

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

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

Before us is a petition for review under Rule 42 which seeks to reverse and set aside the Decision[1] and Order[2] 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."[3]

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

SO ORDERED."[4]

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.[5]

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."[6]

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*,[7] 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)[8] of the Revised Rules on Summary Procedure and Section 7,[9] 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)

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Section 12. Duty of the Court.-

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(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[10] 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.[11] 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.[12]

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 State only through the Solicitor General. The private complainant or offended party may not undertake on his own such motion for reconsideration or appeal the criminal aspect of the case. The offended party or private complainant, however, may file a motion for reconsideration of such dismissal or acquittal, or appeal therefrom only insofar as the civil aspect is concerned.[13]

In the case under review, there was nothing in the available records that would show that the public prosecutor took the reins in filing a motion for reconsideration of the MeTC's order of dismissal dated 20 October 2011 or that the appeal to the RTC was made by the State through the Solicitor General. What is clear from the records is that it was only the private complainant, General Manager Regios of MIATS-MPC, thru counsel, who appealed the dismissal of the case to the RTC. Juxtaposed against the above-discussed principles, the private respondent on his own, clearly did not have the personality to appeal the dismissal of the criminal action on behalf of the State. He had no authority to act for the People of the Philippines before the RTC.

It is, however, too late in the day for Aquinde to challenge the legal personality of the private respondent's counsel considering that it was never disputed by him before the RTC or even now.

Despite the non-participation of the public prosecutor, however, the RTC took cognizance of the case.

It must be remembered that while jurisdiction over the subject matter of a case may be raised at any time of the proceedings, this rule presupposes that laches or estoppel has not supervened.[14] Participation in all stages of a case before a trial court effectively estops a party from challenging its jurisdiction.

In the case at hand, nothing in the records shows that Aquinde raised the issue of jurisdiction when the RTC took cognizance of the appeal filed by MIATS-MPC. Aquinde, in fact, actively participated in the proceedings before the RTC and even submitted his Memorandum raising the sole issue of whether or not there was probable cause for an offense of bouncing checks on his part. Moreover, even if the issue of jurisdiction had been raised after the order of dismissal via a Rule 65 Petition for Certiorari, charging the MeTC with acting without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, we must stress that a Petition for Certiorari is one of the prohibited pleadings under Section 19[15] of the Revised Rules on Summary Procedure. Hence, such petition would have been only dismissed by the RTC, if taken upon an interlocutory order. In reversing the MeTC's dismissal of the two (2) separate pieces of information against Aquinde, was the

RTC in error when it granted the appeal, which in effect, revived the BP 22 case against Aquinde? Did the dismissal of the action amount to an acquittal of Aquinde?

In *People v. Paulin*,^[16] citing *People v. Salico*,^[17] the Supreme Court had the occasion to distinguish between acquittal and dismissal,

"... Acquittal is always based on the merits, that is, the defendant is acquitted because the evidence does not show that defendant's guilt is beyond reasonable doubt; but dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissals terminate the proceedings, either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court or the complaint or information is not valid or sufficient in form and substance, etc. ..."

To us, the MeTC's decision which outrightly dismissed the BP 22 case against Aquinde was not an acquittal from the charge considering that no finding was made as to the guilt or innocence of the petitioner. The MeTC had only found the case without basis or merit, to be lacking in probable cause. Likewise, it cannot be said that the petitioner's right against double jeopardy was violated because Aquinde had not yet been arraigned. For double jeopardy to be validly invoked by the petitioner, the following requisites must have obtained in the original prosecution: (a) a valid complaint or information; (b) a competent court; (c) the defendant had pleaded to the charge; and (d) the defendant was acquitted, or convicted, or the case against him was dismissed or otherwise terminated without his express consent.^[18] Here, Aquinde was not shown to have pleaded to the charge under BP 22.

Anent the substantial issues raised by Aquinde regarding: (1) whether or not legal compensation or set-off has set in; and (2) whether or not violations of *litis pendentia* and forum shopping had been committed by the private respondent, our view is that we cannot and should not resolve these matters as they were not even touched upon by the RTC in the assailed decision and order. The RTC only dwelt on the issue concerning the propriety of the MeTC's dismissal and the finding of probable cause to try Aquinde for BP 22. The RTC merely resolved the applicability of Section 7, Rule 110 of the Rules of Court concerning erroneous designation in the information of the name of the accused. It later on ruled that based on the complaints, the affidavits and evidence accompanying the prosecution, it found merit to grant the appeal.

In light of the foregoing, the Court therefore finds no ample ground to reverse the decision of the RTC.

WHEREFORE, the instant petition is DISMISSED. The decision and order of the RTC are consequently AFFIRMED.

IT IS SO ORDERED.

Salazar-Fernando (Chairperson) and Barrios,^[*] JJ., concur.

[*] Actg. Third Member vice J. Gaerlan per Office Order No. 270-14-RSF.

[1] Written by Judge Aida Estrella Macapagal, Branch 195 of the Regional Trial Court of Parañaque City in Criminal Case Nos. 12-0202 to 12-0203 dated 23 August 2012; Rollo, pp. 33-35.

[2] Dated 05 December 2012; Rollo, p. 42.

[3] Rollo, p. 35.

[4] Ibid, p. 42.

[5] Rollo, pp. 319-320.

[6] Ibid, p. 44.

[7] G.R. No. 169933, March 9, 2007, 518 SCRA 48.

[8] Sec. 12. Duty of court.-

(a) If commenced by complaint.- On the basis of the complaint and the affidavits and other evidence accompanying the same, the court may dismiss the case outright for being patently without basis or merit and order the release of the accused if in custody.

[9] Sec. 7. Name of the accused.- The complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known. If his name cannot be asserted, he must be described under a fictitious name with a statement that his true name is unknown.

If the true name of the accused is thereafter disclosed by him or appears in some other manner to the court, such true name shall be inserted in the complaint or information and record.

[10] Rule 40. Appeal from Municipal Trial Courts to the Regional Trial Courts.

[11] Sadio v. RTC of Antique, G.R. No. 94143, September 24, 1991, 201 SCRA 744.

[12] Mobilia Products, Inc. v. Umezawa, G.R. No. 149357, March 4, 2005, 452 SCRA 736.

[13] Mobilia Products, Inc. v. Umezawa, supra at footnote 12.

[14] Prudential Bank and Trust Company v. Reyes, G.R. No. 141093, February 20, 2001, 352 SCRA 316, citing Bañaga vs. Commission on the Settlement of Land Problems, G.R. No. 66386, January 30, 1990, 181 SCRA 599; Figueroa v. People, G.R. No. 147406, July 14, 2008, 558 SCRA 63, citing Soliven v. Fastforms Philippines, Inc. , G.R. No. 139031, October 18, 2004, 440 SCRA 389.

[15] Sec. 19. Prohibited pleadings and motions.- The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule:

(a) Motion to dismiss the complaint or to quash the complaint or information except on the ground of lack of jurisdiction over the subject matter, or failure to comply with the preceding section:

(b) Motion for bill of particulars;

(c) Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;

(d) Petition for relief from judgment;

(e) Motion for extension of time to file pleadings, affidavits or any other paper;

(f) Memoranda;

(g) Petition for certiorari, mandamus or prohibition against any interlocutory order issued by the court;

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[16] G.R. No. 103323, January 21, 1993, 217 SCRA 386.

[17] G.R. No. L-1567, October 13, 1949, 84 PHIL 722.

[18] Paulin v. Gimenez, supra at footnote 16, citing People v. Obsania, L-24447, June 29, 1968, 23 SCRA 1249.

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