

JOVY P. BAHENA AND VIVIAN S. TAN, PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES, AND PRESIDING JUDGE OF BRANCH 20, REGIONAL TRIAL COURT OF CEBU, RESPONDENTS.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is a Petition[1] filed by petitioners Jovy Bahena and Vivian Tan praying for this Court to set aside the Orders dated June 6, 2014[2] and July 1, 2014[3] (“assailed Orders”) of the Regional Trial Court, Branch 20, Cebu City, in Criminal Cases Nos. CBU-67484-89, which denied petitioner Tan's and petitioner Bahena's Motions for Reconsideration/Motion for New Trial on the Joint Decision dated October 9, 2013. Petitioners also pray for the setting aside of the court a quo's Omnibus Order[4] dated July 21, 2014 (“assailed Omnibus Order”), which denied petitioners' notices of appeal, and for the restoration of their rights to appeal.

The factual backdrop of the case as presented by petitioners in their petition is as follows:

The trial court convicted herein petitioners for six counts of Estafa thru Falsification of Public Document in its Joint Decision dated October 9, 2013.[5] Petitioner Tan sought for a reconsideration of the Joint Decision,[6] while petitioner Bahena moved for both reconsideration and new trial.[7] Their motions were, however, denied by the trial court in its assailed Orders.

Thereafter, both petitioners moved for the restoration of their rights to appeal and filed their notice of appeal.[8] They averred therein that they were not notified of the Joint Decision and of the promulgation of judgment until the time they were arrested. But their motion and notice of appeal were denied by the trial court in its assailed Omnibus Order. The trial court did not consider their motion considering that petitioners were absent during the promulgation of judgment without justifiable cause despite due notice thereby losing their right to avail of the remedy of appeal.

Petitioners moved for a reconsideration[9] of the assailed Omnibus Order, but the same was denied.

Hence, the petitioners come before Us with the instant Petition.

Petitioners placed in the caption of their Petition that the same is in the nature of a petition for review by (sic) certiorari with preliminary injunction.

A petition for review on certiorari is governed by Rule 45 of the Rules of Court. Section 1 of the said rule states, to wit:

“Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, The Court of Tax Appeals, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. Xxx.”

Based on the above-cited provision, a petition for review on certiorari is an appeal that is cognizable only by the Supreme Court. It is an appeal which is raised only on pure questions of law.

Clearly, this Petition is bound to fail as this Court does not have any jurisdiction on a petition for review on certiorari under Rule 45 of the Rules of Court.

Notwithstanding the above-quoted rule, this petition for review on certiorari, even if properly filed or endorsed to the Supreme Court, still cannot prosper. We have carefully considered the allegations and arguments in the Petition, and We find that the issues discussed do not involve pure questions of law. Factual issues are raised which involve the consideration of evidence, and that is beyond the scope of a petition for review on certiorari.

We cannot also consider this Petition to be properly lodged before this Court, even if the issues presented involve both questions of facts and law, because We cannot find any procedural and jurisdictional basis to act on the same.

To recall, the trial court denied petitioners' notice of appeal. Hence, no appeal is deemed filed. To consider this Petition as a perfected appeal would be tantamount to giving herein petitioners a procedural shortcut that would undermine the trial court's authority to act, at first instance, on notices of appeal.

Moreover, the assailed Omnibus Order denying petitioners' notices of appeal is not a decision or final order from which an appeal may be taken. The Rules of Court specifically provides that no appeal shall be taken from an order disallowing or dismissing an appeal. Rather, the aggrieved party can elevate the matter through a special civil action under Rule 65. Thus, in availing of the wrong mode of appeal in this petition under Rule 45 instead of the appropriate remedy of Rule 65, the petition merits an outright dismissal.[10]

The Court could not even treat this Petition as a petition for certiorari filed under Rule 65 of the Rules of Court because it is fatally defective – again the Petition, even if treated as such, is still bound to fail. A petition for certiorari under Rule 65 concerns errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Nothing, however, in this Petition aver any grave abuse of discretion committed by the trial court in rendering its assailed Omnibus Order. And, the arguments presented in the Petition do not pose any jurisdictional issue or error of jurisdiction. Clearly, We cannot resolve an issue that is not within Our jurisdiction, much less, when such issue was not even raised and no averments were presented in support thereof.

WHEREFORE, the instant Petition is hereby DENIED for lack of merit.

SO ORDERED.

Hernando, J., Chairperson, and [*]Lopez, J., concur.

[*] Vice Justice Marie Christine Azacarraga-Jacob, per Office Order No. 01-15-GTI, January 22, 2015.

[1] Rollo, pp. 2-14.

[2] Rollo, p. 35.

[3] Rollo, pp. 38-39.

[4] Rollo, p. 45.

[5] Rollo, pp. 15-31.

[6] Rollo, pp. 32-34.

[7] Rollo, pp. 36-37.

[8] Rollo, pp. 41-44.

[9] Rollo, pp. 46-47.

[10] Macapagal v. People of the Philippines, G.R. No. 193217, February 26, 2014.

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