SAN MIGUEL CORPORATION, PETITIONER, VS. BARTOLOME PUZON, JR., RESPONDENT.

G.R. No. 167567. September 22, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This petition for review assails the December 21, 2004 Decision[1] and March 28, 2005 Resolution[2]of the Court of Appeals (CA) in CA-G.R. SP No. 83905, which dismissed the petition before it and denied reconsideration, respectively.

Factual Antecedents

Respondent Bartolome V. Puzon, Jr., (Puzon) owner of Bartenmyk Enterprises, was a dealer of beer products of petitioner San Miguel Corporation (SMC) for Parañaque City. Puzon purchased SMC products on credit. To ensure payment and as a business practice, SMC required him to issue postdated checks equivalent to the value of the products purchased on credit before the same were released to him. Said checks were returned to Puzon when the transactions covered by these checks were paid or settled in full.

On December 31, 2000, Puzon purchased products on credit amounting to P11,820,327 for which he issued, and gave to SMC, Bank of the Philippine Islands (BPI) Check Nos. 27904 (for P309,500.00) and 27903 (for P11,510,827.00) to cover the said transaction.

On January 23, 2001, Puzon, together with his accountant, visited the SMC Sales Office in Parañaque City to reconcile his account with SMC. During that visit Puzon allegedly requested to see BPI Check No. 17657. However, when he got hold of BPI Check No. 27903 which was attached to a bond paper together with BPI Check No. 17657 he allegedly immediately left the office with his accountant, bringing the checks with them.

SMC sent a letter to Puzon on March 6, 2001 demanding the return of the said checks. Puzon ignored the demand hence SMC filed a complaint against him for theft with the City Prosecutor's Office of Parañaque City.

Rulings of the Prosecutor and the Secretary of Department of Justice (DOJ)

The investigating prosecutor, Elizabeth Yu Guray found that the "relationship between [SMC] and [Puzon] appears to be one of credit or creditor-debtor relationship. The problem lies in the reconciliation of accounts and the non-payment of beer empties which cannot give rise to a criminal prosecution for theft."[3] Thus, in her July 31, 2001 Resolution,[4] she recommended the dismissal of

the case for lack of evidence. SMC appealed.

On June 4, 2003, the DOJ issued its resolution[5] affirming the prosecutor's Resolution dismissing the case. Its motion for reconsideration having been denied in the April 23, 2004 DOJ Resolution,[6] SMC filed a petition for certiorari with the CA.

Ruling of the Court of Appeals

The CA found that the postdated checks were issued by Puzon merely as a security for the payment of his purchases and that these were not intended to be encashed. It thus concluded that SMC did not acquire ownership of the checks as it was duty bound to return the same checks to Puzon after the transactions covering them were settled. The CA agreed with the prosecutor that there was no theft, considering that a person cannot be charged with theft for taking personal property that belongs to himself. It disposed of the appeal as follows:

> WHEREFORE, finding no grave abuse of discretion committed by public respondent, the instant petition is hereby DISMISSED. The assailed Resolutions of public respondent, dated 04 June 2003 and 23 April 2004, are AFFIRMED. No costs at this instance.
>
> SO ORDERED.[7]

The motion for reconsideration of SMC was denied. Hence, the present petition.

Issues

Petitioner now raises the following issues:

> I
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> WHETHER X X X PUZON HAD STOLEN FROM SMC ON JANUARY 23, 2001, AMONG OTHERS BPI CHECK NO. 27903 DATED MARCH 30, 2001 IN THE AMOUNT OF PESOS: ELEVEN MILLION FIVE HUNDRED TEN THOUSAND EIGHT HUNDRED TWENTY SEVEN (Php11,510,827.00)
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> II
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> WHETHER X X X THE POSTDATED CHECKS ISSUED BY PUZON, PARTICULARLY BPI CHECK NO. 27903 DATED MARCH 30, 2001 IN THE AMOUNT OF PESOS: ELEVEN MILLION FIVE HUNDRED TEN THOUSAND EIGHT HUNDRED TWENTY SEVEN (Php11,510,827.00), WERE ISSUED IN PAYMENT OF HIS BEER PURCHASES OR WERE USED MERELY AS SECURITY TO ENSURE PAYMENT OF PUZON'S OBLIGATION.
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> III
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> WHETHER X X X THE PRACTICE OF SMC IN RETURNING THE POSTDATED CHECKS ISSUED IN PAYMENT OF BEER PRODUCTS PURCHASED ON CREDIT SHOULD THE TRANSACTIONS COVERED BY THESE CHECKS [BE] SETTLED ON [THE] MATURITY DATES THEREOF COULD BE LIKENED TO A CONTRACT OF PLEDGE.
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> IV
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> WHETHER X X X SMC HAD ESTABLISHED PROBABLE CAUSE TO JUSTIFY THE INDICTMENT OF PUZON FOR THE CRIME OF THEFT PURSUANT TO ART. 308 OF THE REVISED PENAL CODE.[8]

Petitioner's Arguments

SMC contends that Puzon was positively identified by its employees to have taken the subject postdated checks. It also contends that ownership of the checks was transferred to it because these were issued, not merely as security but were, in payment of Puzon's purchases. SMC points out that it has established more than sufficient probable cause to justify the indictment of Puzon for the crime of Theft.

Respondent's Arguments

On the other hand, Puzon contends that SMC raises questions of fact that are beyond the province of an appeal on

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certiorari. He also insists that there is no probable cause to charge him with theft because the subject checks were issued only as security and he therefore retained ownership of the same.

Our Ruling

The petition has no merit.

Preliminary Matters

At the outset we find that as pointed out by Puzon, SMC raises questions of fact. The resolution of the first issue raised by SMC of whether respondent stole the subject check, which calls for the Court to determine whether respondent is guilty of a felony, first requires that the facts be duly established in the proper forum and in accord with the proper procedure. This issue cannot be resolved based on mere allegations of facts and affidavits. The same is true with the second issue raised by petitioner, to wit: whether the checks issued by Puzon were payments for his purchases or were intended merely as security to ensure payment. These issues cannot be properly resolved in the present petition for review on certiorari which is rooted merely on the resolution of the prosecutor finding no probable cause for the filing of an information for theft.

The third issue raised by petitioner, on the other hand, would entail venturing into constitutional matters for a complete resolution. This route is unnecessary in the present case considering that the main matter for resolution here only concerns grave abuse of discretion and the existence of probable cause for theft, which at this point is more properly resolved through another more clear cut route.

Probable Cause for Theft

"Probable cause is defined as such facts and circumstances that will engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial."[9] On the fine points of the determination of probable cause, Reyes v. Pearlbank Securities, Inc.[10] comprehensively elaborated that:

> The determination of [the existence or absence of probable cause] lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Thus, the decision whether to dismiss a complaint or not is dependent upon the sound discretion of the prosecuting fiscal. He may dismiss the complaint forthwith, if he finds the charge insufficient in form or substance or without any ground. Or he may proceed with the investigation if the complaint in his view is sufficient and in proper form. To emphasize, the determination of probable cause for the filing of information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case. Ultimately, whether or not a complaint will be dismissed is dependent on the sound discretion of the Secretary of Justice. And unless made with grave abuse of discretion, findings of the Secretary of Justice are not subject to review.
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> For this reason, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.

In the present case, we are also not sufficiently convinced to deviate from the general rule of non-interference. Indeed the CA did not err in dismissing the petition for certiorari before it, absent grave abuse of discretion on the part of the DOJ Secretary in not finding probable cause against Puzon for theft.

The Revised Penal Code provides:

> Art. 308. Who are liable for theft. - Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.
>
> x x x x

"[T]he essential elements of the crime of theft are the following: (1) that there be a taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence or intimidation against persons or force upon things."[11]

Considering that the second element is that the thing taken belongs to another, it is relevant to determine whether ownership of the subject check was transferred to petitioner. On this point the Negotiable Instruments Law provides:

> Sec. 12. Antedated and postdated - The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. (Underscoring supplied.)

Note however that delivery as the term is used in the aforementioned provision means that the party delivering did so for the purpose of giving effect thereto.[12] Otherwise, it cannot be said that there has been delivery of the negotiable instrument. Once there is delivery, the person to whom the instrument is delivered gets the title to the instrument completely and irrevocably.

If the subject check was given by Puzon to SMC in payment of the obligation, the purpose of giving effect to the instrument is evident thus title to or ownership of the check was transferred upon delivery. However, if the check was not given as payment, there being no intent to give effect to the instrument, then ownership of the check was not transferred to SMC.

The evidence of SMC failed to establish that the check was given in payment of the obligation of Puzon. There was no provisional receipt or official receipt issued for the amount of the check. What was issued was a receipt for the document, a "POSTDATED CHECK SLIP."[13]

Furthermore, the petitioner's demand letter sent to respondent states "As per company policies on receivables, all issuances are to be covered by post-dated checks. However, you have deviated from this policy by forcibly taking away the check you have issued to us to cover the December issuance."[14] Notably, the term "payment" was not used instead the terms "covered" and "cover" were used.

Although the petitioner's witness, Gregorio L. Joven III, states in paragraph 6 of his affidavit that the check was given in payment of the obligation of Puzon, the same is contradicted by his statements in paragraph 4, where he states that "As a standard company operating procedure, all beer purchases by dealers on credit shall be covered by postdated checks equivalent to the value of the beer products purchased"; in paragraph 9 where he states that "the transaction covered by the said check had not yet been paid for," and in paragraph 8 which clearly shows that partial payment is expected to be made by the return of beer empties, and not by the deposit or encashment of the check. Clearly the term "cover" was not meant to be used interchangeably with "payment."

When taken in conjunction with the counter-affidavit of Puzon - where he states that "As the [liquid beer] contents are paid for, SMC return[s] to me the corresponding PDCs or request[s] me to replace them with whatever was the unpaid balance."[15] - it becomes clear that both parties did not intend for the check to pay for

the beer products. The evidence proves that the check was accepted, not as payment, but in accordance with the long-standing policy of SMC to require its dealers to issue postdated checks to cover its receivables. The check was only meant to cover the transaction and in the meantime Puzon was to pay for the transaction by some other means other than the check. This being so, title to the check did not transfer to SMC; it remained with Puzon. The second element of the felony of theft was therefore not established. Petitioner was not able to show that Puzon took a check that belonged to another. Hence, the prosecutor and the DOJ were correct in finding no probable cause for theft.

Consequently, the CA did not err in finding no grave abuse of discretion committed by the DOJ in sustaining the dismissal of the case for theft for lack of probable cause.

WHEREFORE, the petition is DENIED. The December 21, 2004 Decision and March 28, 2005 Resolution of the Court of Appeals in CA-G.R. SP. No. 83905 are AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Carpio Morales[*], Velasco, Jr., and Perez, JJ., concur.

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[*] In lieu of Associate Justice Teresita J. Leonardo-De Castro per Special Order No. 884 dated September 1, 2010.

[1] Rollo,pp. 32-42; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Ruben T. Reyes and Jose C. Reyes, Jr.

[2] Id. at 43-45.

[3] Id. at 141.

[4] Id. at 140-142.

[5] CA rollo, pp. 24-27.

[6] Id. at 22-23.

[7] Rollo, p. 41.

[8] Id. at 305.

[9] Sanrio Company Limited v. Lim, G.R. No. 168662, February 19, 2008, 546 SCRA 303, 312-313.

[10] G.R. No.171435, July 30, 2008, 560 SCRA 518, 535-536, citing Public Utilitites Department v. Hon. Guingona, Jr., 417 Phil. 798, 804 (2001).

[11] Aoas v. People, G.R. No. 155339, March 3, 2008, 547 SCRA 311, 317-318; People v. Puig, G.R. Nos. 173654-765, August 28, 2008, 563 SCRA 564, 570; Cruz v. People, G.R. No. 176504, September 3, 2008, 564 SCRA 99, 110.

[12] Sec. 16 of the Negotiable Instruments Law.

[13] Rollo, p. 76.

[14] Demand letter. Id. at 79.

[15] Id. at 113.

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