

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 ...

Ponente: TAGLE, J.

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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 aforestated 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:

- 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.
- The Affidavit of Service, which is supposed to be attached to the petition, was executed ahead of the Special Power of Attorney.
- The petition failed to state the date of filing of the Motion for Reconsideration of the assailed Order of the court a quo.
- 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 P.D. No. 115. In order to resolve the same, it was and is henceforth necessary to ascertain whether the contract denominated as a trust receipt entered into by the parties in fact embodies a trust receipt transaction.

In *Colinares vs. Court of Appeals*, the Supreme Court points out that in a pure trust receipt transaction, the goods are owned by the bank and only released to the importer in trust subsequent to the grant of the loan.[17]

The antecedent facts in a trust receipt transaction consist of the application and approval of the letter of credit, the making of the marginal deposit and the effective importation of goods through the efforts of the importer.[18]

In the case at bench, the subject trust receipts were apparently executed and signed by private respondents only after the goods were already sold and delivered to MTCI. In other words, there were already sales invoices, bills and lading and other documents issued to MTCI evidencing their receipt of the imported goods even before the execution of the trust receipts. The goods were not conditioned to be released to MTCI by petitioner if the trust receipt was not released.

Besides, in a pure trust receipt transaction, the letter of credit-trust receipt agreement is limited to a specific transaction which is clearly absent in the case at bar as the P50million credit line was not merely limited to the purpose of being a financing arrangement for the importation or purchase of the subject goods from a supplier. The irrefutable fact is that even before the trust receipts were issued, MTCI had already an existing credit line with petitioner since 1997, not merely for the sole purpose of acquiring the subject goods from a supplier. If the intention of the parties at the inception is a letter of credit-trust receipt agreement, then these two (2) documents should have been drawn simultaneously to establish a fiduciary relationship between them. In that case, the trust receipts would serve as the collateral or security for the loan.

More importantly, nowhere in the seven trust receipts show that MTCI, as represented by private respondents, had the obligation to return the goods to petitioner, if unsold. Section 5, P.D. No. 115 clearly provides that every trust receipt must substantially contain the following, viz:

- (1) a description of the goods, documents or instruments subject of the trust receipt;
- (2) the total invoice value of the goods and the amount of the draft to be paid by the entrustee;
- (3) an undertaking or a commitment of the entrustee (a) to hold in trust for the entruster the goods, documents or instruments therein described; (b) to dispose of them in the manner provided for in the trust receipt; and (c) to turn over the proceeds of the sale of the goods, documents or instruments to the entruster to the extent of the amount owing to the entruster or as appears in the trust receipt or to return the goods, documents or instruments in the event of their non-sale within the period specified therein. x x x (emphasis supplied)

Under the signed trust receipts, there is clearly no obligation on the part of MTCI involving the duty to make delivery of, or to return the goods if unsold. Petitioner's theory that it is sufficient that private respondents were obligated under the trust receipts to turn over the proceeds from the sale of the goods and their subsequent failure

to do so falls within the coverage of P.D. No. 115 is erroneous.

P.D. No. 115 being penal in nature must be strictly construed against the State and in favor of the accused. The failure of an entrustee (MTCI) to turn over the proceeds of the sale of the goods, documents or instruments covered by the trust receipts to the entruster or to return the goods if not sold or disposed of according to the terms of the trust receipt constitutes the crime of estafa.[19]

It is incorrect to declare that as long as the contract denominated as a trust receipt embodies the provision of either to turn over the proceeds from the sale of the goods, documents or instruments or to return the goods, documents or instruments, if unsold, the same is already a trust receipt transaction. The aforementioned obligations – to turn over the proceeds from the sale of the goods, documents or instruments or to return the goods, documents or instruments, if unsold must both be expressly stated in the contract denominated as a “trust receipt” in order that the parties shall be bound by it as a trust receipt transaction in accordance with Section 5 of P.D. No. 115 and, more importantly, in order to hold the accused criminally liable for estafa in relation to P.D. No. 115.

Not only does P.D. No. 115 mandate that the person holding the goods, documents or instruments in trust should return the goods if unsold. Under Art. 315, par. 1 (b) of the Revised Penal Code, it is also provided that the money, goods or other personal property received by the offender in trust xxx involves the duty to make delivery of, or to return, the same. Without the written express obligations – to turn over the proceeds from the sale of the goods, documents or instruments or to return the goods, documents or instruments, if unsold, there can be no criminal act.

Besides, if the obligation was only to remit the proceeds from the sale of the goods, documents or instruments, then the nature of the trust receipt transaction as being a fiduciary relationship is negated. For what is held in trust is the goods, documents or instruments itself and not the proceeds to be derived from the sale thereof. What is sought to be protected by the law is the entruster's security interest[20] on the goods, documents or instruments held in trust and not really the proceeds derived from the disposition thereof. Hence, if the contract denominated as a trust receipt does not contain the provisions to remit the proceeds and to return the goods, documents or instruments, if not disposed of according to the terms and conditions thereof – there is no trust receipt agreement to speak of. The finding of the lower court, therefore, that petitioner should have expressly obligated private respondents to return the goods, if unsold to hold them criminally liable is correct.

Indeed, it is glaringly apparent that what petitioner was seeking in its demand letter[21] addressed to MTCI was the payment of its loan. The added statement in the latter part of the letter in demanding the return of the goods subject of the L/C-TR within five days appears to be a mere afterthought, particularly so when petitioner stresses in the instant petition that the trust receipts signed by private respondents already obligated them to remit the proceeds from the sale of the goods. By wording the demand letter in such manner, petitioner-bank conveniently made it appear that the agreement it had with MTCI was one of a trust receipt transaction, to be able to carry out its threat of pursuing a criminal action against private respondents for non-payment of the loan.

Verily, the High Court's disquisition on the required signing of trust receipts by banks is elucidating, viz:

The practice of banks of making borrowers sign trust receipts to facilitate collection of loans and place them under the threats of criminal prosecution should they be unable to pay it may be unjust and inequitable, if not reprehensible. Such agreements are contracts of adhesion which if borrowers have no option but to sign lest their loan be disapproved. The resort to this scheme leaves poor and hapless borrowers at the mercy of banks.[22]

We also cannot give credence to petitioner's contention that it was the one which imported the goods covered by the trust receipt and therefore, the owner thereof. This is belied by the evidence on record which shows that it was

MTCI which did so under its credit facility of P50M with petitioner bank. The goods were in fact delivered directly to MTCI and subsequently invoiced to it. In order to pay the goods, MTCI thru private respondents made use of its existing credit facility with petitioner, which then required private respondents to execute the seven (7) trusts receipts, subject of the controversy.

Be that as it may, the trusts receipts in question partake of the nature of promissory notes to evidence and secure the money used to pay the supplier of the goods. For all legal intents and purposes, therefore, the transaction that transpired between petitioner and private respondents, in representation of MTCI, is a simple loan.

There is no showing that private respondents are guilty of abuse of confidence or of any dishonest conduct in handling the goods claimed by petitioner as its property. It has not been evinced that any artifice has been employed by them in dealing with the bank or even attempted to abscond or evade its payment of the obligation. In fact, in reply to the demand letter sent by the counsel of petitioner, MTCI admitted its loan obligation and requested for a restructuring of the payment scheme.[23]

Such being the case, there is no basis to hold private respondents liable for the offense of estafa under Art. 315 (1)b of the Revised Penal Code in relation to P.D. No. 115.

WHEREFORE, in view of the foregoing, the petition for certiorari is hereby DENIED. The Orders of the respondent judge dated December 4, 2002 and September 4, 2004 are AFFIRMED IN TOTO. Costs against petitioner.

SO ORDERED.

Buzon, (Chairman) and Maambong, JJ., concur.

[1] Under Rule 65, 1997 Rules of Civil Procedure.

[2] Annex "A", Petition.

[3] Annex "B", Petition.

[4] Annex "L" to "O", Petition.

[5] Rollo, pp. 87-88.

[6] Id., p. 92.

[7] 391 SCRA 277 (2002).

[8] Id at 284.

[9] Rollo, pp. 15-16.

[10] Shippside Incorporated v. CA, 352 SCRA 334, 346 (2001).

[11] Madarang v. CA, 463 SCRA 318, 326 (2005).

[12] Rule 41, Section 1. Subject of appeal. -- An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(c) An interlocutory order; xxx

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an

appropriate special civil action under Rule 65.

[13] Supra note 11, p. 327.

[14] Lee v. People, 393 SCRA 397, 404 (2002).

[15] Nocon v. Hon. F. Geronimo, et al., 101 Phil 735, 740 (1957) and People v. Gomez, 98 SCRA 181, 189 (1980).

[16] People v. De la Rosa, 98 SCRA 190, 200 (1980).

[17] 339 SCRA 609, 620 (2000).

[18] Id at 621.

[19] The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code.

[20] Security interest means a property interest in goods, documents or instruments to secure performance of some obligations of the entrustee or of some third persons to the entruster and includes title, whether or not expressed to be absolute, whenever such title is in substance taken or retained for security only. Landl&Company (Phil.) Inc. v. Metropolitan Bank&Trust Co., 435 SCRA 639, 649 (2004).

[21] Rollo, pp. 81-82.

[22] Supra note 17, pp. 623-624.

[23] Rollo, p. 83.

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