

CECILIA B. ESTINOZO, Petitioner, vs. COURT OF APPEALS, FORMER SIXTEENTH DIVISION, and PEOPLE OF THE PHILIPPINES, Respondents.*G.R. No. 150276. February 12, 2008*

Ponente: NACHURA, J.

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Assailed before the Court via a petition for certiorari under Rule 65 are the following issuances of the Court of Appeals (CA): (1) the April 30, 2001 Decision[1] in CA-G.R. CR No. 18387 affirming the November 9, 1994 Decision[2] of the Regional Trial Court, Branch 24 of Maasin, Southern Leyte in Criminal Case Nos. 1261, 1262, 1263, 1264, 1265, 1267 and 1269; (2) the June 28, 2001 Resolution[3] denying petitioner's Motion for Extension of Time to File a Motion for Reconsideration[4] and (3) the August 17, 2001 Resolution[5] denying petitioner's Motion for Reconsideration[6] of the June 28, 2001 Resolution.

Records reveal the following antecedent facts:

Sometime in February and March 1986, petitioner, while in Sogod, Southern Leyte, represented to private complainants Gaudencio Ang, Rogelio Ceniza, Nilo Cabardo, Salvacion Nueve, Virgilio Maunes, Apolinaria Olayvar, and Mariza Florendo that she was one of the owners of Golden Overseas Employment[7] and that she was recruiting workers to be sent abroad.[8] She then asked from the said complainants the payment of placement and processing fees totaling P15,000.00.[9] Viewing this as a golden opportunity for the amelioration of their lives, the private complainants paid the fees, went with petitioner to Manila, relying on her promise that they would be deployed by July 1986.[10] On the promised date of their departure, however, private complainants never left the country. They were then informed by petitioner that there were no available plane tickets and that they would leave by September of that year.

Came November 1986 and still they were not deployed. This prompted private complainants to suspect that something was amiss, and they demanded the return of their money. Petitioner assured them refund of the fees and even executed promissory notes[11] to several of the complainants; but, as before, her assurances were mere pretenses.[12]

In the early months of 1987, complainants then initiated formal charges for estafa against petitioner. After preliminary investigation, the Provincial Prosecutor filed with the Regional Trial Court (RTC) of Maasin, Southern Leyte seven (7) separate Informations[13] for Estafa, defined and penalized under Article 315, par. 2(a) of the Revised Penal Code (RPC). On request of petitioner, the cases were consolidated and jointly heard by the trial court.[14]

During the trial, in her defense, petitioner testified, among others, that she was an employee of the Commission on Audit who worked as a part-time secretary at FCR Recruitment Agency owned by Fe Corazon Ramirez; that she received the amounts claimed by the complainants and remitted the same to Ramirez[15] that complainants actually transacted with Ramirez and not with her[16] and that she was only forced to execute the promissory notes.[17]

On November 9, 1994, the RTC rendered its Decision[18] finding petitioner guilty beyond reasonable doubt of the charges of estafa. The dispositive portion of the trial court's decision reads:

WHEREFORE, FOREGOING CONSIDERED, the Court hereby renders judgment finding the accused Cecilia Dejarne Estinozo GUILTY beyond reasonable doubt of seven (7) counts of the crime of Estafa through false pretenses as defined and penalized under Article 315(2)(a) of the Revised Penal Code under Criminal Cases Nos. 1261, 1262, 1263, 1264, 1265, 1267 and 1269, and applying the Indeterminate Sentence Law, with no modifying circumstances to consider for or against her, hereby sentences the said accused, for EACH of the seven (7) counts of Estafa in the criminal cases aforementioned, to an indeterminate penalty of TWO (2) YEARS, ELEVEN (11) MONTHS and TEN (10) DAYS of prision correccional, as minimum, to SIX (6) YEARS, EIGHT (8) MONTHS and TWENTY (20) DAYS of prision mayor, as maximum, and to pay the costs.

The accused is also ordered to reimburse to the private complainants the following amounts proved during the trial:

1. Gaudencio Ang ----- P15,000.00
2. Virgilio Maunes ----- P15,000.00
3. Rogelio Ceniza ----- P11,500.00
4. Nilo Cabardo ----- P15,000.00
5. Mariza Florendo ----- P15,000.00
6. Salvacion Nueve ----- P15,000.00
7. Salvador Olayvar ----- P13,500.00

with interest at the legal rate from the date of the filing of the respective informations in each case of every private complainant until the amount shall have been fully paid.

SO ORDERED.[19]

Aggrieved, petitioner appealed the case to the CA (docketed as CA-G.R. CR No. 18387). As aforesaid, the appellate court, in the assailed April 30, 2001 Decision,[20] affirmed the ruling of the trial court. The CA ruled that the complainants positively identified petitioner, their townmate, as the one who falsely presented herself as possessing a license to recruit persons for overseas employment. The seven (7) complainants relied on that representation when they paid the amount she required as a condition for their being employed abroad. Petitioner even admitted receiving the said fees.[21] The prosecution had then satisfactorily proved that she committed the offense of Estafa under Article 315, par. 2 (a) of the RPC.[22] Her defense that she was merely an agent of the real recruiter was deemed as merely a last-ditch effort to absolve herself of authorship of the crime. The CA noted that Ramirez was never mentioned when petitioner conducted her recruitment activities, and no evidence was further introduced to show that petitioner remitted the said fees to Ramirez.[23]

On May 30, 2001, within the 15-day reglementary period to file a motion for reconsideration or a petition for review,[24] petitioner filed with the appellate court a Motion for Extension of Time to File a Motion for Reconsideration.[25] On June 28, 2001, the CA, in the challenged Resolution,[26] denied the said motion pursuant to Rule 52, Section 1 of the Rules of Court and Rule 9, Section 2 of the Revised Internal Rules of the Court of Appeals (RIRCA).

Petitioner then filed a Motion for Reconsideration[27] of the June 28, 2001 Resolution of the CA. The appellate court denied the same, on August 17, 2001, in the other assailed Resolution.[28]

Displeased with this series of denials, petitioner instituted the instant Petition for Certiorari[29] under Rule 65, arguing, among others, that: (1) her previous counsel, by filing a prohibited pleading, foreclosed her right to file a motion for reconsideration of the CA's decision, and consequently an appeal therefrom;[30] (2) she should not be bound by the mistake of her previous counsel especially when the latter's negligence and mistake would prejudice her substantial rights and would affect her life and liberty;[31] (3) the appellate court gravely abused its discretion when it affirmed petitioner's conviction for the other four (4) criminal cases—Criminal Cases Nos. 1264, 1265, 1267 and 1269—absent any direct testimony from the complainants in those cases;[32] (4) she was deprived of her constitutional right to cross-examine the complainants in the aforementioned 4 cases;[33] and (5) she presented sufficient evidence to cast reasonable doubt as to her guilt in all the seven (7) criminal cases.[34]

The Court rules to dismiss the petition.

Immediately apparent is that the petition is the wrong remedy to question the appellate court's issuances. Section 1 of Rule 45 of the Rules of Court expressly provides that a party desiring to appeal by certiorari from a judgment or final order or resolution of the CA may file a verified petition for review on certiorari.[35] Considering that, in this case, appeal by certiorari was available to petitioner, she effectively foreclosed her right to resort to a special civil action for certiorari, a limited form of review and a remedy of last recourse, which lies only where there is no appeal or plain, speedy and adequate remedy in the ordinary course of law.[36]

A petition for review on certiorari under Rule 45 and a petition for certiorari under Rule 65 are mutually exclusive remedies. Certiorari cannot co-exist with an appeal or any other adequate remedy.[37] The nature of the questions of law intended to be raised on appeal is of no consequence. It may well be that those questions of law will treat exclusively of whether or not the judgment or final order was rendered without or in excess of jurisdiction, or with grave abuse of discretion. This is immaterial. The remedy is appeal, not certiorari as a special civil action.[38]

Even granting *arguendo* that the instant certiorari petition is an appropriate remedy, still this Court cannot grant the writ prayed for because we find no grave abuse of discretion committed by the CA in the challenged issuances. The rule, as it stands now without exception, is that the 15-day reglementary period for appealing or filing a motion for reconsideration or new trial cannot be extended, except in cases before this Court, as one of last resort, which may, in its sound discretion grant the extension requested.[39] This rule also applies even if the motion is filed before the expiration of the period sought to be extended.[40] Thus, the appellate court correctly denied petitioner's Motion for Extension of Time to File a Motion for Reconsideration.

It is well to point out that with petitioner's erroneous filing of a motion for extension of time and with her non-filing of a motion for reconsideration or a petition for review from the CA's decision, the challenged decision has already attained finality and may no longer be reviewed by this Court. The instant Rule 65 petition cannot even substitute for the lost appeal[41]—certiorari is not a procedural device to deprive the winning party of the fruits of the judgment in his or her favor.[42] When a decision becomes final and executory, the court loses jurisdiction over the case and not even an appellate court will have the power to review the said judgment. Otherwise, there will be no end to litigation and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[43]

We reiterate what we stated in *Amatorio v. People*[44] that relief will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy at law was due to his own negligence, or to a mistaken mode of procedure.

As a final note, we remind party-litigants and their lawyers to refrain from filing frivolous petitions for certiorari. The 2nd and 3rd paragraphs of Section 8 of Rule 65, as amended by A.M. No. 07-7-12-SC, now provide that:

x x x

However, the court may dismiss the petition if it finds the same patently without merit or prosecuted manifestly for delay, or if the questions raised therein are too unsubstantial to require consideration. In such event, the court may award in favor of the respondent treble costs solidarily against the petitioner and counsel, in addition to subjecting counsel to administrative sanctions under Rules 139 and 139-B of the Rules of Court.

The Court may impose *motu proprio*, based on *res ipsa loquitor*, other disciplinary sanctions or measures on erring lawyers for patently dilatory and unmeritorious petitions for certiorari.

WHEREFORE, premises considered, the petition for certiorari is DISMISSED.

SO ORDERED.

Austria-Martinez, Corona, Nachura, and Reyes, JJ., concur.

* In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 484, dated January 11, 2008.

[1] Penned by Associate Justice (later, Presiding Justice) Romeo A. Brawner (retired); with Associate Justices Remedios Salazar-Fernando and Rebecca De Guia-Salvador, concurring; CA rollo, pp. 200-214.

[2] Decided by Judge Leandro T. Loyao, Jr.; *id.* at 4-33.

[3] CA rollo, pp. 220-221.

[4] *Id.* at 216-217.

[5] *Id.* at 249-250.

[6] *Id.* at 222-224.

[7] TSN, May 6, 1993, p. 12.

[8] TSN, May 4, 1993, p. 5.

[9] *Id.* at 6.

[10] *Id.* at 8-10.

[11] Exhibits “G” and “H.”

[12] TSN, May 4, 1993, pp. 13-19.

[13] Records (Crim. Case No. 1261), pp. 1-2; records (Crim. Case No. 1262), pp. 1-2; records (Crim. Case No. 1263), pp. 1-2; records (Crim. Case No. 1264), pp. 1-2; records (Crim. Case No. 1265), pp. 1-2; records (Crim. Case No. 1267), pp. 1-2; records (Crim. Case No. 1269), pp. 1-2.

Except for the date of the commission of the crime, the name of the private complainant and the amount involved, the seven separate Informations are similarly worded to read as follows:

“x x x

“That on or about the 6[th] day of February, 1986 [in Crim. Cases Nos. 1261 and 1265; ‘24[th] day of February, 1986’ in Crim. Cases Nos. 1262 and 1263; ‘3[rd] day of March, 1986’ in Crim. Cases Nos. 1264, 1267 and 1269], in the Municipality of Sogod, province of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of false manifestations and fraudulent representations

which she made to Gaudencio Ang [in Crim. Case No. 1261; ‘Rogelio Ceniza’ in Crim. Case No. 1262; ‘Nilo Cabardo’ in Crim. Case No. 1263; ‘Salvacion Nueve’ in Crim. Case No. 1264; ‘Virgilio Maunes’ in Crim. Case No. 1265; ‘Apolinaria Olayvar’ in Crim. Case No. 1267; ‘Mariza Florendo’ in Crim. Case No. 1269], the offended party, to the effect that she has the capacity and authority to recruit and enlist persons to work abroad, provided that they give her money in the sum of P15,000.00 [in Crim. Cases Nos. 1261, 1262, 1263, 1264, 1265 and 1269] each as processing and placement fees, which she demanded and received from said Gaudencio Ang [‘the amount of P13,500.00’ in Crim. Case No. 1267] as a condition for recruitment and job placement, recruited and promised employment or job placement abroad for said Gaudencio Ang, and once in possession of the amount aforesaid, with intent to defraud the herein complainant, said accused did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the aforesaid sum of money to her own personal use and benefit, to the damage and prejudice of the herein complainant in the sum of FIFTEEN THOUSAND PESOS (P15,000.00), Philippine Currency.

“x x x”

[14] Records (Crim. Case No. 1261), pp. 82-83.

[15] TSN, October 8, 1993, pp. 6-23; TSN, November 16, 1993, pp. 4-12.

[16] TSN, November 16, 1993, pp. 13-20; TSN, November 17, 1993, pp. 3-18.

[17] TSN, November 17, 1993, pp. 18-19.

[18] CA rollo, pp. 4-33.

[19] Id. at 32-33.

[20] Supra note 1.

[21] CA rollo, pp. 207-208.

[22] Id. at 212.

[23] Id. at 209-211.

[24] As alleged in petitioner’s Motion for Extension of Time to File a Motion for Reconsideration, she received a copy of the decision of the appellate court on May 18, 2001. (Id. at 216.)

[25] Supra note 4.

[26] Supra note 3.

[27] Supra note 6.

[28] Supra note 5.

[29] Rollo, pp. 3-34. In compliance with the Court’s February 6, 2002 Resolution (Id. at 158.), the petitioner amended her petition, on March 11, 2002, to implead as party respondent the People of the Philippines. (Id. at 164-195.)

[30] Id. at 14-17.

[31] Id. at 17-20.

[32] Id. at 21-24.

[33] Id. at 24-26.

[34] Id. at 26.

[35] As amended by A.M. No. 07-7-12-SC, Section 1 of Rule 45 now states:

Section 1. Filing of petition with Supreme Court.—A party desiring to appeal by certiorari from a judgment, 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. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[36] See *Heirs of Lourdes Potenciano Padilla v. Court of Appeals*, 469 Phil. 196, 204 (2004); but see *Metropolitan Waterworks and Sewerage System v. Daway*, G.R. No. 160732, June 21, 2004, 432 SCRA, 559, 572, in which the Court ruled that it is not enough that a remedy is available to prevent a party from making use of the extraordinary remedy of certiorari but that such remedy be an adequate remedy which is equally beneficial, speedy and sufficient, not only a remedy which at some time in the future may offer relief but a remedy which will promptly relieve the petitioner from the injurious acts of the lower tribunal.

[37] *Macawiag v. Balindong*, G.R. No. 159210, September 20, 2006, 502 SCRA 454, 465.

[38] *Pan Realty Corporation v. Court of Appeals*, No. L-47726, November 23, 1988, 167 SCRA 564, 573.

[39] *Barba v. Court of Appeals*, G.R. No. 169731, March 28, 2007; *Suarez v. Villarama, Jr.*, G.R. No. 124512, June 27, 2006, 493 SCRA 74, 83; *Amatorio v. People*, 445 Phil. 481, 488-490 (2003).

[40] *Fernandez v. Court of Appeals*, G.R. No. 131094, May 16, 2005, 458 SCRA 454, 468.

[41] *Nippon Paint Employees Union-Olalia v. Court of Appeals*, G.R. No. 159010, November 19, 2004, 443 SCRA 286, 291; *Manila Midtown Hotel v. Borromeo*, G.R. No. 138305, September 22, 2004, 438 SCRA 653, 657.

[42] *Ang v. Grageda*, G.R. No. 166239, June 8, 2006, 490 SCRA 424, 439.

[43] *Macawiag v. Balindong*, *supra* note 37, at 466.

[44] *Supra* note 39, at 491.

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