

## THIRD DIVISION

[ G.R. No. 176084, April 30, 2008 ]

**CARMENCITA G. CARIÑO, Petitioner, vs. MERLIN DE CASTRO,  
Respondent.**

### D E C I S I O N

**YNARES-SATIAGO, J.:**

This petition for review on certiorari seeks to annul and set aside the August 18, 2006 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR No. 29523 dismissing the petition as well as the December 29, 2006 Resolution<sup>[2]</sup> denying the Motion for Reconsideration.

Petitioner Carmencita G. Cariño filed a complaint-affidavit for violation of *Batas Pambansa Blg. 22* (BP 22) against respondent Merlin de Castro before the Office of the City Prosecutor of Manila. After conducting preliminary investigation, Assistant City Prosecutor Manuel B. Sta. Cruz, Jr., issued a Resolution finding prima facie evidence and recommending respondent's indictment. Accordingly, respondent was charged with five (5) counts of violation of BP 22 before the Metropolitan Trial Court of Manila, Branch 13.

During arraignment, respondent manifested her intention to file a Motion for Preliminary Determination of Existence of Probable Cause which was granted. Accordingly, respondent's arraignment was deferred. Petitioner was required to file comment on the Motion for Preliminary Determination of Existence of Probable Cause. However, instead of a comment, petitioner filed a motion for extension which was denied for being a prohibited pleading under the Rule on Summary Procedure.

In an Order<sup>[3]</sup> dated August 30, 2004, the Metropolitan Trial Court of Manila, Branch 13 found that the checks were issued by respondent without valuable consideration; that petitioner was not authorized to collect rental payments from respondent; and that consequently, respondent can legally refuse payment on the ground that said checks were issued without valuable and legal consideration. The dispositive portion of the Order reads:

WHEREFORE, finding no probable cause against the accused for violation of Batas Pambansa Bilang 22, the instant cases are DISMISSED.

IT IS SO ORDERED.<sup>[4]</sup>

Petitioner appealed to the Regional Trial Court. In a Decision<sup>[5]</sup> dated February 28, 2005, the Regional Trial Court of Manila, Branch 40, affirmed the Decision of the court *a quo* and dismissed the appeal for lack of merit. It held that petitioner failed to controvert the Joint-Affidavit executed by the owners of the property that they did not authorize petitioner to lease their property and to collect rentals thereon.

Hence, the checks were issued for a non-existing account or without legal and valuable consideration.

Petitioner filed a motion for reconsideration but it was denied by the Regional Trial Court in an Order<sup>[6]</sup> dated August 15, 2005.

Thereafter, petitioner, through counsel and with the conformity of Asst. City Prosecutor, Sawadjaan Issan, filed a petition for review before the Court of Appeals. However, in the assailed Decision dated August 18, 2006, the Court of Appeals dismissed the petition because it was filed only by the private prosecutor and not by the Office of the Solicitor General as mandated by law. The appellate court ruled thus:

We note that the instant petition for review suffers from a basic infirmity of having been filed merely by the private prosecutor or counsel of the private complainant, though with the conformity of the Assistant City Prosecutor, and not by the authorized representative of the People of the Philippines - the Solicitor General. Hence, it is dismissible on said ground alone.

We emphasize that the authority to represent the State in appeals of criminal cases before the Court of Appeals and the Supreme Court is solely vested in the Office of the Solicitor General. Section 35(1), Chapter 12, Title III of Book IV of the 1987 Administrative Code explicitly provides, *viz.*:

"SEC. 35. *Powers and Functions.* - The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. x x x It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court and Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party."

Jurisprudence has been consistent on this point so much so that in the *City Fiscal of Tacloban vs. Espina*, it was held:

"Under Section 5, Rule 110 of the Rules of Court all criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the fiscal. The fiscal represents the People of the Philippines in the prosecution of offenses before the trial courts at the metropolitan trial courts, municipal trial courts, municipal circuit trial courts and the regional trial courts. However, when such criminal actions are brought to the Court of Appeals or (to) this Court, it is the Solicitor General who must represent the People of the Philippines not the fiscal.

As succinctly observed by the Solicitor General, petitioner has no authority to file the petition in this Court. It is only the Solicitor General who can bring or defend such actions on behalf of the Republic of the Philippines or the People of the Philippines. And such actions not initiated by the Solicitor General should be summarily dismissed."<sup>[7]</sup>

Petitioner filed a Motion for Reconsideration. On October 3, 2006, the Court of Appeals required the Office of the Solicitor General (OSG) to file comment.<sup>[8]</sup>

In its Comment,<sup>[9]</sup> the OSG noted thus:

1. A thorough examination of petitioner's Motion for Reconsideration and an assiduous re-evaluation of the records and the applicable laws and jurisprudence reveal that there is no basis, in fact or in law, there being no new and substantial matter not already considered and ruled upon by this Honorable Court is pleaded that would warrant a re-examination, much less, the modification or reversal of the Decision dated August 18, 2006 of this Honorable Court which dismissed petitioner's petition for review dated August 31, 2005. Said petition was filed merely by the private prosecutor, and not by the authorized representative of the People of the Philippines - the Office of the Solicitor General which is solely vested with the authority to represent the People in appeals of criminal cases before the Court of Appeals and the Supreme Court, pursuant to Section 35(1), Chapter 12, Title III of Book IV of the 1987 Administrative Code.
2. Petitioner's Motion for Reconsideration is just a reiteration and rehash of the errors assigned and discussed in the petition for review dated August 31, 2005, which were already resolved in the Decision sought to be reconsidered. It would be a useless ritual of this Honorable Court to reiterate itself.
3. Considering that this Honorable Court had carefully scrutinized and studied the records as well as weighed and assessed the arguments of both parties before rendering the assailed Decision, petitioner's motion has no leg to stand on. Hence, this Honorable Court is correct in dismissing the petition.<sup>[10]</sup>

On December 29, 2006, the Court of Appeals denied the Motion for Reconsideration; hence, the instant petition raising the following issues:

I.

THE COURT OF APPEALS ERRED IN ISSUING THE DECISION PROMULGATED ON AUGUST 18, 2006 AND THE RESOLUTION PROMULGATED ON DECEMBER 29, 2006 IN NOT RECTIFYING THE ERROR OF LAW COMMITTED BY THE BRANCH 40 REGIONAL TRIAL OF MANILA AND BRANCH 13 OF THE METROPOLITAN TRIAL COURT OF MANILA.