

JUAN BELLO, FILOMENA C. BELLO, PETITIONERS, VS. HON. COURT OF APPEALS, HON. FRANCISCO, LLAMAS, AS JUDGE OF PASAY CITY COURT, AND REPUBLIC OF THE PHILIPPINES, RESPONDENTS.*G.R. NO. L-38161. March 29, 1974*

Ponente: TEEHANKEE, J.

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The Court holds that the court of first instance of Pasay City in an appeal erroneously taken to it from the city court's judgment convicting petitioners-accused of the charge of estafa within the concurrent original jurisdiction of said courts should grant petitioners-accused's timely petition for certifying their appeal to the Court of Appeals as the proper court rather than peremptorily grant the prosecution's motion for dismissal of the appeal and order the remand of the case to the city court for execution of judgment. The appellate court's decision denying the relief sought by petitioners of compelling the elevation of their appeal to it as the proper court simply because of the non-impleader of the court of first instance as a nominal party notwithstanding that it was duly represented by the respondent People as the real party in interest through the Solicitor General who expressed no objection to the setting aside of the court of first instance's dismissal order is set aside as sacrificing substance to form and subordinating substantial justice to a mere matter of procedural technicality.

Petitioners spouses were charged on August 25, 1970 for estafa before the City Court of Pasay[1] for allegedly having misappropriated a lady's ring with a value of P1,000.00 received by them from Atty. Prudencio de Guzman for sale on commission basis. After trial, they were convicted and sentenced under respondent city court's decision of February 26, 1971 to six (6) months and one (1) day of prision correccional and to indemnify the offended party in the sum of P1,000.00 with costs of suit.

Petitioners filed their notice of appeal of the adverse judgment to the Court of First Instance at Pasay City, but the prosecution filed a "petition to dismiss appeal" on the ground that since the case was within the concurrent jurisdiction of the city court and the court of first instance and the trial in the city court had been duly recorded, the appeal should have been taken directly to the Court of Appeals as provided by Section 87 of the Judiciary Act, Republic Act 296, as amended.[2]

Petitioners opposed the prosecution's dismissal motion and invoking the analogous provision of Rule 50, Section 3 directing that the Court of Appeals in cases of appeals erroneously brought to it "shall not dismiss the appeal, but shall certify the case to the proper court, with a specific and clear statement of the grounds therefor," prayed of the court of first instance if it should find the appeal to have been wrongly brought before it, to certify the same 'to either the Court of Appeals or the Supreme Court.'[3]

The court of first instance per its order of October 29, 1971 did find that the appeal should have been taken directly to the Court of Appeals but ordered the dismissal of the appeal and remand of the records to the city court "for execution of judgment." [4]

Petitioners aver that they were not notified of the order of dismissal of their appeal and learned of it only when

they were called by the Pasay city court for execution of the judgment of conviction. Hence, they filed with the city court their "motion to elevate appeal to Court of Appeals" of December 7, 1971 stating that "through inadvertence and/or excusable neglect" they had erroneously filed a notice of appeal to the court of first instance instead of to the Court of Appeals as the proper court and prayed that the city court, following precedents of this Court remanding appeals before it to the proper court instead of dismissing appeals, "elevate the records ... to the Court of Appeals for proper review." [5]

Respondent city court per its order of December 11, 1971 denied petitioners' motion "for having been erroneously addressed to this court" instead of to the court of first instance [6] ignoring petitioners' predicament that the court of first instance had already turned them down and ordered the dismissal of their appeal without notice to them and that as a consequence it was poised to execute its judgment of conviction against them.

Petitioners spouses then filed on January 14, 1972 their petition for prohibition and mandamus against the People and respondent city court to prohibit the execution of the judgment and to compel respondent city court to elevate their appeal to the Court of Appeals. [7]

The Solicitor General filed respondents' answer to the petition manifesting that "we shall not interpose any objection whichever view point is adopted by this Honorable Court in resolving the two apparently conflicting or clashing principles of law finality of judicial decision or equity in judicial decision," after observing that "(F)rom the view point of equity considering that petitioners' right to appeal lapsed or was lost through the fault, though not excusable, of their counsel, and compounded by the alleged error of judgment committed by the Court of First Instance to which the appeal was erroneously brought, we sympathize with petitioners' plight."

The Court of Appeals, however, per its decision of December 17, 1973 dismissed the petition, after finding that the city court's judgment was directly appealable to it. Although recognizing that the 'CFI instead of dismissing appeal, could have in the exercise of its inherent powers directed appeal to be endorsed to this Court of Appeals' it held that since petitioners did not implead the court of first instance as "principal party respondent" it could not "grant any relief at all even on the assumption that petitioners can be said to deserve some equities," as follows:

"x x x therefore, when they appealed to CFI, that was procedurally wrong; of course, CFI instead of dismissing appeal, could have in the exercise of its inherent powers, directed appeal to be endorsed to this Court of Appeals, but when instead of doing so, it dismissed, it also had power to do so, and correction of it is difficult to see to be remediable by mandamus, but ignoring this altogether, what this Court finds is that since it was CFI that dismissed the appeal, and according to petitioners, wrongly, it must follow that if CFI was wrong, this pica for mandamus to compel it to act 'correctly' should have been directed against said CFI, it should have been the CFI, Hon. Francisco de la Rosa, who should have been made under Rule 65, Sec. 3, herein principal party respondent, but he was not, this being the situation, this Court can not see how it can grant any relief at all even on the assumption that petitioners can be said to deserve some equities."

Petitioners moved for reconsideration on January 2, 1974 [8] and for elevation of their appeal to the Court of Appeals, stressing the merits of their appeal and of their defense to the charge, viz, that the offended party Atty. de Guzman had represented their son who was a suspect with two others for robbery before the Pasay City fiscal's office and upon dismissal to the charge demanded payment from them as parents the sum of P1,000.00 as attorney's fees, and since they had no money to pay him required them to sign the receipt dated June 25, 1970 in his favor for an imaginary lady's ring to sell "on commission basis" for P1,000.00 (their "commission" to be any overprice) to assure payment of the sum by the stated deadline of July 9, 1970 under penalty of criminal prosecution for estafa; and that they had then newly met Atty. de Guzman, whose services had been secured not by them but by the family of one of the other suspects, implying the incredibility of his entrusting a lady's ring to both of them (husband and wife) for sale on commission basis when his only association with them was his

demand of payment of his P1,000-attorney's fee for having represented their son-suspect.

Reconsideration having been denied by the appellate court "for lack of sufficient merit," petitioners filed the present petition for review.[9]The Court required the Solicitor General's comment on behalf of the People of the Philippines, and upon receipt thereof resolved to consider the case as a special civil action with such comment as answer and the case submitted for decision in the interest of justice and speedy adjudication.

The Court finds merit in the petition and holds that the court of first instance acted with grave abuse of discretion in dismissing petitioners-accused's appeal which was erroneously brought to it and ordering remand of the records to the city court for execution of judgment instead of certifying and endorsing the appeal to the Court of Appeals as the proper court as timely prayed for by petitioners-accused in their opposition to the prosecution's motion to dismiss appeal. We find that the Court of Appeals also acted with grave abuse of discretion in dismissing their petition instead of setting aside the challenged order of the court of first instance peremptorily dismissing the appeal pursuant to which respondent city court was poised to execute its judgment of conviction simply because the court of first instance which is but a nominal party had not been impleaded as party respondent in disregard of the substantive fact that the People as plaintiff and the real party in interest was duly impleaded as principal party respondent and was represented in the proceedings by the Solicitor General.

The appellate court while recognizing that petitioners' appeal taken to the court of first instance was "procedurally wrong" and that the court of first instance "in the exercise of its inherent powers" could have certified the appeal to it as the proper court instead of dismissing the appeal, gravely erred in holding that it could not "correct" the court of first instance's "wrong action" and grant the relief sought of having the appeal elevated to it since said court's presiding judge "who should have been made under Rule 65, Sec. 3[10]herein principal party respondent, but he was not." The Court has always stressed as in *Torre vs. Erica*[11] that a respondent judge is "merely a nominal party" in special civil actions for certiorari, prohibition and mandamus and that he "is not a person in interest' within the purview (of Rule 65, Section 5[12])" and "accordingly, he has no standing or authority to appeal from or seek a review on certiorari" of an adverse decision of the appellate court setting aside his dismissal of a party's appeal and issuing the writ of mandamus for him to allow the appeal.

It is readily seen from the cited Rule that the court of first instance or presiding judge who issued the challenged order or decision is but a nominal party, the real parties in interest being "the person or persons interested in sustaining the proceedings in the court" and who are charged with the duty of appearing and defending the challenged act both "'in their own behalf and in behalf of the court or judge affected by the proceedings." Hence, the formal impleading of the court of first instance which issued the challenged order of dismissal was not indispensable and could be "overlooked in the interest of speedy adjudication." [13]

Since the real party in interest, the People as plaintiff in the criminal proceeding against petitioners-accused was duly impleaded and represented by the Solicitor General to defend the proceedings in the court of first instance and had expressed no objection to the appellate court's setting aside of the court of first instance's dismissal order, in the interest of justice and equity, the appellate court's act of dismissing the petition and denying the relief sought of endorsing the appeal to the proper court simply because of the non-impleader of the court of first instance as a nominal party was tantamount to sacrificing substance to form and to subordinating substantial justice to a mere matter of procedural technicality. The procedural infirmity of petitioners mis-directing their appeal to the court of first instance rather than to the Court of Appeals, which they had timely sought to correct in the court of first instance . itself by asking that court to certify the appeal to the Court of Appeals as the proper court, should not be over-magnified as to totally deprive them of their substantial right of appeal and leave them without any remedy.

The Court therefore grants herein the relief denied by respondent appellate court of mandamus to compel respondent city court to elevate petitioners' appeal to the Court of Appeals as the proper court as being within the context and spirit of Rule 50, Section 3, providing for certification to the proper court by the Court of Appeals of appealed cases erroneously brought to it,[14] particularly where petitioners-accused have shown prima facie (and without this Court prejudging the merits of their appeal) that they have a valid cause for pursuing in good faith their appeal (as against a manifestly dilatory or frivolous appeal) and to have a higher court appreciate their evidence in support of their defense that they were prosecuted and sentenced to imprisonment (for cstafa) for failure to pay a purely civil indebtedness (the attorney's fee owed by their son to the complainant).

Here, petitioners-accused's counsel, misdirected their appeal to the court of first instance, confronted with the thorny question (which has confused many a practitioner)[15] of concurrent criminal jurisdiction of city courts and municipal courts of provincial and sub-provincial capitals with courts of first instance under Sections 44 (f) and 87 (c) of the Judiciary Act where the appeal from the municipal or city court's judgment should be taken directly to the Court of Appeals as held in *Esperat vs. Avila*[16] as distinguished however from judgments of ordinary municipal courts in similar cases within the concurrent jurisdiction of the courts of first instance where as held by this Court in *People vs. Valencia*[17] the appeal should nevertheless be brought to the court of first instance which retains its appellate jurisdiction under Section 45 of the Judiciary Act.

It certainly was within the inherent power of the court of first instance in exercise of its power to "control its process and orders so as to make them conformable to law and justice"[18] to grant petitioners-accused's timely plea to endorse their appeal to the Court of Appeals as the proper court and within the context and spirit of Rule 50, Section 3. In a mis-directed appeal to the Court of Appeals of a case that pertains to the court of first instance's jurisdiction, the said Rule expressly provides that the Court of Appeals "shall not dismiss the appeal but shall certify the case to the proper court" viz, the court of first instance in the given example. There is no logical reason why in all fairness and justice the court of first instance in a misdirected appeal to it should not be likewise bound by the same rule and therefore enjoined not to dismiss the appeal but to certify the case to the Court of Appeals as the proper court. The paucity of the language of the Rule and its failure to expressly provide for such cases of misdirected appeals to the court of first instance (owing possibly to the fact that at the time of the revision of the Rules of Court in 1963 Section 87 (c) had been newly amended under Republic Act 2613 approved on June 22, 1963 to enlarge the jurisdiction of city courts and municipal courts of provincial capitals and provide for their concurrent jurisdiction with the courts of first instance and direct appeal from their judgments in such cases to the Court of Appeals) should not be a cause for unjustly depriving petitioners of their substantial right of appeal.

This Court has in many cases involving the construction of statutes always cautioned against "narrowly interpreting a statute 'as to defeat the purpose of the legislator'"[19] and stressed that "it is of the essence of judicial duty to construe statutes so as to avoid such a deplorable result (of injustice or absurdity)"[20] and that therefore "a literal interpretation is to be rejected if it would be unjust or lead to absurd results." [21] In the construction of its own Rules of Court, this Court is all the more so bound to liberally construe them to avoid injustice, discrimination and unfairness and to supply the void that is certainly within the spirit and purpose of the Rule to eliminate repugnancy and inconsistency — by holding as it does now that courts of first instance are equally bound as the higher courts not to dismiss misdirected appeals timely made but to certify them to the proper appellate court.

ACCORDINGLY, the decision of the Court of Appeals dismissing the petition is hereby set aside and in lieu thereof, judgment is hereby rendered granting the petition for prohibition against respondent city court which is hereby enjoined from executing its judgment of conviction against petitioners-accused and further commanding said city court to elevate petitioners' appeal from its judgment to the Court of Appeals for the latter's disposition

on the merits. No costs.

Makalintal, C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Makasiar, Antonio, Fernandez, Muñoz Palma, and Aquino, JJ., concur.

[1] Docketed as Criminal Case No. 60761.

[2] Annex D, petition. See *Esperat vs. Avila*, 20 SCRA 596 (1967) and *People vs. Tapayan*, 30 SCRA 529 (1969) and cases cited.

[3] Annex E, *idem*.

[4] Annex F, *idem*.

[5] Annex G, *idem*.

[6] Annex H, *idem*.

[7] Annex I, *idem*.

[8] Annex L, *idem*., italics supplied.

[9] The petition was filed on February 14, 1974 within the extended ten-day period from expiration of reglementary period on February 4, 1974, granted per the Court's resolution of February 7, 1974.

[10] This Rule provides for petitions for mandamus.

[11] 38 SCRA 296, 315 (1971), per Concepcion, C.J.

[12] "SEC. 5. Defendants and costs in certain cases. — When the petition filed relates to the acts or omissions of a court or judge, the petitioner shall join, as parties defendant with such court or judge, the person or persons interested in sustaining the proceedings in the court, and it shall be the duty of such person or persons to appear and defend, both in his or their own behalf and in behalf of the court or judge affected by the proceedings, and costs awarded in such proceedings in favor of the petitioner shall be against the person or persons in interest only, and not against the court or judge." (Rule 65).

[13] See *Valenzuela VJ. CFI of La Union*, 91 Phil. 906 (1952).

[14] See also Section 31, R.A. 296 providing that "Transfer of cases from Supreme Court and Court of Appeals to proper court- — All cases which may be erroneously brought to the Supreme Court or to the Court of Appeals shall be sent to the proper court, which shall hear the same, as if it has originally been brought before it." (Judiciary Act).

[15] See "a dozen cases" cited in *People vs. Tapayan*, 30 SCRA 529 (1969).

[16] 20 SCRA 596 (1967).

[17] 29 SCRA 252 (1969), per Castro, J. which expressly distinguished the ruling from that in *Esperat vs. Avila*, *supra*.

[18] Rule 135, Section 5 (g).

[19] *Macabenta v. Davao Stevedore Terminal Co.*; 32 SCRA 553, 558 (1970), per Fernando, J.

[20] *Automotive Parts' & Equipment Co., Inc. v. Lingad*, 30 SCRA 248, 256, (1969), per Fernando, J.; notes in parenthesis and italics supplied.

[21] *Idem.*, at p. 255, italics supplied.

DISSENTING

ESGUERRA, J.,

I beg to dissent from the opinion that Section 3 of Rule 50 of the Rules of Court may be applied by analogy to this case, considering that the dispositive portion of the draft decision commands the City Court to elevate the case to the Court of Appeals. Under Section 31 of the Judiciary Act (Republic Act No. 296), "all cases erroneously brought to the Supreme Court or to the Court of Appeals shall be sent to the proper court, which shall hear the same, as if it had originally been brought before it." Section 3 of Rule 50 provides that "when the appealed case has been erroneously brought to the Court of Appeals, it shall not dismiss the appeal but shall certify the case to the proper court, with a specific and clear statement of the grounds therefor." These are the only legal provisions governing the handling and disposition of erroneous appeals. Neither the Legislature nor the Rules of Court has provided the rules for erroneous appeal to the Court of First Instance from the judgment of a City Court or the Municipal Court of a provincial or sub-provincial capital in cases falling within their concurrent jurisdiction under the Judiciary Act, as amended. I do not think the Supreme Court, by judicial fiat, can supply the deficiency unless it formally promulgates a rule governing transfer or certification of cases erroneously appealed to the Court of First Instance from judgments of inferior courts in cases directly appealable to the Court of Appeals. The void in the law is in the certification by the Court of First Instance to the Court of Appeals in such cases.

We cannot apply Section 31 of the Judiciary Act and Section 3 of Rule 50 by analogy because We have to compel the Court of First Instance to certify the case to the Court of Appeals. We cannot also compel the City Court of Pasay City to do the same because the case was not appealed to it as it was its decision which was erroneously appealed to the Court of First Instance. The proper court to certify and to be commanded to do so by mandamus is the Court of First Instance, but this Court is not a party to this case and cannot be bound by any judgment rendered herein.

That the People of the Philippines was impleaded as a party and represented by the Solicitor General is of no significance to me. The People is not the one to be compelled to perform the act but the Judge of First Instance that dismissed the appeal; and neither said Court nor the Judge thereof is a party respondent in these proceedings.

The petitioners here should have known, through their counsel, that the People of the Philippines and the Court of First Instance of Pasay City are not one and the same entity, and that the former may not be compelled to perform the act of certifying the case to the Court of Appeals while the latter can be. The respondent-appellate Court was right in dismissing the petition to prohibit the execution of the judgment and to compel the City Court to elevate the case to the Court of Appeals. Petitioners should have known that the Court of First Instance is an indispensable party to these proceedings. For their counsel's fatal error, they should pay the price of having the judgment of conviction become final.

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