

**JULIETA H. ONG, PETITIONER, VS. JUDGE ALEXANDER P. TAMAYO,
IN HIS CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL
COURT, BRANCH 15 OF MALOLOS CITY, BULACAN AND ARMELIA
AMPARO, RES...**

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

This petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure filed by petitioner Julieta H. Ong, seeks to annul and set aside the following decision and order of the Regional Trial Court, (RTC) Branch 20, Malolos City, Bulacan, to wit: (1) Decision[1] dated April 30, 2013, finding petitioner civilly liable for the payment of the full amount of the obligation; and (2) Order[2] dated June 20, 2013, denying her motion for reconsideration thereof.

Records show[3] that sometime in May, 2007, certain Fred Lunaria approached private respondent Armelia Amparo and offered a re-discounting of PNB Check No. 0700647 in the amount of P100,000 belonging to and allegedly issued by, petitioner Julieta H. Ong. Lunaria alleged that he was merely told by petitioner to look for somebody for the re-discounting of the said check. Private respondent acceded, considering her good long business dealings with petitioner and the latter's good credit line. Two (2) days after and every two (2) days thereafter, Lunaria came back for a re-discounting of each check, to wit:

Check No. 0700638

June 30, 2007

30,000

Check No. 0700659

July 4, 2007

143,000

Check No. 0700655

July 6, 2007

100,000

Check No. 0700660

July 10, 2007

143,000

Check No. 0700673

July 15, 2007

105,000

Check No. 0700629

July 18, 2007

50,000

Check No. 0700651

Aug. 20, 2007

25,000

Check No. 0028317

Aug. 30, 2007

25,000

Check No. 0027246

Sept. 30, 2007

85,000

When presented/deposited for encashment, all the said checks, except the last two (2), had been dishonored by the drawee bank for reason "account closed". Thereafter, demands were made upon petitioner, but she failed and refused to pay the amount of the checks. Thus, private respondent filed a complaint, charging petitioner for eight (8) counts of violation of B.P. 22 before the MTCC of Meycauayan, Bulacan.[4]

After the presentation of the prosecution's evidence, petitioner filed a demurrer to evidence by way of motion to dismiss on the ground that the prosecutions evidence is insufficient to prove her guilt beyond reasonable doubt. The MTCC through a Resolution[5] dated May 12, 2010, granted petitioner's demurrer to evidence, dismissing the cases filed against her. The MTCC held that the prosecution failed to prove adequate notice of dishonor. Likewise, it failed to prove that Lunaria is an agent acting for and in behalf of petitioner.[6] Consequently, according to the MTCC, with the granting of the demurrer to evidence which is equivalent to an acquittal, petitioner's civil liability found no factual support.[7]

Private respondent appealed the decision with respect to the civil aspect of the case to the RTC of Bulacan, which in a Decision[8] dated September 6, 2010, set aside the Resolution dated May 12, 2010 issued by the MTCC. The RTC held that while proof beyond reasonable doubt is required to sustain a conviction, one's entitlement to the award of civil liability requires only a preponderance of evidence. While petitioner did not present evidence with respect to both the criminal and civil aspects of the case in view of her filing of the demurrer to evidence, however, private respondent presented her own evidence.[9] The RTC declared that the foregoing evidence is sufficient to constitute preponderance of evidence to hold petitioner civilly liable, which was not rebutted by evidence to the contrary,[10] Accordingly, the RTC remanded the case to the court of origin for further proceedings to enable petitioner to present evidence.

On May 31, 2012, the MTCC rendered a Decision[11] in favor of private respondent, the dispositive portion of which states:

WHEREFORE, premises considered, judgment on the civil aspect is hereby rendered in favor of complainant

Armelia A. Amparo, ordering:

Fred Lunaria to pay in full the amount of Php 696,00.00 unto Amelia A. Amparo with interest thereon of 12% a year until such time of full payment of the same;

Julieta Ong is jointly and solidarily liable on the full amount of the loan.

SO RESOLVED.

Petitioner appealed the decision to the RTC. However, the RTC in its assailed Decision[12] dated April 30, 2013 denied the appeal and affirmed the decision of the MTCC with modification by excluding Fred Lunaria from joint and solidary liability with petitioner.

Petitioner filed a motion for reconsideration, but the motion was denied by the RTC in its assailed Order[13] dated June 20, 2013.

Aggrieved, petitioner filed this petition for certiorari, raising the lone issue, to wit:[14]

WHETHER [OR NOT PETITIONER] JULIETA ONG SHALL BE MADE CIVILLY LIABLE TO PAY THE FULL AMOUNT OF PHP 696,000.00 TO [PRIVATE RESPONDENT] ARMELIA AMPARO WITH THE INTEREST OF 10% A YEAR UNTIL FULL PAYMENT OF THE OBLIGATION WAS MADE, CONSIDERING THAT SHE HAS BEEN ACQUITTED IN THE CRIMINAL CASE FOR B.P. 22 AND IT WAS THE PERSON OF WITNESS FRED LUNARIA WHO HAD RECEIVED THE MONEY FROM [PRIVATE RESPONDENT]. (Emphasis ours)

Petitioner claims that only Fred Lunaria should be held civilly liable, since, he was the one who transacted with private respondent and received the proceeds of the checks.[15] Petitioner also argues that the instant case had passed the stage of appeal, and the trial court had acted with grave abuse of discretion in denying her motion for reconsideration.[16] On the other hand, private respondent claims that petitioner should have filed a petition for review under Rule 42 of the Rules of Court to assail the April 30, 2013 Decision and June 20, 2013 Order issued by the RTC. The petition should be dismissed, since, an appeal was available to petitioner and a petition for certiorari cannot be a substitute for a lost appeal.[17] Further, no grave abuse of discretion was manifested in the issuance of the assailed Decision and Order of the trial court.[18]

The petition is not meritorious.

With regard to the procedural aspect of this case, this Court agrees with private respondent's contention that petitioner had availed of the wrong remedy. Petitioner should have filed a petition for review under Rule 42 of the Rules of Court, and not a petition for certiorari under Rule 65. It bears stressing that the extraordinary remedy of certiorari can be availed only if there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.[19] On the other hand, a petition for review may be filed by a party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction.[20] In this case, when the RTC issued the assailed decision and order, it did so in the exercise of its appellate jurisdiction. Hence, the proper remedy therefrom is a petition for review under Rule 42 .

In any case, even granting that the petition can be properly filed under Rule 65 of the Rules of Court, the same should still be dismissed.

It should be noted that as a legal recourse, the special civil action of certiorari is a limited form of review. It is restricted to resolving errors of jurisdiction, not errors of judgment. Indeed, as long as the lower courts act within their jurisdiction, alleged errors committed in the exercise of their discretion will amount to mere errors of judgment correctable by an appeal or a petition for review.[21]

Besides, the RTC acted within its jurisdiction when it adjudged petitioner civilly liable to pay the amount of the checks. The rule is that every act or omission punishable by law has its accompanying civil liability. If the judgment is one of acquittal, then the imposition of the civil liability will depend on whether or not the act or omission from which it might arise exists.

In this case, petitioner was charged with violation of B.P. 22 for allegedly issuing worthless checks. The essential elements of the offense of violation of B.P. 22 are as follows:[22]

- (1) The making, drawing, and issuance of any check to apply for account or for value;
- (2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
- (3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment.

Of the three (3) elements, the second element is the hardest to prove as it involves a state of mind. In this case, the first and third elements were duly proven during the trial. However, petitioner was acquitted from criminal liability because of the failure of the prosecution to prove the fact of notice of dishonor. Nevertheless, the act or omission from which her civil liability arose, which was the making or the issuing of the subject worthless checks, clearly existed. Petitioner's acquittal from the criminal charge of B.P. 22 was based on reasonable doubt and it did not relieve her of the corresponding civil liability.

As correctly observed by the trial court, the PNB checks are the personal checks of petitioner, which were drawn and issued payable to cash from June 28, 2007 to August 20, 2007. All checks bounced when presented for payment for the reason of "account closed". When confronted with the checks, petitioner flatly denied having issued the same, which is highly implausible as nothing was shown to prove otherwise. Petitioner did not categorically deny her signatures on the checks nor claim that the same were forged or stolen. Thus, the checks encashed were undoubtedly issued by petitioner. As the drawer of the checks, petitioner is presumed to have issued the same for valuable consideration. It behooves upon petitioner to present evidence to overthrow the presumption to prove otherwise, which she failed to do so.[23]

WHEREFORE, the petition for certiorari is DISMISSED for lack of merit.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Cruz, R.A. and [*]Inting, S. B., JJ., concur.

[*] Vice Justice Romeo F. Barza, per Office Order No. 238-14-ABR dated May 23, 2014.

[1] Rollo, pp. 83-88.

[2] Id. at 96.

[3] Id. at 42-43.

[4] Id. at 42-43.

[5] Id. at 41-51.

[6] Id. at 49.

[7] Id. at 50.

[8] Id. 53-66.

[9] Id. at 63.

[10] Id. at 65.

[11] Id. at 72-80.

[12] See Note 1.

[13] See Note 2.

[14] Id. at 11.

[15] Id. at 13.

[16] Id. at 138-139.

[17] Id. at 124-125.

[18] Id. at 126.

[19] See Section 1, Rule 65, 1997 Rules of Civil Procedure.

[20] See Section 1, Rule 42, 1997 Rules of Civil Procedure.

[21] *Apostol vs. Court of Appeals*, 569 SCRA 80, 92. (2008)

[22] *Nissan Gallery-Ortigas vs. Purificacion F. Felipe*, G.R. No. 199067, November 11, 2013.

[23] Id. at 85-86.

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