

FIRST DIVISION

[G.R. No. 167567, September 22, 2010]

**SAN MIGUEL CORPORATION, PETITIONER, VS. BARTOLOME
PUZON, JR., RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

This petition for review assails the December 21, 2004 Decision^[1] and March 28, 2005 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 83905, which dismissed the petition before it and denied reconsideration, respectively.

Factual Antecedents

Respondent Bartolome V. Puzon, Jr., (Puzon) owner of Bartenmyk Enterprises, was a dealer of beer products of petitioner San Miguel Corporation (SMC) for Parañaque City. Puzon purchased SMC products on credit. To ensure payment and as a business practice, SMC required him to issue postdated checks equivalent to the value of the products purchased on credit before the same were released to him. Said checks were returned to Puzon when the transactions covered by these checks were paid or settled in full.

On December 31, 2000, Puzon purchased products on credit amounting to P11,820,327 for which he issued, and gave to SMC, Bank of the Philippine Islands (BPI) Check Nos. 27904 (for P309,500.00) and 27903 (for P11,510,827.00) to cover the said transaction.

On January 23, 2001, Puzon, together with his accountant, visited the SMC Sales Office in Parañaque City to reconcile his account with SMC. During that visit Puzon allegedly requested to see BPI Check No. 17657. However, when he got hold of BPI Check No. 27903 which was attached to a bond paper together with BPI Check No. 17657 he allegedly immediately left the office with his accountant, bringing the checks with them.

SMC sent a letter to Puzon on March 6, 2001 demanding the return of the said checks. Puzon ignored the demand hence SMC filed a complaint against him for theft with the City Prosecutor's Office of Parañaque City.

Rulings of the Prosecutor and the Secretary of Department of Justice (DOJ)

The investigating prosecutor, Elizabeth Yu Guray found that the "relationship between [SMC] and [Puzon] appears to be one of credit or creditor-debtor relationship. The problem lies in the reconciliation of accounts and the non-payment of beer empties which cannot give rise to a criminal prosecution for theft."^[3] Thus, in her July 31, 2001 Resolution,^[4] she recommended the dismissal of

the case for lack of evidence. SMC appealed.

On June 4, 2003, the DOJ issued its resolution^[5] affirming the prosecutor's Resolution dismissing the case. Its motion for reconsideration having been denied in the April 23, 2004 DOJ Resolution,^[6] SMC filed a petition for *certiorari* with the CA.

Ruling of the Court of Appeals

The CA found that the postdated checks were issued by Puzon merely as a security for the payment of his purchases and that these were not intended to be encashed. It thus concluded that SMC did not acquire ownership of the checks as it was duty bound to return the same checks to Puzon after the transactions covering them were settled. The CA agreed with the prosecutor that there was no theft, considering that a person cannot be charged with theft for taking personal property that belongs to himself. It disposed of the appeal as follows:

WHEREFORE, finding no grave abuse of discretion committed by public respondent, the instant petition is hereby **DISMISSED**. The assailed Resolutions of public respondent, dated 04 June 2003 and 23 April 2004, are **AFFIRMED**. No costs at this instance.

SO ORDERED.^[7]

The motion for reconsideration of SMC was denied. Hence, the present petition.

Issues

Petitioner now raises the following issues:

I

WHETHER X X X PUZON HAD STOLEN FROM SMC ON JANUARY 23, 2001, AMONG OTHERS BPI CHECK NO. 27903 DATED MARCH 30, 2001 IN THE AMOUNT OF PESOS: ELEVEN MILLION FIVE HUNDRED TEN THOUSAND EIGHT HUNDRED TWENTY SEVEN (Php11,510,827.00)

II

WHETHER X X X THE POSTDATED CHECKS ISSUED BY PUZON, PARTICULARLY BPI CHECK NO. 27903 DATED MARCH 30, 2001 IN THE AMOUNT OF PESOS: ELEVEN MILLION FIVE HUNDRED TEN THOUSAND EIGHT HUNDRED TWENTY SEVEN (Php11,510,827.00), WERE ISSUED IN PAYMENT OF HIS BEER PURCHASES OR WERE USED MERELY AS SECURITY TO ENSURE PAYMENT OF PUZON'S OBLIGATION.

III

WHETHER X X X THE PRACTICE OF SMC IN RETURNING THE POSTDATED CHECKS ISSUED IN PAYMENT OF BEER PRODUCTS PURCHASED ON CREDIT SHOULD THE TRANSACTIONS COVERED BY THESE CHECKS [BE] SETTLED ON [THE] MATURITY DATES THEREOF COULD BE LIKENED TO A CONTRACT OF PLEDGE.

IV

WHETHER X X X SMC HAD ESTABLISHED PROBABLE CAUSE TO JUSTIFY THE INDICTMENT OF PUZON FOR THE CRIME OF THEFT PURSUANT TO ART. 308 OF THE REVISED PENAL CODE.^[8]

Petitioner's Arguments

SMC contends that Puzon was positively identified by its employees to have taken the subject postdated checks. It also contends that ownership of the checks was transferred to it because these were issued, not merely as security but were, in payment of Puzon's purchases. SMC points out that it has established more than sufficient probable cause to justify the indictment of Puzon for the crime of Theft.

Respondent's Arguments

On the other hand, Puzon contends that SMC raises questions of fact that are beyond the province of an appeal on *certiorari*. He also insists that there is no probable cause to charge him with theft because the subject checks were issued only as security and he therefore retained ownership of the same.

Our Ruling

The petition has no merit.

Preliminary Matters

At the outset we find that as pointed out by Puzon, SMC raises questions of fact. The resolution of the first issue raised by SMC of whether respondent stole the subject check, which calls for the Court to determine whether respondent is guilty of a felony, first requires that the facts be duly established in the proper forum and in accord with the proper procedure. This issue cannot be resolved based on mere allegations of facts and affidavits. The same is true with the second issue raised by petitioner, to wit: whether the checks issued by Puzon were payments for his purchases or were intended merely as security to ensure payment. These issues cannot be properly resolved in the present petition for review on *certiorari* which is rooted merely on the resolution of the prosecutor finding no probable cause for the filing of an information for theft.

The third issue raised by petitioner, on the other hand, would entail venturing into constitutional matters for a complete resolution. This route is unnecessary in the present case considering that the main matter for resolution here only concerns grave abuse of discretion and the existence of probable cause for theft, which at this point is more properly resolved through another more clear cut route.