

RUFINA CHUA, PETITIONER, VS. THE COURT OF APPEALS AND WILFRED N. CHIOK, RESPONDENTS.

G.R. NO. 140842. April 12, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is a Petition for Certiorari[1] assailing the Resolutions dated September 20, 1999[2] and November 16, 1999 of the Court of Appeals in CA-G.R. SP No. 53340.

In 1989, Rufina Chua, petitioner, met Wilfred Chiok, respondent, who represented himself as a licensed stockbroker and an expert in the stock market. He encouraged petitioner to invest her money in stocks, requesting her to designate him as her stockbroker. On respondent's prodding, she agreed.

For several years, respondent acted as petitioner's stockbroker. She made profits out of their transactions, prompting her to trust respondent in handling her stock investments.

In 1995, respondent encouraged petitioner to purchase shares in bulk as this will increase her earnings. Hence, in June 1995, she entrusted to him the amount of P9,563,900.00 for the purpose of buying shares of stocks in bulk. Petitioner deposited P7,100,000.00 in respondent's account and personally gave him the remaining P2,463,900.00. Thereupon, he told petitioner to wait for one week. A week elapsed and respondent advised her to wait for another week. Then, there was no more news from respondent. Finally, when petitioner was able to contact him, respondent admitted that he spent the money. At any rate, he issued two checks as payment but when petitioner deposited them in the drawee bank, the checks were dishonored for insufficient funds.

In a letter dated October 25, 1995, petitioner demanded payment from respondent, but this remained unheeded.

Petitioner then came to know that respondent was not a licensed stockbroker but only a telephone clerk at Bernard Securities, Inc. Immediately, she caused the filing of an information for estafa against him with the Regional Trial Court, Branch 165, Pasig City, docketed as Criminal Case No. 109927.

During the arraignment, respondent, assisted by his counsel de parte, pleaded not guilty. Trial ensued.

Respondent denied the charge against him. He testified that he was not an employee of Bernard Securities, Inc.; that he buys and sells U.S. dollars and that petitioner used to buy dollars from him; that what actually existed between them was an unregistered partnership; and that he received the amount of P9,563,900.00 as her investment in their partnership.

After the prosecution and the defense had presented their respective evidence, the trial court set the promulgation of judgment on January 26, 1999. However, respondent and his counsel failed to appear on said date despite notice. The trial court reset the promulgation of judgment on February 1, 1999, with notice to respondent. Again, respondent failed to appear. The trial court then promulgated its Decision convicting respondent of estafa and sentencing him to suffer twelve (12) years of prision mayor, as minimum, to twenty (20) years of reclusion

temporal, as maximum. Respondent was likewise ordered to pay herein petitioner the amount of P9,563,900.00 with interest at the legal rate computed from October 25, 1995, the date of demand, until fully paid.

On the same day, February 1, 1999, the prosecution filed a motion for cancellation of bail on the ground that respondent might flee or commit another crime.

On February 13, 1999, respondent filed a motion for reconsideration of the judgment of conviction.

Meanwhile, or on February 15, 1999, the motion for cancellation of bail was set for hearing. The prosecution presented a Record Check Routing Form issued by the Bureau of Immigration showing that respondent has an Alien Certificate of Registration (ACR) and Immigrant Certificate of Residence (ICR). During that hearing, respondent admitted using the names "Mark Tan" and "Tong Wai Fat" as aliases.

Consequently, on May 28, 1999, the trial court issued an Omnibus Order (a) denying respondent's motion for reconsideration of the judgment of conviction; (b) canceling his bail; and (c) giving him five (5) days from notice within which to appear before the trial court, otherwise he would be arrested.

On June 18, 1999, respondent interposed an appeal to the Court of Appeals from the trial court's judgment of conviction and from the Omnibus Order insofar as it denied his motion for reconsideration of said judgment. The appeal was docketed as CA-G.R. CR No. 23309.

The following day, or on June 19, 1999, respondent filed with the Court of Appeals a petition for certiorari with application for a temporary restraining order (TRO) and a writ preliminary injunction assailing the trial court's Omnibus Order canceling his bail. The petition was docketed as CA-G.R. SP No. 53340.

On June 25, 1999, the trial court issued a warrant of arrest against respondent for his failure to appear despite the lapse of the 5-day period provided in the May 28, 1999 Omnibus Order. The warrant was returned unserved because he could not be found at his given address.

However, the Court of Appeals, in a Resolution dated July 27, 1999 issued a TRO enjoining the trial court from implementing its Omnibus Order of May 28, 1999.

On September 20, 1999, after hearing respondent's application for injunction, the appellate court issued a writ of preliminary injunction enjoining the arrest of respondent, holding that the latter should not be deprived of his liberty pending resolution of his appeal as the offense for which he was convicted is a non-capital offense; and that the probability that he will flee during the pendency of his appeal is merely conjectural.

Petitioner then filed a motion for reconsideration but it was denied by the Court of Appeals in its Resolution dated November 16, 1999.

Hence, the instant petition for certiorari.

Petitioner contends that the Court of Appeals acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing the writ of preliminary injunction enjoining the arrest of respondent.

Private respondent counters that the petition should be dismissed for lack of merit.

The petition is meritorious.

Firstly, the petition for certiorari with prayer for a TRO and a writ of preliminary injunction (CA-G.R. SP No. 53340) is not the proper recourse in assailing the trial court's May 28, 1999 Omnibus Order canceling his bail. Section 5, Rule 114 of the Revised Rules of Criminal Procedure[3] provides:

SEC. 5. Bail, when discretionary. — Upon conviction by the Regional Trial Court of an offense not punishable

by death, reclusion perpetua or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court,

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

- (a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
- (b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;
- (c) That he committed the offense while under probation, parole, or conditional pardon;
- (d) That the circumstances of his case indicate the probability of flight if released on bail; or
- (e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or ON MOTION OF ANY PARTY, review the resolution of the Regional Trial Court after notice to the adverse party in either case.[4] (Underscoring supplied)

It is clear from the last paragraph of the above provision that private respondent's appropriate remedy against the trial court's May 28, 1999 Omnibus Order canceling his bail is by filing with the Court of Appeals a motion to review the said order in the same regular appeal proceedings in CA-G.R. CR No. 23309 he himself initiated. Such motion is an incident in his appeal.[5] The filing of a separate petition via a special civil action or special proceeding questioning such adverse order before the appellate court is proscribed.[6] Such independent special civil action obviously contravenes the rule against multiplicity of suits and constitutes forum shopping. Hence, the Court of Appeals erred in not dismissing outright respondent's petition for certiorari in CA-G.R. SP No. 53340. The basic rule is that such petition may only be availed of when "there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law." [7]

Secondly, the assailed September 20, 1999 Resolution of the Court of Appeals granting respondent's application for a writ of preliminary injunction enjoining the implementation of the trial court's Omnibus Order canceling his bail, is bereft of any factual or legal basis. To be entitled to an injunctive writ, the applicant must show that (1) he has a clear existing right to be protected; and (2) the acts against which the injunction is to be directed are in violation of such right.[8]

The first requisite is absent. Respondent has no right to be freed on bail pending his appeal from the trial court's judgment. His conviction carries a penalty of imprisonment exceeding 6 years (to be exact, 12 years of prison mayor, as minimum, to 20 years of reclusion temporal, as maximum) which justifies the cancellation of his bail pursuant to the third paragraph of Section 5 (b), (d) and (e) of Rule 114, quoted above. Moreover, he failed to appear despite notice during the promulgation of judgment on January 26, 1999. His inexcusable non-appearance not only violated the condition of his bail that he "shall appear" before the court "whenever required" by the latter or the Rules,[9] but also showed the probability that he might flee or commit another crime while released on bail.

At this point, we stress that when respondent did not appear during the promulgation of judgment on January 26,

1999 despite notice, and without offering any justification therefor, the trial court should have immediately promulgated its Decision. The promulgation of judgment in absentia is mandatory pursuant to Section 6, Rule 120 of the same Rules, the relevant portions of which read:

SEC. 6. Promulgation of judgment. — The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

x x x

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. x x x.

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, THE PROMULGATION SHALL BE MADE BY RECORDING THE JUDGMENT IN THE CRIMINAL DOCKET and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation, and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.[10] (Underscoring supplied)

It bears stressing that the rule authorizing the promulgation of judgment in absentia is intended to obviate the situation in the past where the judicial process could be subverted by the accused jumping bail to frustrate the promulgation of judgment.[11] As mentioned earlier, the trial court should have promulgated the judgment in absentia on January 26, 1999. The resetting the promulgation on February 1, 1999 is tantamount to condoning respondent's act of making a mockery of our judicial process, thereby defeating the avowed purpose of the Rule.

Since respondent has not shown any right to be protected, the second requisite for the issuance of a writ of preliminary injunction is obviously absent. As such, the Court of Appeals clearly acted with grave abuse of discretion in issuing its assailed Resolution of September 20, 1999 granting the writ of preliminary injunction. We held that the grant of the writ of preliminary injunction despite the absence of a clear legal right on the part of the applicant constitutes grave abuse of discretion amounting to lack of jurisdiction.[12]

WHEREFORE, we GRANT the petition. The assailed Resolutions dated September 20, 1999 and November 16, 1999 of the Court of Appeals in CA-G.R. SP No. 53340 are SET ASIDE. Respondent Wilfred N. Chiok's petition for certiorari in CA-G.R. SP No. 53340 is DISMISSED. The Omnibus Order dated May 28, 1999 issued by the Regional Trial Court, Branch 165, Pasig City in Criminal Case No. 109927 canceling respondent's bail is AFFIRMED.

Costs against respondent.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

[1] Pursuant to Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[2] Per Associate Justice Omar U. Amin and concurred in by Associate Justice Hector L. Hofileña (both retired)

and Associate Justice Jose L. Sabio, Jr., Rollo, pp. 371-388.

[3] Effective December 1, 2000, A.M. No. 00-5-03-SC.

[4] These provisions are substantially similar to Section 5, Rule 114 of the 1985 Rules on Criminal Procedure.

[5] Florenz D. Regalado, REMEDIAL LAW COMPENDIUM, volume two, seventh revised edition (1995), p. 339.

[6] Id.

[7] Section 1, Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[8] Philippine National Bank v. Timbol, G.R. No. 157535, February 11, 2005, 451 SCRA 163; Borbajo v. Hidden View Homeowners, Inc., G.R. No. 152440, January 31, 2005, 450 SCRA 315; Rualo v. Pitargue, G.R. No. 140284, January 21, 2005, 449 SCRA 121.

[9] Section 2 (b), Rule 114 of the Revised Rules of Criminal Procedure.

[10] These provisions are substantially similar to Section 5, Rule 114 of the 1985 Rules on Criminal Procedure.

[11] The rule is also intended to enable the offended party to enforce the civil liability ex delicto which the court may have awarded, as its enforcement may only be possible after promulgation of the judgment (People v. Prades, G.R. No. 127569, July 30, 1998, 293 SCRA 411, 427, citing Florendo v. Court of Appeals, G.R. No. 110886, December 20, 1994, 239 SCRA 325; Regalado, Remedial Law Compendium, vol. two, 7[th] revised ed., pp. 450-451).

[12] Almeida v. Court of Appeals, G.R. No. 159124, January 17, 2005, 448 SCRA 681; Philippine Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc., G.R. No. 147861, November 18, 2005, 475 SCRA 426.

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