441 Phil. 705

THIRD DIVISION

[G.R. No. 137914, December 04, 2002]

JOHNSON LEE AND SONNY MORENO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND THE COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

CORONA, J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure of the decision[1] dated August 24, 1998 of the Court of Appeals[2] dismissing the petition for certiorari of the orders dated June 27, 1996[3] and June 28, 1996, respectively, of the Regional Trial Court, Branch 50, Bacolod City in Criminal Cases Nos. 10010 and 10011.

The undisputed facts as found by the appellate court are as follows:

Petitioners Johnson Lee and Sonny Moreno were charged by Neugene Marketing, Inc. (NMI, for brevity), through its designated trustee, Atty. Roger Z. Reyes, with the crime of estafa with abuse of confidence before the Office of the City Prosecutor, Bacolod City. On December 14, 1988, the City Prosecutor issued a resolution absolving the petitioners from criminal liability due to lack of malice on the part of the petitioners in retaining the money of NMI. The appeal by NMI to the Department of Justice (DOJ, for brevity) was denied on the ground that the petitioners did not misappropriate corporate funds.

NMI then filed a motion for reconsideration of the DOJ resolution. On January 4, 1991, the DOJ, through then Undersecretary Silvestre Bello III, ordered the reinvestigation of the case. Upon recommendation of City Prosecutor Augusto C. Rallos on March 9, 1991 to charge the petitioners with estafa, Criminal Case Nos. 10010 and 10011 were filed.

The petitioners, on May 4 and 21 of 1992, filed at the DOJ petitions for reinvestigation of the cases but the same were denied on the ground that the trial court's permission should first be secured before reinvestigation can be conducted in accordance with this Court's ruling in *Crespo vs. Mogul.*[4] Petitioners then filed a motion to suspend the proceedings before the trial court on the ground that there was a need for reinvestigation and there was a prejudicial question in a Securities Exchange Commission (SEC, for brevity) case pending before this Court docketed as G. R. No. 112941. The SEC case questions the validity of the dissolution of NMI and the designation of Atty. Reyes as trustee.

Initially, the trial court ruled in favor of the petitioners and ordered the DOJ to conduct a reinvestigation. But, on motion for reconsideration by the prosecutor, the trial court reversed itself, set aside the previous order and scheduled the arraignment of the petitioners. On January 19, 1996, the petitioners filed another

motion to suspend the proceedings, based on the same ground that the prejudicial question in the SEC case would determine the petitioners' guilt in the criminal cases, thereby necessitating the suspension of the same.

On June 27, 1996, the trial court rendered the first assailed order denying petitioners' motion to suspend the proceedings. Arraignment was scheduled on June 28, 1996. But on the day of the arraignment, petitioner Lee failed to appear. The trial court then issued the second assailed order, directing the issuance of a warrant of arrest and fixing an additional bond in the amount of P30,000 by petitioner Lee.

The petitioners filed before the Court of Appeals a petition for certiorari under Rule 65 of the Rules of Court, questioning the said orders of the trial court. On August 24, 1998, the appellate court rendered a decision, the dispositive portion of which reads:

> "WHEREFORE, foregoing considered, the present petition is hereby DENIED. Public respondent is hereby Ordered to proceed with deliberate speed in the hearing and trial of Criminal Cases Nos. 10010 and 10011.
>
> "SO ORDERED."[5]

In dismissing the said petition, the appellate court ruled that:

> "In the criminal cases, the question is whether petitioners misappropriated the P1,500,150.00 corporate funds which was paid to the private respondent through petitioners. It is alleged in the criminal complaint that upon demand, petitioners failed to deliver the same.
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> "In G.R. No. 112941 before the Supreme Court, the validity of the dissolution of the Nuegene (sic) Corporation is in issue.
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> "With these in mind, We do not see how the resolution of the issue in the civil case would necessarily be determinative of petitioners' criminal liability for Estafa.
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> "It is to be emphasized that even if the dissolution of the Neugene Corporation is to be declared void and petitioners are still to be considered President and Secretary of Nuegene (sic) Corporation, still petitioners may be found liable for the misappropriation of the corporate funds. The fact that petitioners are the President and Secretary of the Nuegene (sic) Corporation does not mean that they could not be held liable for Estafa with Abuse of Confidence, if they did in fact misappropriate the corporate fund for personal use. The crime of Estafa is committed when a person shall defraud another by any means mentioned in Article 315 of the Revised Penal Code. This is true whether or not such person is an officer of the corporation defrauded.
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> "Thus, the issue in G.R. No 11241 does not in anyway pose a prejudicial question to the criminal cases for Estafa against petitioners. Thus, there is no justifiable reason why the proceedings in Criminal Cases No. 10010 and 10011 should be suspended.
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> "xxx xxx xxx"[6]

Hence, this appeal based on the following assignment of errors:

"5.1. PUBLIC RESPONDENT COURT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN NOT ORDERING THE DISMISSAL OF CRIMINAL CASES NOS. 10010 AND 10011 PENDING BEFORE BRANCH 50 OF THE REGIONAL TRIAL COURT OF BACOLOD CITY IN VIEW OF THE FOLLOWING:

> "5.1.1. THE ALLEGATIONS IN THE COMPLAINT SHOW THAT THE ALLEGED ACT OF PETITIONERS HEREIN WAS ONLY AN ATTEMPT TO COMMIT THE CRIME OF ESTAFA IN THAT THE ACCUSED REFUSED TO TURN OVER CERTAIN SUMS OF MONEY, WHICH COMPLAINANT CONSIDERED AS EVIDENCE OF 'CRIMINAL INTENT TO APPROPRIATE' AND THERE IS NO CRIME OF ATTEMPTED ESTAFA UNDER ARTICLE 315, PARAGRAPH 1 (B) OF THE REVISED PENAL CODE.
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> "5.1.2. EVEN ASSUMING THAT A 'CRIMINAL INTENT TO APPROPRIATE' IS ESTAFA, PUBLIC RESPONDENT SHOULD HAVE ORDERED CRIMINAL CASES NOS. 10010 AND 10011 PENDING BEFORE BRANCH 50 OF THE BACOLOD CITY REGIONAL TRIAL COURT DISMISSED AT LEAST PROVISIONALLY UPON SHOWING THAT THE APPOINTMENT OF COMPLAINANT LAW FIRM AS TRUSTEE IS IN ISSUE BEFORE THE SECURITIES AND EXCHANGE COMMISSION IN SEC CASE NO. 3318;
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> "5.1.3 *ASSUMING FURTHER* THAT A 'CRIMINAL INTENT TO APPROPRIATE' IS ESTAFA, PUBLIC RESPONDENT COURT SHOULD HAVE DISMISSED NONETHELESS THE SAID CRIMINAL CASES, AT LEAST PROVISIONALLY ALSO, UPON SHOWING THAT IT INVOLVED AN *INTRA*-CORPORATE ISSUE, WHICH IS WITHIN THE EXCLUSIVE, SOLE AND ORIGINAL JURISDICTION OF THE SECURITIES AND EXCHANGE COMMISSION UNDER THE CASE LAW IN *DIONISIO V. CFI,* (124 SCRA 222);
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> "5.1.4. ASSUMING *FURTHERMORE* THAT A 'CRIMINAL INTENT TO APPROPRIATE' IS ESTAFA, PUBLIC RESPONDENT COURT SHOULD HAVE LIKEWISE ORDERED THE DISMISSAL OF SAID CRIMINAL CASES BECAUSE THE NUMEROUS TWISTS AND TURNS THAT THEY HAD GONE THROUGH DURING THE PRELIMINARY STAGE OF THE PROCEEDING, INCLUDING THE RE-OPENING OF THE CASES AFTER THEY HAD BEEN DISMISSED A YEAR OR SO AGO, VIOLATED PETITIONERS' RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF LAW." [7]

We deny the petition.

In the case at bar, we are being asked to review the decision of the appellate court which dismissed the petition for certiorari under Rule 65.

We have consistently ruled that certiorari lies only where it is clearly shown that there is a patent and gross abuse of discretion amounting to an evasion of positive duty or virtual refusal to perform a duty enjoined by law, or to act at all in

contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[8] Certiorari may not be availed of where it is not shown that the respondent court lacked or exceeded its jurisdiction over the case, even if its findings are not correct. Its questioned acts would at most constitute errors of law and not abuse of discretion correctible by certiorari.

In other words, certiorari will issue only to correct errors of jurisdiction and not to correct errors of procedure or mistakes in the court's findings and conclusions. An interlocutory order may be assailed by certiorari or prohibition only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. However, this Court generally frowns upon this remedial measure as regards interlocutory orders. To tolerate the practice of allowing interlocutory orders to be the subject of review by certiorari will not only delay the administration of justice but will also unduly burden the courts.[9]

We find that the allegations of the petitioners are not sufficient grounds to qualify as abuse of discretion warranting the issuance of a writ of certiorari. The petitioners present factual contentions to absolve them from the criminal charge of estafa. The criminal cases concern corporate funds petitioners allegedly received as payment for plastic bought by Victorias Milling Corporation from NMI. They refused to turn over the money to the trustee after NMI's dissolution on the ground that they were keeping the money for the protection of the corporation itself. Thus, the elements of misappropriation and damage are absent. They argue that there is no proof that, as officers of the corporation, they converted the said amount for their own personal benefit. They likewise claim that they already turned the money over to the majority stockholder of the defunct corporation.

Clearly, the said allegations are defenses that must be presented as evidence in the hearing of the criminal cases. They are inappropriate for consideration in a petition for certiorari before the appellate court inasmuch as they do not affect the jurisdiction of the trial court hearing the said criminal cases but instead are defenses that might absolve them from criminal liability. A petition for certiorari must be based on jurisdictional grounds because, as long as the respondent court acted with jurisdiction, any error committed by it in the exercise thereof will amount to nothing more than an error of judgment which can be reviewed or corrected on appeal.[10]

Moreover, the petition for certiorari before the Court of Appeals was premature for the reason that there were other plain and adequate remedies at law available to the petitioners. Under Section 3 (a) of Rule 117 of the Revised Rules of Criminal Procedure, the accused can move to quash the information on the ground that the facts do not constitute an offense. There is no showing that the petitioners, as the accused in the criminal cases, ever filed motions to quash the subject informations or that the same were denied. It cannot then be said that the lower court acted without or in excess of jurisdiction or with grave abuse of discretion to justify recourse to the extraordinary remedy of certiorari or prohibition.

But it must be stressed that, even if petitioners did file motions to quash, the denial thereof would not have automatically given rise to a cause of action under Rule 65 of the Rules of Court. The general rule is that, where a motion to quash is denied, the remedy is not certiorari but to go to trial without prejudice to reiterating the special defenses involved in said motion, and if, after trial on the merits an adverse decision is rendered, to appeal therefrom in the manner authorized by law. And, even in the exceptional case where such denial may be the subject of a special civil