

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. SANDIGANBAYAN (THIRD DIVISION) AND MANUEL G. BARCENAS, RESPONDENTS.

G.R. No. 174504. March 21, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

The dismissal order arising from the grant of a demurrer to evidence amounts to an acquittal and cannot be appealed because it would place the accused in double jeopardy. The order is reviewable only by certiorari if it was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

This is a Petition for Certiorari which seeks to nullify the Sandiganbayan's July 26, 2006 Resolution[1] which granted private respondent's demurrer to evidence.

Factual Antecedents

On May 21, 2004, private respondent was charged with violation of Section 89 of Presidential Decree (P.D.) No. 1445[2] before the Sandiganbayan. The Information reads --

That on or about December 19, 1995, and for sometime prior or subsequent thereto at Toledo City, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused MANUEL G. BARCENAS, a high-ranking public officer, being a Vice-Mayor of Toledo City, and committing the offense in relation to office, having obtained cash advances from the City Government of Toledo in the total amount of SIXTY-ONE THOUSAND SEVEN HUNDRED SIXTY FIVE PESOS (P61,765.00), Philippine Currency, which he received by reason of his office, for which he is duty bound to liquidate the same within the period required by law, with deliberate intent and intent to gain, did then and there, willfully, unlawfully and criminally fail to liquidate said cash advances of P61,765.00, Philippine Currency, despite demands to the damage and prejudice of the government in the aforesaid amount.[3]

The case was docketed as Criminal Case No. 27990 and raffled to the Third Division. On October 20, 2004, private respondent was arraigned for which he pleaded not guilty. The prosecution presented its lone witness, Manolo Tulibao Villad, Commission on Audit (COA) State Auditor. Thereafter, the prosecution filed its formal offer of evidence and rested its case.

On April 20, 2006, private respondent filed a motion[4] for leave to file demurrer to evidence. On June 16, 2006, the Sandiganbayan issued a Resolution[5] granting the motion. On June 30, 2006, private respondent filed his demurrer[6] to evidence.

Sandiganbayan's Ruling

On July 26 2006, the Sandiganbayan promulgated the assailed Resolution, viz:

WE find the demurrer to evidence well taken.

The testimony of the prosecution's lone witness City Auditor Manolo Tulibao confirming his Report (Exhibit "D") that the accused had indeed liquidated his cash advances did not help the prosecution but rather weakened its cause of action against the accused. At the time this case was filed in Court, the accused had already liquidated his cash advances subject matter hereof in the total amount of P61,765.00. Hence, We find the element of damages wanting in this case.

PREMISES CONSIDERED, the Demurrer to Evidence is hereby granted and this case is hereby ordered DISMISSED.[7]

Issue

Whether the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction in giving due course to and eventually granting the demurrer to evidence.[8]

Petitioner's Arguments

Petitioner contends that the prosecution was able to establish all the elements of the offense defined and penalized under Section 89 of P.D. No. 1445: (1) the private respondent, an accountable officer, received cash advances in the total amount of P120,000.00 to defray the expenses of the Public Assistance Committee and Committee on Police Matters covering the period January-March 1993, (2) the purpose of the cash advance has been served, (3) the private respondent settled his cash advances only in March 1996, (4) the city auditor sent a demand letter to the private respondent to settle the cash advance within 72 hours from receipt thereof, and (5) the private respondent received said letter on December 22, 1995 but failed to liquidate the same within the aforesaid period.

Although it concedes that the private respondent eventually settled the subject cash advances sometime in March 1996, petitioner theorizes that damage is not one of the elements of the offense charged. Hence, the settlement of the cash advance would not exonerate the private respondent but only mitigate his criminal liability. Otherwise, the purpose of the law would be rendered futile since accountable officers can easily make cash advances and liquidate the same beyond the period prescribed by law without being penalized for doing so.

Finally, petitioner argues that double jeopardy does not lie in this case because the order of dismissal was issued with grave abuse of discretion amounting to lack of jurisdiction.

Private Respondent's Arguments

Private respondent counters that the grant of a demurrer to evidence is equivalent to an acquittal from which the prosecution cannot appeal as it would place the accused in double jeopardy. Further, assuming that the Sandiganbayan erroneously granted the demurrer, this would, at most, constitute an error of judgment and not an error of jurisdiction. Thus, certiorari does not lie to correct the grant of the demurrer to evidence by the Sandiganbayan.

Our Ruling

The petition lacks merit.

An order of dismissal arising from the grant of a demurrer to evidence has the effect of an acquittal unless the order was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

In criminal cases, the grant of a demurrer[9] is tantamount to an acquittal and the dismissal order may not be

appealed because this would place the accused in double jeopardy.[10] Although the dismissal order is not subject to appeal, it is still reviewable but only through certiorari under Rule 65 of the Rules of Court.[11] For the writ to issue, the trial court must be shown to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham thus rendering the assailed judgment void.[12] The burden is on the petitioner to clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[13]

In the case at bar, the Sandiganbayan granted the demurrer to evidence on the ground that the prosecution failed to prove that the government suffered any damage from private respondent's non-liquidation of the subject cash advance because it was later shown, as admitted by the prosecution's witness, that private respondent liquidated the same albeit belatedly.

Sections 89 and 128 of P.D. No. 1445 provide--

SECTION 89. Limitations on Cash Advance. -- No cash advance shall be given unless for a legally authorized specific purpose. A cash advance shall be reported on and liquidated as soon as the purpose for which it was given has been served. No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.

SECTION 128. Penal Provision. -- Any violation of the provisions of Sections 67, 68, 89, 106, and 108 of this Code or any regulation issued by the Commission [on Audit] implementing these sections, shall be punished by a fine not exceeding one thousand pesos or by imprisonment not exceeding six (6) months, or both such fine and imprisonment in the discretion of the court. (Emphasis supplied.)

On the other hand, COA Circular No. 90-331[14] or the "Rules and Regulations on the Granting, Utilization and Liquidation of Cash Advances" which implemented Section 89 of P.D. No. 1445 pertinently provided-

5. LIQUIDATION OF CASH ADVANCES

5.1 The AO (Accountable Officer) shall liquidate his cash advance as follows:

5.1.1 Salaries, Wages, etc. - within 5 days after each 15 day/ end of the month pay period.

5.1.2 Petty Operating Expenses and Field Operating Expenses - within 20 days after the end of the year; subject to replenishment during the year.

5.1.3 Foreign Travel - within 60 days after return to the Philippines.

Failure of the AO to liquidate his cash advance within the prescribed period shall constitute a valid cause for the withholding of his salary.

x x x x

5.7 When a cash advance is no longer needed or has not been used for a period of two (2) months, it must be returned to or deposited immediately with the collecting officer.

5.8 All cash advances shall be fully liquidated at the end of each year. Except for petty cash fund, the AO shall refund any unexpended balance to the Cashier/Collecting Officer who will issue the necessary official receipt.

x x x x

9. DUTIES AND RESPONSIBILITIES OF THE COA AUDITOR

x x x x

9.6 Upon failure of the AO to liquidate his cash advance within one month for AOs within the station and three months for AOs outside the station from date of grant of the cash advance, the Auditor shall issue a letter demanding liquidation or explanation for non-liquidation.

9.7 If 30 days have elapsed after the demand letter is served and no liquidation or explanation is received, or the explanation received is not satisfactory, the Auditor shall advise the head of the agency to cause or order the withholding of the payment of any money due the AO. The amount withheld shall be applied to his (AO's) accountability. The AO shall likewise be held criminally liable for failure to settle his accounts.[15] (Emphasis supplied.)

As can be seen, contrary to the findings of the Sandiganbayan, actual damage to the government arising from the non-liquidation of the cash advance is not an essential element of the offense punished under the second sentence of Section 89 of P.D. No. 1445 as implemented by COA Circular No. 90-331. Instead, the mere failure to timely liquidate the cash advance is the gravamen of the offense. Verily, the law seeks to compel the accountable officer, by penal provision, to promptly render an account of the funds which he has received by reason of his office.[16]

Nonetheless, even if the Sandiganbayan proceeded from an erroneous interpretation of the law and its implementing rules, the error committed was an error of judgment and not of jurisdiction. Petitioner failed to establish that the dismissal order was tainted with grave abuse of discretion such as the denial of the prosecution's right to due process or the conduct of a sham trial. In fine, the error committed by the Sandiganbayan is of such a nature that can no longer be rectified on appeal by the prosecution because it would place the accused in double jeopardy.[17]

In *United States v. Kilayko*,[18] the accused was charged with a violation under Section 12 of the Chattel Mortgage Law[19] which prohibited the mortgagor from selling the mortgaged property without the consent of the mortgagee while the debt secured remained outstanding. The accused was arraigned for which he pleaded not guilty. Thereafter, he moved to dismiss the Information. After the prosecution and defense entered into a stipulation of facts, the trial court dismissed the case. On appeal by the prosecution to this Court, we acknowledged that the trial court erred in interpreting Section 12 when it ruled that the subsequent payment of the secured debt extinguished the accused's criminal liability arising from the unlawful sale of the mortgaged property. Nonetheless, we ruled that the judgment dismissing the Information, although based upon an erroneous interpretation of the law, was in effect a judgment on the merits from which no appeal lay on the part of the prosecution as it would place the accused in double jeopardy.[20]

In another case, *People v. City Court of Silay*,[21] after the prosecution had presented its evidence and rested its case, the accused filed a motion to dismiss for insufficiency of evidence. The trial court granted the motion and dismissed the case. On appeal by the prosecution to this Court, we were of the view that the dismissal order was erroneous and resulted to a miscarriage of justice. However, we ruled that such error cannot be corrected because double jeopardy had already set in:

In the case of the herein respondents, however, the dismissal of the charge against them was one on the merits of the case which is to be distinguished from other dismissals at the instance of the accused. All the elements of double jeopardy are here present, to wit: (1) a valid information sufficient in form and substance to sustain a conviction of the crime charged, (2) a court of competent jurisdiction, and (3) an unconditional dismissal of the complaint after the prosecution had rested its case, amounting to the acquittal of the accused. The dismissal being one on the merits, the doctrine of waiver of the accused to a plea of double jeopardy cannot be invoked.

It is clear to Us that the dismissal of the criminal case against the private respondents was erroneous.

As correctly stated in the Comment of the Acting Solicitor General, the accused were not charged with substitution of genuine "tarjetas" with false ones. The basis for the accusation was that the accused entered

false statements as to the weight of the sugar cane loaded in certain cane cars in "tarjetas" which were submitted to the laboratory section of the company. The act of making a false entry in the "tarjetas" is undoubtedly an act of falsification of a private document, the accused having made untruthful statements in a narration of facts which they were under obligation to accomplish as part of their duties - Ernesto de la Paz, as overseer of Hda. Malisbog, and the other accused as scalers of the offended party, the Hawaiian-Philippine Company, thereby causing damage to the latter.

However erroneous the order of respondent Court is, and although a miscarriage of justice resulted from said order, to paraphrase Justice Alex Reyes in *People vs. Nieto*, 103 Phil. 1133, such error cannot now be righted because of the timely plea of double jeopardy.[22]

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[1] Rollo, pp. 22-28; penned by Associate Justice Godofredo L. Legaspi and concurred in by Associate Justices Efren N. Dela Cruz and Norberto Y. Germaldez.

[2] GOVERNMENT AUDITING CODE OF THE PHILIPPINES (June 11, 1978).

[3] Records, pp. 1-2.

[4] *Id.* at 277-279.

[5] *Id.* at 300.

[6] *Id.* at 303-310.

[7] Rollo, p. 27.

[8] *Id.* at 9.

[9] Section 23, Rule 119 of the Rules of Court provides:

Section 23. Demurrer to evidence. -- After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court. x x x

[10] *Dayap v. Sendiong*, G.R. No. 177960, January 29, 2009, 577 SCRA 134, 147.

[11] *Id.*

[12] *Sanvicente v. People*, 441 Phil. 139, 147-148 (2002).

[13] *Id.*

[14] Effective May 3, 1990.

[15] This provision is reiterated in COA Circular No. 92-382 (effective July 3, 1992) which specifically governs the cash advances of local government officials. Section 48 (k) states:

Sec. 48. Rules on grant, use, and liquidation of cash advances. - In the granting, utilization, and liquidation of cash advances the following shall be observed: x x x

x x x x

(k) The cash advances shall be liquidated as follows:

- Salaries, wages, etc. - within 5 days after each 15 days/end of the month pay period.
- Petty operating expenses - within 20 days after the end of the year; subject to replenishment during the year.
- Foreign Travel - within 60 days after return to the Philippines.

[16] The rationale is similar to that of Article 218 (Failure of Accountable Officer to Render Accounts) of the Revised Penal Code where misappropriation is not an essential element of said felony (Luis B. Reyes, *The Revised Penal Code*, Book II [2001] at 409). In *United States v. Saberon* (19 Phil. 391 [1911] cited in Reyes at 409), Section 1 of Act No. 1740 punished, among others, the failure to render an account by an accountable public officer. In construing this penal provision, we ruled--

Section 1 of Act No. 1740, a violation of which is charged against the defendant, literally provides as follows:

"Any bonded officer or employee of the Insular Government, or of any provincial or municipal government, or of the city of Manila, and any other person who, having charge, by reason of his office or employment, of Insular, provincial, or municipal funds or property, or of funds or property of the city of Manila, or of trust or other funds by law required to be kept or deposited by or with such officer, employee, or other person, or by or with any public office, treasury, or other depository, fails or refuses to account for the same, or makes personal use of such funds or property, or of any part thereof, or abstracts or misappropriates the same or any part thereof, or is guilty of any malversation with reference to such funds or property, or through his abandonment, fault, or negligence permits any other person to abstract, misappropriate, or make personal use of the same, shall, upon conviction, be punished by imprisonment for not less than two months nor more than ten years and, in the discretion of the court, by a fine of not more than the amount of such funds and the value of such property."

x x x [T]rue it is that the unjustified refusal to render an account may produce a suspicion that there are at least irregularities in the officer's bookkeeping, but neither is this in itself conclusive proof of misappropriation, nor does the law in imposing punishment in any wise take into account the more or less correct condition of the funds which may be in his charge. The law makes the mere fact of that refusal a crime and punishes it as such, in absolute distinction from the other fact, entirely immaterial to the case, as to whether or not the funds in the safe entrusted to the officer are intact. So true is this that, although such funds are found to be intact and the official having them in charge is found not to have committed the smallest or most insignificant defalcation, still he would not be exempt from the criminal liability established by law if he refused or failed to render an account of said funds on being requested to do so by competent authority. The reason for this is that Act No. 1740, in so far as its provisions bearing on this point are concerned, does not so much contemplate the possibility of

malversation as the need of enforcing by a penal provision the performance of the duty incumbent upon every public employee who handles government funds, as well as every depository or administrator of another's property, to render an account of all he receives or has in his charge by reason of his employment. x x x" (Id. at 394-396).

[17] *Central Bank of the Philippines v. Court of Appeals*, 253 Phil. 39, 49 (1989).

[18] 32 Phil. 619 (1915).

[19] Act No. 1508.

[20] *Supra* note 18 at 622-623.

[21] 165 Phil. 847 (1976).

[22] Id. at 854-855.

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