

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN, FOURTH DIVISION AND SERGIO F. EMPRESE, SR., RESPONDENTS.*G.R. NO. 156394. January 21, 2005*

Ponente: CHICO-NAZARIO, J.

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Before the Court is a petition for certiorari under Rule 65 of the Rules of Court filed by the People of the Philippines through the Office of the Ombudsman, assailing the 02 August 2002 Resolution of the Fourth Division of the Sandiganbayan (public respondent) which granted the Motion to Quash the Information filed by Sergio F. Emprese, Sr. (private respondent) in Criminal Case No. 27136, entitled “People of the Philippines versus Sergio Emprese, Sr.,” and the 11 September 2002 Resolution denying petitioner’s Motion for Reconsideration.[1]

It would be useful to trace the origin of the case.

On 22 June 1998, private complainants in the above case, i.e., Ariel A. Castro, Ramon B. Lustanas, Julia F. Avelino, Butche P. Reyes, Jurly L. Reta, Jr., Rene L. Dadace, Ramon Isidro U. Reyes, Jr., Judith B. Montero and Anastacia V. Edar, were appointed by the then Mayor of the Municipality of San Andres, Quezon, Francisco de Leon, Jr., as Agricultural Technologist, Utility Worker II, Utility Worker II, Construction and Maintenance Man, Construction and Maintenance Man, Utility Worker II, Utility Worker II, Clerk II and Utility Worker II, respectively, for the Municipality of San Andres, Quezon.

On 01 July 1998, when private respondent assumed office, he revoked the appointments of private complainants.

Aggrieved, private complainants filed with the Civil Service Commission, Regional Office No. IV, Quezon City (CSCRO-IV) a complaint for illegal termination and nonpayment of salaries.

On 05 March 1999, the CSCRO-IV issued an order in favor of private complainants directing private respondent to reinstate the former with payment of back wages and other monetary benefits from the time they were illegally terminated from service until their actual reinstatement.[2]

On 04 May 1999, private respondent filed a notice of appeal with the Civil Service Commission, Central Office (CSC Central).

On 29 February 2000, the CSC Central issued a resolution reversing the order of CSCRO-IV and declaring the termination of the services of private complainants valid.[3] Private complainants filed a Motion for Reconsideration of the resolution, but the same was denied.

Private complainants elevated the case to the Court of Appeals. In a decision dated 31 July 2001, the Court of Appeals ruled in their favor.[4] It reversed the order of CSC Central and reinstated the order of the CSCRO-IV. The Court of Appeals found that the CSC Central’s resolution was issued without jurisdiction as the

CSCRO-IV's order dated 05 March 1999 had already become final and executory for failure of private respondent to appeal seasonably and was therefore beyond the power of review by the CSC Central.

On 18 October 2001, private complainants filed complaints with the Office of the Ombudsman against private respondent Sergio F. Emprese, Sr., for violation of Republic Act No. 3019, Section 3(e) and an administrative case for Grave Misconduct.[5]

On 22 October 2001, private respondent filed before this Court a petition for certiorari under Rule 65[6] seeking to nullify the 31 July 2001 decision of the Court of Appeals for allegedly being rendered in grave abuse of discretion amounting to lack of jurisdiction. This Court denied the petition for being filed beyond the prescriptive period and for failure to pay the prescribed legal fees and deposit for costs.[7]

Private complainants filed with the CSC Central an Urgent Motion for Execution dated 22 October 2001 of the 31 July 2001 decision of the Court of Appeals.[8]

On 28 January 2002, the Office of the Ombudsman filed an Information with the Sandiganbayan charging private respondent for violation of Section 3(e) of Rep. Act No. 3019. It was docketed as Criminal Case No. 27136 and was raffled to the Fourth Division.[9] The Information reads:

That on or about September 11, 2001, or immediately prior or subsequent thereto, in San Andres, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Sergio F. Emprese, Sr., a public officer, being then the Municipal Mayor of San Andres, Quezon, committing the crime herein charged in relation to and taking advantage of his official functions, and through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and criminally fail to reinstate the complainants to their position and to pay back wages due them despite the finality of the Order of the Court of Appeals, thereby causing undue injury to the complainants.

On 20 February 2002, the CSC Central granted private complainants' Urgent Motion for Execution dated 22 October 2001 seeking the implementation of the decision of the Court of Appeals dated 31 July 2001.[10] Private respondent filed a motion for reconsideration which was denied by the CSC Central in an order dated 23 April 2002.[11]

On 09 May 2002, private respondent filed a Motion to Quash with the Sandiganbayan on the grounds that the acts for which the accused is charged do not constitute a violation of Section 3(e) of Rep. Act No. 3019 and that the Information does not conform substantially to the prescribed form pursuant to Section 3(d) of Rule 117 of the Rules of Court.[12]

On 13 June 2002, private respondent manifested before the Office of the Ombudsman that private complainants had been reinstated to their former positions and that they have been receiving partial payments for their back wages as evidenced by the Allotment and Obligation Slip dated 23 May 2002 and the Payroll for the month of May, 2002.[13]

On 19 June 2002, private respondent further filed with the Office of the Ombudsman a Supplemental Manifestation attaching therewith the Joint Affidavit of Desistance of private complainants dated 11 June 2002.[14] On the same date, the Office of the Ombudsman dismissed the administrative case against private respondent for lack of interest to prosecute.[15]

On 25 June 2002, private respondent filed with the Sandiganbayan a Manifestation informing the said court of the Affidavit of Desistance executed by private complainants.[16]

On 02 August 2002, public respondent issued the assailed Resolution granting the Motion to Quash filed by private respondent.[17] Public respondent ruled:[18]

It strains reason how could accused (sic) be charged criminally in this Court for failure to enforce a decision, the execution of which the private complainants asked in the Civil Service Commission.

What is apparent is the good faith shown by the obedience of the accused in reinstating the private complainants after receiving the Civil Service Commission's Order denying his Motion for Reconsideration. This, the accused did, when his Motion for Clarification has yet to be resolved in the Court of Appeals.

...

IN VIEW HEREOF, the instant Information is hereby DISMISSED. The cash bail bond posted by the accused for his provisional liberty is cancelled and the Hold Departure Order issued by this Court is hereby lifted and set aside.

Petitioner sought a reconsideration thereof which was denied by public respondent in a resolution dated 11 September 2002.[19]

On 13 November 2002, petitioner received a copy of the above resolution.[20]

On 10 January 2003, petitioner filed before this Court the instant petition imputing grave abuse of discretion and lack or excess of jurisdiction to respondent court in granting the motion to quash the Information and in denying the motion for reconsideration.[21]

Petitioner filed the instant petition seeking to annul the Resolutions of the Sandiganbayan raising the sole issue:

Whether or not the Sandiganbayan acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion in quashing the Information.

In support of its claim, petitioner asserts that the Sandiganbayan committed grave abuse of discretion when it quashed the Information on the basis of an Affidavit of Desistance signed only by one of the eight (8) complaining witnesses. Such being the case, the said affidavit cannot be used as a basis for dismissing the case insofar as the other remaining witnesses were concerned. The petitioner likewise alleged that the resolution which quashed the Information merely concluded, without any evidence on record to support such conclusion, and without giving it the opportunity to present contrary evidence, that private respondent had acted in good faith.

Private respondent, on the other hand, contends that the instant petition should be dismissed on the ground that the present recourse is an improper remedy to assail the resolutions of the Sandiganbayan. The resolution, being a final order, should have been appealed via petition for review on certiorari under Rule 45 of the Rules of Court. Unfortunately, petitioner cannot make use of the said remedy after it failed to file an appeal within the reglementary period. Private respondent further contends that the Information was quashed not primarily on the basis of the Affidavit of Desistance but on the ground that the acts for which the accused is charged do not constitute a violation of Section 3(e) of Rep. Act No. 3019. Finally, the charges in the Information were rendered moot and academic because private complainants were duly reinstated by private respondent pursuant to the writ of execution issued by the Civil Service Commission (CSC).

Court's Ruling

The petition must fail.

It must be stated that the filing of the instant petition for certiorari under Rule 65 of the Rules of Court is inappropriate. Considering that the Resolution of the Sandiganbayan which quashed the Information was a final order that finally disposed of the case, the proper remedy therefrom is a petition for review under Rule 45 of the Rules of Court.[22] Section 1 of said rule provides:

Filing of petition with Supreme Court. – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, 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 shall raise only questions of law which must be distinctly set forth.

Section 2 of the same rule provides for the period within which to file the appeal:

Time for filing; extension. – The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

Moreover, Section 7 of Presidential Decree No. 1606, as amended by Section 3 of Rep. Act No. 7975, states:

Form, Finality and Enforcement of Decisions. -

...

Decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court.

It appears that petitioner resorted to the special civil action of certiorari because it failed to seasonably interpose an appeal. It must be noted that the Sandiganbayan promulgated the assailed resolution on 02 August 2002. Petitioner filed a motion for reconsideration thereof but the same was denied in a resolution dated 11 September 2002, a copy of which was received by the petitioner on 13 November 2002. The petitioner's remedy would have been to file a petition for review on certiorari under Rule 45[23] before this Court, and, reckoning the fifteen-day period to file the same from receipt of the resolution denying the motion for reconsideration, the petitioner had until 28 November 2002 to file said petition for certiorari before this Court. Instead, petitioner filed the instant petition for certiorari under Rule 65[24] on 10 January 2003 or forty-three (43) days after the lapse of the reglementary period within which to file an appeal via petition for review on certiorari. Apparently, petitioner resorted to the instant special civil action after failing to appeal within the fifteen-day reglementary period. This, of course, cannot be done. The special civil action of certiorari cannot be used as a substitute for an appeal which the petitioner already lost.[25]

This Court has often enough reminded members of the bench and bar that a special civil action for certiorari under Rule 65[26] lies only when there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law.[27] Certiorari is not allowed when a party to a case fails to appeal a judgment or final order despite the availability of that remedy. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[28]

The antithetic character of the remedies of appeal and certiorari has been generally observed by this Court save only in those rare instances where appeal is satisfactorily shown to be an inadequate remedy. In this case, petitioner has failed to show any valid reason why the issue being raised by the petitioner, whether or not respondent court committed grave abuse of discretion in quashing the Information in Criminal Case No. 27136, could not have been raised on appeal.

Admittedly, this Court, may treat a petition for certiorari under Rule 65 as having been filed under Rule 45 to serve the higher interest of justice.[29] Such liberal application of the rules, however, finds no application if the petition is filed well beyond the reglementary period for filing a petition for review without any reason

therefor.[30]

Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least explain its failure to comply with the rules.[31] This Court finds no exceptional circumstances to justify the relaxation of the rules and neither has petitioner tried to offer any valid reason or explanation as to why it failed to properly observe the rules of procedure. This being the case, another elementary rule of procedure applies, i.e., the perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional so that failure to do so renders the questioned resolution final and executory, and deprives this Court of jurisdiction to alter the final order, much less to entertain the appeal.[32] This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of law.[33] It is a jurisdictional caveat that not even this Court can trifle with.[34]

Even on the ground invoked by the petitioner, i.e., that the Sandiganbayan committed grave abuse of discretion in quashing the Information, the present petition must be dismissed. There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.[35] The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[36]

The material dates of the case reveal that the Decision of the Court of Appeals ordering the reinstatement of private complainants was promulgated on 31 July 2001. The said decision became final and executory as private respondent did not appeal on time. Private complainants filed with the CSC an Urgent Motion for Execution of the same on 22 October 2001. The Office of the Ombudsman through the Office of the Special Prosecutor filed the Information before the Sandiganbayan on 28 January 2002 while the Urgent Motion for Execution was still pending. It was only on 20 February 2002 that the Urgent Motion for Execution was granted. Private respondent filed a motion for reconsideration thereof which was eventually denied in an order of the CSC Central dated 23 April 2002.

Undoubtedly, when the Information was filed with the Sandiganbayan, there was yet no Writ of Execution from the CSC ordering private respondent to reinstate private complainants. Private respondent could not have committed the crime alleged in the Information – failure to reinstate private complainants to their positions and to pay back wages due them - as there was no writ or order from the CSC to reinstate private complainants and to pay them back wages. As correctly put by the respondent Court “[i]t strains reason how accused could be charged criminally in this Court for failure to enforce a decision, the execution of which the private complainants asked in the Civil Service Commission.” Public respondent, in rendering the assailed resolutions, was evidently, an ocean away from being gravely abusive of its discretion.

In sum, we find that the petition is bereft of merit. It is not the proper remedy and even if it is, no grave abuse of discretion was committed by the Sandiganbayan.

WHEREFORE, the instant petition for certiorari is DISMISSED for lack of merit.

SO ORDERED.

Puno, (Acting C.J.), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Associate Justice Nicodemo T. Ferrer with Associate Justices Narciso S. Nario and Rodolfo G.

Palattao, concurring.

[2] Rollo, pp. 51-57.

[3] Rollo, pp. 65-69.

[4] Rollo, pp. 89-98.

[5] Rollo, pp. 124-126.

[6] Rules of Court.

[7] Rollo, p. 115.

[8] Rollo, pp. 189-191.

[9] Rollo, pp. 131-132.

[10] Rollo, pp. 118-120.

[11] Rollo, pp. 120A-123.

[12] Sandiganbayan Records, pp. 59-77.

[13] Rollo, pp. 195-202.

[14] Rollo, pp. 203-206.

[15] Rollo, pp. 207-213.

[16] Rollo, pp. 157-160.

[17] Rollo, pp. 28-38.

[18] Rollo, pp. 36-37.

[19] Rollo, p. 39.

[20] Rollo, p. 5.

[21] Rollo, p. 2.

[22] *People v. Sandiganbayan*, G.R. No. 145951, 12 August 2003, 408 SCRA 672, 674; *Africa v. Sandiganbayan* (Third Division), G.R. No. 124478, 11 March 1998, 287 SCRA 408, 417.

[23] Rules of Court.

[24] *Id.*

[25] *Dr. Alberto Nidoy, et al. v. CA*, G.R. No. 146017, 18 February 2004; *Landbank of the Philippines v. Continental Watchman Agency Incorporated*, G.R. No. 136114, 22 January 2004, 420 SCRA 624, citing *Bernardo v. CA*, G.R. No. 106153, 14 July 1997, 275 SCRA 413.

[26] Rules of Court.

[27] *Agus Dwikarna v. Domingo*, G.R. No. 153454, 7 July 2004; *Marawi Marantao General Hospital, Inc. v. CA*, G.R. No. 141008, 16 January 2001, 349 SCRA 321; *Heirs of Pedro Atega v. Garilao*, G.R. No. 133806, 20 April 2001, 357 SCRA 203; *Zarate, Jr. v. Olegario*, G.R. No. 90655, 07 October 1996, 263 SCRA 1; *Solis v. NLRC*, G.R. No. 116175, 28 October 1996, 263 SCRA 629.

[28] Heirs of Lourdes Potenciano Padilla v. CA, G.R. No. 147205, 10 March 2004; Bernardo v. CA, *supra*, note 25.

[29] Republic of the Philippines v. CA, G.R. No. 129846, 18 January 2000, 322 SCRA 81; Delsan Transport Lines, Inc. v. CA, G.R. No. 112288, 20 February 1997, 268 SCRA 597.

[30] The President of PDIC v. CA, G.R. No. 151280, 10 June 2004.

[31] Heirs of Lourdes Potenciano Padilla v. CA, G.R. No. 147205, 10 March 2004.

[32] Pedrosa v. Hill, G.R. No. 120804, 14 June 1996, 257 SCRA 373, 375.

[33] Borre v. CA, G.R. No. L-57204, 14 March 1988, 158 SCRA 560; People v. Esparas, G.R. No. 120034, 20 August 1996, 260 SCRA 539.

[34] Republic of the Philippines v. CA, *supra*, note 29.

[35] People v. Court of Appeals, G.R. No. 144332, 10 June 2004; Rodson Phil., Inc., et al. v. CA, et al., G.R. No. 141857, 09 June 2004; Ernesto T. Matugas v. COMELEC, et al., G.R. No. 151944, 20 January 2004, 420 SCRA 365; Tomas Claudio Memorial College, Inc. v. CA, G.R. No. 152568, 16 February 2004; Condo Suite Club Travel, Inc. v. NLRC, G.R. No. 125671, 28 January 2000, 323 SCRA 679.

[36] Hadji Rasul Batabor v. COMELEC, et al., G.R. No. 160428, 21 July 2004; Duero v. CA, G.R. No. 131282, 04 January 2002, 373 SCRA 11; Madrigal Transport, Inc. v. Lapanday Holdings Corp., et al., G.R. No. 156067, 11 August 2004, citing Cuison v. CA, 351 Phil. 1089, 1102 (1998); Lalican v. Vergara, 342 Phil. 485, 495 (1997); Pure Foods Corp. v. NLRC, G.R. No. 78591, 21 March 1989, 171 SCRA 415, 426, 21 March 1989; Palma v. Q & S Inc., 123 Phil. 958, 960 (1966).

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