

**SPOUSES ARGOVAN AND FLORIDA GADITANO, PETITIONERS, VS. SAN MIGUEL CORPORATION, RESPONDENT.***G.R. No. 188767. July 24, 2013*

Ponente: PEREZ, J.

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For review on certiorari are the Decision dated 11 March 2008 and Resolution dated 16 July 2009 of the Court of Appeals in CA-G.R. SP No. 88431 which reversed the Resolutions issued by the Secretary of Justice, suspending the preliminary investigation of I.S. No. 01-4205 on the ground of prejudicial question.

Petitioner Spouses Argovan Gaditano (Argovan) and Florida Gaditano (Florida), who were engaged in the business of buying and selling beer and softdrink products, purchased beer products from San Miguel Corporation (SMC) in the amount of P285,504.00 on 7 April 2000. Petitioners paid through a check signed by Florida and drawn against Argovan's AsiaTrust Bank Current Account. When said check was presented for payment on 13 April 2000, the check was dishonored for having been drawn against insufficient funds. Despite three (3) written demands,[1] petitioner failed to make good of the check. This prompted SMC to file a criminal case for violation of Batas Pambansa Blg. 22 and estafa against petitioners, docketed as I.S. No. 01-4205 with the Office of the Prosecutor in Quezon City on 14 March 2001.

In their Counter-Affidavit, petitioners maintained that their checking account was funded under an automatic transfer arrangement, whereby funds from their joint savings account with AsiaTrust Bank were automatically transferred to their checking account with said bank whenever a check they issued was presented for payment. Petitioners narrated that sometime in 1999, Fatima Padua (Fatima) borrowed P30,000.00 from Florida. On 28 February 2000, Fatima delivered Allied Bank Check No. 82813 dated 18 February 2000 payable to Florida in the amount of P378,000.00. Said check was crossed and issued by AOWA Electronics. Florida pointed out that the amount of the check was in excess of the loan but she was assured by Fatima that the check was in order and the proceeds would be used for the payroll of AOWA Electronics. Thus, Florida deposited said check to her joint AsiaTrust Savings Account which she maintained with her husband, Argovan. The check was cleared on 6 March 2000 and petitioners' joint savings account was subsequently credited with the sum of P378,000.00. Florida initially paid P83,000.00 to Fatima. She then withdrew P295,000.00 from her joint savings account and turned over the amount to Fatima. Fatima in turn paid her loan to Florida.

Petitioners claimed that on 7 April 2000, the date when they issued the check to SMC, their joint savings account had a balance of P330,353.17.[2] As of 13 April 2000, petitioners' balance even amounted to P412,513.17.[3]

On 13 April 2000, Gregorio Guevarra (Guevarra), the Bank Manager of AsiaTrust Bank, advised Florida that the Allied Bank Check No. 82813 for P378,000.00, the same check handed to her by Fatima, was not cleared due to a material alteration in the name of the payee. Guevarra explained further that the check was allegedly drawn payable to LG Collins Electronics, and not to her, contrary to Fatima's representation. AsiaTrust Bank then garnished the P378,000.00 from the joint savings account of petitioners without any court order. Consequently,

the check issued by petitioners to SMC was dishonored having been drawn against insufficient funds.

On 23 October 2000, petitioners filed an action for specific performance and damages against AsiaTrust Bank, Guevarra, SMC and Fatima, docketed as Civil Case No. Q-00-42386. Petitioners alleged that AsiaTrust Bank and Guevarra unlawfully garnished and debited their bank accounts; that their obligation to SMC had been extinguished by payment; and that Fatima issued a forged check.

Petitioners assert that the issues they have raised in the civil action constitute a bar to the prosecution of the criminal case for violation of Batas Pambansa Blg. 22 and estafa.

On 29 January 2002, the Office of the Prosecutor recommended that the criminal proceedings be suspended pending resolution of Civil Case No. Q-00-42386. SMC thereafter filed a motion for reconsideration before the Office of the Prosecutor but it was denied for lack of merit on 19 September 2002.

SMC filed with the Department of Justice (DOJ) a petition for review challenging the Resolutions of the Office of the Prosecutor. In a Resolution dated 3 June 2004, the DOJ dismissed the petition. SMC filed a motion for reconsideration, which the DOJ Secretary denied in a Resolution dated 15 December 2004.

Undaunted, SMC went up to the Court of Appeals by filing a petition for certiorari, docketed as CA-G.R. SP No. 88431. On 11 March 2008, the Court of Appeals rendered a Decision granting the petition as follows:

IN THE LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Resolutions of the Department of Justice dated June 3, 2004 and December 15, 2004 are SET ASIDE. In view thereof, let the suspension of the preliminary investigation of the case docketed as I.S. No. 01-4205 with the Office of the Prosecutor of Quezon City be LIFTED. Accordingly, the continuation of the preliminary investigation until completed is ordered and if probable cause exists, let the corresponding information against the respondents be filed.[4]

The Court of Appeals drew a distinction between the civil case which is an action for specific performance and damages involving petitioners' joint savings account, and the criminal case which is an action for estafa/violation of Batas Pambansa Blg. 22 involving Argovan's current account. The Court of Appeals belied the claim of petitioners about an automatic fund transfer arrangement from petitioners' joint savings account to Argovan's current account.

By petition for review, petitioners assail the ruling of the Court of Appeals on the following grounds:

- THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND EXCEEDED THE BOUNDS OF ITS JURISDICTION IN GIVING DUE COURSE TO RESPONDENT'S PETITION FOR CERTIORARI.
- THE COURT OF APPEALS ERRED IN REVERSING THE RESOLUTIONS DATED JUNE 3, 2004 AND DECEMBER 15, 2004 OF THE DOJ, THERE BEING NO GRAVE ABUSE OF DISCRETION.
- THE COURT OF APPEALS ERRED IN RULING THAT THERE WAS NO PREJUDICIAL QUESTION BELOW BECAUSE TWO DIFFERENT BANK ACCOUNTS ARE INVOLVED IN THE CIVIL AND CRIMINAL CASES.
- THE APPELLATE COURT ERRED IN REQUIRING PETITIONERS TO PRESENT EVIDENCE TO PROVE THE PREJUDICIAL QUESTION DURING THE PRELIMINARY INVESTIGATION.[5]

The issues raised by petitioners are divided into the procedural issue of whether certiorari is the correct mode of appeal to the Court of Appeals and the substantive issue of whether a prejudicial question exists to warrant the suspension of the criminal proceedings.

On the procedural issue, petitioners contend that SMC's resort to certiorari under Rule 65 was an improper

remedy because the DOJ's act of sustaining the investigating prosecutor's resolution to suspend the criminal proceedings due to a valid prejudicial question was an error in judgment and not of jurisdiction. Petitioners further assert that nevertheless, an error of judgment is not correctible by certiorari when SMC had a plain, speedy and adequate remedy, which was to file an appeal to the Office of the President.

The procedure taken up by petitioner was correct.

The Court of Appeals is clothed with jurisdiction to review the resolution issued by the Secretary of the DOJ through a petition for certiorari under Rule 65 of the Rules of Court albeit solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.[6]

In *Alcaraz v. Gonzalez*, [7] we stressed that the resolution of the Investigating Prosecutor is subject to appeal to the Justice Secretary who exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor. Thus, while the Court of Appeals may review the resolution of the Justice Secretary, it may do so only in a petition for certiorari under Rule 65 of the Rules of Court, solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.[8]

Also, in *Tan v. Matsuura*, [9] we held that while the findings of prosecutors are reviewable by the DOJ, this does not preclude courts from intervening and exercising our own powers of review with respect to the DOJ's findings. In the exceptional case in which grave abuse of discretion is committed, as when a clear sufficiency or insufficiency of evidence to support a finding of probable cause is ignored, the Court of Appeals may take cognizance of the case via a petition under Rule 65 of the Rules of Court.[10]

We agree with the Court of Appeals that the DOJ abused its discretion when it affirmed the prosecutor's suspension of the criminal investigation due to the existence of an alleged prejudicial question.

We expound.

Petitioners insist that the Court of Appeals erroneously ruled against the existence of a prejudicial question by separately treating their joint savings account and Argovan's current account, and concluding therefrom that the civil and criminal cases could proceed independently of each other. It is argued that the appellate court overlooked the fact that petitioners had an automatic transfer arrangement with AsiaTrust Bank, such that funds from the savings account were automatically transferred to their checking account whenever a check they issued was presented for payment. Petitioners maintain that since the checking account was funded by the monies deposited in the savings account, what mattered was the sufficiency of the funds in the savings account. Hence, petitioners' separate action against AsiaTrust Bank for unlawfully garnishing their savings account, which eventually resulted in the dishonor of their check to SMC, poses a prejudicial question in the instant criminal proceedings.

Moreover, petitioners argue that they were not required to fully and exhaustively present evidence to prove their claims. The presentation of their passbook, which confirmed numerous withdrawals made on the savings account and indicated as "FT" or "Fund Transfer," proved the existence of fund transfer from their savings account to the checking account.

A prejudicial question generally comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions.[11]

Section 7, Rule 111 of the 2000 Rules of Criminal Procedure states the two elements necessary for a civil case to be considered a prejudicial question, to wit:

Section 7. Elements of prejudicial question. – The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed. (Emphasis supplied).

If both civil and criminal cases have similar issues, or the issue in one is intimately related to the issues raised in the other, then a prejudicial question would likely exist, provided that the other element or characteristic is satisfied. It must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that the resolution of the issues raised in the civil action would be necessarily determinative of the guilt or innocence of the accused. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or if there is no necessity that the civil case be determined first before taking up the criminal case, the civil case does not involve a prejudicial question. Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.[12]

The issue in the criminal case is whether the petitioner is guilty of estafa and violation of Batas Pambansa Blg. 22, while in the civil case, it is whether AsiaTrust Bank had lawfully garnished the P378,000.00 from petitioners' savings account.

The subject of the civil case is the garnishment by AsiaTrust Bank of petitioner's savings account. Based on petitioners' account, they deposited the check given to them by Fatima in their savings account. The amount of said check was initially credited to petitioners' savings account but the Fatima check was later on dishonored because there was an alleged alteration in the name of the payee. As a result, the bank debited the amount of the check from petitioners' savings account. Now, petitioners seek to persuade us that had it not been for the unlawful garnishment, the funds in their savings account would have been sufficient to cover a check they issued in favor of SMC.

The material facts surrounding the civil case bear no relation to the criminal investigation being conducted by the prosecutor. The prejudicial question in the civil case involves the dishonor of another check. SMC is not privy to the nature of the alleged materially altered check leading to its dishonor and the eventual garnishment of petitioners' savings account. The source of the funds of petitioners' savings account is no longer SMC's concern. The matter is between petitioners and AsiaTrust Bank. On the other hand, the issue in the preliminary investigation is whether petitioners issued a bad check to SMC for the payment of beer products.

The gravamen of the offense punished by Batas Pambansa Blg. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment.[13] Batas Pambansa Blg. 22 punishes the mere act of issuing a worthless check. The law did not look either at the actual ownership of the check or of the account against which it was made, drawn, or issued, or at the intention of the drawee, maker or issuer.[14] The thrust of the law is to prohibit the making of worthless checks and putting them into circulation.[15]

Even if the trial court in the civil case declares AsiaTrust Bank liable for the unlawful garnishment of petitioners' savings account, petitioners cannot be automatically adjudged free from criminal liability for violation of Batas Pambansa Blg. 22, because the mere issuance of worthless checks with knowledge of the insufficiency of funds to support the checks is in itself the offense.[16]

Furthermore, three notices of dishonor were sent to petitioners, who then, should have immediately funded the check. When they did not, their liabilities under the bouncing checks law attached. Such liability cannot be

affected by the alleged prejudicial question because their failure to fund the check upon notice of dishonour is itself the offense.

In the crime of estafa under Article 315, paragraph 2(d) of the Revised Penal Code, deceit and damage are additional and essential elements of the offense. It is the fraud or deceit employed by the accused in issuing a worthless check that is penalized.[17] A prima facie presumption of deceit arises when a check is dishonored for lack or insufficiency of funds.[18] Records show that a notice of dishonor as well as demands for payment, were sent to petitioners. The presumption of deceit applies, and petitioners must overcome this presumption through substantial evidence. These issues may only be threshed out in a criminal investigation which must proceed independently of the civil case.

Based on the foregoing, we rule that the resolution of the issue raised in the civil action is not determinative of the guilt or innocence of the accused in the criminal investigation against them. There is no necessity that the civil case be determined first before taking up the criminal complaints.

WHEREFORE, the petition is DENIED. The assailed Decision of the Court of Appeals dated 11 March 2008 and its Resolution dated 16 July 2009, in CA-G.R. SP No. 88431, are hereby AFFIRMED.

**SO ORDERED.**

Carpio, (Chairperson), Brion, Del Castillo, and Perlas-Bernabe, JJ., concur.

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[1] Records, pp. 83-85.

[2] Id. at 73.

[3] Id. at 70 and 72.

[4] Rollo, p. 47.

[5] Id. at 20.

[6] Chong v. Dela Cruz, G.R. No. 184948, 21 July 2009, 593 SCRA 311, 314-315.

[7] 533 Phil. 796 (2006).

[8] Id. at 807.

[9] G.R. No. 179003, 9 January 2013 citing Tan v. Ballena, G.R. No. 168111, 4 July 2008, 557 SCRA 229, 252-253.

[10] Tan v. Matsuura, id.

[11] Jose v. Suarez, G.R. No. 176795, 30 June 2008, 556 SCRA 773, 781-782 citing Carlos v. Court of Appeals, 335 Phil. 490, 499 (1997) citing further Tuanda v. Sandiganbayan, G.R. No. 110544, 17 October 1995, 249 SCRA 342, 350-351.

[12] Reyes v. Rossi, G.R. No. 159823, 18 February 2013; Yap v. Cabales, G.R. No. 159186, 5 June 2009, 588 SCRA 426, 432-433; Reyes v. Pearlbank Securities, Inc., G.R. No. 171435, 30 July 2008, 560 SCRA 518, 539-540; People v. Consing, Jr., 443 Phil. 454, 460 (2003); Sabandal v. Hon. Tongco, 419 Phil. 13, 18 (2001).

[13] Medalla v. Laxa, G.R. No. 193362, 18 January 2012, 663 SCRA 461, 466.

[14] Resterio v. People, G. R. No. 177438, 24 September 2012, 681 SCRA 592, 597.

[15] Ty v. People, 482 Phil. 427, 445 (2004) citing Caram Resources Corp. v. Contreras, A.M. No. MTJ-93-849, 26 October 1994, 237 SCRA 724, 732-733; Cruz v. Court of Appeals, G.R. No. 108738, 17 June 1994, 233 SCRA 301, 308-309.

[16] Yap v. Cabales, *supra* note 12 at 433.

[17] People v. Reyes, 494 Phil. 620, 629 (2005).

[18] Dy v. People, G.R. No. 158312, 14 November 2008, 571 SCRA 59, 74.

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