Supreme Court E-Library

WHEREFORE, the judgment of the court *a quo* is hereby modified in that the two accused, Antonio Garcia *y* Cabarse and Reynaldo Arviso *y* Rebelleza, are sentenced to undergo an indeterminate imprisonment of 10 years as minimum to 18 years as maximum, but in all other respects affirmed.

SO ORDERED.

Fernando (C.J.), Barredo, Makasiar, Antonio, Aquino, Concepcion Jr, Santos, Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

Teehankee, J., took no part.

SECOND DIVISION

[G.R. Nos. 50550-52. October 31, 1979]

CHEE KIONG YAM, AMPANG MAH, ANITA YAM, JOSE Y.C. YAM AND RICHARD YAM, *petitioners, vs.* **HON. NABDAR J. MALIK, Municipal Judge of Jolo, Sulu (Branch 1), THE PEOPLE OF THE PHILIPPINES, ROSALINDA AMIN, TAN CHU KAO, and LT. COL. AGOSTO SAJOR,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; ESTAFA; NOT COMMITTED IN CASE AT BAR.**— In order that a person can be convicted under Article 315 of the Revised Penal Code, it must be proven that he has the obligation to deliver or return the same money, goods or personal property that he received. Petitioners had no such obligation to return the same money, *i.e.*, the bills or coins, which they received from private respondents. This is so because as clearly stated in criminal complaints, the related civil

Supreme Court E-Library

complaints and the supporting sworn statements, the sums of money that petitioners received were loans. It can be readily noted from the above-quoted provisions that in simple loan (*mutuum*), as contrasted to commodatum, the borrower acquires ownership of the money, goods or personal property borrowed. Being the owner, the borrower can dispose of the thing borrowed (Article 248, Civil Code) and his act will not be considered misappropriation thereof.

2. ID.; ID.; ID.; IT IS NOT ESTAFA FOR A PERSON TO REFUSE TO PAY HIS DEBT OR TO DENY ITS EXISTENCE.— In *U.S. vs. Ibañez*, 19 Phil. 559, 560 (1911), this Court held that it is not estafa for a person to refuse to pay his debt or to deny its existence. "We are of the opinion and so decide that when the relation is purely that of debtor and creditor, the debtor can not be held liable for the crime of estafa, under said article, by merely refusing to pay or by denying the indebtedness."

3. REMEDIAL LAW; MUNICIPAL COURT; JURISDICTION OVER CRIMINAL CASES; SCOPE.— Under Sec. 87 of the Judiciary Act, the municipal court of a provincial capital, which the Municipal Court of Jolo is, has jurisdiction over criminal cases where the penalty provided by law does not exceed *prision correccional* or imprisonment for not more than six (6) years, or fine not exceeding ₱6,000.00 or both. The amounts allegedly misappropriated by petitioners range from ₱20,000.00 to ₱50,000.00. The penalty for misappropriation of this magnitude exceeds *prision correccional* or 6-year imprisonment. (Article 315, Revised Penal Code). Assuming then that the acts recited in the complaints constitute the crime of estafa, the Municipal Court of Jolo has no jurisdiction to try them on the merits. The alleged offenses are under the jurisdiction of the Court of First Instance.

APPEARANCES OF COUNSEL

Tomas P. Matic, Jr. for petitioners.

Jose E. Fernandez for private respondent.

Office of the Solicitor General for respondent The People of the Philippines.

Supreme Court E-Library

DECISION

ABAD SANTOS, *J.*:

This is a petition for *certiorari*, prohibition, and *mandamus* with preliminary injunction. Petitioners alleged that respondent Municipal Judge Nabdar J. Malik of Jolo, Sulu, acted without jurisdiction, in excess of jurisdiction and with grave abuse of discretion when:

(a) he held in the preliminary investigation of the charges of estafa filed by respondents Rosalinda Amin, Tan Chu Kao and Augusto Sajor against petitioners that there was a *prima facie* case against the latter;

(b) he issued warrants of arrest against petitioners after making the above determination; and

(c) he undertook to conduct trial on the merits of the charges which were docketed in his court as Criminal Cases No. M-111, M-183 and M-208.

Respondent judge is said to have acted without jurisdiction, in excess of jurisdiction and with grave abuse of discretion because the facts recited in the complaints did not constitute the crime of estafa, and assuming they did, they were not within the jurisdiction of the respondent judge.

In a resolution dated May 23, 1979, we required respondents to comment on the petition and issued a temporary restraining order against the respondent judge from further proceeding with Criminal Cases Nos. M-111, M-183 and M-208 or from enforcing the warrants of arrest he had issued in connection with said cases.

Comments by the respondent judge and the private respondents pray for the dismissal of the petition but the Solicitor General has manifested that the People of the Philippines have no objection to the grant of the reliefs prayed for, except the damages. We considered the comments as answers and gave due course to the petition.

Supreme Court E-Library

The position of the Solicitor General is well taken. We have to grant the petition in order to prevent manifest injustice and the exercise of palpable excess of authority.

In Criminal Case No. M-111, respondent Rosalinda M. Amin charges petitioners Yam Chee Kiong and Yam Yap Kieng with estafa through misappropriation of the amount of ₱50,000.00. But the complaint states on its face that said petitioners received the amount from respondent Rosalinda M. Amin "as a loan. " Moreover, the complaint in Civil Case No. N-5, an independent action for the collection of the same amount filed by respondent Rosalinda M. Amin with the Court of First Instance of Sulu on September 11, 1975, likewise states that the ₱50,000.00 was a "simple business loan" which earned interest and was originally demandable six (6) months from July 12, 1973. (Annex E of the petition.)

In Criminal Case No. M-183, respondent Tan Chu Kao charges petitioners Yam Chee Kiong, Jose Y.C. Yam, Ampang Mah, and Anita Yam, *alias* Yong Tay, with estafa through misappropriation of the amount of ₱30,000.00. Likewise, the complaint states on its face that the ₱30,000.00 was "a simple loan." So does the complaint in Civil Case No. N-8 filed by respondent Tan Chu Kao on April 6, 1976 with the Court of First Instance of Sulu for the collection of the same amount. (Annex D of the petition.)

In Criminal Case No. M-208, respondent Augusto Sajor charges petitioners Jose Y.C. Yam, Anita Yam *alias* Yong Tai Mah, Chee Kiong Yam and Richard Yam, with estafa through misappropriation of the amount of ₱20,000.00. Unlike the complaints in the other two cases, the complaint in Criminal Case No. M-208 does not state that the amount was received as loan. However, in a sworn statement dated September 29, 1976, submitted to respondent judge to support the complaint, respondent Augusto Sajor states that the amount was a "loan." (Annex G of the petition.)

We agree with the petitioners that the facts alleged in the three criminal complaints do not constitute estafa through misappropriation.

Supreme Court E-Library

Estafa through misappropriation is committed according to Article 315, paragraph 1, subparagraph (b), of the Revised Penal Code as follows:

"Art. 315. Swindling (Estafa). — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

x x x x x x x x x

"1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

"b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property."

In order that a person can be convicted under the abovequoted provision, it must be proven that he has the obligation to deliver or return the same money, goods or personal property that he received. Petitioners had no such obligation to return the same money, *i.e.*, the bills or coins, which they received from private respondents. This is so because as clearly stated in criminal complaints, the related civil complaints and the supporting sworn statements, the sums of money that petitioners received were loans.

The nature of simple loan is defined in Articles 1933 and 1953 of the Civil Code.

"Art. 1933. — By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a *commodatum*; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or *mutuum*.

Commodatum is essentially gratuitous.

Supreme Court E-Library

Simple loan may be gratuitous or with a stipulation to pay interest.

In *commodatum* the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower."

"Art. 1953. — A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality."

It can be readily noted from the above-quoted provisions that in simple loan (*mutuum*), as contrasted to *commodatum*, the borrower acquires ownership of the money, goods or personal property borrowed. Being the owner, the borrower can dispose of the thing borrowed (Article 248, Civil Code) and his act will not be considered misappropriation thereof.

In *U.S. vs. Ibañez*, 19 Phil. 559, 560 (1911), this Court held that it is not estafa for a person to refuse to pay his debt or to deny its existence.

"We are of the opinion and so decide that when the relation is purely that of debtor and creditor, the debtor can not be held liable for the crime of estafa, under said article, by merely refusing to pay or by denying the indebtedness."

It appears that respondent judge failed to appreciate the distinction between the two types of loan, *mutuum* and *commodatum*, when he performed the questioned acts. He mistook the transaction between petitioners and respondents Rosalinda Amin, Tan Chu Kao and Augusto Sajor to be *commodatum* wherein the borrower does not acquire ownership over the thing borrowed and has the duty to return the same thing to the lender.

Under Sec. 87 of the Judiciary Act, the municipal court of a provincial capital, which the Municipal Court of Jolo is, has jurisdiction over criminal cases where the penalty provided by law does not exceed *prision correccional* or imprisonment for not more than six (6) years, or fine not exceeding ₱6,000.00 or both. The amounts allegedly misappropriated by petitioners range from ₱20,000.00 to ₱50,000.00. The penalty for misappropriation of this magnitude exceeds *prision correccional*

Supreme Court E-Library

or 6-year imprisonment. (Article 315, Revised Penal Code). Assuming then that the acts recited in the complaints constitute the crime of estafa, the Municipal Court of Jolo has no jurisdiction to try them on the merits. The alleged offenses are under the jurisdiction of the Court of First Instance.

Respondents People of the Philippines being the sovereign authority can not be sued for damages. They are immune from such type of suit.

With respect to the other respondents, this Court is not the proper forum for the consideration of the claim for damages against them.

WHEREFORE, the petition is hereby granted; the temporary restraining order previously issued is hereby made permanent; the criminal complaints against petitioners are hereby declared null and void; respondent judge is hereby ordered to dismiss said criminal cases and to recall the warrants of arrest he had issued in connection therewith. Moreover, respondent judge is hereby rebuked for manifest ignorance of elementary law. Let a copy of this decision be included in his personal life. Costs against private respondents.

SO ORDERED.

Barredo, Antonio, and *Santos, JJ.*, concur.

Concepcion Jr, J., is on leave.

Aquino, J., concur. The claim for damages in this *certiorari, mandamus* and prohibition case is not warranted under Section 3, Rule 65 of the Rules of Court.