MARILYN C. SANTOS, PETITIONER, VS. HONORABLE COURT OF APPEALS AND CORAZON T. CASTRO, RESPONDENTS.

G.R. No. 127899. December 02, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision,[1] Resolution,[2] and Supplemental Resolution[3]of the Court of Appeals in CA-G.R. SP No. 38522.

The facts that matter are as follows:

Petitioner issued fifty-four (54) checks in the total amount of Three Million Nine Hundred Eighty Nine Thousand One Hundred Seventy-Five and 10/100 (P3,989,175.10) Pesos, all of which checks were dishonored upon presentment to the drawee bank.

On October 12, 1993, the petitioner was charged with fifty-four (54) counts of violation of Batas Pambansa Bilang 22 ("BP 22") in fifty-four (54) separate Informations, docketed as Criminal Case Nos. 102009 to 102062, respectively, before Branch 160 of the Regional Trial Court of Pasig City. To the said accusations, petitioner pleaded not guilty upon arraignment. After trial, she was found guilty in a Decision promulgated on December 20, 1994, sentencing her to a total prison term of fifty-four (54) years and to pay P3,989,175.10 to the private respondent.

Petitioner therefore, filed an application for probation, which was referred by Presiding Judge Umali to the Probation Officer of Marikina, for investigation, report, and recommendation.

Private respondent opposed subject application for probation on the grounds that: the petitioner is not eligible for probation because she has been sentenced to suffer an imprisonment of fifty-four (54) years, and she failed to pay her judgment debt to the private respondent.

On January 6, 1995, private respondent presented a "Motion for a Writ of Execution", which motion was granted by Judge Umali in an Order dated January 11, 1995. Thus, the corresponding writ of execution issued for the implementation and satisfaction of the monetary aspect of the said Decision. Thereafter, the sheriff prepared and signed a Notice of Levy on Execution over several properties belonging to the petitioner.

On February 13, 1995, petitioner and her husband executed a "Deed of Absolute Sale" deeding out in favor of Teodoro S. Dijamco ("Mr. Dijamco") for P264,570.00 a parcel of land in La Trinidad, Benguet ("Benguet Property"), covered by Transfer Certificate of Title No. T-18721 ("TCT No. T-18721"). On the same day, the sheriff annotated the Notice of Levy on Execution on the dorsal portion of TCT No. T-18721.

On March 29, 1995, Mr. Dijamco filed an "Affidavit of Third-Party-Claim" over the same Benguet property on the strength of the said previous sale but averring already a consideration of P3,000,000.00. Attached thereto are the checks he allegedly paid for subject property.

On May 5, 1995, private respondent interposed a "Supplemental Opposition" to the application for probation; contending that:

> "x x x
>
> 2. Recent developments show that the accused had been disposing and/or mortgaging her properties in obvious attempt to negate the satisfaction of her civil liability to herein private complainant, as evidenced by the Affidavit of Third Party Claim filed by Teodoro S. Dijamco and the Real Estate Mortgage executed by the accused in favor of the Rural Bank of Angono, Inc. (attached as Annexes "A" and "B" in the Comment/Opposition to the Post Sentence Investigation Report).
>
> 3. It must be stressed that the real estate mortgage was executed by the accused in anticipation of an unfavorable judgment and that the alleged sale the real property in favor of Teodoro Dijamco was made after this Honorable Court had rendered judgment convicting the accused of the crime charged and after notice of levy on execution had been annotated on the title. Clearly, the said mortgage and sale executed by the accused constitute indirect contempt under Sec. 3 of Rule 71 of the Rules of Court and the accused may likewise be prosecuted criminally for the said acts.
>
> 4. Moreover, the accused is disqualified from the benefits of the aforecited Decree as she has been sentenced to a total of fifty four (54) years of imprisonment.
>
> 5. From the foregoing, it is crystal clear that the accused is not entitled to the benefits of the probation law and that the acts enumerated constitute indirect contempt."

In the Order he issued on June 30, 1995, Judge Umali granted petitioner's application for probation for a period of six (6) years, subject to the following terms and conditions, to wit:

> "1. Probationer shall report initially to the Chief parole and Probation Officer at Marikina Parole & Probation Off. Hall of Justice, Marikina within seventy-two hours from receipt of the Order granting Probation.
>
> 2. She shall, thereafter, report to her supervising probation and parole officer 2 times a month, unless otherwise modified by the Chief Probation and Parole Officer.
>
> 3. She shall reside in #8 Jazmin, Twinsville Subd. Concepcion, Marikina and shall not change her residence without approval of the supervising probation and parole officer or of the Court, as the case may be.
>
> 4. She shall secure a written permit to travel outside the jurisdiction of the parole and probation office from the chief probation officer, and from the Court if such travel exceeds thirty (30) days.
>
> 5. She shall allow the supervising probation officer, or an authorized Volunteer Aide to visit her place of work and home.
>
> 6. She shall meet her family responsibilities.
>
> 7. She shall devote herself to a specific employment and shall not change said employment without prior notice to the supervising officer; and/or shall pursue a prescribed secular study or vocational training.
>
> 8. She shall refrain from associating with persons of questionable character, and shall not commit any other offense.
>
> 9. She shall cooperate with her program of supervision, and shall satisfy any other condition related to her rehabilitation and not unduly restrictive of her liberty or incompatible with her freedom of conscience.
>
> 10. She shall plant at least five (5) fruit bearing trees in his backyard or any government lot as part of her rehabilitation.

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> 11. She shall participate in the Parole and Probationer's Project as clean and green project in Marikina and attend the First Friday Mass at the Hall of Justice of Marikina."

Private respondent moved for reconsideration but to no avail. Her motion for reconsideration was denied.

Dissatisfied, the private respondent filed with the Court of Appeals a petition for Certiorari under Rule 65 of the Rules of Court, questioning the grant of probation. In its Decision[4] dated August 16, 1996, the Court of Appeals ruled thus:

> "IN THE LIGHT OF ALL THE FOREGOING, the Petition is GRANTED. The Orders of the Respondent Judge, Annexes "A" and "B" of the Petition are SET ASIDE. Let the records of this case be remanded to the Court a quo. The Respondent Judge is hereby directed to issue a warrant for the arrest of the Private Respondent."

Private respondent filed a Motion for Reconsideration[5] of the above Decision but the same was denied in the Resolution[6] dated January 7, 1997, holding:

> "Anent Private Respondent's 'Motion for Reconsideration', We find no valid justification for a reversal or reconsideration of our Decision. Private Respondent's claim that the Petitioner is not the proper party-in-interest to file the Petition is barren of merit. In the first place, the Private Respondent, in her Answer/Comment and the Public Respondent, in his Comment, on the Petition, never claimed that the Petitioner was not the proper party-in-interest to file the Petition. More, the Solicitor General appearing for the Public Respondent has not filed any 'Motion for Reconsideration' of our Decision. Evidently, the Solicitor General is in accord with our Decision.
>
> Anent Petitioner's 'Motion for the Issuance of a Hold Departure Order', We find the said motion meritorious and hereby grants the same. Accordingly, the Commissioner & Immigration and Deportation is hereby directed not to allow the departure from the Philippines of the Private Respondent Marilyn C. Santos, married, and a resident of No. 8 Jasmin Street, Twinville Subdivision, Marikina City, until further orders of this Court.
>
> SO ORDERED."

In a Supplemental Resolution[7] dated January 29, 1997, the Court of Appeals elucidated further its Resolution that the herein petitioner is the real party-in-interest, and declared that there were no procedural lapses in the granting of private respondent's petition.

Having lost the case before the Court of Appeals, petitioner has come to this Court for relief; contending that:

> I
> PRIVATE RESPONDENT CORAZON T. CASTRO IS NOT THE REAL PARTY IN INTEREST TO QUESTION THE GRANT OF PROBATION TO HEREIN PETITIONER.
>
> II
> NON-PAYMENT OF THE CIVIL LIABILITY IMPOSED ON PETITIONER IN THE DECISION RENDERED IN THE CRIMINAL CASE IS NOT A GROUND FOR THE REVOCATION OF PROBATION.
>
> III
> THE COURT OF APPEALS IS MORE INTERESTED IN THE FULL SATISFACTION OF PRIVATE RESPONDENT CORAZON T. CASTRO RELATIVE TO THE CIVIL ASPECT OF CASE THAN IN THE REHABILITATION OF PETITIONER AS A PROBATIONER. THIS IS HIGHLY IMPROPER.
>
> IV
> THE GRANT OF PROBATION TO PETITIONER MARILYN C. SANTOS IS FAIT ACCOMPLI AND SHE

HAS COMPLIED WITH THE CONDITIONS OF THE PROBATION GRANTED HER.

V
THE GRANT OF PROBATION BY JUDGE UMALI TO PETITIONER UNDER THE FACTS OBTAINING DOES NOT CONSTITUTE GRAVE ABUSE OF DISCRETION.

VI
THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING A "HOLD DEPARTURE ORDER" TO PREVENT PETITIONER FROM LEAVING THE PHILIPPINES.

Anent the first issue, the Court holds that the private respondent had the personality to bring a special civil action for certiorari before the Court of Appeals. Being the person aggrieved by petitioner's issuance of bouncing checks, private respondent has an interest in the civil aspect of the case. It is not true that it is only the State or the People that can prosecute the special civil action before the Court of Appeals. Private respondent may bring such action in her own name to protect her interest in the case.

> "In a special civil action for certiorari filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in name of said complainant." (People v. Santiago, 174 SCRA 143, 153)
>
> * * *"In the instant case, the recourse of the complainant to the respondent Court was therefore proper since it was brought in his own name and not in that of the People of the Philippines. That the said proceedings benefited the People is not a reversible error. Neither does it constitute grave abuse of discretion. xxx" (De la Rosa v. Court of Appeals, 253 SCRA 501, 508)

Anent the second, third, and fifth issues, erroneous is petitioner's submission that the Court of Appeals unduly stressed petitioner's non-satisfaction of her civil liability as the basis for reversing the grant of probation to her. The proper approach to the problem, and the Court considers the same as the pivotal issue in this case, is whether the petitioner is entitled to probation.

The point of conflict is whether the petitioner is qualified to be granted probation. Stated otherwise, has petitioner shown her qualifications entitling her to the grant of probation? Is society better off with petitioner in jail or should petitioner be allowed to co-mingle with the people, subject to some conditions, despite her criminal record?

Probation is not a right of an accused but a mere privilege, an act of grace and clemency or immunity conferred by the state, which may be granted to a seemingly deserving defendant who thereby escapes the extreme rigors of the penalty imposed by law for the offense for which he was convicted.[8] The primary objective in granting probation is the reformation of the probationer. Courts must be meticulous enough to ensure that the ends of justice and the best interest of the public as well as the accused be served by the grant of probation.[9]

Probation is a just privilege the grant of which is discretionary upon the court. Before granting probation, the court must consider the potentiality of the offender to reform, together with the demands of justice and public interest, along with other relevant circumstances.[10] The courts are not to limit the basis of their decision to the report or recommendation of the probation officer, which is at best only persuasive.[11]

In granting petitioner's application for probation, Judge Umali ratiocinated:

> "Based on the report of the probation officer, accused may be granted probation (P.D. 968, as amended) The findings of the Parole and Probation Office shows that accused is not considered as a rescidivist [sic]; accused petitioner is not in need of correctional treatment, but more of an individualize treatment of rehabilitation; offenses committed by accused/ petitioner is not so grave a crime that she can pose a great threat in the peace and order of the community where she resides; and accused/petitioner is not condemned by the community because of her cases, it can be presumed that she is still welcome to mingle with the community and participate in any community projects.
>
> Her failure to satisfy the judgment on the civil liability is not a ground for the denial of the application for probation of accused. Moreover, the court had earlier issued a writ of execution to satisfy the money judgment in an order dated January 11, 1995 and the sheriff of this court had issued a notice of levy on execution on the properties of accused.
>
> Foregoing considered that petition of accused for probation is hereby Granted." (Order, June 30, 1995; Rollo, p. 99)

When the aforesaid order was assailed before it, the Court of Appeals reversed the grant of probation, on the grounds that the respondent judge gravely abused his discretion and petitioner was unworthy of probation; ruling thus:

> "As it was, the Private Respondent had violated, with impunity, Batas Pambansa Blg. 22 no less than fifty-four (54) times to the damage and prejudice of the Petitioner in the aggregate amount of close to P4,000,000.00. One would believe that the Private Respondent had learned her lesson, would strive, from then on, to reform, shy away from doing and abetting injustices to her fellowmen, make amends for her criminal misdeeds, demonstrate remorse and concomitant determination to reform and turn a new leaf in her life, and reassume her role as a responsible and productive member of community. On the contrary, after escaping from the specter of imprisonment and averting the tribulations and vicissitudes of a long prison term, by applying for and securing probation from the Respondent Judge, Private Respondent resorted to devious chicanery and artifice to prevent Petitioner from recovering her losses and perpetrate reprehensible if not criminal acts of falsification of the "Deed of Absolute Sale" in favor of Dijamco over her Benguet property, thus flaunting, once again, her mockery and defiance of justice, foul play and unabashedly making gross misrepresentations to the Probation Officer.
>
> In fine, then, We find and so declare that the Respondent Judge abused his discretion amounting to lack of jurisdiction in granting probation to the Private Respondent. Accordingly, We find and so declare that the Orders complained of, Annexes 'A' and 'B' of the Petition are null and void." (Decision, p. 24; Rollo, p. 51)

The Court finds merit in the determination by the Court of Appeals that the herein petitioner is not entitled to probation because she had displayed a devious and reprehensible character in trying to evade the implementation of the execution against her thereby rendering the judgment against her ineffective; as indicated by the following facts and circumstances, to wit:

> 1. On February 13, 1995, petitioner disposed of her Benguet property by means of a "Deed of Absolute Sale" in favor of Mr. Dijamco and had the deed registered in Benguet to preempt the sheriff of the lower court from causing the "Notice of Levy on Execution" annotated at the back of the title of the Benguet property.
>
> 2. The "Deed of Absolute Sale" executed in favor of Mr. Dijamco stated a consideration of P264,570.00 when in truth and in fact, the consideration was P3,000,000.00, as stated in the uncontested "Affidavit of Third Party Claim" of Mr. Dijamco and as evidenced by the checks issued to and encashed by petitioner. By understating the price, petitioner committed acts of falsification causing damage to the government as the latter was deprived of taxes that should have been paid from the sale.
>
> 3. There is evidence to prove that the "Deed of Absolute Sale" may just have been a simulated sale because

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> petitioner's husband, in his "Affidavit of Third Party Claim" dated February 21, 1995, still claimed the property to be theirs. There is no mention whatsoever of any sale to Mr. Dijamco.
>
> 4. Petitioner never remitted a single centavo of the proceeds of the "Real Estate Mortgage" (in favor of Rural Bank of Angono,Inc.) and "Deed of Absolute Sale" (in favor of Mr. Dijamco) to the private respondent. If she really had the good intentions of settling and satisfying the judgment of the trial court, she should have at least offered a portion of said proceeds to private respondent. Worse, she exhibited a design to compeletely evade her civil obligation to private respondent.
>
> 5. Petitioner's claim that the Benguet property actually belongs to Corazon Leano is of no moment and could not be given credence. The documentary evidence presented in this case overwhelmingly proves that such claim is puerile and tenuous. Primarily, the "Deed of Absolute Sale" and "Affidavit of Third Party Claim" (filed by petitioner's husband) prove their ownership of the Benguet property.

From the foregoing, it can be gleaned unerringly that petitioner has shown no remorse for the criminal acts she committed against the private respondent. Her issuing subject fifty-four (54) bouncing checks is a serious offense. To allow petitioner to be placed on probation would be to depreciate the seriousness of her malefactions. Worse, instead of complying with the orders of the trial court requiring her to pay her civil liability, she even resorted to devious schemes to evade the execution of the judgment against her. Verily, petitioner is not the penitent offender who is eligible for probation within legal contemplation. Her demeanor manifested that she is incapable to be reformed and will only be a menace to society should she be permitted to co-mingle with the public.

With respect to the fourth issue, petitioner's contention that her probation is fait accompli is equally untenable. The six (6) year period of probation which commenced on June 30, 1995, has not yet been completed. Furthermore, even if the said period has expired, such lapse of the period of probation does not detract from the fact that the order granting probation was tainted with grave abuse of discretion. Probation having been improperly granted, there is no probation to speak of.

Anent the last issue, the Court rules that the issuance of a "hold departure order" against the petitioner is warranted under the premises. Having displayed a criminal tendency and propensity to evade or disobey the lawful orders of the trial court, there is indeed the need to restrict the petitioner's movements and activities so as not to render nugatory the multiple judgments rendered against her.

WHEREFORE, the petition is DENIED and the Decision of the Court of Appeals in CA-G.R. SP No. 38522 AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] Penned by Associate Justice Romeo J. Callejo, Sr. and concurred by Associate Justices Antonio M. Martinez and Pacita Canizares-Nye.

[2] Penned by Associate Justice Romeo J. Callejo, Sr, and concurred by Associate Justices Antonio M. Martinez and Conrado M. Vasquez, Jr. (vice Pacita Canizares-Nye).

[3] Ibid.

[4] Rollo, pp. 28-52.

[5] Rollo, pp. 53-68.

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[6] Rollo, pp. 92-93.

[7] Rollo, pp. 95-96.

[8] Francisco v. Court of Appeals, 243 SCRA 384.

[9] Salgado v. Court of Appeals, 189 SCRA 304.

[10] Bernardo v. Balagot, 215 SCRA 526.

[11] Ibid.

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