

SECOND DIVISION

[G.R. NO. 152429, March 18, 2005]

**ELIZABETH ED. LIM, PETITIONER, VS. EDILBERTO D. ANG,
RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure of the Decision^[1] of the Regional Trial Court (RTC) of Cauayan City, Isabela, Branch 20, in Special Civil Action No. Br. 20-120.

The Antecedents

On December 12, 2000, Edilberto D. Ang filed a criminal complaint for violation of Batas Pambansa (B.P.) Blg. 22, otherwise known as the Bouncing Checks Law, against Elizabeth Lim before the Municipal Trial Court in Cities (MTCC) of Cauayan City, Isabela. The accusatory portion of the complaint reads:

That on or about the 10th day of September 2000, the said accused issued to the undersigned Allied Bank Check No. 0089099 in the amount of P2,208,398.40, a xerox copy of which being attached hereto as Annex "A," knowing fully well that at that time she had no funds with said Bank, and which when deposited in the undersigned's depository Bank (the Bank of the Philippine Islands, Cauayan, Isabela Branch) for collection/payment, was dishonored by said Allied Bank on October 02, 2000 on the ground of "account closed" to the damage and prejudice of the undersigned in the said amount of P2,208,398.40.

CONTRARY TO LAW.^[2]

Appended to the said criminal complaint was the affidavit^[3] of Ang subscribed and sworn to before Public Prosecutor Fausto Cabantac.

On December 13, 2000, the MTCC issued an Order^[4] stating that there was sufficient ground to hold the accused for trial. Lim filed a motion to quash^[5] the complaint on the following grounds: (a) the facts charged do not constitute a violation of B.P. Blg. 22 as the notice of dishonor was not sent to her as the drawer of the check; (b) the supporting affidavit attached to the criminal complaint lacked the required certification by the public prosecutor; (c) the December 13, 2000 Order violated her right to be informed of the nature and cause of the accusation against her; and (d) there was no probable cause to charge her with any crime.

The public prosecutor opposed the motion and, at the same time, filed an amended criminal complaint^[6] which included the affidavit of Ang containing the certification

of the assistant provincial prosecutor that he personally examined the affiant and was satisfied that the latter voluntarily executed and understood the contents of the criminal complaint.

On July 20, 2001, the MTCC issued an Order^[7] denying the motion to quash and set the arraignment of Lim on August 17, 2001. She filed a motion for reconsideration^[8] of the order but the court denied the said motion in an Order dated September 7, 2001. Lim's arraignment was reset to October 3, 2001.

Lim assailed the order in the RTC by way of a petition for *certiorari*^[9] wherein she reiterated the grounds she raised in support of her motion to quash.

In his comment on the petition, Ang averred that he had filed *pendente lite* a second amended criminal complaint with the MTCC on December 20, 2001 wherein the following allegations were made:

That on or about the 16th day of September 2000, the said accused issued to the undersigned to apply on account or for value Allied Bank Check No. 0089099 dated 10 September 2000 in the amount of P2,208,398.40, a xerox copy of which being attached hereto as Annex "A", knowing fully well that at that time she had no funds with said Bank, and which when deposited in the Bank of the Philippine Islands, Cauayan, Isabela Branch for collection/payment, was dishonored by said Allied Bank on October 02, 2000 on the ground of "account closed" and notwithstanding notice of dishonor to the accused and demand for the full payment of the amount of said check within five (5) days from said notice, the accused failed and refused to pay said amount, to the damage and prejudice of the undersigned in the said amount of P2,208,398.40.

CONTRARY TO LAW.^[10]

On January 14, 2002, the RTC rendered its Decision^[11] dismissing the petition. It ruled that although the amended criminal complaint filed in the MTCC did not contain all the essential elements of the crime of violation of B.P. Blg. 22, the second amended criminal complaint contained all the essential elements of the crime; hence, the petition had become moot and academic.

Lim filed a motion for the reconsideration of the decision, claiming that the dismissal of her petition was premature inasmuch as the MTCC had not yet determined the presence of probable cause against her under the second amended criminal complaint. The trial court denied the motion for reconsideration in an Order dated February 20, 2002. The RTC held that since the amended criminal complaint had been superseded by the second amended criminal complaint, there was no longer a complaint which was sought to be quashed.

Lim, now the petitioner, filed a petition for review on *certiorari* with this Court for the nullification of the decision and the February 20, 2002 Order of the RTC.

The petitioner contends that conformably with Section 3(b), in relation to Section 3(a), of Rule 112 of the Revised Rules of Criminal Procedure, it behooved the MTCC to first determine the presence or absence of probable cause by personally

examining the complainant and his witnesses in writing and under oath. Until then, the second amended criminal complaint cannot be considered filed; hence, it was premature for the RTC to dismiss her petition for *certiorari*. The petitioner cited the ruling of this Court in *Guillen v. Nicolas*.^[12] The petitioner insists that the RTC should have granted the petition and quashed the amended criminal complaint of the respondent herein, and to let the second amended criminal complaint take its course.

In his comment on the petition, the respondent avers that his second amended criminal complaint had cured the substantial defects in his amended criminal complaint. Hence, the petition for *certiorari* had become moot and academic. He asserts that if the petitioner believed that his second amended criminal complaint was also defective, she should have filed the appropriate motion with the MTCC. The respondent further avers that since the crime charged was within the exclusive original jurisdiction of the MTCC, it may find probable cause or dismiss the complaint, either by personally evaluating the evidence, or by personally examining in writing and under oath the complainant and his witnesses in the form of searching questions.

The petition is denied for lack of merit.

We note that the petitioner failed to implead the People of the Philippines in her petition in the RTC and in this Court. This is fatal to the petitioner's cause. It behooved the petitioner to implead the People of the Philippines as respondent in the RTC and in this Court to enable the Solicitor General to comment on the petition in this case.

In dismissing the petition for *certiorari*, the RTC ratiocinated in its decision, thus:

The Court agrees with the petitioner that the facts alleged in the Criminal Complaint and Amended Criminal Complaint do not constitute a violation of Batas Pambansa Blg. 22. There is no allegation in the Criminal Complaint or Amended Criminal Complaint that the check was issued by the accused on account or for value. There is also no allegation in the Amended Criminal Complaint that the drawee bank notified the accused on the dishonor of the check. These are essential elements of the crime. Respondent Judge should have quashed the Criminal Complaint or Amended Criminal Complaint.

It now appears, however, that the private complainant, private respondent herein Edilberto D. Ang, filed a Second Amended Criminal Complaint, wherein all the requisites for Violation of Batas Pambansa Blg. 22 are alleged. Since the accused, petitioner herein, has not yet been arraigned, the Amended Criminal Complaint may be amended as to matter of form or substance even without leave of Court in accordance with Section 14, Rule 110, Rules of Court. The private respondent, who is the offended party, can validly sign and file the Second Amended Criminal Complaint (Section 3, Rule 110, Rules of Court).

The Second Amended Criminal Complaint has rendered moot and academic the petition for *Certiorari*.^[13]