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FIRST DIVISION

[G.R. No. 150793. November 19, 2004]

FRANCIS CHUA, *petitioner, vs.* **HON. COURT OF APPEALS and LYDIA C. HAO,** *respondents.*

SYNOPSIS

Private respondent Lydia Hao, treasurer of Siena Realty Corporation, filed a complaint-affidavit with the City Prosecutor of Manila charging petitioner Francis Chua and his wife, Elsa Chua, of four counts of falsification of public documents pursuant to Article 172 in relation to Article 171 of the Revised Penal Code. During the trial in the Metropolitan Trial Court (MeTC), private prosecutors Atty. Evelyn Sua-Kho and Atty. Ariel Bruno Rivera appeared as private prosecutors and presented Hao as their first witness. After Hao's testimony, Chua moved to exclude complainant's counsels as private prosecutors in the case on the ground that Hao failed to allege and prove any civil liability in the case. The MeTC granted Chua's motion and ordered the complainant's counsels to be excluded from actively prosecuting Criminal Case No. 285721. Hao moved for reconsideration but it was denied. Hao filed a petition for *certiorari* in her own behalf and for the benefit of Siena Realty Corporation. The Regional Trial Court (RTC) of Manila, Branch 190 gave due course to the petition and reversed the MeTC Order. Chua moved for reconsideration, which was denied. Dissatisfied, Chua filed before the Court of Appeals a petition for *certiorari*. The appellate court promulgated its assailed Decision denying the petition. The Court of Appeals held that the action was a derivative suit, for it alleged that petitioner falsified documents pertaining to projects of the corporation and made it appear that the petitioner was a stockholder and a director of the corporation. Hence, the present petition.

The Supreme Court denied the petition. While the Court ruled that the criminal complaint filed by private respondent including the civil aspect of the case is not considered a derivative suit because the corporation was not impleaded as an indispensable party, evidence should be allowed in the criminal proceedings to establish the civil liability arising from the offense committed

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on the ground that every person criminally liable for a felony is also civilly liable. The Court stressed that 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 civil liability arising from the crime may be determined in the criminal proceedings if the offended party does not waive to have it adjudged or does not reserve the right to institute a separate civil action against the defendant. If there is no waiver or reservation of civil liability, evidence should be allowed to establish the extent of injuries suffered. In the present case, there was neither a waiver nor a reservation made; nor did the offended party institute a separate civil action. It follows that evidence should be allowed in the criminal proceedings to establish the civil liability arising from the offense committed, and the private offended party has the right to intervene through the private prosecutors.

SYLLABUS

1. **MERCANTILE LAW; CORPORATION CODE; DERIVATIVE SUIT; CONSTRUED.**— In *Western Institute,* we said that a mere appeal in the civil aspect cannot be treated as a derivative suit because the appeal lacked the basic requirement that it must be alleged in the complaint that the shareholder is suing on a derivative cause of action for and in behalf of the corporation and other shareholders who wish to join. Under Section 36 of the Corporation Code, read in relation to Section 23, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stocks in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. A derivative action is a suit by a shareholder to enforce a corporate cause of action. The corporation is a necessary party to the suit. And the relief which is granted is a judgment against a third person in favor of the corporation. Similarly, if a

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corporation has a defense to an action against it and is not asserting it, a stockholder may intervene and defend on behalf of the corporation.

2. **ID.; ID.; ID.; CRIMINAL COMPLAINT FILED BY PRIVATE RESPONDENT INCLUDING THE CIVIL ASPECT OF THE CASE COULD NOT BE DEEMED A DERIVATIVE SUIT; COMPLAINT DOES NOT STATE THAT PRIVATE RESPONDENT IS FILING THE SAME IN BEHALF AND FOR THE BENEFIT OF THE CORPORATION.**— Under the Revised Penal Code, every person criminally liable for a felony is also civilly liable. 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. In Criminal Case No. 285721, the complaint was instituted by respondent against petitioner for falsifying corporate documents whose subject concerns corporate projects of Siena Realty Corporation. Clearly, Siena Realty Corporation is an offended party. Hence, Siena Realty Corporation has a cause of action. And the civil case for the corporate cause of action is deemed instituted in the criminal action. However, the board of directors of the corporation in this case did not institute the action against petitioner. Private respondent was the one who instituted the action. Private respondent asserts that she filed a derivative suit in behalf of the corporation. This assertion is inaccurate. Not every suit filed in behalf of the corporation is a derivative suit. For a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit. It is a condition *sine qua non* that the corporation be impleaded as a party because not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. The judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and may not bring subsequent suit against the same defendants for the same cause of action. In other words, the corporation must be joined as party because it is its cause of action that is being litigated and because judgment must be a *res adjudicata* against it. In the criminal complaint

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filed by herein respondent, nowhere is it stated that she is filing the same in behalf and for the benefit of the corporation. Thus, the criminal complaint including the civil aspect thereof could not be deemed in the nature of a derivative suit.

3. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; CORPORATION IS A PROPER PARTY IN THE PETITION FOR *CERTIORARI* BECAUSE THE PROCEEDINGS IN THE CRIMINAL CASE DIRECTLY AND ADVERSELY AFFECTED THE CORPORATION.**— We find that the recourse of the complainant to the respondent Court of Appeals was proper. The petition was brought in her own name and in behalf of the Corporation. Although, the corporation was not a complainant in the criminal action, the subject of the falsification was the corporation's project and the falsified documents were corporate documents. Therefore, the corporation is a proper party in the petition for *certiorari* because the proceedings in the criminal case directly and adversely affected the corporation.

4. **ID.; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTIONS; SINCE THERE WAS NEITHER A WAIVER NOR RESERVATION MADE, NOR DID THE OFFENDED PARTY INSTITUTE A SEPARATE CIVIL ACTION, IT FOLLOWS THAT EVIDENCE SHOULD BE ALLOWED IN THE CRIMINAL PROCEEDINGS TO ESTABLISH THE CIVIL LIABILITY ARISING FROM THE OFFENSE COMMITTED AND THE PRIVATE OFFENDED PARTY HAS THE RIGHT TO INTERVENE THROUGH PRIVATE PROSECUTORS.**—Generally, the basis of civil liability arising from crime is the fundamental postulate that every man criminally liable is also civilly liable. 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 has violated; and (2) the individual member of the society whose person, right, honor, chastity or property has been actually or directly injured or damaged by the same punishable act or omission. 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. Additionally, 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, whether done

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intentionally or negligently. The indemnity which a person is sentenced to pay forms an integral part of the penalty imposed by law for the commission of the crime. The civil action involves the civil liability arising from the offense charged which includes restitution, reparation of the damage caused, and indemnification for consequential damages.

5. **CRIMINAL LAW; CIVIL LIABILITY; BASIS.**— When the civil action is instituted with the criminal action, evidence should be taken of the damages claimed and the court should determine who are the persons entitled to such indemnity. The civil liability arising from the crime may be determined in the criminal proceedings if the offended party does not waive to have it adjudged or does not reserve the right to institute a separate civil action against the defendant. Accordingly, if there is no waiver or reservation of civil liability, evidence should be allowed to establish the extent of injuries suffered. In the case before us, there was neither a waiver nor a reservation made; nor did the offended party institute a separate civil action. It follows that evidence should be allowed in the criminal proceedings to establish the civil liability arising from the offense committed, and the private offended party has the right to intervene through the private prosecutors.

APPEARANCES OF COUNSEL

Martinez Martinez Alcudia Law Office for petitioner.
Ariel Bruno Rivera for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

Petitioner assails the *Decision*,[1] dated June 14, 2001, of the Court of Appeals in CA-G.R. SP No. 57070, affirming the *Order*, dated October 5, 1999, of the Regional Trial Court (RTC) of Manila, Branch 19. The RTC reversed the *Order*, dated April

[1] *Rollo*, pp. 34-43. Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Godardo A. Jacinto, and Eliezer R. De Los Santos concurring.

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26, 1999, of the Metropolitan Trial Court (MeTC) of Manila, Branch 22. Also challenged by herein petitioner is the CA *Resolution,*[2] dated November 20, 2001, denying his Motion for Reconsideration.

The facts, as culled from the records, are as follows:

On February 28, 1996, private respondent Lydia Hao, treasurer of Siena Realty Corporation, filed a complaint-affidavit with the City Prosecutor of Manila charging Francis Chua and his wife, Elsa Chua, of four counts of falsification of public documents pursuant to Article 172[3] in relation to Article 171[4] of the Revised Penal Code. The charge reads:

That on or about May 13, 1994, in the City of Manila, Philippines, the said accused, being then a private individual, did then and there willfully, unlawfully and feloniously commit acts of falsification upon a public document, to wit: the said accused prepared, certified, and falsified the Minutes of the Annual Stockholders meeting of the Board of Directors of the Siena Realty Corporation, duly notarized before a Notary Public, Atty. Juanito G. Garcia and entered in his Notarial Registry as Doc No. 109, Page 22, Book No. IV and Series of

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[2] *Id.* at 45.

[3] ART. 172. *Falsification by private individuals and use of falsified documents.*— The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 [pesos] shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

. . . . . .

[4] ART. 171. *Falsification by public officer, employee; or notary or ecclesiastic minister.*— The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

. . . . . .

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

. . . . . .

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1994, and therefore, a public document, by making or causing it to appear in said Minutes of the Annual Stockholders Meeting that one LYDIA HAO CHUA was present and has participated in said proceedings, when in truth and in fact, as the said accused fully well knew that said Lydia C. Hao was never present during the Annual Stockholders Meeting held on April 30, 1994 and neither has participated in the proceedings thereof to the prejudice of public interest and in violation of public faith and destruction of truth as therein proclaimed.

CONTRARY TO LAW.[5]

Thereafter, the City Prosecutor filed the Information docketed as Criminal Case No. 285721[6] for falsification of public document, before the Metropolitan Trial Court (MeTC) of Manila, Branch 22, against Francis Chua but dismissed the accusation against Elsa Chua.

Herein petitioner, Francis Chua, was arraigned and trial ensued thereafter.

During the trial in the MeTC, private prosecutors Atty. Evelyn Sua-Kho and Atty. Ariel Bruno Rivera appeared as private prosecutors and presented Hao as their first witness.

After Hao's testimony, Chua moved to exclude complainant's counsels as private prosecutors in the case on the ground that Hao failed to allege and prove any civil liability in the case.

In an *Order*, dated April 26, 1999, the MeTC granted Chua's motion and ordered the complainant's counsels to be excluded from actively prosecuting Criminal Case No. 285721. Hao moved for reconsideration but it was denied.

Hence, Hao filed a petition for *certiorari* docketed as SCA No. 99-94846,[7] entitled *Lydia C. Hao, in her own behalf and*

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[5] CA *Rollo*, p. 59.

[6] Criminal Case No. 285721-CR in some parts of the Records.

[7] SCA No. 99-94648 in some parts of the Records.

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for the benefit of Siena Realty Corporation v. Francis Chua, and the Honorable Hipolito dela Vega, Presiding Judge, Branch 22, Metropolitan Trial Court of Manila, before the Regional Trial Court (RTC) of Manila, Branch 19.

The RTC gave due course to the petition and on October 5, 1999, the RTC in an order reversed the MeTC Order. The dispositive portion reads:

> WHEREFORE, the petition is GRANTED. The respondent Court is ordered to allow the intervention of the private prosecutors in behalf of petitioner Lydia C. Hao in the prosecution of the civil aspect of Crim. Case No. 285721, before Br. 22 [MeTC], Manila, allowing Attys. Evelyn Sua-Kho and Ariel Bruno Rivera to actively participate in the proceedings.
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> SO ORDERED.[8]

Chua moved for reconsideration which was denied.

Dissatisfied, Chua filed before the Court of Appeals a petition for *certiorari*. The petition alleged that the lower court acted with grave abuse of discretion in: (1) refusing to consider material facts; (2) allowing Siena Realty Corporation to be impleaded as co-petitioner in SCA No. 99-94846 although it was not a party to the criminal complaint in Criminal Case No. 285721; and (3) effectively amending the information against the accused in violation of his constitutional rights.

On June 14, 2001, the appellate court promulgated its assailed Decision denying the petition, thus:

> WHEREFORE, premises considered, the petition is hereby DENIED DUE COURSE and DISMISSED. The Order, dated October 5, 1999 as well as the Order, dated December 3, 1999, are hereby AFFIRMED *in toto*.
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> SO ORDERED.[9]

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[8] CA *Rollo*, p. 23.

[9] *Rollo*, p. 43.

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Petitioner had argued before the Court of Appeals that respondent had no authority whatsoever to bring a suit in behalf of the Corporation since there was no Board Resolution authorizing her to file the suit.

For her part, respondent Hao claimed that the suit was brought under the concept of a derivative suit. Respondent maintained that when the directors or trustees refused to file a suit even when there was a demand from stockholders, a derivative suit was allowed.

The Court of Appeals held that the action was indeed a derivative suit, for it alleged that petitioner falsified documents pertaining to projects of the corporation and made it appear that the petitioner was a stockholder and a director of the corporation. According to the appellate court, the corporation was a necessary party to the petition filed with the RTC and even if private respondent filed the criminal case, her act should not divest the Corporation of its right to be a party and present its own claim for damages.

Petitioner moved for reconsideration but it was denied in a Resolution dated November 20, 2001.

Hence, this petition alleging that the Court of Appeals committed reversible errors:

I. . . . IN RULING THAT LYDIA HAO'S FILING OF CRIMINAL CASE NO. 285721 WAS IN THE NATURE OF A DERIVATIVE SUIT

II. . . . IN UPHOLDING THE RULING OF JUDGE DAGUNA THAT SIENA REALTY WAS A PROPER PETITIONER IN SCA NO. [99-94846]

III. . . . IN UPHOLDING JUDGE DAGUNA'S DECISION ALLOWING LYDIA HAO'S COUNSEL TO CONTINUE AS PRIVATE PROSECUTORS IN CRIMINAL CASE NO. 285721

IV. . . . IN [OMITTING] TO CONSIDER AND RULE UPON THE ISSUE THAT JUDGE DAGUNA ACTED IN GRAVE ABUSE OF DISCRETION IN NOT DISMISSING THE PETITION IN SCA NO. [99-94846] FOR BEING A SHAM PLEADING.[10]

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[10] *Id.* at 18.

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The pertinent issues in this petition are the following: (1) Is the criminal complaint in the nature of a derivative suit? (2) Is Siena Realty Corporation a proper petitioner in SCA No. 99-94846? and (3) Should private prosecutors be allowed to actively participate in the trial of Criminal Case No. 285721.

On the first issue, petitioner claims that the Court of Appeals erred when (1) it sustained the lower court in giving due course to respondent's petition in SCA No. 99-94846 despite the fact that the Corporation was not the private complainant in Criminal Case No. 285721, and (2) when it ruled that Criminal Case No. 285721 was in the nature of a derivative suit.

Petitioner avers that a derivative suit is by nature peculiar only to intra-corporate proceedings and cannot be made part of a criminal action. He cites the case of *Western Institute of Technology, Inc. v. Salas*,[11] where the court said that an appeal on the civil aspect of a criminal case cannot be treated as a derivative suit. Petitioner asserts that in this case, the civil aspect of a criminal case cannot be treated as a derivative suit, considering that Siena Realty Corporation was not the private complainant.

Petitioner misapprehends our ruling in *Western Institute*. In that case, we said:

> Here, however, the case is not a derivative suit but is merely an appeal on the civil aspect of Criminal Cases Nos. 37097 and 37098 filed with the RTC of Iloilo for estafa and falsification of public document. Among the basic requirements for a derivative suit to prosper is that the minority shareholder who is suing for and on behalf of the corporation must allege in his complaint before the proper forum that he is suing on a derivative cause of action on behalf of the corporation and all other shareholders similarly situated who wish to join.... This was not complied with by the petitioners either in their complaint before the court *a quo* nor in the instant petition which, in part, merely states that "this is a petition for review on *certiorari* on pure questions of law to set aside a portion of the RTC decision in Criminal Cases Nos. 37097 and 37098" since the trial court's judgment of acquittal failed to impose civil liability

[11] G.R. No. 113032, 21 August 1997, 278 SCRA 216, 226.

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against the private respondents. By no amount of equity considerations, if at all deserved, can a mere appeal on the civil aspect of a criminal case be treated as a derivative suit.[12]

Moreover, in *Western Institute*, we said that a mere appeal in the civil aspect cannot be treated as a derivative suit because the appeal lacked the basic requirement that it must be alleged in the complaint that the shareholder is suing on a derivative cause of action for and in behalf of the corporation and other shareholders who wish to join.

Under Section 36[13] of the Corporation Code, read in relation to Section 23,[14] where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees.[15] An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stocks in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest.[16]

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[12] *Id.* at 225-226.

[13] SEC. 36. *Corporate powers and capacity.*– Every corporation incorporated under this Code has the power and capacity:

1. To sue and be sued in its corporate name;

. . . . . .

[14] SEC. 23. *The Board of Directors or Trustees.*– Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

. . . . . .

[15] *Tam Wing Tak v. Makasiar*, G.R. No. 122452, 29 January 2001, 350 SCRA 475, 485, citing *Premium Marble Resources, Inc. v. Court of Appeals*, G.R. No. 96551, 4 November 1996, 264 SCRA 11, 17.

[16] *Gamboa v. Victoriano*, No. L-40620, 5 May 1979, 90 SCRA 40, 47.

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A derivative action is a suit by a shareholder to enforce a corporate cause of action. The corporation is a necessary party to the suit. And the relief which is granted is a judgment against a third person in favor of the corporation. Similarly, if a corporation has a defense to an action against it and is not asserting it, a stockholder may intervene and defend on behalf of the corporation.[17]

Under the Revised Penal Code, every person criminally liable for a felony is also civilly liable.[18] 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.[19]

In Criminal Case No. 285721, the complaint was instituted by respondent against petitioner for falsifying corporate documents whose subject concerns corporate projects of Siena Realty Corporation. Clearly, Siena Realty Corporation is an offended party. Hence, Siena Realty Corporation has a cause of action. And the civil case for the corporate cause of action is deemed instituted in the criminal action.

However, the board of directors of the corporation in this case did not institute the action against petitioner. Private respondent was the one who instituted the action. Private respondent asserts that she filed a derivative suit in behalf of the corporation. This assertion is inaccurate. Not every suit filed in behalf of the corporation is a derivative suit. For a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit.[20] It is

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[17] *Price v. Gurney*, 324 U.S. 100 (1944).

[18] Article 100, Revised Penal Code.

[19] Section 1(a), Rule 111, Revised Rules of Criminal Procedure.

[20] *Tam Wing Tak v. Makasiar, supra*, note 15 at 485-486, citing *Western Institute of Technology, Inc. v. Salas, supra*, note 11 at 225.

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a condition *sine qua non* that the corporation be impleaded as a party because not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. The judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and may not bring subsequent suit against the same defendants for the same cause of action. In other words, the corporation must be joined as party because it is its cause of action that is being litigated and because judgment must be a *res adjudicata* against it.[21]

In the criminal complaint filed by herein respondent, nowhere is it stated that she is filing the same in behalf and for the benefit of the corporation. Thus, the criminal complaint including the civil aspect thereof could not be deemed in the nature of a derivative suit.

We turn now to the second issue, is the corporation a proper party in the petition for *certiorari* under Rule 65 before the RTC? Note that the case was titled "*Lydia C. Hao, in her own behalf and for the benefit of Siena Realty Corporation v. Francis Chua, and the Honorable Hipolito dela Vega, Presiding Judge, Branch 22, Metropolitan Trial Court of Manila.*" Petitioner before us now claims that the corporation is not a private complainant in Criminal Case No. 285721, and thus cannot be included as appellant in SCA No. 99-94846.

Petitioner invokes the case of *Ciudad Real & Dev't. Corporation v. Court of Appeals.*[22] In *Ciudad Real*, it was ruled that the Court of Appeals committed grave abuse of discretion when it upheld the standing of Magdiwang Realty Corporation as a party to the petition for *certiorari*, even though it was not a party-in-interest in the civil case before the lower court.

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[21] *Asset Privatization Trust v. Court of Appeals*, G.R. No. 121171, 29 December 1998, 300 SCRA 579, 615, citing III A.F. AGBAYANI, *COMMERCIAL LAWS OF THE PHILIPPINES*, 561-562 (1996).

[22] G.R. No. 107888, 4 January 1994, 229 SCRA 71.

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In the present case, respondent claims that the complaint was filed by her not only in her personal capacity, but likewise for the benefit of the corporation. Additionally, she avers that she has exhausted all remedies available to her before she instituted the case, not only to claim damages for herself but also to recover the damages caused to the company.

Under Rule 65 of the Rules of Civil Procedure,[23] when a trial court commits a grave abuse of discretion amounting to lack or excess of jurisdiction, the person aggrieved can file a special civil action for *certiorari*. The aggrieved parties in such a case are the State and the private offended party or complainant.[24]

In a string of cases, we consistently ruled that only a party-in-interest or those aggrieved may file *certiorari* cases. It is settled that the offended parties in criminal cases have sufficient interest and personality as "person(s) aggrieved" to file special civil action of prohibition and *certiorari*.[25]

In *Ciudad Real*, cited by petitioner, we held that the appellate court committed grave abuse of discretion when

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[23] SECTION 1. *Petition for certiorari.*– When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[24] *Dela Rosa v. Court of Appeals*, G.R. No. 116945, 9 February 1996, 253 SCRA 499, 507.

[25] *Flores v. Joven*, G.R. No. 129874, 27 December 2002, 394 SCRA 339, 344-345; *Narciso v. Sta. Romana-Cruz*, G.R. No. 134504, 17 March 2000, 385 Phil. 208, 221-224; *Martinez v. Court of Appeals*, G.R. No. 112387, 13 October 1994, 237 SCRA 575, 582.

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it sanctioned the standing of a corporation to join said petition for *certiorari*, despite the finality of the trial court's denial of its Motion for Intervention and the subsequent Motion to Substitute and/or Join as Party/Plaintiff.

Note, however, that in *Pastor, Jr. v. Court of Appeals*[26] we held that if aggrieved, even a non-party may institute a petition for *certiorari*. In that case, petitioner was the holder in her own right of three mining claims and could file a petition for *certiorari*, the fastest and most feasible remedy since she could not intervene in the probate of her father-in-law's estate.[27]

In the instant case, we find that the recourse of the complainant to the respondent Court of Appeals was proper. The petition was brought in her own name and in behalf of the Corporation. Although, the corporation was not a complainant in the criminal action, the subject of the falsification was the corporation's project and the falsified documents were corporate documents. Therefore, the corporation is a proper party in the petition for *certiorari* because the proceedings in the criminal case directly and adversely affected the corporation.

We turn now to the third issue. Did the Court of Appeals and the lower court err in allowing private prosecutors to actively participate in the trial of Criminal Case No. 285721?

Petitioner cites the case of *Tan, Jr. v. Gallardo*,[28] holding that where from the nature of the offense or where the law defining and punishing the offense charged does not provide for an indemnity, the offended party may not intervene in the prosecution of the offense.

Petitioner's contention lacks merit. Generally, the basis of civil liability arising from crime is the fundamental postulate that every man criminally liable is also civilly liable. When a person commits a crime he offends two entities namely (1) the society in which

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[26] No. L-56340, 24 June 1983, 122 SCRA 885.

[27] *Id.* at 903-904.

[28] Nos. L-41213-14, 5 October 1976, 73 SCRA 306, 313.

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he lives in or the political entity called the State whose law he has violated; and (2) the individual member of the society whose person, right, honor, chastity or property has been actually or directly injured or damaged by the same punishable act or omission. 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. Additionally, 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, whether done intentionally or negligently. The indemnity which a person is sentenced to pay forms an integral part of the penalty imposed by law for the commission of the crime.[29] The civil action involves the civil liability arising from the offense charged which includes restitution, reparation of the damage caused, and indemnification for consequential damages.[30]

Under the Rules, 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.[31] Rule 111(a) of the Rules of Criminal Procedure provides that, "[w]hen a criminal action is instituted, the civil action 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."

Private respondent did not waive the civil action, nor did she reserve the right to institute it separately, nor institute the civil action for damages arising from the offense charged. Thus, we find that the private prosecutors can intervene in the trial of the criminal action.

Petitioner avers, however, that respondent's testimony in the inferior court did not establish nor prove any damages

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[29] *Banal v. Tadeo, Jr.*, Nos. L-78911-25, 11 December 1987, 156 SCRA 325, 329-330.

[30] Article 104, Revised Penal Code.

[31] Section 16, Rule 110, Revised Rules of Criminal Procedure.

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personally sustained by her as a result of petitioner's alleged acts of falsification. Petitioner adds that since no personal damages were proven therein, then the participation of her counsel as private prosecutors, who were supposed to pursue the civil aspect of a criminal case, is not necessary and is without basis.

When the civil action is instituted with the criminal action, evidence should be taken of the damages claimed and the court should determine who are the persons entitled to such indemnity. The civil liability arising from the crime may be determined in the criminal proceedings if the offended party does not waive to have it adjudged or does not reserve the right to institute a separate civil action against the defendant. Accordingly, if there is no waiver or reservation of civil liability, evidence should be allowed to establish the extent of injuries suffered.[32]

In the case before us, there was neither a waiver nor a reservation made; nor did the offended party institute a separate civil action. It follows that evidence should be allowed in the criminal proceedings to establish the civil liability arising from the offense committed, and the private offended party has the right to intervene through the private prosecutors.

WHEREFORE, the instant petition is *DENIED*. The Decision, dated June 14, 2001, and the Resolution, dated November 20, 2001, of the Court of Appeals in CA-G.R. SP No. 57070, affirming the Order, dated October 5, 1999, of the Regional Trial Court (RTC) of Manila, Branch 19, are *AFFIRMED*. Accordingly, the private prosecutors are hereby allowed to intervene in behalf of private respondent Lydia Hao in the prosecution of the civil aspect of Criminal Case No. 285721 before Branch 22, of Metropolitan Trial Court (MeTC) of Manila. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

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[32] *Corpuz v. Siapno*, A.M. No. MTJ-96-1106, 17 June 2003, 404 SCRA 83, 90.