ALFREDO O. ESTRERA, (IN HIS OFFICIAL CAPACITY AS THE REGIONAL DIRECTOR, PHILIPPINE POSTAL CORPORATION, POSTAL REGION 10), PETITIONER, VS. HON. LEONARDO DEMECILLO, AND VENUS KAVO...

G.R. NOS. 154235-36. August 16, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the petition for certiorari seeking to set aside the Resolution[1] of the Court of Appeals (CA) dated January 10, 2002 dismissing herein petitioner's Petition for Certiorari docketed as CA-G.R. SP No. 67944[2] and the Resolution[3] of the CA dated June 17, 2002 which denied petitioner's Motion for Reconsideration in the re-filed Petition for Certiorari docketed as CA-G.R. SP No. 69407[4], and found petitioner and his counsel guilty of forum shopping, sentencing each of them to pay a fine of Fifteen Thousand Pesos, failing which, each of them is to suffer imprisonment of three (3) months.

A thorough scrutiny of the records reveals that the narration of the antecedent facts set forth in the Order[5] of the Regional Trial Court of Cagayan de Oro City (RTC) dated October 24, 2001 is undisputed; hence, the pertinent portion of said Order is reproduced hereunder:

> THE ANTECEDENT: Petitioner [herein private respondent Kavoori] is employed with the Philippine Postal Corporation as POSTMAN II and assigned at the Registry Delivery Section of the Cagayan de Oro City Post Office.
>
> Respondent [herein petitioner] Alfredo Estrera is the Regional Director, Region 10 of the Philippine Postal Corporation.
>
> Sometime in the second week of March 2001 BOMBO RADYO, DXIF, Cagayan de Oro City aired about the alleged pilferage and/or loss of PVAO checks and foreign mail matters and other alleged anomalies.
>
> On March 21, 2001 Regional Office Order No. 01-06 was issued creating an investigation team to look into the said allegations. x x x
>
> After investigation, the investigating team submitted the following recommendation.
>
> "RECOMMENDATIONS:
>
> IN VIEW OF THE FOREGOING FACTS and CIRCUMSTANCES, it is strongly recommended that:
>
> x x x x
>
> x x x
>
> POSTMAN VENUS KAVOORI be ADMINISTRATIVELY charged for DISHONESTY, GROSS VIOLATION OF REGULATIONS and/or NEGLIGENCE and/or LAXITY IN THE PERFORMANCE OF

OFFICIAL FUNCTIONS

POSTMAN VENUS KAVOORI be criminally charged for DISHONESTY (infidelity in the custody of official documents) and VIOLATIONS of the ANTI-GRAFT LAW

POSTMAN VENUS KAVOORI be reassigned/transferred/detailed immediately in a work area not directly handling mails, preferably at the APDM Office or Administrative and Finance Division, Philippine Postal Corporation."

On May 5, 2001, Cayetano T. Pacana IV, Director II and Concurrent Chief of the legal staff submitted his evaluation of the report of the investigating team. x x x

On same date also, respondent [herein petitioner] filed a formal charge against petitioner [herein private respondent].

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On June 25, 2001, respondent [herein petitioner] issued Regional Office [Order] No. 01-12. In this Order, petitioner [herein private respondent] was reassigned from the Cagayan de Oro City Office to the Motor Transport Section, Mail Distribution Center.

Relative to the formal charge, petitioner [herein private respondent] filed a motion to quash based on the following grounds:

(a) that the complaint was not under oath;
(b) the complaint was only signed by Alfredo Estrera and not the Postmaster General;
(c) that the complaint should have been signed by the fact-finding body;
(d) that there was no preliminary investigation conducted before the filing of the charge;
(e) that the alleged affidavit of complaining witnesses were executed after respondent was investigated.

On June 14, 2001, respondent [herein petitioner] issued an Order denying the motion to quash – citing as ground, Sec. 16, par. 3, Rule II of the Revised Rules on Administrative Cases in the Civil Service.

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On June 25, 2001 petitioner [herein private respondent] filed a motion for reconsideration of the order denying his motion to quash.

On July 2, 2001, respondent [herein petitioner] issued an order denying petitioner's motion for reconsideration and required petitioner [herein respondent] to submit her answer within five (5) days from receipt of said order.

Feeling no more other recourse, petitioner [herein private respondent] came to this court on prohibition, injunction with prayer for preliminary injunction and temporary restraining order and damages.[6] (Words in brackets, supplied)

The RTC ruled in favor of herein private respondent, stating thus:

x x x The complaint was not subscribed and sworn to by complainant and respondent Alfredo Estrera. It should have been sworn as he is not a Postmaster General. Sec. 1 (b) Rule II of the Disciplinary Rules and Procedures of the Philippine Postal Corporation provides:

"Except when initiated by the Postmaster General, no complaint against the subordinate official or employees shall be given due course unless the same is in writing and subscribed and sworn to by the complainant."

The complaint not being sworn, had no effect. The proceedings initially had are hereby invalidated including the creation of the fact-finding committee and the designation of the members thereof and their report as well

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> as the evaluation report of the Chief Legal Staff relative to the findings of the fact finding committee and the designation of Lilia F. Eduarte as hearing officer and Rafael S. Suangco and Guiling Manalocan as prosecuting officers. Consequently, the injunction prayed for is hereby granted. Mrs. Lilia Eduarte, Rafael Suangco and Guiling Manalocan are hereby enjoined from proceeding with the hearing.
>
> Respondent Alfredo Estrera may however, refile again the formal charge. In so doing he should observe the Disciplinary Rules and Procedures of the Philippine Postal Corporation and Circular No. 97-29.
>
> SO ORDERED.[7]

Petitioner no longer filed a motion for reconsideration of the foregoing RTC Order and proceeded to file a petition for certiorari with the CA which was docketed as CA-G.R. SP No. 67944.

On January 10, 2002, the CA issued the first assailed Resolution, stating thus:

> However, after going over this petition, it was found out that petitioners failed to attach or incorporate the authority of Alfredo O. Estrera who signed the Verification and Certification of Non-Forum Shopping to sign for and in behalf of petitioner Lilia F. Eduarte in violation of Section 3, paragraph 3, Rule 46 of the 1997 Rules of Civil Procedure, hence, dismissible.
>
> WHEREFORE, foregoing premises considered, this petition is hereby ordered DISMISSED.
>
> SO ORDERED.[8]

Petitioner did not to file a motion for reconsideration of the foregoing Resolution and instead filed another petition for certiorari with the CA on February 8, 2002, which was docketed as CA-G.R. SP No. 69407. On March 13, 2002, the CA issued a Resolution, to wit:

RESOLUTION

> Upon examination of the present Petition for Certiorari, with prayer for Preliminary Injunction and Temporary Restraining Order, and it appearing that:
>
> a) The petition assails the Orders dated August 21, 2001 and October 24, 2001, granting a temporary restraining order and writ of preliminary injunction, respectively, issued by respondent Judge Leonardo Demecillo of the Regional Trial Court of Cagayan de Oro City, Branch 24, in Civil Case No. 2001-190, entitled: "Venus Kavoori, Petitioner versus Alfredo Estrera, et al., Respondents," which were previously the subjects of another petition for certiorari with prayer for preliminary injunction and temporary restraining order earlier filed with this Court by Alfredo O. Estrera and Lilia F. Eduarte, and docketed as CA-G.R. SP No. 67944, which was dismissed by the former Fifteenth Division on January 10, 2002. Except for the exclusion of Lilia F. Eduarte, the present petition, which is filed solely by Alfredo O. Estrera, appears to be exactly the same petition as the one docketed as CA-G.R. No. 67944 which, to repeat, has already been dismissed, without any motion for reconsideration having been filed, so that it cannot be revived as an entirely new petition;
>
> b) Treated as a new petition, the instant petition appears to have been filed out of time, considering that the petitioner received a copy of the assailed Order dated October 24, 2001 on November 7, 2001, so that the last day of the 60-day period within which to file the same expired on January 6, 2002, whereas the instant petition was filed only on February 8, 2002 and, hence, already late by thirty-three (33) days;
>
> c) Moreover, the petitioner did not first file with the respondent court a motion for the reconsideration of the assailed October 24, 2001, which is a condition precedent to the filing of a petition for certiorari; and
>
> d) Lastly, the certificate of non-forum shopping incorporated in the petition at bar is defective in that it does not disclose the earlier filing of a similar petition by herein petitioner Alfredo O. Estrera and Lilia F. Eduarte

> which was, however, dismissed, thereby violating Section 3, Rule 46 of the 1997 Rules of Civil Procedure, in relation to Section 5, Rule 7 of the same Rules.
>
> WHEREFORE, premises considered, the petition is DISMISSED OUTRIGHT, and the petitioner Alfredo O. Estrera and counsel Atty. Rene Artemio T. Pacana are both directed to show cause cause, within fifteen (15) days from notice hereof, why they should not be dealt with for contempt of court for engaging in forum shopping.
>
> SO ORDERED.[9] (Emphasis supplied)

Petitioner then filed his Manifestation/Explanation[10] and his Motion for Reconsideration[11] both dated March 26, 2002. He explained that his failure to disclose the previous petition for certiorari was through sheer inadvertence or oversight and the belief that since the previous petition had already been dismissed, there is no longer any similar case pending with the court.

On June 17, 2002, the CA issued the second assailed Resolution, the dispositive portion of which states thus:

> WHEREFORE, premises considered, the motion for reconsideration is DENIED; and the petitioner Alfredo O. Estrera and counsel, Atty. Rene Artemio T. Pacana, are found guilty of forum shopping and EACH is sentenced to pay a fine of Fifteen Thousand (P15,000.00) Pesos, failing in which, EACH is to suffer imprisonment of three (3) months.
>
> SO ORDERED.[12]

Hence, this petition for certiorari where petitioner alleges that:

The Honorable Court of Appeals:

> A.) FAILED SERIOUSLY TO APPRECIATE THE FACT THAT THE CERTIFICATE OF NON-FORUM SHOPPING INCORPORATED TO THE PETITION DOCKETED AS CA-G.R. SP NO. 67944 WAS DEEMED IN SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF SECTION 3, PARAGRAPH 3, RULE 46 OF THE 1997 RULES OF CIVIL PROCEDURE. HENCE, GRAVELY ERRED IN DISMISSING THE PETITION.
>
> B.) SERIOUSLY FAILED TO CONSIDER THE FACT THAT DISMISSAL OF THE PETITION UNDER SECTION 3, PARAGRAPH 3, RULE 46 OF THE 1997 RULES OF CIVIL PROCEDURE IN RELATION TO SECTION 5, RULE 7 OF THE SAME RULES SHALL BE UNDERSTOOD TO BE WITHOUT PREJUDICE.
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> C.) SERIOUSLY ERRED IN FINDING THAT THE PETITION DOCKETED AS CA-G.R. SP NO. 69407 WAS A REVIVAL OF THE PETITION DOCKETED AS CA-G.R. SP NO. 67944 WHICH IT EARLIER DISMISSED;
>
> D.) SERIOUSLY ERRED IN TREATING THE PETITION DOCKETED AS CA-G.R. SP NO. 69407 AS A NEW PETITION AND IN FINDING THAT THE SAME WAS FILED OUT OF TIME;
>
> E.) SERIOUSLY ERRED IN FINDING HEREIN PETITIONER AND UNDERSIGNED COUNSEL GUILTY OF FORUM SHOPPING AND IMPOSING THE PENALTY OF FINE IN THE AMOUNT OF FIFTEEN THOUSAND PESOS (P15,000.00) EACH OR TO SUFFER IMPRISONMENT OF THREE (3) MONTHS IN CASE OF FAILURE THEREOF, WITHOUT DUE PROCESS OF LAW;
>
> F.) SERIOUSLY FAILED TO APPRECIATE AND CONSIDER THE PRESENCE OF EXCEPTIONAL CIRCUMSTANCES THAT JUSTIFIED HEREIN PETITIONER IN FILING THE PETITION WITHOUT FILING A MOTION FOR RECONSIDERATION; AND

G.) FAILING TO DECIDE THE PETITION ON ITS MERITS.[13]

The petition lacks merit.

Petitioner must be reminded of the function of the remedy of certiorari. In People v. Court of Appeals,[14] the Court expounded thus:

> As observed in Land Bank of the Philippines v. Court of Appeals, et al. "the special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. The raison d'etre for the rule is when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a scenario, the administration of justice would not survive. Hence, where the issue or question involved affects the wisdom or legal soundness of the decision – not the jurisdiction of the court to render said decision – the same is beyond the province of a special civil action for certiorari. x x x[15] (Emphasis supplied)

As can be gleaned from the afore-quoted assignment of errors in the petition, the issues alleged are only possible errors of judgment, questioning the correctness of the CA's rulings. Hence, since the issues involved do not affect the jurisdiction of the CA, the writ of certiorari cannot be availed of by petitioner.

Nevertheless, a close scrutiny of the records reveals that the CA committed no errors.

Indeed, the CA acted properly in dismissing CA-G.R. No. 67944 as the Section 3, Rule 46 of 1997 Rules of Civil Procedure provides that the failure of petitioner to comply with any of the requirements, such as the submission of a sworn certification of non-forum shopping by all the petitioners, is sufficient ground for the dismissal of the petition. Petitioner no longer filed a motion for reconsideration of the Resolution dated January 10, 2002, hence, the same attained finality.

Although it is true that the dismissal of the petition for certiorari in CA-G.R. SP No. 67944 was without prejudice and petitioner could have re-filed such petition, such re-filing should still be done within the prescribed period under Section 4, Rule 65 of the 1997 Rules of Civil Procedure, or not later than sixty days from notice of the assailed Order of the RTC. The CA was correct in ruling that since petitioner received said RTC Order dated October 24, 2001 on November 7, 2001, the last day for filing a petition for certiorari was on January 6, 2002. Thus, the filing of the petition for certiorari docketed as CA-G.R. SP No. 69407 on February 8, 2002 was undoubtedly beyond the 60-day period provided for under Rule 65 of the 1997 Rules of Civil Procedure. On this point alone, CA-G.R. SP No. 69407 was clearly dismissible and should not be given due course.

It is also too late for petitioner to question the CA Resolution dated January 10, 2002 through the present petition for certiorari. As discussed above, a petition for certiorari should be filed within 60 days from notice of the questioned resolution. Since petitioner received said CA Resolution on January 22, 2002,[16] the last day for filing a petition for certiorari to question the same was on March 23, 2002. The present petition was filed only on July 31, 2002, thus, filed beyond the reglementary period for filing a petition for certiorari. This Court, therefore, can no longer entertain any arguments against the propriety of the dismissal of CA-G.R. No. 67944.

Lastly, the issue of the propriety of finding petitioner guilty of contempt for forum shopping is also not within the province of a special action for certiorari. As stated in People v. Court of Appeals,[17] issues merely questioning the wisdom or legal soundness of the decision, not the jurisdiction of the court rendering it, are not proper for a petition for certiorari.

Petitioner's remedy to question the CA's finding of contempt should have been to appeal via a petition for review on certiorari. However, pursuant to Section 2, Rule 45 of the 1997 Rules of Civil Procedure, such petition should

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be filed 15 days after receipt of the CA Resolution dated June 17, 2002. Petitioner having received said Resolution on June 24, 2002, the last day for filing a petition for review on certiorari was on July 9, 2002, but no such petition was filed.

The axiomatic rule, as stated in Madrigal Transport, Inc. v. Lapanday Holdings Corporation,[18] is that:

> x x x Where appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion. Basic is the rule that certiorari is not a substitute for the lapsed remedy of appeal.[19] (Emphasis supplied)

Thus, since appeal was available to petitioner, the present petition for certiorari cannot be granted.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Issued by the Fifteenth Division of the Court of Appeals with Associate Justice Mercedes Gozo-Dadole as ponente and concurred in by Associate Justices Salvador J. Valdez, Jr. and Sergio L. Pestaño.

[2] Entitled, "Alfredo O. Estrera, Lilia F. Eduarte versus Hon. Leonardo Demecillo and Venus Kavoori".

[3] Issued by the CA Former Fourteenth Division with Associate Justice Salvador J. Valdez, Jr. as ponente with concurrence of Associate Justices Mercedes Gozo-Dadole and Juan Q. Enriquez, Jr.

[4] Entitled, "Alfredo O. Estrera versus Hon. Leonardo Demecillo and Venus Kavoori".

[5] Rollo, pp. 256 -263.

[6] Rollo, pp. 257- 259.

[7] Rollo, p. 263.

[8] Rollo, pp. 61-62.

[9] CA Rollo for CA-G.R. SP No. 69407, pp. 469-470.

[10] Id. at 471-474.

[11] Id. at 476-483.

[12] Id. at 496.

[13] Rollo, pp. 29-30.

[14] G.R. No. 142051, February 24, 2004, 423 SCRA 605.

[15] Id. at 613.

[16] See Registry Return Receipt, CA rollo for CA-G.R. SP No. 67944, at the back of p. 477.

[17] Supra. See note 11.

[18] G.R. No. 156067, August 11, 2004, 436 SCRA 123.

[19] Id. at 127.

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