

## SECOND DIVISION

[ G.R. No. 175750-51, April 02, 2014 ]

**SILVERINA E. CONSIGNA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, THE HON. SANDIGANBAYAN (THIRD DIVISION), AND EMERLINA MOLETA, RESPONDENTS.**

### D E C I S I O N

**PEREZ, J.:**

For review on *certiorari* is the Decision<sup>[1]</sup> of the Honorable Sandiganbayan dated 12 December 2006, finding Silverina E. Consigna (petitioner) guilty for violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as Anti-Graft and Corrupt Practices Act, and Estafa, as defined and penalized under Article 315 (2)(a) of the Revised Penal Code (RPC).

The facts as culled from the records are as follows:

On or about 14 June 1994, petitioner, the Municipal Treasurer of General Luna, Surigao del Norte, together with Jose Herasmio, obtained as loan from private respondent Hermelina Moleta (Moleta), the sum of P320,000.00, to pay for the salaries of the employees of the municipality and to construct the municipal gymnasium as the municipality's Internal Revenue Allotment (IRA) had not yet arrived. As payment, petitioner issued three (3) Land Bank of the Philippines (LBP) checks signed by Jaime Rusillon (Rusillon), the incumbent mayor of the Municipality of General Luna: (1) Check No. 11281104 for P130,000.00 dated 14 June 1994; (2) Check No. 9660500 for P130,000.00 dated 14 June 1994; and (3) Check No. 9660439 for P60,000.00 dated 11 July 1994.

Between 15 June 1994 and 18 August 1994, in several attempts on different occasions, Moleta demanded payment from petitioner and Rusillon, but to no avail.

Thus, on 18 August 1994, Moleta deposited the three (3) LBP checks to her account in Metrobank-Surigao Branch. Upon presentation for payment, Metrobank returned the checks to Moleta as the checks had no funds. The following day, Moleta again deposited the checks. This time, however, she deposited the checks to her LBP account. Upon presentation for payment, the checks were again returned for the reason, "*Signature Not on File.*" Upon verification, LBP informed Moleta that the municipality's account was already closed and transferred to Development Bank of the Philippines, and that petitioner, the municipal treasurer, has been relieved from her position.

Hence, Moleta filed with the Sandiganbayan two (2) sets of Information against petitioner, in the latter's capacity as Municipal Treasurer and Rusillon, in his capacity as Municipal Mayor of General Luna, Surigao del Norte, to wit:

(1) Criminal Case No. 24182 - Sec. 3(e) of R.A. 3019, otherwise known as Anti-Graft and Corrupt Practices Act:

That on or about 15 June 1994, or sometime after said date, at the General Luna, Surigao del Norte, and within the jurisdiction of this Honorable Court accused Municipal Treasurer Silverina Consigna (with Salary Grade below 27), and Municipal Mayor Jaime Rusillon (with Salary Grade 27) did then and there, willfully and unlawfully, with evident bad faith, in cooperation with each other, and taking advantage of their official positions and in the discharge for the functions as such, borrow the amount of P320,000.00 from one Emerlina Moleta to whom they misrepresented to be for the municipality of General Luna, when in fact the same is not; and fail to pay back said amount thereby causing undue injury to said Emerlina Moleta in the amount of P320,000.00.<sup>[2]</sup>

(2) Criminal Case No. 24183 – Art. 315 of the RPC, otherwise known as Estafa:

That on or about 15 June 1994, or sometime after said date, at the General Luna, Surigao del Norte, and within the jurisdiction of this Honorable Court, accused Municipal Treasurer Silverina Consigna (with Salary Grade below 27), and Municipal Mayor Jaime Rusillon (with Salary Grade 27), did then and there, willfully and unlawfully, with evident bad faith, in cooperation with each other, representing themselves to be transacting in behalf of the [M]unicipality of Gen. Luna, in truth and in fact they are not, contract a loan from one Emerlina Moleta in the amount of P320,000.00 for which they issued three (3) checks: LBP Check No. 11281104 dated 14 June 1994 in the amount of P130,000.00, LBP Check No. 9660500 dated 14 June 1994 in the amount of P130,000.00, and LBP Check no. 9660439 dated 11 July 1994 in the amount of P60,000.00, all in favor of said Emerlina Moleta, knowing fully well that the account belongs to the Municipality of the (sic) Gen. Luna, and that they have no personal funds [of] the same account such that upon presentation of the said checks to the bank, the same were dishonored and refused payment, to the damage and prejudice of said Emerlina Moleta in the amount of P320,000.00.<sup>[3]</sup>

As defense, petitioner argued that the court *a quo* has no jurisdiction because (1) the crime as charged did not specify the provision of law allegedly violated, *i.e.*, the specific type of Estafa; and (2) Sec. 3(e) of RA 3019 does not fall within the jurisdiction of the court *a quo* because the offense as charged can stand independently of public office and public office is not an element of the crime.<sup>[4]</sup>

The court *a quo* admitted that the Information for violation of Estafa did not specify the provision of law allegedly violated.<sup>[5]</sup> However, based on the allegations of deceit and misrepresentation, the court *a quo* allowed the prosecution to indict petitioner and Rusillon under Art. 315 (2)(a) of the RPC.

On the charge of graft and corruption, petitioner argued that, "[w]hen allegations in

the information do not show that the official position of the [petitioner] was connected with the offense charged, the accused is not charged with an offense in relation to her official functions".<sup>[6]</sup> Petitioner, citing *Lacson v. The Executive Secretary*,<sup>[7]</sup> further argued:

x x x [M]ere allegation in the information "that the offense was committed by the accused public officer in relation to his office is not sufficient. That phrase is a mere conclusion of law not a factual averment that would show the close intimacy between the offense charged and the discharge of accused's official duties."<sup>[8]</sup>

Petitioner also contends that there was no fraud or misrepresentation. By demanding payment from Rusillon, Moleta attested that there exists no fraud or misrepresentation. In petitioner's words, "... why will she [Moleta] insist payment from [Rusillon] if she has no knowledge that the money loaned have reached him?"<sup>[9]</sup>

On the other hand, Rusillon maintained that he had no participation in the acts committed by petitioner. Based on his testimony, he signed the three (3) checks to pay the following: (1) payroll of the following day; (2) daily expenses of the municipal building; (3) construction of the municipal gymnasium; and (4) health office's medical supplies.<sup>[10]</sup> As found by the court *a quo*, "the only link of Rusillon to [petitioner] with respect to the loan transaction is his signature on the three (3) checks which [petitioner] used as security to Moleta."<sup>[11]</sup>

After trial, the Sandiganbayan, on 12 December 2006, found petitioner guilty, but exonerated Rusillon. The dispositive portion of the Decision reads:<sup>[12]</sup>

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

- (1) In **Criminal Case No. 24182**, accused SILVERINA E. CONSIGNA is found GUILTY beyond reasonable doubt of violation of Section 3(e) of the Republic Act No. 3019, and is hereby SENTENCED to suffer the penalty of imprisonment of six (6) years and one (1) month to eight (8) years.  
Accused JAIME RUSILLON is ACQUITTED for failure of the prosecution to prove his guilt with moral certainty.
- (2) In Criminal Case No. 24183, accused SILVERINA E. CONSIGNA is found GUILTY beyond reasonable doubt of Estafa under Article 315 (2)(a) of the Revised Penal Code, and is hereby SENTENCED to the indeterminate prison term of six (6) years and one (1) day of *prision mayor* as MINIMUM, to twenty (20) years of *reclusion temporal* as MAXIMUM.  
Accused JAIME RUSILLON is ACQUITTED as his guilt was not proven with moral certainty.
- (3) Accused SILVERIA E. CONSIGNA is ordered to pay private complainant Emerlina F. Moleta the amount of PhP368,739.20 by way of actual damages; PhP30,000.00 as moral damages, and the costs of suit; and

(4) The hold departure order against accused JAIME RUSILLON in connection with these cases is hereby LIFTED.

Hence, this Petition.

Noticeably, the petitioner formulated its arguments, thus:

a. The court *a quo* committed grave abuse of discretion in making its finding of facts which amounts to lack of jurisdiction.

x x x x

b. The court *a quo* committed grave abuse of discretion when it convicted the accused on “false pretense, fraudulent act or means” made or executed prior to or simultaneously with the commission of fraud.

x x x x

c. The court *a quo* committed grave abuse of discretion when it made a conclusion that the petitioner acted with manifest partiality, evident bad faith or inexcusable negligence to justify its conclusion that all the elements of violations of Section 3(e) of RA 3019 are present.”<sup>[13]</sup>

Preliminarily, We here note a common disorder in petitions that mingle the concepts involved in a Petition for Review under Rule 45 and in the special civil action of *certiorari* under Rule 65, as a prevalent practice of litigants to cure a lapsed appeal.

We shall discuss the distinction.

With regard to the period to file a petition, in Rule 45, the period within which to file is fifteen (15) days from notice of the judgment or final order or resolution appealed from.<sup>[14]</sup> In contrast to Rule 65, the petition should be filed not later than sixty (60) days from notice of the judgment, order or resolution.<sup>[15]</sup>

Regarding the subject matter, a review on *certiorari* under Rule 45 is generally limited to the review of legal issues; the Court only resolves questions of law which have been properly raised by the parties during the appeal and in the petition.<sup>[16]</sup> A Rule 65 review, on the other hand, is strictly confined to the determination of the propriety of the trial court’s jurisdiction — whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>[17]</sup> Otherwise stated, errors of judgment are the proper subjects of a Rule 45 petition; errors of jurisdiction are addressed in a Rule 65 petition.

The special civil action of *certiorari* under Rule 65 is resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law.<sup>[18]</sup> So when appeal, or a petition for review is available, *certiorari* cannot be resorted to; *certiorari* is not a substitute for a lapsed or lost appeal.<sup>[19]</sup> A Rule 65

*certiorari* petition cannot be a substitute for a Rule 45 petition so as to excuse the belatedness in filing the correct petition. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.<sup>[20]</sup>

Grave abuse of discretion means “such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.”<sup>[21]</sup>

Petitioner was correct when she filed a Petition for Review under Rule 45. However, instead of raising errors of judgment as a proper subject of a petition for review under Rule 45, the petition formulated jurisdictional errors purportedly committed by the court *a quo*, *i.e.*, whether or not the court *a quo* committed grave abuse of discretion,<sup>[22]</sup> which is the proper subject of a Petition for *Certiorari* under Rule 65. Noticeably, the petition does not allege any bias, partiality or bad faith by the court *a quo* in its proceedings;<sup>[23]</sup> and the petition does not raise a denial of due process in the proceedings before the Sandiganbayan.<sup>[24]</sup>

Importantly, however, the petition followed the period specified in Rule 45. It was timely filed. For that reason, we excuse the repeated referral to the supposed grave abuse of discretion of the Sandiganbayan and treat the petition as, nonetheless, one for review of the questioned decision. We thus recast the arguments as:

- I. Whether or not the court *a quo* committed a reversible error for finding petitioner guilty of estafa, based on information which does not specifically designate the provision allegedly violated.
- II. Whether or not petitioner is guilty of estafa as penalized under Art. 315 (2)(a) of the RPC.
- III. Whether or not petitioner is guilty of Sec. 3 (e) of RA 3019.

The Petition must fail.

1. On the first issue, petitioner insists that even if the court *a quo* already admitted that the Information failed to specifically identify the mode or manner by which estafa was committed by petitioner, it nonetheless went on to convict her by relying on the allegation in the Information of deceit and misrepresentation and applying par. (2)(a), Art. 315 of the RPC.

Entrenched in jurisprudence is the dictum that the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information.<sup>[25]</sup> As held in *People v. Dimaano*:<sup>[26]</sup>