

THIRD DIVISION

[G.R. No. 221505, December 05, 2018]

**PEOPLE OF THE PHILIPPINES, PETITIONER, RANDOLPH S. TING
AND SALVACION I. GARCIA, RESPONDENTS.**

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision^[1] dated June 16, 2015 and the Resolution^[2] dated November 5, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 134943 which affirmed the Order^[3] dated December 16, 2013 of the Regional Trial Court (RTC) of Tuguegarao City, Cagayan, Branch 5.

The antecedent facts are as follows:

In an Information dated May 30, 2011, respondents City Mayor Randolph S. Ting and City Treasurer Salvacion I. Garcia, both of Tuguegarao City in the year 2004, were charged with violation of Section 261 (w)(b) of Batas Pambansa Bilang R81, otherwise known as the Omnibus Election Code, for issuing a treasury warrant during the forty-five (45)-day election ban period as payment for two (2) parcels of land to be used as a public cemetery for the city. The accusatory portion of said Information reads:

That on or about April 30, 2004 during the period of forty five (45) days preceding the May 10, 2004 National and Local Elections in the City of Tuguegarao, Province of Cagayan, Philippines and within the jurisdiction of this Honorable Court, accused did then and there, willfully and unlawfully issue Treasury Warrant Number 0001534514, undertaking future delivery of money chargeable against public funds in the amount of P8,486,027.00, as payment for the acquisition of two (2) parcel[s] of land (TCT No. T-36942 and TCT No. T-36943) owned by Anselmo Almazan, Angelo Almazan and Anselmo Almazan III.

CONTRARY TO LA W.^[4]

Upon arraignment, respondents entered a plea of not guilty to the offense charged. At the pre-trial, it was stipulated and admitted that Ting, as representative of the City Government of Tuguegarao, entered into a Contract of Sale with Dr. Anselmo D. Almazan, Angelo A. Almazan, and Anselmo A. Almazan III for the purchase of two (2) parcels of land, identified as Lot Nos. 5860 and 5861 located in Atulayan Sur, Tuguegarao City, with an aggregate area of 24,816 square meters and covered by Transfer Certificate of Title (TCT) No. T-36942 and TCT No. T-36943 of the Register of Deeds in Tuguegarao City. As payment, Garcia issued and released Treasury Warrant No. 0001534514 dated April 30, 2004 in the sum of P8,486,027.00. On May

5, 2004, the City Government of Tuguegarao caused the registration of the sale and the issuance of TCT No. T-144428 and TCT No. T-144429 in its name. Consequently, a complaint was filed against respondents for violation of Section 261 (v)^[5] and (w)^[6] of the Omnibus Election Code, but the same was eventually dismissed by the Commission on Elections (COMELEC) finding that since the issuance of the treasury warrant was not for public works, no liability could arise therefrom. In *Guzman v. Commission on Elections, et al.*,^[7] however, the Court set aside the COMELEC's resolution and ordered the filing of the appropriate criminal information against respondents. It found that while said issuance may not be considered as public works under Section 261 (v) of the Omnibus Election Code, there was still probable cause to believe that Section 261 (w) of the Omnibus Election Code was violated since the provision does not require that the undertaking be for public works. Thus, the instant case.

After the pre-trial, the prosecution filed its Formal Offer of Evidence on October 23, 2013. But instead of presenting their evidence, respondents filed a Motion for Leave to File a Demurrer to Evidence and, subsequently, a Demurrer to Evidence.^[8] In an Order^[9] dated December 16, 2013, the RTC granted the same and acquitted the respondents. According to the RTC, while it is uncontested that the treasury warrant or the Landbank check in issue bears the date "April 30, 2004," which is well within the prohibited period, the date of the instrument is not necessarily the date of issue. The Negotiable Instruments Law provides that an instrument is issued by "the first delivery of the instrument, complete in form, to a person who takes it as a holder." But the prosecution failed to prove that the subject check was delivered to the vendors of the lots within the prohibited period. In fact, the dorsal side of the instrument bears "May 18, 2004" as the date of payment as annotated by the drawee bank, which is beyond the said period. The RTC added that just because the title was issued in favor of the City Government of Tuguegarao on May 5, 2004, it does not follow that payment was in fact made on the same day. The Law on Sales provides that payment of the purchase price is not a condition for the transfer of title, in the absence of stipulation to the contrary.

In a Decision dated June 16, 2015, the CA denied the Petition for *Certiorari* under Rule 65 of the Rules of Court filed by the Office of the Solicitor General (OSG), and affirmed the RTC's Order. Like the RTC, the CA cited the Negotiable Instruments Law and held that every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument to the payee for the purpose of giving effect thereto. Without initial delivery of the instrument from the drawer of the check to the payee, there can be no valid and binding contract and no liability on the instrument. Also, without delivery, the instrument cannot be deemed to have been issued. Thus, the date on the check, April 30, 2004, pertains to nothing more than the date of the making or drawing of the instrument. Moreover, the CA ruled that neither can the date of notarization of the deed of sale, May 5, 2004, be considered as the date of issuance. This is because notarization only serves to convert a private document to a public one, making it admissible in evidence without further proof of its authenticity. Furthermore, it was held that the issuance of a check is not payment until the check has been encashed. Thus, since the check herein was presented for payment and encashment on May 18, 2004, which is well after the prohibited period, respondents were correctly acquitted.^[10]

Aggrieved by the CA's denial of its Motion for Reconsideration, the OSG filed the instant petition on January 7, 2016 invoking the following argument:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE 16 DECEMBER 2013 ORDER OF RESPONDENT JUDGE THAT GRANTED PRIVATE RESPONDENT TING'S DEMURRER TO EVIDENCE DESPITE SUFFICIENCY OF THE PROSECUTION'S EVIDENCE ON RECORD.^[11]

In its petition, the OSG posits that it duly established beyond reasonable doubt that respondents violated Section 261 (w)(b) of the Omnibus Election Code. As such, the RTC had no clear legal and factual basis to grant City Mayor Ting's demurrer to evidence.

Prefatorily, we point out that the remedy from an order of dismissal granting a demurrer to evidence is reviewable by the CA, but only through *certiorari* under Rule 65 of the Rules of Court. In turn, if the CA finds no grave abuse of discretion on the part of the trial court in granting the demurrer, such finding is reviewable by the Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court. In *People v. Court of Appeals, et al.*,^[12] we explained:

We point out at the outset that in criminal cases, the grant of a demurrer is tantamount to an acquittal and the dismissal order may not be appealed because this would place the accused in double jeopardy. Although the dismissal order is not subject to appeal, it is still reviewable but only through *certiorari* under Rule 65 of the Rules of Court. The *People* thus correctly filed a special civil action for *certiorari* under Rule 65 before the CA to question the RTC's grant of demurrer. Nonetheless, we emphasize that the CA disposed of the merits of an original special civil action when it ruled that the RTC did not gravely abuse its discretion in granting Ang's demurrer to evidence because the pieces of evidence presented by the prosecution were insufficient to sustain a conviction. The CA ruling, therefore, may be questioned before this Court through a petition for review on *certiorari* under Rule 45. Where the issue or question involves or affects the wisdom or legal soundness of the decision (e.g., whether the CA correctly ruled that the RTC judge did not commit grave abuse of discretion in granting the accused's demurrer), and not the jurisdiction of the court to render said decision, the same is beyond the province of a petition for *certiorari*.

Thus, in *Asistio v. People, et al.*,^[13] the Court ruled that under Rule 45 of the Rules of Court, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case.^[14] This is in line with the established rule "that one of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion."^[15]

On the substantive issues, we find that the RTC should not have granted the demurrer to evidence.

For clarity, Section 261 (w)(b) of the Omnibus Election Code is reproduced as follows:

ARTICLE XXII.
ELECTION OFFENSES

Sec. 261. Prohibited Acts. - The following shall be guilty of an election offense:

X X X X

(w) Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices. - ***During the period of forty-five days preceding a regular election and thirty days before a special election, any person who*** (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; or (b) ***issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds.*** (Emphasis supplied.)

From the foregoing, it can be deduced that subparagraph (b) above is violated when: (1) any person *issues, uses or avails* of treasury warrants or any device *forty-five days* preceding a regular election or *thirty days* before a special election; (2) the warrant or device *undertakes the future delivery of money, goods or other things of value*; and (3) the undertaking is *chargeable against public funds*.

The attending circumstances in the instant case depict a violation of the provision cited above. *First*, the subject Treasury Warrant No. 0001534514 was dated April 30, 2004, which date falls within the election ban period beginning on March 26, 2004 and ending on the election day or May 10, 2004. As such, it is deemed *prima facie* to have been drawn, made, accepted, and indorsed on said date.^[16] On the basis of said presumption, it follows that the treasury warrant was delivered to the Almazans, for delivery naturally precedes acceptance. Moreover, while this presumption is disputable, respondents merely filed their Demurrer to Evidence and presented no evidence to challenge the same.

Second, even assuming that the treasury warrant was issued on another date, said date could not have been later than May 5, 2004, which is the date when the deed of sale was notarized. According to the CA, the fact that the undated deed was notarized on said date is of no moment because notarization only serves to convert a private document to a public one, making it admissible in evidence without further proof of its authenticity. The Court, however, finds merit in the OSG's argument that the defense cannot rely on the lack of date on the deed of sale. In fact, when said document was notarized on May 5, 2004, the same was evidence that the deed was formally executed on or before, but not after, such date. This is pursuant to the Rules on Notarial Practice which provides that when a document is notarized, the notary public subscribes that a person appeared before him, presented a document, and affirmed the contents thereof, which in this case included the issuance of the treasury warrant as payment for the lots.^[17] Thus, by virtue of the deed of sale notarized on May 5, 2004, the parties thereto, namely, the Almazans as sellers and the City Government of Tuguegarao, represented by City Mayor Ting, as buyer,

appeared before the notary public and affirmed on said date the contents of the deed of sale stating that the sellers unconditionally sold, transferred, and conveyed the lots, for and in consideration of P8,654,914.08, to them.^[18] Consequently, as the OSG maintains, this acknowledgement of payment in the deed of sale, coupled with the admission of respondents that the subject check was used as payment for the lots, is evidence of its receipt by the Almazans on a date no later than May 5, 2004 for, as Section 23, Rule 132 of the Revised Rules on Evidence provides, public documents, such as the notarized deed of sale herein, are evidence of the facts giving rise to their execution, as well as the date of their execution.^[19]

Third, it must be noted that May 5, 2004 was also the date when the City Government of Tuguegarao caused the registration of the sale and the issuance of new TCTs in its name. But the RTC ruled that even if the title was already issued in favor of the City Government of Tuguegarao, it does not follow that payment was made on the same day because as the Law on Sales provides, payment of the purchase price is not a condition for the transfer of title, in the absence of stipulation to the contrary. Thus, the courts below found that since the dorsal side of the instrument bears the date "May 18, 2004" as the date of payment annotated by the drawee bank, which is beyond the prohibited period, respondents cannot be held liable. It must be emphasized, however, that actual payment of the purchase price is not an element of the offense charged herein. To repeat, the subject provision expressly states that a person shall be guilty of an election offense if he or she issues, uses, or avails of treasury warrants or other devices undertaking the future delivery of money, goods, or other things of value chargeable against public funds. Clearly, the offense is committed even if the payment or the delivery of money was made after the prohibited period. Hence, that the check was encashed on May 18, 2004, or after the prohibited election ban period, does not render respondents innocent of the charges against them.

Nevertheless, the courts below proceeded to dismiss the complaint against respondents, relying on the provisions of the Negotiable Instruments Law as to the meaning of the word "issue." True, Section 191 of the Negotiable Instruments Law defines "issue" as the first delivery of an instrument, complete in form, to a person who takes it as a holder. In fact, the Court has held in the past that delivery is the final act essential to the negotiability of an instrument.^[20] But, as the OSG points out, the issue in this case neither concerns the negotiability or commerciability of the treasury warrant nor the parties' rights thereon. Note that the subject provision of the Omnibus Election Code does not merely penalize a person who "issues" treasury warrants or devices, but a person who "issues, uses or avails" of treasury warrants or devices. As such, the term "issues" under the subject provision should not be construed in its restricted sense within the meaning of Negotiable Instruments Law, but rather in its general meaning to give, to send, or such other words importing delivery to the proper person. To the Court, this is more in keeping with the intent of the law for basic statutory construction provides that where a general word follows an enumeration of a particular specific word of the same class, the general word is to be construed to include things of the same class as those specifically mentioned.^[21] Thus, for as long as the device is *issued, used, or availed of* within the prohibited period to undertake the future delivery of money chargeable against public funds, an election offense is committed.

Notwithstanding the aforementioned circumstances, however, we resolve to deny