

THIRD DIVISION

[G.R. No. 174238, July 07, 2009]

**ANITA CHENG, PETITIONER, VS. SPOUSES WILLIAM SY AND
TESSIE SY, RESPONDENTS.**

DECISION

NACHURA, J.:

This is a petition^[1] for review on *certiorari* under Rule 45 of the Rules of Court of the Order dated January 2, 2006^[2] of the Regional Trial Court (RTC), Branch 18, Manila in Civil Case No. 05-112452 entitled *Anita Cheng v. Spouses William Sy and Tessie Sy*.

The antecedents are as follows--

Petitioner Anita Cheng filed two (2) estafa cases before the RTC, Branch 7, Manila against respondent spouses William and Tessie Sy (Criminal Case No. 98-969952 against Tessie Sy and Criminal Case No. 98-969953 against William Sy) for issuing to her Philippine Bank of Commerce (PBC) Check Nos. 171762 and 71860 for P300,000.00 each, in payment of their loan, both of which were dishonored upon presentment for having been drawn against a closed account.

Meanwhile, based on the same facts, petitioner, on January 20, 1999, filed against respondents two (2) cases for violation of *Batas Pambansa Bilang* (BP Blg.) 22 before the Metropolitan Trial Court (MeTC), Branch 25, Manila (Criminal Case Nos. 341458-59).

On March 16, 2004, the RTC, Branch 7, Manila dismissed the estafa cases for failure of the prosecution to prove the elements of the crime. The Order dismissing Criminal Case No. 98-969952 contained no declaration as to the civil liability of Tessie Sy.^[3] On the other hand, the Order in Criminal Case No. 98-969953 contained a statement, "Hence, if there is any liability of the accused, the same is purely `civil,' not criminal in nature."^[4]

Later, the MeTC, Branch 25, Manila, dismissed, on demurrer, the BP Blg. 22 cases in its Order^[5] dated February 7, 2005 on account of the failure of petitioner to identify the accused respondents in open court. The Order also did not make any pronouncement as to the civil liability of accused respondents.

On April 26, 2005, petitioner lodged against respondents before the RTC, Branch 18, Manila, a complaint^[6] for collection of a sum of money with damages (Civil Case No. 05-112452) based on the same loaned amount of P600,000.00 covered by the two PBC checks previously subject of the estafa and BP Blg. 22 cases.

In the assailed Order^[7] dated January 2, 2006, the RTC, Branch 18, Manila, dismissed the complaint for lack of jurisdiction, ratiocinating that the civil action to collect the amount of P600,000.00 with damages was already impliedly instituted in the BP Blg. 22 cases in light of Section 1, paragraph (b) of Rule 111 of the Revised Rules of Court.

Petitioner filed a motion for reconsideration^[8] which the court denied in its Order^[9] dated June 5, 2006. Hence, this petition, raising the sole legal issue -

Whether or not Section 1 of Rule 111 of the 2000 Rules of Criminal Procedure and Supreme Court Circular No. 57-97 on the Rules and Guidelines in the filing and prosecution of criminal cases under BP Blg. 22 are applicable to the present case where the nature of the order dismissing the cases for bouncing checks against the respondents was [based] on the failure of the prosecution to identify both the accused (respondents herein)?^[10]

Essentially, petitioner argues that since the BP Blg. 22 cases were filed on January 20, 1999, the 2000 Revised Rules on Criminal Procedure promulgated on December 1, 2000 should not apply, as it must be given only prospective application. She further contends that that her case falls within the following exceptions to the rule that the civil action correspondent to the criminal action is deemed instituted with the latter--

(1) additional evidence as to the identities of the accused is necessary for the resolution of the civil aspect of the case;

(2) a separate complaint would be just as efficacious as or even more expedient than a timely remand to the trial court where the criminal action was decided for further hearings on the civil aspect of the case;

(3) the trial court failed to make any pronouncement as to the civil liability of the accused amounting to a reservation of the right to have the civil liability litigated in a separate action;

(4) the trial court did not declare that the facts from which the civil liability might arise did not exist;

(5) the civil complaint is based on an obligation *ex-contractu* and not *ex-delicto* pursuant to Article 31^[11] of the Civil Code; and

(6) the claim for civil liability for damages may be had under Article 29^[12] of the Civil Code.

Petitioner also points out that she was not assisted by any private prosecutor in the BP Blg. 22 proceedings.

The rule is that upon the filing of the estafa and BP Blg. 22 cases against respondents, where the petitioner has not made any waiver, express reservation to litigate separately, or has not instituted the corresponding civil action to collect the amount of P600,000.00 and damages prior to the criminal action, the civil action is deemed instituted with the criminal cases.^[13]

This rule applies especially with the advent of the 2000 Revised Rules on Criminal Procedure. Thus, during the pendency of both the estafa and the BP Blg. 22 cases, the action to recover the civil liability was impliedly instituted and remained pending before the respective trial courts. This is consonant with our ruling in *Rodriguez v. Ponferrada*^[14] that the possible single civil liability arising from the act of issuing a bouncing check can be the subject of both civil actions deemed instituted with the estafa case and the prosecution for violation of BP Blg. 22, simultaneously available to the complaining party, without traversing the prohibition against forum shopping.^[15] Prior to the judgment in either the estafa case or the BP Blg. 22 case, petitioner, as the complainant, cannot be deemed to have elected either of the civil actions both impliedly instituted in the said criminal proceedings to the exclusion of the other.^[16]

The dismissal of the estafa cases for failure of the prosecution to prove the elements of the crime beyond reasonable doubt--where in Criminal Case No. 98-969952 there was no pronouncement as regards the civil liability of the accused and in Criminal Case No. 98-969953 where the trial court declared that the liability of the accused was only civil in nature--produced the legal effect of a reservation by the petitioner of her right to litigate separately the civil action impliedly instituted with the estafa cases, following Article 29 of the Civil Code.^[17]

However, although this civil action could have been litigated separately on account of the dismissal of the estafa cases on reasonable doubt, the petitioner was deemed to have also elected that such civil action be prosecuted together with the BP Blg. 22 cases in light of the *Rodriguez v. Ponferrada* ruling.

With the dismissal of the BP Blg. 22 cases for failure to establish the identity of the accused, the question that arises is whether such dismissal would have the same legal effect as the dismissed estafa cases. Put differently, may petitioner's action to recover respondents' civil liability be also allowed to prosper separately after the BP Blg. 22 cases were dismissed?

Section 1 (b), Rule 111 of the 2000 Revised Rules on Criminal Procedure states -

Section 1. *Institution of criminal and civil actions.* -

x x x

(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay the filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages [is] subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a

first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of this Rule governing consolidation of the civil and criminal actions.

Petitioner is in error when she insists that the 2000 Rules on Criminal Procedure should not apply because she filed her BP Blg. 22 complaints in 1999. It is now settled that rules of procedure apply even to cases already pending at the time of their promulgation. The fact that procedural statutes may somehow affect the litigants' rights does not preclude their retroactive application to pending actions. It is axiomatic that the retroactive application of procedural laws does not violate any right of a person who may feel that he is adversely affected, nor is it constitutionally objectionable. The reason for this is that, as a general rule, no vested right may attach to, nor arise from, procedural laws.^[18]

Indeed, under the present revised Rules, the criminal action for violation of BP Blg. 22 includes the corresponding civil action to recover the amount of the checks. It should be stressed, this policy is intended to discourage the separate filing of the civil action. In fact, the Rules even prohibits the reservation of a separate civil action, *i.e.*, one can no longer file a separate civil case after the criminal complaint is filed in court. The only instance when separate proceedings are allowed is when the civil action is filed ahead of the criminal case. Even then, the Rules encourages the consolidation of the civil and criminal cases. Thus, where petitioner's rights may be fully adjudicated in the proceedings before the court trying the BP Blg. 22 cases, resort to a separate action to recover civil liability is clearly unwarranted on account of *res judicata*, for failure of petitioner to appeal the civil aspect of the cases. In view of this special rule governing actions for violation of BP Blg. 22, Article 31 of the Civil Code is not applicable.^[19]

Be it remembered that rules governing procedure before the courts, while not cast in stone, are for the speedy, efficient, and orderly dispensation of justice and should therefore be adhered to in order to attain this objective.^[20]

However, in applying the procedure discussed above, it appears that petitioner would be left without a remedy to recover from respondents the P600,000.00 allegedly loaned from her. This could prejudice even the petitioner's Notice of Claim involving the same amount filed in Special Proceedings No. 98-88390 (*Petition for Voluntary Insolvency by Kolin Enterprises, William Sy and Tessie Sy*), which case was reportedly archived for failure to prosecute the petition for an unreasonable length of time.^[21] Expectedly, respondents would raise the same defense that petitioner had already elected to litigate the civil action to recover the amount of the checks along with the BP Blg. 22 cases.

It is in this light that we find petitioner's contention that she was not assisted by a private prosecutor during the BP Blg. 22 proceedings critical. Petitioner indirectly protests that the public prosecutor failed to protect and prosecute her cause when he failed to have her establish the identities of the accused during the trial and when he failed to appeal the civil action deemed impliedly instituted with the BP Blg.