

## THIRD DIVISION

[ G.R. NO. 160451, February 09, 2007 ]

**EDUARDO G. RICARZE, PETITIONER, VS. COURT OF APPEALS,  
PEOPLE OF THE PHILIPPINES, CALTEX PHILIPPINES, INC.,  
PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK (PCIBANK),  
RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

Before the Court is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 68492, and its Resolution<sup>[2]</sup> which denied the Motion for Reconsideration and the Supplemental Motion for Reconsideration thereof.

#### The Antecedents

Petitioner Eduardo G. Ricarze was employed as a collector-messenger by City Service Corporation, a domestic corporation engaged in messengerial services. He was assigned to the main office of Caltex Philippines, Inc. (Caltex) in Makati City. His primary task was to collect checks payable to Caltex and deliver them to the cashier. He also delivered invoices to Caltex's customers.<sup>[3]</sup>

On November 6, 1997, Caltex, through its Banking and Insurance Department Manager Ramon Romano, filed a criminal complaint against petitioner before the Office of the City Prosecutor of Makati City for estafa through falsification of commercial documents. Romano alleged that, on October 16, 1997, while his department was conducting a daily electronic report from Philippine Commercial & Industrial Bank (PCIB) Dela Rosa, Makati Branch, one of its depository banks, it was discovered that unknown to the department, a company check, Check No. 74001 dated October 13, 1997 in the amount of P5,790,570.25 payable to Dante R. Gutierrez, had been cleared through PCIB on October 15, 1997. An investigation also revealed that two other checks (Check Nos. 73999 and 74000) were also missing and that in Check No. 74001, his signature and that of another signatory, Victor S. Goquinco, were forgeries. Another check, Check No. 72922 dated September 15, 1997 in the amount of P1,790,757.25 likewise payable to Dante R. Gutierrez, was also cleared through the same bank on September 24, 1997; this check was likewise not issued by Caltex, and the signatures appearing thereon had also been forged. Upon verification, it was uncovered that Check Nos. 74001 and 72922 were deposited at the Banco de Oro's SM Makati Branch under Savings Account No. S/A 2004-0047245-7, in the name of a regular customer of Caltex, Dante R. Gutierrez.

Gutierrez, however, disowned the savings account as well as his signatures on the dorsal portions thereof. He also denied having withdrawn any amount from said savings account. Further investigation revealed that said savings account had

actually been opened by petitioner; the forged checks were deposited and endorsed by him under Gutierrez's name. A bank teller from the Banco de Oro, Winnie P. Donable Dela Cruz, positively identified petitioner as the person who opened the savings account using Gutierrez's name.<sup>[4]</sup>

In the meantime, the PCIB credited the amount of P581,229.00 to Caltex on March 29, 1998. However, the City Prosecutor of Makati City was not informed of this development. After the requisite preliminary investigation, the City Prosecutor filed two (2) Informations for estafa through falsification of commercial documents on June 29, 1998 against petitioner before the Regional Trial Court (RTC) of Makati City, Branch 63. The Informations are worded as follows:

Criminal Case No. 98-1611

That on or about the 24<sup>th</sup> day of September 1997 in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, a private individual, with intent to defraud and intent to gain, without the knowledge and consent of Caltex Philippines, Inc. through its duly authorized officers/representatives, and by means of falsification of commercial document, did then and there willfully, unlawfully and feloniously defraud Caltex Phils., Inc., in the following manner, to wit: said accused, having obtained possession of PCIBank check no. 72922 dated September 15, 1997 payable to Dante R. Gutierrez, in the amount of Php1,790,757.50 with intent to defraud or cause damage to complainant Caltex Phils., Inc., willfully, unlawfully and feloniously affixed or caused to be affixed signatures purporting to be those of Ramon Romano and Victor Goquingco, Caltex authorized officers/signatories, and of payee Dante R. Gutierrez, causing it to appear that Ramon Romano and Victor Goquingco have participated in the issuance of PCIBank check no. 72922 and that Dante R. Gutierrez had endorsed it, when in truth and in fact, as said accused well knew, such was not the case, since said check previously stolen from Payables Section of CALTEX, was neither duly signed by Ramon Romano and Victor Goquingco nor endorsed by Dante R. Gutierrez, after the check, a commercial document, was falsified in the manner above set forth, the said accused purporting himself to be the payee, Dante R. Gutierrez, deposited the check with Banco De Oro under Account No. 2004-0047245-7, thereby appropriating the proceeds of the falsified but cleared check, to the damage and prejudice of complainant herein represented by Ramon Romano, in the amount of Php1,790,757.50.

Criminal Case No. 98-1612

That on or about the 15<sup>th</sup> day of October 1997 in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, a private individual, with intent to defraud and intent to gain, without the knowledge and consent of Caltex Philippines, Inc. through its duly authorized officers/representatives, and by means of falsification of commercial document, did then and there willfully, unlawfully and feloniously defraud Caltex Phils., Inc., in the

following manner, to wit: said accused, having obtained possession of PCIBank check no. 74001 dated October 13, 1997 payable to Dante R. Gutierrez, in the amount of Php5,790,570.25 with intent to defraud or cause damage to complainant Caltex Phils., Inc., willfully, unlawfully and feloniously affixed or caused to be affixed signatures purporting to be those of Ramon Romano and Victor Goquingco, Caltex authorized officers/signatories, and of payee Dante R. Gutierrez, causing it to appear that Ramon Romano and Victor Goquingco have participated in the issuance of PCIBank check no. 74001 and that Dante R. Gutierrez had endorsed it, when in truth and in fact, as said accused well knew, such was not the case, since said check previously stolen from Payables Section of CALTEX, was neither duly signed by Ramon Romano and Victor Goquingco nor endorsed by Dante R. Gutierrez, after the check, a commercial document, was falsified in the manner above set forth, the said accused purporting himself to be the payee, Dante R. Gutierrez, deposited the check with Banco De Oro under Account No. 2004-0047245-7, thereby appropriating the proceeds of the falsified but cleared check, to the damage and prejudice of complainant herein represented by Ramon Romano, in the amount of Php5,790,570.25.<sup>[5]</sup>

Petitioner was arraigned on August 18, 1998, and pleaded not guilty to both charges.<sup>[6]</sup> Pre-trial ensued and the cases were jointly tried. The prosecution presented its witnesses, after which the Siguion Reyna, Montecillio and Ongsiako Law Offices (SRMO) as private prosecutor filed a Formal Offer of Evidence.<sup>[7]</sup> Petitioner opposed the pleading, contending that the private complainant was represented by the ACCRA Law Offices and the Balgos and Perez Law Office during trial, and it was only after the prosecution had rested its case that SRMO entered its appearance as private prosecutor representing the PCIB. Since the ACCRA and Balgos and Perez Law Offices had not withdrawn their appearance, SRMO had no personality to appear as private prosecutor. Under the Informations, the private complainant is Caltex and not PCIB; hence, the Formal Offer of Evidence filed by SRMO should be stricken from the records.

Petitioner further averred that unless the Informations were amended to change the private complainant to PCIB, his right as accused would be prejudiced. He pointed out, however, that the Informations can no longer be amended because he had already been arraigned under the original Informations.<sup>[8]</sup> He insisted that the amendments of the Informations to substitute PCIB as the offended party for Caltex would place him in double jeopardy.

PCIB, through SRMO, opposed the motion. It contended that the PCIB had re-credited the amount to Caltex to the extent of the indemnity; hence, the PCIB had been subrogated to the rights and interests of Caltex as private complainant. Consequently, the PCIB is entitled to receive any civil indemnity which the trial court would adjudge against the accused. Moreover, the re-credited amount was brought out on cross-examination by Ramon Romano who testified for the Prosecution. PCIB pointed out that petitioner had marked in evidence the letter of the ACCRA Law Office to PCIBank dated October 10, 1997 and the credit memo sent by PCIB to Caltex.<sup>[9]</sup>

Petitioner filed a Motion to Expunge the Opposition of SRMO.<sup>[10]</sup> In his Rejoinder, he

averred that the substitution of PCIB as private complainant cannot be made by mere oral motion; the Information must be amended to allege that the private complainant was PCIB and not Caltex after the preliminary investigation of the appropriate complaint of PCIB before the Makati City Prosecutor.

In response, the PCIB, through SRMO, averred that as provided in Section 2, Rule 110 of the Revised Rules of Criminal Procedure, the erroneous designation of the name of the offended party is a mere formal defect which can be cured by inserting the name of the offended party in the Information. To support its claim, PCIB cited the ruling of this Court in *Sayson v. People*.<sup>[11]</sup>

On July 18, 2001, the RTC issued an Order granting the motion of the private prosecutor for the substitution of PCIB as private complainant for Caltex. It however denied petitioner's motion to have the formal offer of evidence of SRMO expunged from the record.<sup>[12]</sup> Petitioner filed a motion for reconsideration which the RTC denied on November 14, 2001.<sup>[13]</sup>

Petitioner filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with Urgent Application for Temporary Restraining Order with the Court of Appeals (CA,) praying for the annulment of the RTC's Orders of July 18, 2001 and November 14, 2001. The petitioner averred that:

#### I

RESPONDENT JUDGE GRIEVEOUSLY (SIC) ERRED IN RENDERING ITS ORDER ISSUED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION BY ALLOWING THE SUBSTITUTION OF PRIVATE COMPLAINANT, AFTER THE ACUSED WAS ALREADY ARRAIGNED AND PROSECUTION HAS ALREADY TERMINATED PRESENTING ITS EVIDENCE THEREBY PATENTLY VIOLATING THE STRICT CONDITION IMPOSED UPON BY RULE 110 SEC. 14 RULES ON CRIMINAL PROCEDURE.

#### II

AND AS A COROLLARY GROUND RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN EXCESS OF JURISDICTION IN RENDERING AN ORDER RECOGNIZING THE APPEARANCE OF A NEW PROSECUTOR WITHOUT WRITTEN OR EVEN ORAL WITHDRAWAL OF THE COUNSEL ON RECORD.<sup>[14]</sup>

According to petitioner, damage or injury to the offended party is an essential element of estafa. The amendment of the Informations substituting the PCIBank for Caltex as the offended party would prejudice his rights since he is deprived of a defense available before the amendment, and which would be unavailable if the Informations are amended. Petitioner further insisted that the ruling in the *Sayson* case did not apply to this case.

On November 5, 2002, the appellate court rendered judgment dismissing the petition. The *fallo* reads:

WHEREFORE, premises considered, the petition to annul the orders dated July 18, 2001 and November 14, 2001 of the Regional Trial Court, Branch

63, Makati City in Criminal Case Nos. 98-1611 and 98-1612 is hereby DENIED and consequently DISMISSED.

SO ORDERED.<sup>[15]</sup>

The appellate court declared that when PCIB restored the amount of the checks to Caltex, it was subrogated to the latter's right against petitioner. It further declared that in offenses against property, the designation of the name of the offended party is not absolutely indispensable for as long as the criminal act charged in the complaint or information can be properly identified. The appellate court cited the rulings of this Court in *People v. Ho*<sup>[16]</sup> and *People v. Reyes*.<sup>[17]</sup>

On October 17, 2003, the CA issued a Resolution denying petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration.<sup>[18]</sup>

Hence, petitioner filed the instant petition which is anchored on the following grounds:

- I. THE PEOPLE V. YU CHAI HO 53 PHILIPPINES 874 IS INAPPLICABLE TO THE CASE AT BAR CONSIDERING THE FACTS ARE SUBSTANTIALLY DIFFERENT.
- II. LIKEWISE, THE CASE OF PEOPLE VS. REYES CA, 50 (2) OG 665, NOVEMBER 11, 1953 HAS NO MATERIAL BEARING TO THE PRESENT CASE.
- III. THE SUBSTITUTION OF PCIBANK WILL SUBSTANTIALLY PREJUDICE THE RIGHTS OF THE PETITIONER HENCE, IT IS PROHIBITED BY SEC. 14 OF RULE 110.
- IV. THERE IS NO VALID SUBROGATION BETWEEN CALTEX AND PCIBANK. ASSUMING THERE IS, THE CIVIL CASE SHOULD BE DISMISSED TO PROSECUTE.
- V. THE TWIN INFORMATIONS UPON WHICH PETITIONER WAS INDICTED, ARRAIGNED, PRE-TRIAL HELD AND PUBLIC PROSECUTOR TERMINATED THE PRESENTATION OF ITS EVIDENCE IN CHIEF ARE DEFECTIVE AND VOID, HENCE THE DISMISSAL IS IN ORDER.
- VI. PETITIONER TIMELY OBJECTED TO THE APPEARANCE OF PRIVATE PROSECUTOR FOR PCIBANK.
- VII. THE FINDINGS OF MATERIAL FACTS ARE NOT SUPPORTED BY THE RECORD NOR EVIDENCE AND BASED ON MISAPPRECIATION OF FACTS.
- VIII. PETITIONER'S SUPPLEMENTAL MOTION FOR RECONSIDERATION DID NOT VIOLATE THE OMNIBUS MOTION RULE UNDER SEC. 8, RULE 15 OF THE 1997 RULES OF CIVIL PROCEDURE.<sup>[19]</sup>

### **The Court's Ruling**