

FERNANDO ONG, PETITIONER, VS. THE COURT OF APPEALS AND JUDGE FIDEL P. PURISIMA, RESPONDENTS.*G.R. No. 58476. September 02, 1983*

Ponente: RELOVA, J.

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Records show that on January 17, 1979, an information for estafa (Criminal Case No. 43423), was filed by the Assistant Fiscal before the then Court of First Instance of Manila alleging that herein petitioner "obtained and received from the Tramet Mercantile, Inc., x x x several units of machineries for a total value of P133,550.00, in trust, for the purpose of displaying and selling the machineries for cash, under the express obligation on the part of said accused (herein petitioner) of turning over to said Tramet Mercantile, Inc., the proceeds from the sale thereof, if sold, or of returning to the latter the said goods, if not sold, within ninety (90) days, or immediately upon demand x x x. (p. 7, Rollo) Petitioner allegedly failed to turn over the proceeds of the sale or to return the goods under the aforementioned covenant.

On April 2, 1979, a few months after the case of estafa was filed against petitioner, Tramet Mercantile, Inc., filed a complaint against him in Civil Case No. 122842 for sum of money with the then Court of First Instance of Manila. The parties entered into a compromise agreement to settle the claim in said civil case, on the basis of which the trial court rendered judgment, dated March 27, 1980, approving the same.

On June 1, 1980, herein petitioner moved for the dismissal of the criminal charge of estafa (Criminal Case No. 43423) against him on the ground of novation because of the compromise agreement entered into between him and the complainant.

On July 17, 1980, the trial court denied the motion to dismiss the estafa case for lack of merit. Thereafter, petitioner filed a petition for certiorari with the then Court of Appeals which dismissed the petition on the grounds, among others, that "novation does not extinguish the criminal liability if the crime of estafa had been completed. (2 REYES 670, 1975 ed., citing *People vs. Clemente*, CA, 65 O.G. 6892). In the instant case the crime of estafa had been consummated long before the compromise settlement was agreed upon. In fact, the criminal case had already been filed in the court. Therefore, the subsequent agreement did not affect the criminal culpability of the petitioner." (p. 16, Rollo) Hence, the filing of the instant petition for certiorari, mandamus, prohibition and for a writ of preliminary injunction, with prayer that "the Decision of the respondent Court of Appeals be reversed and set aside; and that respondent judge of First Instance be prohibited permanently from further proceeding in said criminal case and to command him to dismiss said case after due hearing of this petition x x x." (p. 11, Rollo)

It is the position of herein petitioner that the compromise agreement in the civil case novated the contract embodied in the trust receipts on which the information in Criminal Case No. 43423 was based, "inasmuch as there was a change of object or principal conditions, under Article 1291 of the Civil Code. There being a novation, it is respectfully submitted that even if the novation took place after the filing of the Information in the

criminal case, the transaction had nonetheless been converted from a criminal violation to civil obligation, which would therefore necessitate the consequent dismissal of the criminal case." (p. 8, Rollo).

We are not persuaded. The Court, speaking through Justice J. B. L. Reyes, in *People vs. Nery*, 10 SCRA 244, said that:

"The novation theory may perhaps apply prior to the filing of the criminal information in court by the state prosecutors because up to that time the original trust relation may be converted by the parties into an ordinary creditor-debtor situation, thereby placing the complainant in estoppel to insist on the original trust. But after the justice authorities have taken cognizance of the crime and instituted action in court, the offended party may no longer divest the prosecution of its power to exact the criminal liability, as distinguished from the civil. The crime being an offense against the state, only the latter can renounce it (*People vs. Gervacio*, 54 Off. Gaz. 2898; *People vs. Velasco*, 42 Phil. 76; *U.S. vs. Montañes*, 8 Phil. 620).

"It may be observed in this regard that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be to either prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction, whether or not it was such that its breach would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to (cf. *Abeto vs. People*, 90 Phil. 581; *U.S. vs. Villareal*, 27 Phil. 481)."

Thus, it is clear that the respondent Court of Appeals did not abuse its discretion amounting to lack of jurisdiction in denying petitioner's motion to dismiss the criminal case of estafa on the basis of a compromise agreement made after the filing of the information.

ACCORDINGLY, the petition is DISMISSED for lack of merit.

SO ORDERED.

Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

Teehankee, J., (Chairman), files a brief dissent.

Ong vs Court of Appeals : L-58476 : September 2, 1983 : J. Teehankee : First Division : Dissenting Opinion
Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

TEEHANKEE, J.:

I dissent from the majority opinion on the ground that the trust receipt transaction, more so when there has been a compromise agree-ment after the filing of the information for the discharge of petitioner accused's liability under the importation covered by the trust receipt, gives rise only to civil liability on the part of the said petitioner-accused. As previously stated by me in my dissent in *People vs. Cuevo*, G. R. No. L-27607, May 7, 1981 (which is herein reproduced by reference for brevity's sake), the old capitalist orientation of putting importers in jail for supposed estafa or swindling for non-payment of the price of the imported goods released to them under trust receipts (a purely commercial transaction), under the fiction of the trust receipt device, should no longer be permitted in this day and age.

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