

SECOND DIVISION

[G.R. No. 188767, July 24, 2013]

**SPOUSES ARGOVAN AND FLORIDA GADITANO, PETITIONERS,
VS. SAN MIGUEL CORPORATION, RESPONDENT.**

D E C I S I O N

PEREZ, J.:

For review on *certiorari* are the Decision dated 11 March 2008 and Resolution dated 16 July 2009 of the Court of Appeals in CA-G.R. SP No. 88431 which reversed the Resolutions issued by the Secretary of Justice, suspending the preliminary investigation of I.S. No. 01-4205 on the ground of prejudicial question.

Petitioner Spouses Argovan Gaditano (Argovan) and Florida Gaditano (Florida), who were engaged in the business of buying and selling beer and softdrink products, purchased beer products from San Miguel Corporation (SMC) in the amount of P285,504.00 on 7 April 2000. Petitioners paid through a check signed by Florida and drawn against Argovan's AsiaTrust Bank Current Account. When said check was presented for payment on 13 April 2000, the check was dishonored for having been drawn against insufficient funds. Despite three (3) written demands,^[1] petitioner failed to make good of the check. This prompted SMC to file a criminal case for violation of *Batas Pambansa Blg. 22* and estafa against petitioners, docketed as I.S. No. 01-4205 with the Office of the Prosecutor in Quezon City on 14 March 2001.

In their Counter-Affidavit, petitioners maintained that their checking account was funded under an automatic transfer arrangement, whereby funds from their joint savings account with AsiaTrust Bank were automatically transferred to their checking account with said bank whenever a check they issued was presented for payment. Petitioners narrated that sometime in 1999, Fatima Padua (Fatima) borrowed P30,000.00 from Florida. On 28 February 2000, Fatima delivered Allied Bank Check No. 82813 dated 18 February 2000 payable to Florida in the amount of P378,000.00. Said check was crossed and issued by AOWA Electronics. Florida pointed out that the amount of the check was in excess of the loan but she was assured by Fatima that the check was in order and the proceeds would be used for the payroll of AOWA Electronics. Thus, Florida deposited said check to her joint AsiaTrust Savings Account which she maintained with her husband, Argovan. The check was cleared on 6 March 2000 and petitioners' joint savings account was subsequently credited with the sum of P378,000.00. Florida initially paid P83,000.00 to Fatima. She then withdrew P295,000.00 from her joint savings account and turned over the amount to Fatima. Fatima in turn paid her loan to Florida.

Petitioners claimed that on 7 April 2000, the date when they issued the check to SMC, their joint savings account had a balance of P330,353.17.^[2] As of 13 April 2000, petitioners' balance even amounted to P412,513.17.^[3]

On 13 April 2000, Gregorio Guevarra (Guevarra), the Bank Manager of AsiaTrust Bank, advised Florida that the Allied Bank Check No. 82813 for P378,000.00, the same check handed to her by Fatima, was not cleared due to a material alteration in the name of the payee. Guevarra explained further that the check was allegedly drawn payable to LG Collins Electronics, and not to her, contrary to Fatima's representation. AsiaTrust Bank then garnished the P378,000.00 from the joint savings account of petitioners without any court order. Consequently, the check issued by petitioners to SMC was dishonored having been drawn against insufficient funds.

On 23 October 2000, petitioners filed an action for specific performance and damages against AsiaTrust Bank, Guevarra, SMC and Fatima, docketed as Civil Case No. Q-00-42386. Petitioners alleged that AsiaTrust Bank and Guevarra unlawfully garnished and debited their bank accounts; that their obligation to SMC had been extinguished by payment; and that Fatima issued a forged check.

Petitioners assert that the issues they have raised in the civil action constitute a bar to the prosecution of the criminal case for violation of *Batas Pambansa Blg. 22* and estafa.

On 29 January 2002, the Office of the Prosecutor recommended that the criminal proceedings be suspended pending resolution of Civil Case No. Q-00-42386. SMC thereafter filed a motion for reconsideration before the Office of the Prosecutor but it was denied for lack of merit on 19 September 2002.

SMC filed with the Department of Justice (DOJ) a petition for review challenging the Resolutions of the Office of the Prosecutor. In a Resolution dated 3 June 2004, the DOJ dismissed the petition. SMC filed a motion for reconsideration, which the DOJ Secretary denied in a Resolution dated 15 December 2004.

Undaunted, SMC went up to the Court of Appeals by filing a petition for *certiorari*, docketed as CA-G.R. SP No. 88431. On 11 March 2008, the Court of Appeals rendered a Decision granting the petition as follows:

IN THE LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Resolutions of the Department of Justice dated June 3, 2004 and December 15, 2004 are SET ASIDE. In view thereof, let the suspension of the preliminary investigation of the case docketed as I.S. No. 01-4205 with the Office of the Prosecutor of Quezon City be LIFTED. Accordingly, the continuation of the preliminary investigation until completed is ordered and if probable cause exists, let the corresponding information against the respondents be filed.^[4]

The Court of Appeals drew a distinction between the civil case which is an action for specific performance and damages involving petitioners' joint savings account, and the criminal case which is an action for estafa/violation of *Batas Pambansa Blg. 22* involving Argovan's current account. The Court of Appeals belied the claim of petitioners about an automatic fund transfer arrangement from petitioners' joint savings account to Argovan's current account.

By petition for review, petitioners assail the ruling of the Court of Appeals on the following grounds:

- I. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND EXCEEDED THE BOUNDS OF ITS JURISDICTION IN GIVING DUE COURSE TO RESPONDENT'S PETITION FOR *CERTIORARI*.
- II. THE COURT OF APPEALS ERRED IN REVERSING THE RESOLUTIONS DATED JUNE 3, 2004 AND DECEMBER 15, 2004 OF THE DOJ, THERE BEING NO GRAVE ABUSE OF DISCRETION.
- III. THE COURT OF APPEALS ERRED IN RULING THAT THERE WAS NO PREJUDICIAL QUESTION BELOW BECAUSE TWO DIFFERENT BANK ACCOUNTS ARE INVOLVED IN THE CIVIL AND CRIMINAL CASES.
- IV. THE APPELLATE COURT ERRED IN REQUIRING PETITIONERS TO PRESENT EVIDENCE TO PROVE THE PREJUDICIAL QUESTION DURING THE PRELIMINARY INVESTIGATION.^[5]

The issues raised by petitioners are divided into the procedural issue of whether *certiorari* is the correct mode of appeal to the Court of Appeals and the substantive issue of whether a prejudicial question exists to warrant the suspension of the criminal proceedings.

On the procedural issue, petitioners contend that SMC's resort to *certiorari* under Rule 65 was an improper remedy because the DOJ's act of sustaining the investigating prosecutor's resolution to suspend the criminal proceedings due to a valid prejudicial question was an error in judgment and not of jurisdiction. Petitioners further assert that nevertheless, an error of judgment is not correctible by *certiorari* when SMC had a plain, speedy and adequate remedy, which was to file an appeal to the Office of the President.

The procedure taken up by petitioner was correct.

The Court of Appeals is clothed with jurisdiction to review the resolution issued by the Secretary of the DOJ through a petition for *certiorari* under Rule 65 of the Rules of Court *albeit* solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.^[6]

In *Alcaraz v. Gonzalez*,^[7] we stressed that the resolution of the Investigating Prosecutor is subject to appeal to the Justice Secretary who exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor. Thus, while the Court of Appeals may review the resolution of the Justice Secretary, it may do so only in a petition for *certiorari* under Rule 65 of the Rules of Court, solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.^[8]

Also, in *Tan v. Matsuura*,^[9] we held that while the findings of prosecutors are