

EIGHTH DIVISION

[CA-G.R. SP NO. 90910, August 10, 2006]

**CARLOS LEE UI, PETITIONER, VS. REGIONAL TRIAL COURT,
BRANCH 145, MAKATI CITY, PEOPLE OF THE PHILIPPINES, AND
IRIS L. BONIFACIO, RESPONDENTS.**

D E C I S I O N

BERSAMIN, J.:

Through this special civil action for *certiorari*, petitioner Carlos Lee Ui, alleging grave abuse of discretion amounting to lack or excess of jurisdiction, assails the following orders of the Regional Trial Court (RTC) of Makati City Branch 145, issued in Criminal Case No. 04-3796 entitled *People of the Philippines v. Carlos Lee Ui, Anne Marie M. Cochico, and Michelle de Leon*, to wit:

1. Order dated July 14, 2005, granting the Prosecution's *motion for partial reconsideration* (vis-à-vis the order dated May 13, 2005 suspending the criminal action due to a prejudicial question), setting aside such order, and setting the arraignment of the petitioner as an accused;^[1] and
2. Order dated August 10, 2005, denying the petitioner's *motion for reconsideration*.^[2]

The antecedents follow. In Criminal Case No. 04-3796, the petitioner is charged with *estafa* under Art. 315, 1, (b), *Revised Penal Code*, along with 2 others, under the information dated November 17, 2004, to wit:

That on or about February 17, 2004 and sometime thereafter, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, acting in common accord and helping one another, did then and there, willfully, unlawfully and feloniously defraud complainant of P17.5 million representing the proceeds of the sale of her house and lot located at No. 527 San Carlos St., Ayala Alabang, Muntinlupa City, committed as follows: that accused Ui, being then the attorney-in-fact of complainant Iris L. Bonifacio for the sale of the latter's afore-described house and lot, was able to sell it for P19.5 million. Upon receipt of the proceeds of the sale [through check payments], with complainant Iris L. Bonifacio as the sole payee, accused Ui, with the express approval and indispensable cooperation of accused bank officers Cochico and de Leon, was able to open two (2) "UNISA" placement accounts by requesting his co-accused Cochico and de Leon to issue two (2) Metrobank Manager's Check Nos. 6600001919 and 6600001920, in the amounts of P9,501,451.38 and P8,012,222.22, respectively, both payable under the account name "Carlos Ui" OR "Iris L. Bonifacio", again without complainant's knowledge and consent. Worse, accused "Ui" subsequently deposited these two (2) Metrobank Manager's

Checks in the aggregate amount of P17.5 million in his personal account with China Trust Bank under Account No. 015020022130 [to the exclusion of complainant Iris L. Bonifacio] and, thereafter, misappropriated, misapplied and converted the amount of P17.5 million and despite formal demands made upon all the accused, they failed and continue to fail to deliver or remit the amount of P17.5 million to herein complainant Iris L. Bonifacio to her damage and prejudice.

CONTRARY TO LAW.^[3]

On January 21, 2005, the petitioner filed a *motion to suspend proceedings and arraignment due to prejudicial question*,^[4] praying that his arraignment and the proceedings in Criminal Case No. 04-3796 be suspended during the pendency of the civil action brought by complainant Iris L. Bonifacio prior to the commencement of Criminal Case No. 04-3796 to declare the nullity of her marriage with the petitioner due to the prejudicial question raised therein that was determinative of whether or not he would be liable for *estafa*. He contended in his motion that should the marriage be declared valid in said civil action, the regime of conjugal partnership would apply to the parties as spouses due to their marriage having been solemnized before the effectivity of the *Family Code*, rendering the property subject of the information part of the spouses' conjugal partnership, that he would not be guilty of *estafa*.

Respondent Bonifacio opposed the petitioner's motion.^[5]

On March 29, 2005, the RTC reset the arraignment on May 24, 2005 without prejudice to the resolution of the *motion to suspend proceedings and arraignment due to prejudicial question*.

On May 13, 2005, the RTC granted the *motion to suspend* etc., abating the proceedings as against the petitioner until final adjudication of the petition for declaration of nullity of his marriage with Bonifacio.^[6]

Consequently, Bonifacio, with the conformity of the public prosecutor, filed a *motion for partial reconsideration*.^[7] After the petitioner submitted his *opposition*, the RTC issued its first assailed order on July 14, 2005, granting the *motion for partial reconsideration* and setting aside the order dated May 13, 2005,^[8] holding thus:

In support of its partial motion for reconsideration, the prosecution cited the case of Carino vs. Carino, 351 SCRA 126, wherein it was ruled by the Honorable Supreme Court that: **"For other purposes, such as but not limited to the determination of heirship, legitimacy x x x or a criminal case for that matter, the court may pass upon the validity of marriage even after the death of the parties thereto and even in a suit not directly instituted to question the validity of said marriage so long as it is essential to the determination of the case."** (Emphasis supplied)

In the light of this pronouncement, it is asserted by the prosecution that the prior declaration of nullity of the void and bigamous marriage between private complainant Iris Bonifacio and accused Ui is only

necessarily for purposes of remarriage. Thus, in the case at bar, the validity of such marriage can be determined by this court as it is essential to this case, wherein accused Ui is claiming exception from criminal culpability on the ground that he is the legitimate spouse of the private complainant.

This contention vis-à-vis the arguments advanced by the accused that his marriage to the private complainant is valid and legal, since his first marriage to Lily Sy solemnized on January 24, 1971 was null and void at its inception, even though it was only nullified in 1996, as it retroacts to the date of their marriage in 1971, hence, when he contracted the second marriage to the private complainant on October 22, 1987, there is no more legal impediment to it, is correct.

As aptly pointed out by the prosecution, the principle of retroactivity cannot be applied to the first marriage for the purpose of nullifying it, not on the date when it was actually declared null and void on 1986 but on January 24, 1971, since to do so, will prejudice the vested rights acquired by the private complainant under the Civil Code. This being so, there is more reasons for the court to proceed with the hearing of this case, as it is now essential that the validity of the marriage between the accused and the private complainant should be determined in this proceeding as it is vital and crucial to this case.

In any event, the question as to whether or not the said marriage is void ab initio being bigamous, was already resolved by Branch 140 of this Court in its Resolution of July 5, 2002, declaring the marriage of the petitioner and private complainant Iris Bonifacio to accused Carlos Lee Ui on October 22, 1987, void ab initio for being bigamous in nature.

This finding by Branch 140 of this Court supported by the cited case of Carino promulgated on February 2, 2001, was buttressed further by the earlier case of Engrace Niñal, et. al., vs. Norma Bayadog, 328 SCRA 125, March 14, 2000, wherein it was initially held by the Honorable Supreme Court that: ***"Other than for purposes of remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case."*** (Emphasis supplied)

Additionally, the argument advanced by the accused Ui that even if their marriage is to be declared void ab initio, their property regime is that of co-ownership under Article 144 of the Civil Code and therefore he is not still criminally liable of the offense of Estafa as he is a co-owner of the alleged amount supposed to have been misappropriated, is untenable and specious to say the least, in the light of the insistence of the private complainant that this parcel of land which was sold, the proceeds of which is the subject of this Estafa case, is her exclusive paraphernal property.

In any case, these disparate contentions of the parties are factual issues which should be addressed during the trial proper. Corollarily, the partial motion for reconsideration of the prosecution is apposite, as there is indeed no need for the prior declaration of nullity of the marriage between the accused and the private complainant, before proceeding to the trial of this Estafa case.

Necessarily, the motion for reconsideration filed by accused Cochico and De Leon, which has its entire factual and legal moorings on the suspension of the proceedings as against their co-accused Ui is rendered moot and academic. Their arraignment as well as that of Ui and the ensuing trial are to be set, to afford the prosecution the opportunity to adduce its evidence, first, to establish the fact that there was no valid marriage between the private complainant and accused Ui as it was void from the very beginning it being bigamous and second to prove all the elements of the offense of Estafa as alleged in the information.

On the part of the accused Ui, to adduce evidence primarily to show that his marriage to the private complainant Iris Bonifacio is valid and subsisting and legal, hence, he is exempt from any criminal liability being the legitimate spouse of the private complainant pursuant to Article 332. Second, if need be, to show that no Estafa was committed by him.

On the part of the two accused Cochico and De Leon, they will also be given the chance to present countervailing evidence if prima facie case had already been established against them, on the bases of the evidence presented by the prosecution, otherwise, to present no evidence at all and file a motion for leave to submit demurrer to evidence as the case may be.

The petitioner moved for reconsideration and for dismissal for alleged forum shopping.^[9] The Prosecution opposed.^[10]

On August 10, 2005, the RTC issued the second assailed order,^[11] stating:

Acting on the motion for reconsideration and motion to dismiss due to forum shopping filed by accused Carlos Lee Ui, the opposition to it by the prosecution, and it appearing that the averments in the said motion are mere repetitious of the arguments advanced by movant Ui in his opposition to the motion for partial reconsideration filed by the prosecution, as it is indeed irrefragable that there is no prejudicial question in this case which will warrant the suspension of its proceedings on account of the pending civil case for declaration of nullity of the marriage of the movant-accused and private complainant Bonifacio, in the light of the pronouncement of the Honorable Supreme Court that this court may pass upon the validity of the marriage of the parties herein in this action, as it is essential to the determination of the criminal culpability of the accused, without awaiting for the adjudication of the civil case for petition of declaration of nullity, the motion for reconsideration is without merit and must necessarily fail.

Relative to the motion to dismiss on the ground of forum shopping, the same is likewise spacious to say the least. As invariably held by the Supreme Court the test to determine whether forum shopping is in existence, is whether in these two cases there is identity of parties, rights or causes of action and reliefs sought.

It is at once obvious that there is no identity of parties between these two cases, the other one pending before Branch 140 of this court has for its parties, the private complainant herein as well as her husband, the accused Ui. In this case at bar, it is the accused Ui and the people of the Philippines who is the principal private complainant.

Ms Iris Bonifacio, the wife of the accused, is only a principal witness in this criminal case. The causes of action are likewise different. In the civil case, the cause of action of Ms Bonifacio is for declaration of nullity of her marriage to accused Ui and the determination of their property relationship once the marriage is declared null and void among others. While in this criminal case, the cause of action is the vindication of the rights of the people of the Philippines which was allegedly violated by the accused when he purportedly committed the imputed offense of *estafa*, as it disturbs public order. Lastly, the reliefs sought for are likewise dissimilar. In the civil case, it is for the declaration of nullity of the marriage between the parties and that the vested right of the petitioner Bonifacio over the properties in question, be maintained and respected, while in this criminal case it is the imposition of the penal sanction against the accused if his guilt is proven beyond reasonable doubt, conversely, his acquittal in accordance with his constitutional presumption of innocence, if there is no moral certainty of his criminal culpability.

Limpidly, there is no forum shopping which will warrant the dismissal of this criminal case.

PREMISES CONSIDERED, the motion for reconsideration as well as the motion to dismiss is DENIED for lack of merit. The arraignment of the accused is to proceed as scheduled on August 18, 2005 at 2:00 p.m. pursuant to the Order of July 26, 2005. Furnish the accused of a copy of this Order as well as his counsel through personal service to be effected by the process server of this Branch, immediately, in time for the scheduled arraignment.

SO ORDERED.

Hence, this special civil action for *certiorari*, wherein the petitioner insists that the RTC:

xxx COMMITTED A SERIOUS AND REVERSIBLE ERROR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED ORDERS ORDERING THE FURTHER PROCEEDING OF THE INSTANT CRIMINAL CASE AGAINST HEREIN PETITIONER CARLOS LEE UI AND SETTING HIS ARRAIGNMENT THEREFOR DESPITE THE CLEAR PRESENCE OF RPEJUDICIAL QUESTION