined that giving preference to the criminal case would avoid multiplicity of suits and the possibility of a conflict of decision on the same issues, for it would be anomalous if the civil case is decided in favor of plaintiff and thereafter he gets convicted in the criminal case. Concluding that 'only if the criminal case is tried first and the accused is acquitted would it be proper for him to continue with this civil case,' the lower court finally said that this ruling is in accordance with Paragraph (c) of Rule 107 of the Rules of Court providing that 'after a criminal action has been commenced, no civil action arising from the same offense can be prosecuted.'"

The appellate court then recited plaintiff-appellant's grounds of appeal:

"Appealing the order of dismissal to this Court, plaintiff contends 'That the lower court erred in giving due course to the motion to dismiss filed by defendant-appellee' on the following grounds:

'(1) That the provisions of the Rules of Court, particularly Rule 107, Section 1, have no application in the case at bar;

'(2) That civil case No. 52247 is a prejudicial question to the resolution of Criminal Case No. 67752;

'(3) That assuming arguendo that the provisions of Rule 107 is applicable, the proper remedy is not Motion to Dismiss.'"

After the submittal in September and October, 1963, of the parties' briefs, the appellate court found no question of fact and that "the only issue is the correctness of the order of dismissal which is one of law,"[1] and ordered the elevation of the record to this Court.

Since the present case involved only plaintiff-appellant's appeal from the lower court's dismissal order of his civil case No. 52247 for specific performance, and the parties made no reference to what had transpired meanwhile to the criminal case for estafa, No. 67752 against plaintiff as accused pending before another branch, Branch XVIII of the same lower court presided by Judge Ruperto Kapunan, Jr.,[2] the Court resolved to send for the records of the criminal case.

The Court's examination, *motu proprio*, of the record of said Criminal Case No. 67752 entitled "People vs. Chan Kian" has shown that the principal issue raised on appeal by herein plaintiff-appellant that the lower court erred in issuing the order dismissing his civil complaint against the complainant in the criminal case on its ruling that the trial of the criminal case should take precedence over the civil case, has become moot and academic. This is so because in the meantime long before this case was certified to this Court by the appellate court on September 19, 1967, the trial of the criminal case had proceeded and terminated with a judgment of conviction rendered on July 9, 1964 by Judge Kapunan of Branch XVIII, which in turn was reversed on appeal by the Court of Appeals as per its decision of June 18, 1965.

The record of said Criminal Case No. 67752 thus shows the following sequence of events:

1. Judge Kapunan had denied a similar motion on the part of the accused (herein plaintiff) to suspend the criminal proceedings, ruling in his order of February 2, 1963 that the civil case did not present a prejudicial question, besides citing Judge Arca's prior order of January 28, 1963 dismissing the civil case.[3]
2. The accused (herein plaintiff) questioned Judge Kapunan's order by seeking an injunction from the Court of Appeals in a case docketed as CA-G.R. No. 31915-R, entitled "Chan Kian, petitioner vs. Ruperto Kapunan, Jr. Judge of the Court of First Instance of Manila, and Arsenio Angsin, respondents." The appellate court, through its special fifth division, promulgated on July 13, 1963 its decision ruling that "respondent judge correctly denied petitioner's motion to suspend the proceedings in Criminal Case No. 67752 of the Court of First Instance of Manila"[4] and final judgment was entered on September 10, 1963.[5]
3. The criminal case thus proceeded to trial and on July 10, 1964. Judge Kapunan promulgated his decision dated July 9, 1964 finding the accused (herein plaintiff) guilty beyond reasonable doubt of the crime charged and sentencing him to serve an indeterminate penalty ranging from not less than ten (10) years, eight (8) months and twenty-one (21) days of prison mayor as minimum; to not more than fourteen (14) years, five (5) months and eleven (11) days of reclusion temporal, to indemnify the offended party in the sum of P120,000.00 and to pay the costs.[6]
4. On appeal, the appellate court, through its special first division approved the Solicitor-General's recommendation for acquittal and reversed Judge Kapunan's judgment of conviction and instead acquitted the accused (plaintiff herein) of the charge against him, per its decision of June 18, 1965[7] and final entry of the said judgment was made on June 29, 1965.[8]

The majority of the division held "that the transaction between complainant Arsenio Ang Sin and appellant Chan Kian that led to the execution of Exhibit A was one of purchase and sale with advance payment at the purchases price of P120,000.00 for 400 drums of Vetsin. There was therefore no obligation on the part of appellant to return the said amount to the complainant. Furthermore, we find that appellant was ready and willing to deliver the 400

drums of 'Vetsin' as agreed upon and hence he did not, under the circumstances of this case, incur any criminal liability Enriquez, J. as a minority disagreed with the majority's holding on the nature of the transaction but nevertheless held that "(U)nder the facts therefore neither misappropriation nor conversion has been shown. The absence of such essential element precludes the existence of criminal liability" and likewise voted for the acquittal of the accused. And they were also unanimous that the drop in the price of the monosodium glutamate was the reason for complainant's failure to take delivery thereof on the agreed deadline and for the precipitate filing of the criminal complaint on the day immediately following thereafter.

None of the above developments of record in the criminal case has been brought to the attention of the appellate court or of this Court in the present appeal by the attorneys for the parties, except for the mention in appellee's brief of the appellate court's decision denying plaintiff's petition for a writ enjoining Judge Kapunan from proceeding with the criminal case, *supra*.<sup>[9]</sup>

The Court notes with regret that had the counsels,<sup>[10]</sup> as officers of the courts, but faithfully complied with their duty to deal with the courts in truth and candor, and promptly manifested to the appellate court the above developments, all by June, 1965, which have made the principal issue at bar moot and academic,<sup>[11]</sup> this case would then have been disposed of and need not have been certified to this Court, and the time needed by it to devote to the prompt disposition of meritorious cases need not have been thus dissipated.<sup>[12]</sup>

At any rate, it is clear that the civil case filed by plaintiff-appellant should merely have been suspended, not dismissed although without prejudice, by the lower court under the Rule invoked by it.<sup>[13]</sup> Appellee concedes as much, stating that the dismissal without prejudice is in effect a suspension pending the outcome of the criminal case.

Now that the criminal case has already been resolved, the lower court's dismissal of the civil case should be set aside and the case accordingly remanded to it.

On March 12, 1969, the Court, upon motion of plaintiff-appellant, issued its Resolution authorizing plaintiff "to sell at the best price obtainable, under the supervision of the Clerk of this Court or his representative, the 400 drums of monosodium glutamate subject of this case, now stored in the bodega of the General Packing Corporation, and to deposit with this Court the proceeds of such sale, after deducting the storage fees and other necessary expenses." As per report of the Clerk of Court, this Resolution has not been implemented to date, due according to plaintiff's explanation of December 9, 1971, to the very low price being offered for the article. With the present disposition of this case, this matter has become moot, without prejudice to plaintiff's refiling his motion anew with the lower court.

ACCORDINGLY, for the reasons stated hereinabove, the appealed order of dismissal is hereby set aside and the case is remanded to the lower court for proper trial and disposition on the merits. With costs against defendant-appellee.

Concepcion, C.J., Reyes, J. B. L., Makalintal, Zaldivar, Castro, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.

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[1] The dismissal was ordered by Judge Francisco Arca, presiding over Branch 1, to which the civil case was assigned.

[2] The only reference in the parties' briefs is in defendant-appellee's brief of October 16, 1963, where the following is stated:

"On No. 2 of the Assignment of Error

"That Civil Case No. 52247 is a prejudicial question to the resolution of Criminal Case No. 67752.

"The issue posed by this assignment of error is already a decided case. This Honorable Court of Appeals in CA-G.R. No. 31915-R dated July 3, 1963, between the same parties and on the same question, as in the instant case, held:

'Does Civil Case No. 52247 for specific performance constitute a prejudicial question for the determination of Criminal Case No. 67752 for estafa? The civil case is not based on a fact distinct and separate from the estafa alleged in the information, considering that the civil and the criminal actions arose from the same facts or transaction.'"

[3] Record, Crim. Case No. 67752, pp. 88-89.

[4] Idem, pp. 127-133. The division was composed of JJ. Angeles (ponente), Lanting and Capistrano.

[5] Idem, p. 124.

[6] Idem, at pp. 404-418.

[7] Idem, at pp. 445-463. The division was composed of JJ. Castro, Enriquez and Esguerra (ponente)

[8] Idem at p. 444.

[9] See fn. 2.

[10] The court has noted that counsel for plaintiff (accused) in both cases has been Ramon Encarnacion, Jr. for plaintiff (although he withdrew as defense counsel on October 16, 1963), while counsel for defendant (complainant) has been Attys. Galang & Garcia.

[11] See Director of Lands vs. Adorable, 77 Phil. 468 (1946).

[12] See Pajares vs. Abad Santos, 30 SCRA 748 (Nov. 29, 1969).

[13] Rule 107, sec. 1(c) of the old Rules, now Rule 111 sec. 3(b) of the Revised Rules of Court.

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