

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. FRANCISCO H. ESCANO, JR., AS PRESIDING JUDGE OF BRANCH II, MUNICIPAL TRIAL COURT OF MANDAUE CITY, RESPONDENT.

G.R. Nos. 78657-60. February 07, 1991

Ponente: PARAS, J.

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PARAS, J.:

On January 2, 1986, the City Fiscal of Mandaue City filed four separate criminal informations for Estafa against Carlos Caliangang Romulo Pepito and Jun Lozano, with the Municipal Trial Court of Mandaue City. These cases were consolidated for a joint trial and were subsequently assigned to the respondent judge.

Upon finding that the offended parties seek to enforce civil liabilities against the accused by way of actual damages, the respondent judge ordered the clerk of court of the said court to require the offended parties to pay the corresponding filing fees, pursuant to paragraph 2, Section 1 of the 1985 Rules on Criminal Procedure, which provided:

"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 the Rules of Court and approved by the Court shall first be paid to the Clerk of Court where the criminal action is filed....."

On April 8, 1987, the respondent judge directed said clerk of court to explain in writing why his previous order could not be complied with.

Thus, the prosecuting fiscal filed a motion for reconsideration of the aforesaid orders, alleging:

- (1) that said order render ineffective paragraph 1, Section 1 of the 1985 Rules on Criminal Procedure which provides for the automatic institution of the civil action with the criminal action in a single proceeding, unless a waiver or reservation has been made to file a separate civil action or a separate civil action had in fact been filed prior to the criminal action;
- (2) that said orders violate substantive law more particularly Article 104 of the Revised Penal Code, which grants to the offended parties the right to recover damages directly arising out of the commission of the crime, such as restitution, reparation of the damage caused and indemnification for consequential damages; and
- (3) that if at all the offended parties are liable to pay filing fees, the same should be charged after the offended parties shall have recovered their claims, otherwise, may end up paying for nothing as when the accused gets acquitted of or exonerated from the crime charged.

On April 18, 1987 the respondent judge denied the motion for reconsideration, believing that his questioned orders simply directed the offended parties to comply with a procedural requirement of the law.

Hence, the instant petition.

We deem it unnecessary to pass upon the issues raised in view of the subsequent amendment of Section 1 Rule 111 of the 1985 Rules on Criminal Procedure by the Supreme Court in its Resolution dated July 7, 1988. Said provision now reads -

“SECTION 1. Institution of criminal and civil actions. - When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

“Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

"A waiver of any of the civil actions extinguishes the others. The institution of, or the reservation of the right to file, any of said civil actions separately waives the others.

"The reservation of the right to institute the separate civil actions shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

"In no case may the offended party recover damages twice for the same act or omission of the accused.

"When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate or exemplary damages, the filing fees for such civil action as provided in these Rules shall constitute a first lien on the judgment except in an award for actual damages.

"In cases wherein the amount of damages, other than actual, is alleged in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court for trial. (1a)"

Thus, where the civil action is instituted together with the criminal action, the actual damages claimed by the aggrieved parties, as in this case, are not included in the computation of the filing fees. Filing fees are to be paid only if other items of damages such as moral, nominal, temperate or exemplary damages are alleged in the complaint or information, or if they are not so alleged, shall constitute a first lien on the judgment.

As the amendment partakes of a curative statute, the same applies retroactively and affects pending litigations as in this particular case.

WHEREFORE, the petition is hereby GRANTED in the sense that the payment of filing fees is NOT REQUIRED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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