

ELIZABETH ED. LIM, PETITIONER, VS. EDILBERTO D. ANG, RESPONDENT.

G.R. NO. 152429. March 18, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure of the Decision[1] of the Regional Trial Court (RTC) of Cauayan City, Isabela, Branch 20, in Special Civil Action No. Br. 20-120.

The Antecedents

On December 12, 2000, Edilberto D. Ang filed a criminal complaint for violation of Batas Pambansa (B.P.) Blg. 22, otherwise known as the Bouncing Checks Law, against Elizabeth Lim before the Municipal Trial Court in Cities (MTCC) of Cauayan City, Isabela. The accusatory portion of the complaint reads:

That on or about the 10th day of September 2000, the said accused issued to the undersigned Allied Bank Check No. 0089099 in the amount of P2,208,398.40, a xerox copy of which being attached hereto as Annex “A,” knowing fully well that at that time she had no funds with said Bank, and which when deposited in the undersigned’s depository Bank (the Bank of the Philippine Islands, Cauayan, Isabela Branch) for collection/payment, was dishonored by said Allied Bank on October 02, 2000 on the ground of “account closed” to the damage and prejudice of the undersigned in the said amount of P2,208,398.40.

CONTRARY TO LAW.[2]

Appended to the said criminal complaint was the affidavit[3] of Ang subscribed and sworn to before Public Prosecutor Fausto Cabantac.

On December 13, 2000, the MTCC issued an Order[4] stating that there was sufficient ground to hold the accused for trial. Lim filed a motion to quash[5] the complaint on the following grounds: (a) the facts charged do not constitute a violation of B.P. Blg. 22 as the notice of dishonor was not sent to her as the drawer of the check; (b) the supporting affidavit attached to the criminal complaint lacked the required certification by the public prosecutor; (c) the December 13, 2000 Order violated her right to be informed of the nature and cause of the accusation against her; and (d) there was no probable cause to charge her with any crime.

The public prosecutor opposed the motion and, at the same time, filed an amended criminal complaint[6] which included the affidavit of Ang containing the certification of the assistant provincial prosecutor that he personally examined the affiant and was satisfied that the latter voluntarily executed and understood the contents of the criminal complaint.

On July 20, 2001, the MTCC issued an Order[7] denying the motion to quash and set the arraignment of Lim on August 17, 2001. She filed a motion for reconsideration[8] of the order but the court denied the said motion in an Order dated September 7, 2001. Lim’s arraignment was reset to October 3, 2001.

Lim assailed the order in the RTC by way of a petition for certiorari^[9] wherein she reiterated the grounds she raised in support of her motion to quash.

In his comment on the petition, Ang averred that he had filed *pendente lite* a second amended criminal complaint with the MTCC on December 20, 2001 wherein the following allegations were made:

That on or about the 16th day of September 2000, the said accused issued to the undersigned to apply on account or for value Allied Bank Check No. 0089099 dated 10 September 2000 in the amount of P2,208,398.40, a xerox copy of which being attached hereto as Annex "A", knowing fully well that at that time she had no funds with said Bank, and which when deposited in the Bank of the Philippine Islands, Cauayan, Isabela Branch for collection/payment, was dishonored by said Allied Bank on October 02, 2000 on the ground of "account closed" and notwithstanding notice of dishonor to the accused and demand for the full payment of the amount of said check within five (5) days from said notice, the accused failed and refused to pay said amount, to the damage and prejudice of the undersigned in the said amount of P2,208,398.40.

CONTRARY TO LAW.^[10]

On January 14, 2002, the RTC rendered its Decision^[11] dismissing the petition. It ruled that although the amended criminal complaint filed in the MTCC did not contain all the essential elements of the crime of violation of B.P. Blg. 22, the second amended criminal complaint contained all the essential elements of the crime; hence, the petition had become moot and academic.

Lim filed a motion for the reconsideration of the decision, claiming that the dismissal of her petition was premature inasmuch as the MTCC had not yet determined the presence of probable cause against her under the second amended criminal complaint. The trial court denied the motion for reconsideration in an Order dated February 20, 2002. The RTC held that since the amended criminal complaint had been superseded by the second amended criminal complaint, there was no longer a complaint which was sought to be quashed.

Lim, now the petitioner, filed a petition for review on certiorari with this Court for the nullification of the decision and the February 20, 2002 Order of the RTC.

The petitioner contends that conformably with Section 3(b), in relation to Section 3(a), of Rule 112 of the Revised Rules of Criminal Procedure, it behooved the MTCC to first determine the presence or absence of probable cause by personally examining the complainant and his witnesses in writing and under oath. Until then, the second amended criminal complaint cannot be considered filed; hence, it was premature for the RTC to dismiss her petition for certiorari. The petitioner cited the ruling of this Court in *Guillen v. Nicolas*.^[12] The petitioner insists that the RTC should have granted the petition and quashed the amended criminal complaint of the respondent herein, and to let the second amended criminal complaint take its course.

In his comment on the petition, the respondent avers that his second amended criminal complaint had cured the substantial defects in his amended criminal complaint. Hence, the petition for certiorari had become moot and academic. He asserts that if the petitioner believed that his second amended criminal complaint was also defective, she should have filed the appropriate motion with the MTCC. The respondent further avers that since the crime charged was within the exclusive original jurisdiction of the MTCC, it may find probable cause or dismiss the complaint, either by personally evaluating the evidence, or by personally examining in writing and under oath the complainant and his witnesses in the form of searching questions.

The petition is denied for lack of merit.

We note that the petitioner failed to implead the People of the Philippines in her petition in the RTC and in this Court. This is fatal to the petitioner's cause. It behooved the petitioner to implead the People of the Philippines as

respondent in the RTC and in this Court to enable the Solicitor General to comment on the petition in this case.

In dismissing the petition for certiorari, the RTC ratiocinated in its decision, thus:

The Court agrees with the petitioner that the facts alleged in the Criminal Complaint and Amended Criminal Complaint do not constitute a violation of Batas Pambansa Blg. 22. There is no allegation in the Criminal Complaint or Amended Criminal Complaint that the check was issued by the accused on account or for value. There is also no allegation in the Amended Criminal Complaint that the drawee bank notified the accused on the dishonor of the check. These are essential elements of the crime. Respondent Judge should have quashed the Criminal Complaint or Amended Criminal Complaint.

It now appears, however, that the private complainant, private respondent herein Edilberto D. Ang, filed a Second Amended Criminal Complaint, wherein all the requisites for Violation of Batas Pambansa Blg. 22 are alleged. Since the accused, petitioner herein, has not yet been arraigned, the Amended Criminal Complaint may be amended as to matter of form or substance even without leave of Court in accordance with Section 14, Rule 110, Rules of Court. The private respondent, who is the offended party, can validly sign and file the Second Amended Criminal Complaint (Section 3, Rule 110, Rules of Court).

The Second Amended Criminal Complaint has rendered moot and academic the petition for Certiorari.[13]

We agree with the RTC. The filing of the second amended criminal complaint superseded[14] the amended criminal complaint[15] and rendered moot and academic the petition for certiorari, which assailed the order of the RTC denying her motion to quash the amended criminal complaint on the ground that the said complaint did not charge a violation of B.P. Blg. 22, and as such, there was no probable cause for trial. The second amended criminal complaint was deemed filed with the MTCC on December 12, 2001. It is of no moment that it had not yet determined the presence of probable cause to hold the accused for trial and issue a warrant of arrest or summons or to dismiss the case. What was before the MTCC was the second amended criminal complaint which contained all the essential elements of violation of B.P. Blg. 22 and the certification of the public prosecutor under Section 3(a), Rule 112 of the Revised Rules of Criminal Procedure.[16] The public prosecutor appears to have personally examined the private complainant on his affidavit and was satisfied that the latter voluntarily executed and understood the same. The RTC, therefore, had no alternative but to dismiss the petition for certiorari. As this Court held in *Ocampo v. House of Representatives Electoral Tribunal*:[17]

It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioner would be entitled and which would be negated by the dismissal of the petition.[18]

The ruling of this Court in *Guillen v. Nicolas*:[19] has no relevance in this case. In that case, the Court ruled that the ordinary procedure, not the summary procedure, applies in a case where a criminal complaint is filed with the MTCC, which has original jurisdiction over the offense charged.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED DUE COURSE.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Judge Henedino P. Eduarte.

[2] Records, pp. 44-45.

[3] Id. at 46-47.

[4] Id. at 31.

[5] Id. at 52-64.

[6] Id. at 69-70.

[7] Id. at 27-29.

[8] Id. at 32-37.

[9] Id. at 1-26.

[10] Id. at 107-108.

[11] Id. at 134-137.

[12] 299 SCRA 623 (1998).

[13] Rollo, p. 38.

[14] Supersede – Obliterate, set aside, annul, replace, make void, inefficacious or useless, repeal. To set aside, render unnecessary, suspend, or stay. (Black’s Law Dictionary, 5th ed., p. 1289)

[15] Rule 110, Revised Rules of Criminal Procedure –

Sec. 14. Amendment or substitution. – A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

[16] Sec. 3. Procedure. – The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for

examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

[17] G.R. No. 158466, June 15, 2004.

[18] *Id.* at 11.

[19] *Supra.*

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