

**MANUEL R. JIMENEZ, PETITIONER, VS. HON. ALBERTO V. AVERIA,  
JUDGE OF THE COURT OF FIRST INSTANCE OF CAVITE AND OFELIA  
V. TANG AND ESTEFANIA DE LA CRUZ OLAN-DAY, RESPONDENTS.***G.R. No. L-22759. March 29, 1968*

Ponente: DIZON, J.

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In Criminal Case No. TM-235 of the Court of First Instance of Cavite respondents Ofelia V. Tang and Estefania de la Cruz Olanday were charged with estafa, the information filed alleging that, having received from Manuel Jimenez the sum of P20,000.00 with which to purchase for him a fishing boat known as "Basnig", with the obligation on their part to return the money on January 30, 1963 in case they should fail to buy the fishing boat, they misappropriated the amount aforesaid, to the damage and prejudice of Jimenez.

Before arraignment, the accused filed Civil Case No. 6636 against Jimenez in the Court of First Instance of Quezon con-testing the validity of a certain receipt signed by them on October 25, 1962 (Annex "A" of the present petition) wherein they acknowledged having received from him the sum of P20,000.00 with which to purchase for him a fishing boat and its acces-sories, and the further sum of P240.00 as agent's commission, with the obligation, on their part, to return the aforesaid amounts on January 30, 1963 in case they were unable to buy the fishing boat. Their complaint alleged that they had never re-ceived any amount from Jimenez and that their signatures on the questioned receipt were secured by means of fraud, deceit and intimidation employed by him. Several days later, they filed a motion in the aforementioned criminal action to suspend proceedings therein on the ground that the determination of the issue involved in Civil Case No. 6636 of the Court of First Instance of Quezon was a prejudicial question. The respondent judge granted the motion in an order dated October 18, 1963.

The petition now before Us is one for certiorari pre-dicated upon the preposition that in issuing the order just mentioned, the respondent judge committed a grave abuse of discretion amounting to lack of jurisdiction. Properly, however, the action is for the issuance of a writ of mandamus, the relief prayed being for this Court "to order the Hon. Court of Cavite Province to proceed with the case and to order the Hon. Court at Quezon Province to dismiss the civil case".

The issue to be decided is whether the determination of the issue raised in the civil case mentioned heretofore is a prejudicial question, in the sense that it must be first resolved before the proceedings in the criminal case for estafa may proceed.

A prejudicial question has been defined to be one which arises in a case, the resolution of which (question) is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal (Ency-clopedia Juridical Española, p. 228). In *People vs. Aragon*, G. R. No. L-5930, February 17, 1954, We held in connection with this subject that the question claimed to be prejudicial in nature must be determinative of the case before the court, and that jurisdiction to try and resolved said question must be lodged in another tribunal.

Applying the above considerations to the instant case, it will be readily seen that the alleged prejudicial question

is not determinative of the guilt or innocence of the parties charged with estafa, because even on the assumption that the execution of the receipt whose annulment they sought in the civil case was vitiated by fraud, duress or intimidation, their guilt could still be established by other evidence showing, to the degree required by law, that they had actually received from the complainant the sum of P20,000.00 with which to buy for him a fishing boat, and that, instead of doing so, they misappropriated the money and refused or otherwise failed to return it to him upon demand. The contention of the private respondents herein would be tenable had they been charged with falsification of the same receipt involved in the civil action.

Were We to sanction the theory advanced by the respondents Tang and De la Cruz Olanday and adopted by the respondent judge, there would hardly be a case for estafa that could be prosecuted speedily, it being the easiest thing for the accused to block the proceedings by the simple expedient of filing an independent civil action against the complainant, raising therein the issue that he had not re-ceived from the latter the amount alleged to have been mis-appropriated. A claim to this effect is properly a matter of defense to be interposed by the party charged in the criminal proceeding.

WHEREFORE, judgment is hereby rendered ordering the respondent Court of First Instance of Cavite to proceed with-out undue delay with the trial of Criminal Case No. TM-235, with the result that the order complained of suspending the proceedings therein until after Civil Case No. 6636 of the Court of First Instance of Quezon has been resolved is hereby set aside. With costs against the respondents except the respondent judge.

Reyes, Acting C.J., Makalintal, Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.  
Castro, J., no part.

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