

## THIRD DIVISION

[ G.R. No. 193217, February 26, 2014 ]

### CORAZON MACAPAGAL, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

#### DECISION

**PERALTA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Regional Trial Court<sup>[1]</sup> (RTC) Decision dated November 25, 2008 convicting petitioner Corazon Macapagal of the crime of *Estafa*;<sup>[2]</sup> the Order denying her Motion for Reconsideration and/or New Trial;<sup>[3]</sup> and the Order<sup>[4]</sup> dated June 29, 2010 denying her Notice of Appeal,<sup>[5]</sup> in Criminal Case No. 98-166722.

For a proper perspective, a brief statement of the factual and procedural antecedents of the case follows:

On November 25, 2008, the RTC rendered a decision finding petitioner guilty of the crime of *Estafa* for misappropriating, for her own benefit, the total amount of P800,000.00, which is the value of the unreturned and unsold pieces of jewelry.<sup>[6]</sup> Petitioner received the decision on January 13, 2009 then she timely moved for reconsideration, but was likewise denied in an Order dated May 20, 2009 which the petitioner allegedly received on July 31, 2009. She supposedly filed a Notice of Appeal<sup>[7]</sup> on August 3, 2009, but the same was denied on June 29, 2010 for having been filed out of time.<sup>[8]</sup>

Aggrieved, petitioner comes directly before the Court in this petition for review on *certiorari* with the following assignment of errors:

I.

THE REGIONAL TRIAL COURT OF MANILA, BRANCH 9, GRAVELY ERRED IN DENYING THE NOTICE OF APPEAL FILED BY THE HEREIN PETITIONER-APPELLANT.

II.

THE REGIONAL TRIAL COURT OF MANILA, BRANCH 9, GRAVELY ERRED IN CONVICTING THE HEREIN PETITIONER-APPELLANT OF THE CRIME OF ESTAFA.

III.

THE REGIONAL TRIAL COURT OF MANILA, BRANCH 9, GRAVELY ERRED

IN DENYING THE MOTION FOR RECONSIDERATION AND/OR NEW TRIAL  
FILED BY THE HEREIN PETITIONER-APPELLANT.<sup>[9]</sup>

We deny the petition.

At the outset, the Court notes that the instant case suffers from various procedural infirmities which this Court cannot ignore and are fatal to petitioner's cause. It appears that petitioner assails not only the denial by the RTC of her notice of appeal but likewise seeks the reversal of her conviction for estafa. For reasons that will be discussed below, the petition is bound to fail, because of petitioner's complete disregard of the procedural rules and the orders of the Court.

*First*, petitioner availed of the wrong mode of assailing the trial court's denial of her notice of appeal. Sections 2 and 3, Rule 122 of the Revised Rules of Criminal Procedure lay down the rules on where, how and when appeal is taken, to wit:

SEC. 2. *Where to appeal.* – The appeal may be taken as follows:

x x x x

(b) To the Court of Appeals or to the Supreme Court in the proper cases provided by law, in cases decided by the Regional Trial Court; and

x x x x

SEC. 3. *How appeal taken.* – (a) The appeal to the Regional Trial Court or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by filing a notice of appeal filed with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.

SEC. 6. *When appeal to be taken.* – An appeal must be taken within fifteen days from promulgation of the judgment or from notice of the final order appealed from x x x.

Consequently, the disallowance of the notice of appeal signifies the disallowance of the appeal itself.<sup>[10]</sup> A petition for review under Rule 45 of the Rules of Court is a mode of appeal of a lower court's decision or final order direct to the Supreme Court. However, the questioned Order denying her notice of appeal is not a decision or final order from which an appeal may be taken.<sup>[11]</sup> The Rules of Court specifically provides that no appeal shall be taken from an order disallowing or dismissing an appeal. Rather, the aggrieved party can elevate the matter through a special civil action under Rule 65. Thus, in availing of the wrong mode of appeal in this petition under Rule 45 instead of the appropriate remedy of Rule 65, the petition merits an outright dismissal.<sup>[12]</sup>

The Court has often admonished litigants for unnecessarily burdening it with the task of determining under which rule a petition should fall. It has likewise warned lawyers to follow the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to the client's cause.<sup>[13]</sup>

*Second*, even if we treat this petition as one for *certiorari* under Rule 65, it is still

dismissible for violation of the hierarchy of courts.<sup>[14]</sup> Although the Supreme Court has concurrent jurisdiction with the RTC and the CA to issue writs of *certiorari*, this should not be taken as granting parties the absolute and unrestrained freedom of choice of the court to which an application will be directed.<sup>[15]</sup> Direct resort to this Court is allowed only if there are special, important and compelling reasons clearly and specifically spelled out in the petition, which are not present in this case.<sup>[16]</sup>

*Third*, even if we ignore the above non-compliance and consider the petition as an appeal of the trial court's decision convicting her of estafa, again, we cannot do so for yet another fatal procedural shortcoming committed by petitioner. As stated earlier, petitioner elevated to this Court not only the Order denying her notice of appeal but also the Decision convicting her of *estafa* and the Order denying her motion for reconsideration. In utter disregard of the rules of procedure, petitioner attached to the petition only the June 29, 2010 RTC Order denying her notice of appeal but she failed to attach a clearly legible duplicate original or a certified true copy of the assailed decision convicting her of *estafa* and the order denying her motion for reconsideration.<sup>[17]</sup> A petition for review on *certiorari* under Rule 45 of the Rules of Court must contain a certified true copy or duplicate original of the assailed decision, final order or judgment.<sup>[18]</sup> Failure to comply with such requirement shall be sufficient ground for the dismissal of the petition.<sup>[19]</sup>

The main reason for the prescribed attachments is to facilitate the review and evaluation of the petition by making readily available to the Court all the orders, resolutions, decisions, pleadings, transcripts, documents, and pieces of evidence that are material and relevant to the issues presented in the petition without relying on the case records of the lower court.<sup>[20]</sup>

*Lastly*, this petition is bound to fail because of petitioner's repeated disregard of the Rules and the Court's lawful orders. In a Resolution<sup>[21]</sup> dated September 15, 2010, the Court required petitioner to fully comply with the Rules of Court, the pertinent portion of which reads:

x x x x

2. petitioner to **FULLY COMPLY** with the Rules by submitting: (a) an affidavit of service on the RTC and on the Office of the Solicitor General; (b) a proper verification in accordance with Section 1, Rule 45 in relation to Section 4, Rule 7 of the Rules, and a valid certification of non-forum shopping in accordance with Section 5, Rule 7, with properly accomplished *jurat* showing that the affiant exhibited before the notary public at least one current identification document issued by an official agency **bearing the photograph and signature** of the affiant as required under Sections 6 and 12, Rule II of the 2004 Rules on Notarial Practice, as amended by Court *En Banc* Resolution dated 19 February 2008 in A.M. No. 02-8-13-SC; and (c) her counsel's contact details pursuant to the *En Banc* Resolution dated 10 July 2007 in A.M. No. 07-6-5-SC, all within five (5) days from notice. x x x<sup>[22]</sup>

Despite the directive, no such compliance was made prompting the Court to require her counsel to show cause why he should not be disciplinary dealt with for non-compliance. Records likewise show that petitioner also failed to file a Reply to