

FIRST DIVISION

[G.R. NO. 148544, July 12, 2006]

**FELIX M. CRUZ, JR., PETITIONER, VS. COURT OF APPEALS,
NATIONAL LABOR RELATIONS COMMISSION AND CITYTRUST
BANKING CORPORATION,**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking to annul the April 27, 2001 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 52373 which affirmed the January 27, 1998 Decision of the National Labor Relations Commission (NLRC) and its Resolution, dated May 14, 1998 in NLRC NCR CA 011087-96 (NLRC NCR 00-10-06448-93-A).

The factual and procedural antecedents of the case, as summarized by the CA, are as follows:

Cruz [herein petitioner Felix M. Cruz, Jr.] was an employee of private respondent Citytrust Banking Corporation (or Citytrust) from October 8, 1979. He held the confidential position of Micro Technical Support Officer, with the following duties and responsibilities: (a) Evaluate and recommend from various departments/units request for Micro Computers received by the Bidding Committee. (b) Further evaluate and accept the bids submitted including recommendation thereof, which were done by the Technical Committee of the Bank (Petitioner's Affidavit, p. 102, rollo). The good performance of Cruz did not remain unnoticed for on several occasions he was recognized with awards and citations, given salary increases (Exhs, "A to H", "J-K", pp. 45-50, 52-53, rollo) and promoted to Authorized Signer on May 1, 1991. (Exh. "I", p. 51, rollo).

But after all his years of reputed fealty and good service with the company, something unexpected and besmirching was uncovered. There were feedbacks and informations that certain irregularities were being committed in the bidding process and purchase of computers, an area within the powers and responsibilities of Cruz. To clarify matters, a special investigation was conducted by the Citytrust Internal Audit Group and it was found out that indeed there were unauthorized and unreported commissions and rebates given out by one of its computer suppliers, MECO Enterprises, Inc. (MECO), for purchases made by Citytrust. This was corroborated by the letter dated August 5, 1992 (Exh. "1", p. 148, rollo) of the President and Controller [sic] of MECO certifying that Cruz has received commissions and rebates amounting to P105,192.00 just for the period of September 1992 to March 1993.

With this damaging result of the investigation, Citytrust sent a show-cause memorandum (Exh. "13", p. 161, rollo) to Cruz on August 6, 1993 placing him under a 30-day preventive suspension and directing him to appear in an administrative hearing by the Ad Hoc Committee. Cruz submitted the said memorandum, the Ad Hoc Committee heard the matter, and found Cruz guilty of fraud, serious misconduct, gross dishonesty and serious violation of Bank policies, regulations and procedure. For the resultant loss of confidence, Citytrust terminated Cruz from employment effective October 6, 1993 (Exh "15", pp. 164-165, rollo).

Aggrieved by this, Cruz filed before the Labor Arbiter an action for Illegal Dismissal and Damages claiming that Citytrust denied him due process and hastily dismissed him from service. After the submission of position papers and presentation of witnesses, the Labor Arbiter rendered decision in favor of Cruz disposing that:

"WHEREFORE, premises considered, judgment is hereby rendered, ordering respondent to reinstate complainant to his former position without loss of seniority rights with full backwages which up to the promulgation of this Decision amounted to THREE HUNDRED EIGHTY SEVEN THOUSAND SEVEN HUNDRED NINETY (P387,790.00) Pesos, subject to adjustment upon actual reinstatement; to pay complainant his 13th month pay in the sum of THIRTY TWO THOUSAND THREE HUNDRED FIFTEEN & 83/100 (P32,315.83) Pesos; and to pay the sum of FIFTY THOUSAND (P50,000.00) Pesos as and for damages, plus attorney's fees in the sum of FORTY SEVEN THOUSAND TEN & 58/100 (P47,010.58) Pesos representing ten percent (10%) of the monetary award due complainant, subject also to adjustment.

SO ORDERED." (p. 26, rollo)

From this decision Citytrust appealed to the NLRC, which through its Second Division rendered the Decision dated January 27, 1998 wherein the ruling of the Labor Arbiter was set aside and went on dismissing the case for lack of merit. (p. 37, rollo).

Cruz filed a motion for its reconsideration but this was denied for lack of merit....^[2]

Cruz then filed a petition for *certiorari* with this Court. In a Resolution dated February 15, 1999,^[3] the Court referred the petition to the CA for appropriate action and disposition, pursuant to the ruling in the case of *St. Martin Funeral Homes v. National Labor Relations Commission*.^[4]

On April 27, 2001, the CA rendered the presently assailed Decision denying due course to and dismissing the petition. Sustaining the NLRC, the CA held that while it is true that the signature of petitioner does not appear in the check vouchers, other pieces of evidence prove that he benefited from the proceeds of the checks issued; that there is substantial evidence to hold petitioner liable for soliciting and receiving

monetary considerations from a supplier; that his act constituted a willful breach of his employer's trust and confidence which justifies his termination from employment; that petitioner's dismissal from employment was the result of a thorough investigation and hearing where he was given the opportunity to explain his side.

Instead of a motion for reconsideration, petitioner filed the present petition for *certiorari* predicated on the following grounds:

THAT PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ABUSE(D) ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION OR IN EXCESS OF JURISDICTION IN SETTING ASIDE THE DECISION OF THE LABOR ARBITER A QUO

THAT HONORABLE COURT OF APPEALS ABUSED ITS DISCRETION IN CONCLUDING THAT EXHIBITS 2 TO 10 [IN] WHICH PETITIONER'S SIGNATURE DOES NOT APPEAR, THE FACTS REMAIN THAT HE BENEFITED FROM THE ALLEGED ANOMALOUS TRANSACTIONS, ONE MA. CRESENCIA MANGUERRA ENCASHED THE CHECK USING THE BANK ACCOUNT OF PETITIONER ALLEGING THAT THE LATTER IS PETITIONER['S] PARAMOUR.^[5]

Petitioner claims that while his name appears in the check vouchers issued by MECO, marked as Exhibits "2" to "10", the incontrovertible fact remains that his signature does not appear in any of said vouchers. Not being a signatory of any of the said check vouchers, petitioner contends that there can be no basis in concluding that he ever received any commission, special discount or rebate from MECO. Petitioner also asserts that he was denied due process because he was not given the opportunity to refute the charges imputed against him. While it is true that private respondent conducted an investigation, petitioner claims that the same was done without his participation.^[6]

In its Comment, private respondent contends that the present petition for *certiorari* is not the proper remedy to assail the subject decision of the CA. Private respondent asserts that a petition for *certiorari* under Rule 65 of the Rules of Court may be availed of only when a party has no adequate remedy in the ordinary course of law. Petitioner argues that what petitioner should have done was to file a petition for review on *certiorari* under Rule 45 of the Rules of Court, and that petitioner's failure to file a petition for review cannot be remedied by the filing of a special civil action for *certiorari*. Even assuming that petitioner is allowed to institute the present petition for *certiorari*, private respondent contends that the same must still be dismissed because what is being assailed are the factual findings of the CA and the NLRC and settled is the rule that in *certiorari* proceedings under Rule 65 of the Rules of Court, judicial review does not go as far as to evaluate the sufficiency of evidence upon which the NLRC based its determinations, the inquiry being limited essentially to whether or not said tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion. In any case, private respondent further contends that petitioner failed to prove that the CA committed grave abuse of discretion because pieces of documentary and oral evidence bear out the fact that petitioner indeed received various amounts from MECO either as commission, special discount or rebate without private respondent's knowledge and approval.^[7]

The Court does not find merit in the present petition for the following reasons:

First, it is well settled that the remedy to obtain reversal or modification of judgment on the merits is appeal.^[8] This is true even if the error, or one of the errors, ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of facts or of law set out in the decision.^[9] In the present case, the CA disposed of CA-G.R. SP No. 52373 on the merits. Petitioner claims that he received the Decision of the CA on May 17, 2001. Consequently, he had 15 days from said date of receipt of assailed judgment, or until June 1, 2001, within which to file a petition for review on *certiorari*, the reglementary period prescribed by Rule 45 of the Rules of Court to avail of said action. On July 9, 2001 close to two months after said receipt, petitioner filed the present petition. Evidently, petitioner has lost his remedy of appeal. The filing of the instant petition for *certiorari* cannot be used as a means of recovering his appeal as it is settled that *certiorari* is not a substitute for lost appeal.^[10] The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.^[11]

Second, assuming for the sake of argument that the present petition for *certiorari* is the appropriate remedy, the records of the instant case show that petitioner failed to file a motion for reconsideration of the decision of the appellate court, thus, depriving the CA of the opportunity to correct on reconsideration such errors as it may have committed. The first paragraph of Section 1, Rule 65 of the Rules of Court clearly states that in order for a person to avail of the special civil action of *certiorari*, he must be left with no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, to wit:

SECTION 1. *Petition for Certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and *there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.*
(Italics supplied)

A motion for reconsideration of an assailed decision is deemed a plain and adequate remedy expressly available under the law.^[12] The general rule is that a motion for reconsideration is indispensable before resort to the special civil action for *certiorari* to afford the court or tribunal the opportunity to correct its error, if any.^[13] This rule is subject to certain recognized exceptions, to wit:

(a) where the order is a patent nullity, as where the court a quo has no jurisdiction;

(b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;

(d) where, under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceeding was ex parte or in which the petitioner had no opportunity to object; and

(i) where the issue raised is one purely of law or where public interest is involved.^[14]

None of these exceptions are present in the instant case. Hence, petitioner's unjustified failure to file a motion for reconsideration of the decision of the CA before recourse to this special civil action was made calls for the outright dismissal of this case.

Third, going into the merits of the case, the Court finds that the dismissal of the instant petition is warranted for failure of petitioner to show grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the CA.

Petitioner was dismissed from employment on the ground, among others, of loss of trust and confidence. Loss of trust and confidence, as a valid ground for dismissal, must be substantiated by evidence. Jurisprudence has distinguished the treatment of managerial employees or employees occupying positions of trust and confidence from that of rank-and-file personnel, insofar as the application of the doctrine of trust and confidence is concerned. In *Caoile v. National Labor Relations Commission*, the Court had occasion to explain as follows:

Thus, with respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. **But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein**