

THIRD DIVISION

[G.R. Nos. 155531-34, July 29, 2005]

MARY ANN RODRIGUEZ, PETITIONER, VS. HON. THELMA A. PONFERRADA, IN HER OFFICIAL CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 104; PEOPLE OF THE PHILIPPINES; AND GLADYS NOCOM, RESPONDENTS.

DECISION

PANGANIBAN, J.:

Settled is the rule that the single act of issuing a bouncing check may give rise to two distinct criminal offenses: estafa and violation of Batas Pambansa Bilang 22 (BP 22). The Rules of Court allow the offended party to intervene via a private prosecutor in each of these two penal proceedings. However, the recovery of the single civil liability arising from the single act of issuing a bouncing check in either criminal case bars the recovery of the same civil liability in the other criminal action. While the law allows two simultaneous civil remedies for the offended party, it authorizes recovery in only one. In short, while two crimes arise from a single set of facts, only one civil liability attaches to it.

The Case

Before us is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court, seeking to reverse the July 27, 2002 Order^[2] of the Regional Court (RTC) of Quezon City (Branch 104) in Criminal Case Nos. Q-01-106256 to Q-01-106259. Also assailed is the August 16, 2002 Order^[3] of the RTC denying petitioner's Motion for Reconsideration. The first assailed Order is quoted in full as follows:

"For consideration is the opposition of the accused, through counsel, to the formal entry of appearance of private prosecutor.

"Accused, through counsel, contends that the private prosecutor is barred from appearing before this Court as his appearance is limited to the civil aspect which must be presented and asserted in B.P. 22 cases pending before the Metropolitan Trial Court of Quezon City.

"The private prosecutor submitted comment stating that the offended party did not manifest within fifteen (15) days following the filing of the information that the civil liability arising from the crime has been or would be separately prosecuted and that she should therefore be required to pay the legal fees pursuant to Section 20 of Rule 141 of the Rules of Court, as amended.

"Considering that the prosecution under B.P. 22 is without prejudice to

any liability for violation of any provision of the Revised Penal Code (BP 22, Sec. 5), the civil action for the recovery of the civil liability arising from the estafa cases pending before this Court is deemed instituted with the criminal action (Rule 111, Sec. 1 [a]). The offended party may thus intervene by counsel in the prosecution of the offense (Rule 110. Sec. 16).

"WHEREFORE, the appearance of a private prosecutor shall be allowed upon payment of the legal fees for these estafa cases pending before this Court pursuant to Section 1 of Rule 141 of the Rules of Court, as amended."^[4]

The Facts

The undisputed facts are narrated by petitioner as follows:

"On 10 December 2001, the Honorable Assistant City Prosecutor Rossana S. Morales-Montojo of Quezon City Prosecutor's Office issued her Resolution in I.S. No. 01-15902, the dispositive portion of which reads as follows:

"Premises considered, there being PROBABLE CAUSE to charge respondent for ESTAFA under Article 315 paragraph 2(d) as amended by PD 818 and for Violation of Batas Pambansa Blg. 22, it is respectfully recommended that the attached Information be approved and filed in Court."

"As a consequence thereof, separate informations were separately filed against herein [p]etitioner before proper [c]ourts, for Estafa and [v]iolation of Batas Pambansa Blg. 22.

"Upon payment of the assessed and required docket fees by the [p]rivate [c]omplainant, the informations for [v]iolation of Batas Pambansa Blg. 22 against herein [p]etitioner were filed and raffled to the Metropolitan Trial Court of Quezon City, Branch 42, docketed as Criminal Cases Nos. 0108033 to 36.

"On the other hand, the informations for [e]stafa cases against herein [p]etitioner were likewise filed and raffled to the Regional Trial Court of Quezon City, Branch 104, docketed as Criminal Cases Nos. 01-106256 to 59.

"On 17 June 2002, petitioner through counsel filed in open court before the [p]ublic [r]espondent an 'Opposition to the Formal Entry of Appearance of the Private Prosecutor' dated 14 June 2002.

"The [p]ublic [r]espondent court during the said hearing noted the Formal Entry of Appearance of Atty. Felix R. Solomon as [p]rivate [p]rosecutor as well as the Opposition filed thereto by herein [p]etitioner. x x x.

"As ordered by the Court, [p]rivate [c]omplainant through counsel filed her Comment to the Opposition of herein [p]etitioner.

"On 27 June 2002, the [p]ublic [r]espondent court issued the first assailed Order allowing the appearance of the [p]rivate [p]rosecutor in the above-entitled criminal cases upon payment of the legal fees pursuant to Section 1 of Rule 141 of the Rules of Court, as amended.

"On 31 July 2002, [a]ccused through counsel filed a Motion for Reconsideration dated 26 July 2002.

"On 16 August 2002, the [p]ublic [r]espondent court issued the second assailed Order denying the Motion for Reconsideration of herein [p]etitioner."^[5]

Ruling of the Trial Court

Noting petitioner's opposition to the private prosecutor's entry of appearance, the RTC held that the civil action for the recovery of civil liability arising from the offense charged is deemed instituted, unless the offended party (1) waives the civil action, (2) reserves the right to institute it separately, or (3) institutes the civil action prior to the criminal action. Considering that the offended party had paid the corresponding filing fee for the estafa cases prior to the filing of the BP 22 cases with the Metropolitan Trial Court (MeTC), the RTC allowed the private prosecutor to appear and intervene in the proceedings.

Hence, this Petition.^[6]

Issues

Petitioner raises this sole issue for the Court's consideration:

"Whether or not a [p]rivate [p]rosecutor can be allowed to intervene and participate in the proceedings of the above-entitled [e]stafa cases for the purpose of prosecuting the attached civil liability arising from the issuance of the checks involved which is also subject matter of the pending B.P. 22 cases."^[7]

The Court's Ruling

The Petition has no merit.

Sole Issue:

Civil Action in BP 22 Case Not a Bar to Civil Action in Estafa Case

Petitioner theorizes that the civil action necessarily arising from the criminal case pending before the MTC for violation of BP 22 precludes the institution of the corresponding civil action in the criminal case for estafa now pending before the RTC. She hinges her theory on the following provisions of Rules 110 and 111 of the Rules of Court:

"SECTION 16. *Intervention of the offended party in criminal action.* -- Where the civil action for recovery of civil liability is instituted in the

criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense."

"SECTION 1. *Institution of criminal and civil actions.* -- (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

"The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

"When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages.

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"(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

"Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay the filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

"Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of this Rule governing consolidation of the civil and criminal actions."

Based on the foregoing rules, an offended party may intervene in the prosecution of a crime, except in the following instances: (1) when, from the nature of the crime and the law defining and punishing it, no civil liability arises in favor of a private offended party; and (2) when, from the nature of the offense, the offended parties are entitled to civil indemnity, but (a) they waive the right to institute a civil action, (b) expressly reserve the right to do so or (c) the suit has already been instituted. In any of these instances, the private complainant's interest in the case disappears and criminal prosecution becomes the sole function of the public prosecutor.^[8] None of these exceptions apply to the instant case. Hence, the private prosecutor

cannot be barred from intervening in the estafa suit.

True, each of the overt acts in these instances may give rise to two criminal liabilities -- one for estafa and another for violation of BP 22. But every such act of issuing a bouncing check involves only one civil liability for the offended party, who has sustained only a single injury.^[9] This is the import of *Banal v. Tadeo*,^[10] which we quote in part as follows:

"Generally, the basis of civil liability arising from crime is the fundamental postulate of our law that 'Every man criminally liable is also civilly liable' (Art. 100, The Revised Penal Code). Underlying this legal principle is the traditional theory that when a person commits a crime he offends two entities namely (1) the society in which he lives in or the political entity called the State whose law he had violated; and (2) the individual member of that society whose person, right, honor, chastity or property was actually or directly injured or damaged by the same punishable act or omission. However, this rather broad and general provision is among the most complex and controversial topics in criminal procedure. It can be misleading in its implications especially where the same act or omission may be treated as a crime in one instance and as a tort in another or where the law allows a separate civil action to proceed independently of the course of the criminal prosecution with which it is intimately intertwined. Many legal scholars treat as a misconception or fallacy the generally accepted notion that the civil liability actually arises from the crime when, in the ultimate analysis, it does not. While an act or omission is felonious because it is punishable by law, it gives rise to civil liability not so much because it is a crime but because it caused damage to another. Viewing things pragmatically, we can readily see that what gives rise to the civil liability is really the obligation and the moral duty of everyone to repair or make whole the damage caused to another by reason of his own act or omission, done intentionally or negligently, whether or not the same be punishable by law. In other words, criminal liability will give rise to civil liability only if the same felonious act or omission results in damage or injury to another and is the direct and proximate cause thereof. Damage or injury to another is evidently the foundation of the civil action. Such is not the case in criminal actions for, to be criminally liable, it is enough that the act or omission complained of is punishable, regardless of whether or not it also causes material damage to another. (See Sangco, Philippine Law on Torts and Damages, 1978, Revised Edition, pp. 246-247)."

Thus, the possible single civil liability arising from the act of issuing a bouncing check can be the subject of both civil actions deemed instituted with the estafa case and the BP 22 violation prosecution. In the crimes of both estafa and violation of BP 22, Rule 111 of the Rules of Court expressly allows, even automatically in the present case, the institution of a civil action without need of election by the offended party. As both remedies are simultaneously available to this party, there can be no forum shopping.^[11]

Hence, this Court cannot agree with what petitioner ultimately espouses. At the present stage, no judgment on the civil liability has been rendered in either criminal case. There is as yet no call for the offended party to elect remedies and, after