

SPOUSES REYNALDO AND ESTELITA JAVIER, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT AND LEON S. GUTIERREZ, JR., RESPONDENTS.*G.R. No. 75379, March 31, 1989*

Ponente: CRUZ, J.

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It is not disputed that the private respondent issued to the petitioners a check that was subsequently dishonored and not made good despite the required notice of dishonor. For this he has been charged with estafa under B.P. Blg. 22 in the Regional Trial Court of Makati. His reason for issuing the check is not before us now. The question we are asked to resolve is whether or not he can raise that reason in another court, in a separate civil action for damages filed by him against the petitioners.

The information against Leon S. Gutierrez, Jr. was filed on April 1, 1985, and docketed as Criminal Case No. 15581 in the Regional Trial Court of Makati.[1] The civil case was not reserved. On September 5, 1985, Gutierrez filed a complaint for damages against the petitioners in the Regional Trial Court of Catarman, Northern Samar. This was docketed as Civil Case No. C-355. In this complaint, the defendants were charged with having inveigled Gutierrez into signing the very check subject of the criminal case in the Makati court.[2] The complaint in effect explains why he issued the check for which he is now facing prosecution.

On September 17, 1985, the petitioners filed a motion to dismiss Civil Case No. C-355 on the grounds of lack of a cause of action and *litis pendentia*. [3] The motion was denied on September 24, 1985. On the other hand, the private respondent moved to suspend proceedings in Criminal Case No. 15581 pending the resolution of what was claimed to be the prejudicial question raised in the civil case. The petitioners filed an opposition. The motion was also to be denied later.

Petitioners not having submitted their answer in the civil case, the private respondent moved to declare them in default and that he be allowed to present his evidence *ex parte*. [4] Pending resolution of this motion, the petitioners moved for reconsideration of the order denying their motion to dismiss. [5] This was denied on November 27, 1985. [6] On January 3, 1986, the petitioners filed a second motion for reconsideration based on the original two grounds and alleging the additional ground of improper venue. [7] The record does not show if this second motion for reconsideration was acted upon, but on January 17, 1986, the respondent judge declared the petitioners in default and set the civil case for trial. [8] Three days later, the motion to suspend proceedings in the Regional Trial Court of Makati was denied and the criminal case was set for hearing on the merits. [9]

The petitioners went to the Intermediate Appellate Court to question the orders of Judge Cesar R. Cinco of the Regional Trial Court of Catarman, Northern Samar, denying their motion to dismiss and their motion for reconsideration of the denial. Failing to obtain relief there, [10] they are now before us in this petition for review on certiorari under Rule 45 of the Rules of Court. Challenged are the decision of the respondent court dated May 29, 1986, and its resolution dated July 16, 1986, denying reconsideration. [11]

We shall reverse. The respondent court erred in sustaining the trial judge.

As the civil action was not reserved by the petitioners, it was deemed impliedly instituted with the criminal case in the Regional Trial Court of Makati. The applicable provision is Rule 111, Section 1, of the Rules of Court, reading in full as follows:

Section 1. Institution of criminal and civil actions. -- When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately. However, after the criminal action has been commenced, the civil action cannot be instituted until final judgment has been rendered in the criminal action.

When the offended party seeks to enforce civil liability against the accused by way of actual, moral, nominal, temperate or exemplary damages, the filing fees for such civil action as provided in these Rules shall first be paid to the Clerk of Court of the court where the criminal case is filed. In all other cases, the filing fees corresponding to the civil liability awarded by the court shall constitute a first lien on the judgment award and no payment by execution or otherwise may be made to the offended party without his first paying the amount of such filing fees to the Clerk of Court.

It was before the Makati court that the private respondent, as defendant in the criminal charge of violation of B.P. Blg. 22, could explain why he had issued the bouncing check. As the civil action based on the act was also deemed filed there, it was also before that same court that he could offer evidence to refute the claim for damages made by the petitioners. This he should have done in the form of a counterclaim for damages for his alleged deception by the petitioners. In fact, the counterclaim was compulsory and should have been filed by the private respondent upon the implied institution of the civil action for damages in the criminal action.

A counterclaim is compulsory and is considered barred if not set up where the following circumstances are present: (1) that it arises out of, or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim; (2) that it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, and (3) that the court has jurisdiction to entertain the claim.[12]

All these circumstances are present in the case before the Regional Trial Court of Makati.

This being so, it was improper for the private respondent to file his civil complaint in the Regional Trial Court of Northern Samar alleging the very defense he should be making in the Regional Trial Court of Makati. It is, of course, not possible for him now to invoke a different defense there because he would be contradicting his own verified complaint in the Regional Trial Court in Northern Samar. In effect, therefore, he is arguing that both courts have jurisdiction to consider the same claim of deception he is making in connection with the same transaction and involving the same parties.

The Court suspects that not having set it up against the civil claim for damages in the Regional Trial Court of Makati, the private respondent is now seeking to make amends by filing a separate civil action based on the same matter in the Regional Trial Court of Northern Samar. That is bad enough. But what could be worse is that he may have filed the civil complaint in the second court for the more censurable purpose of deliberately delaying the trial of the criminal case, which has been deferred long enough as it is. That should not be permitted.

The principal reason of the respondent court in sustaining the trial judge is that Civil Case No. C-355 is not barred because it was filed not by the petitioners but by the private respondent. That reasoning is hardly worthy of the Court of Appeals. If such logic were accepted, every accused could file his own civil complaint against the offended party based on the same transaction involved in the prosecution, but in another court. The effect would not only be multiplicity of suits but delay and frustration of the criminal case.

What the Court finds especially questionable here is the choice of the venue for the civil action. Although both parties appear to be residents and running their affairs in Metro Manila, the private respondent filed his complaint in Catarman, Northern Samar in an obvious attempt to inconvenience the petitioners. The lower courts should have taken this matter into consideration if only for reasons of equity. Legally, of course, the lack of proper venue was deemed waived by the petitioners when they failed to invoke it in their original motion to dismiss.[13] Even so, the motivation of the private respondent should have been taken into account by both the trial judge and the respondent court in arriving at their decisions.

As Chief Justice Concepcion said in *Aytona v. Castillo*:^[14]

Good faith, morality and propriety form the basic foundation of claims to equitable reliefs x x x. Needless to say, there are instances wherein not only strict, legality, but also fairness, justice and righteousness should be taken into account.

Courts should not allow themselves to be used as instruments for harassment and the circumvention of the law through cunning manipulations of the procedural rules by counsel who may be too clever for their own good. Rules of procedure are intended to expedite rather than complicate, and much less to obstruct, the administration of justice. There is no excuse why the bench and the bar should not know this principle by now.

WHEREFORE, the decision of the respondent court dated May 29, 1986, and its resolution dated July 16, 1986, are SET ASIDE and Civil Case No. C-355 in the Regional Trial Court of Catarman, Northern Samar is DISMISSED, with costs against the private respondent. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 21.

[2] Original Records, pp. 96-97.

[3] *Ibid.*, pp. 9-12.

[4] *Id.*, pp. 18-20.

[5] *Id.*, pp. 14-16.

[6] *Id.*, p. 17.

[7] *Id.*, pp. 21-25.

[8] *Id.*, p. 37.

[9] *Id.*, p. 33.

[10] *Id.*, pp. 59-64.

[11] Rollo, pp. 2-8.

[12] Sec. 4, Rule 9, Revised Rules of Court.

[13] Sec. 4, Rule 4, Revised Rules of Court.

[14] 4 SCRA 1.

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