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FIRST DIVISION

[G.R. No. 186597. June 17, 2015]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **VICTORIA R. ARAMBULO and MIGUEL ARAMBULO, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; REQUISITES THAT MUST BE PRESENT FOR A CIVIL ACTION TO BE CONSIDERED PREJUDICIAL TO A CRIMINAL CASE AS TO CAUSE THE SUSPENSION OF THE CRIMINAL PROCEEDINGS UNTIL THE FINAL RESOLUTION OF THE CIVIL CASE.— A prejudicial question is one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. Section 7, Rule 111 of the 2000 Rules of Criminal Procedure prescribes the elements that must concur in order for a civil case to be considered a prejudicial question. x x x Aptly put, the following requisites must be present for a civil action to be considered prejudicial to a criminal case as to cause the suspension of the criminal proceedings until the final resolution of the civil case: (1) the civil case involves facts intimately related to those upon which the criminal prosecution would be based; (2) in the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined; and (3) jurisdiction to try said question must be lodged in another tribunal.

2. ID.; ID.; ID.; ID.; SEC CASE NO. 05-97-5659 DOES NOT PRESENT A PREJUDICIAL QUESTION TO THE CRIMINAL

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CASE FOR *ESTAFA*; IT DOES NOT AUTOMATICALLY FOLLOW THAT AN ACCOUNTING OF CORPORATE FUNDS AND PROPERTIES AND ANNULMENT OF FICTITIOUS SALES OF CORPORATE ASSETS WOULD RESULT IN THE CONVICTION OF RESPONDENTS FOR *ESTAFA*.— As correctly stated by the Court of Appeals, SEC Case No. 05-97- 5659 does not present a prejudicial question to the criminal case for *estafa*. It is an action for accounting of all corporate funds and assets of Anaped, annulment of sale, injunction, receivership and damages. Even if said case will be decided against respondents, they will not be adjudged free from criminal liability. It also does not automatically follow that an accounting of corporate funds and properties and annulment of fictitious sale of corporate assets would result in the conviction of respondents in the *estafa* case.

3. **ID.; ID.; ID.; ID.; THE RESOLUTION OF THE ISSUE OF MISAPPROPRIATION BY RESPONDENTS DEPENDS UPON THE RESULT OF SEC CASE NO. 03-99-6259.—** It is true that the accused may be convicted of the felony under Article 315, paragraph 1(b) of the Revised Penal Code if the prosecution proves misappropriation or conversion by the accused of the money or property subject of the Information. In a prosecution for *estafa*, demand is not necessary where there is evidence of misappropriation or conversion. The phrase, "to misappropriate to one's own use" has been said to include "not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right." In this case, the resolution of the issue of misappropriation by respondents depends upon the result of SEC Case No. 03-99-6259. If it is ruled in the SEC case that the present Anaped directors and officers were not validly elected, then respondent Victoria may have every right to refuse remittance of rental to Buban. Hence, the essential element of misappropriation in *estafa* may be absent in this case.

4. **CRIMINAL LAW; REVISED PENAL CODE; *ESTAFA;* ELEMENTS OF *ESTAFA* WITH ABUSE OF CONFIDENCE; MERE FAILURE TO RETURN THE THING RECEIVED FOR ADMINISTRATION OR UNDER ANY OTHER OBLIGATION INVOLVING THE DUTY TO DELIVER OR RETURN THE SAME OR DELIVER THE VALUE THEREOF TO THE OWNER**

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COULD ONLY GIVE RISE TO A CIVIL ACTION AND DOES NOT CONSTITUTE THE CRIME OF *ESTAFA.*— Under Article 315, paragraph 1(b) of the RPC, the elements of *estafa* with abuse of confidence are as follows: (1) that the money, goods or other personal property is 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; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is demand by the offended party to the offender. The elements of demand and misappropriation bear relevance to the validity or invalidity of the authority of Anaped directors and officers. In *Omictin v. Court of Appeals*, we held that since the alleged offended party is the corporation, the validity of the demand for the delivery rests upon the authority of the person making such a demand on the company's behalf. If the supposed authority of the person making the demand is found to be defective, it is as if no demand was ever made, hence the prosecution for *estafa* cannot prosper. The Court added that mere failure to return the thing received for administration or under any other obligation involving the duty to deliver or return the same or deliver the value thereof to the owner could only give rise to a civil action and does not constitute the crime of *estafa*.

APPEARANCES OF COUNSEL

Carag De Mesa & Zaballero for respondents.

D E C I S I O N

PEREZ, *J.*:

This Petition for Review on *Certiorari* seeks to annul the Decision[1] and Resolution[2] dated 5 February 2008 and 27 February

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[1] *Rollo*, pp. 33-45; Penned by Associate Justice Regalado E. Maambong with Associate Justices Celia C. Librea-Leagogo and Sixto C. Marella, Jr. concurring.

[2] *Id*. at 47-48.

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2009, respectively of the Court of Appeals, Seventeenth Division in CA-G.R. SP No. 86353 which effectively suspended the criminal proceedings in Criminal Case No. C-62784, an estafa case against respondents before the Regional Trial Court (RTC), Branch 121, Caloocan City.

Records show that respondent Victoria R. Arambulo (Victoria), Emerenciana R. Gungab, Reynaldo Reyes (Reynaldo), Domingo Reyes (Domingo), Rodrigo Reyes and Oscar Reyes (Oscar) are the heirs of Spouses Pedro C. Reyes and Anastacia Reyes. Anaped Estate, Inc. (Anaped) was incorporated as part of the estate planning or as conduit to hold the properties of the estate of Pedro Reyes for and in behalf of his heirs.

Jose Buban (Buban), as Vice-President and General Manager of Anaped Estate, Inc. (Anaped), filed a complaint for *estafa* against Victoria and her husband Miguel Arambulo, Jr. (Miguel) before the Office of the City Prosecutor of Caloocan City. He alleged that Victoria failed to remit the rentals collected from the time the ownership of the commercial apartments was transferred to Anaped.

On 24 April 2001, Assistant City Prosecutor Alvin A. Almora recommended the filing of an Information against respondents. On 1 June 2001, respondents were charged with *estafa* committed as follow:

> That on [or] about the period from December, 1994 to June, 1997, in the City of Caloocan, Philippines, and within the jurisdiction of the Honorable Court, the said accused, conspiring together and mutually helping one another, and with unfaithfulness or abuse of confidence, after having received rentals from IMF International Corporation, in the total amount of THREE HUNDRED NINETEEN THOUSAND EIGHT HUNDRED EIGHTY-EIGHT (₱319,888.00) PESOS, under the express obligation of turning over or remitting the same to ANAPED ESTATE INCORPORATED, once in possession of the said amount and far from complying with their obligation aforesaid and despite notice [to] that effect, the said accused did then and there willfully, unlawfully and feloniously misappropriate, misapply, and convert the said amount to their own personal use and benefit

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to the damage and prejudice of ANAPED ESTATE, INC., in the sum above-aforementioned.[3]

On 14 April 2003, respondents filed a Motion to Suspend Proceedings on the ground of a prejudicial question in view of the pendency of two intra-corporate cases pending before the RTC of Quezon City and Makati City. SEC Case No. 05-97-5659 is a petition filed by Victoria's brother Oscar for accounting of all corporate funds and assets of Anaped, annulment of sale, injunction, receivership and damages.[4] SEC Case No. 03-99-6259 is a petition filed by Victoria and her brothers Reynaldo and Domingo questioning the authority of their elder sibling Rodrigo Reyes and Emerenciana R. Gungab, as well as the Anaped Board of Directors and officers, including private complainant Buban to act for and in behalf of the corporation.[5]

In their motion to suspend proceedings, respondents asserted that the resolution of the SEC cases in their favor particularly the issues of whether of the group of Rodrigo and Buban are the lawful representatives of the corporation and whether they are duly authorized to make a demand for remittance would necessarily result in their acquittal in the criminal case.

On 28 August 2003, the trial court, through Presiding Judge Adoracion G. Angeles, granted the motion for suspension of the proceedings. The trial court reasoned that the issue in the SEC cases, *i.e.*, who between the groups has the right to act for and in behalf of the corporation, has a direct link to the issue of the culpability of the accused for *estafa*, thus:

> For indeed, if the aforesaid issues are resolved in the [respondent's] favor, they cannot be held liable for misappropriation for they possess the authority to collect rentals and hold the same on behalf of the firm. They would then be justified in not remitting the collections to the group of Jose Buban who would be then deemed as mere usurpers of authority.[6]

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[3] *Id.* at 49.

[4] CA *rollo*, pp. 49-56.

[5] *Rollo*, p. 36.

[6] *Id.* at 51.

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Acting on the Motion for Reconsideration filed by petitioner, the trial court issued an Order dated 19 February 2004 setting aside its 28 August 2003 Order and setting the case for pre-trial. The trial court noted that respondents failed to file an opposition to the motion for reconsideration.

Respondents filed an Omnibus Motion praying that they be allowed to file their Comment/Opposition to the motion for reconsideration and that the pre-trial be held in abeyance. Respondents claimed that the Order of the trial court to file comment/opposition was served on respondents themselves and not on their counsel.

On 23 June 2004, the trial court denied respondents' Omnibus Motion. The trial court stressed that even if the order was served upon respondents and not upon their counsel, records show that a copy of the motion for reconsideration was served by registered mail upon counsel. Thus, the trial court stated that respondents' counsel was well aware of the existence of the motion for reconsideration, thus he could have taken the initiative to file his comment thereto without waiting for any directive from the court.

Aggrieved, respondents filed a petition for *certiorari* before the Court of Appeals asserting that the trial court committed grave abuse of discretion when it denied them the opportunity to file their comment; when it ruled that respondents' counsel should have filed the comment as he was furnished a copy of the motion for reconsideration; and when it granted petitioner's motion for reconsideration.

On 5 February 2008, the Court of Appeals granted the petition. The dispositive portion reads:

WHEREFORE, the assailed Orders of the respondent Judge dated February 19, 2004 and July 23, 2004 are **REVERSED** and **SET ASIDE** and she is hereby enjoined from hearing the Criminal Case No. C-62784 until the termination of the SEC Case No. 03-99-6259. The August 28, 2003 Order of the respondent Judge is hereby **REINSTATED**.[7]

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[7] *Id.* at 44.

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Preliminarily, on the procedural question, the Court of Appeals pointed out that respondents were given the opportunity to present their side in their motion to suspend proceedings. The appellate court treated respondents' arguments in said motion as their Comment/Opposition to the Motion for Reconsideration filed by petitioner. That is correct.

The appellate court ruled that in SEC Case No. 03-99-6259:

> [T]he issue is the legality of the election of ANAPED Board of Directors, as well as the authority of its officers, which include private complainant Jose Buban, to act for and in behalf of the corporation. Clearly, it involves facts that are intimately related to those upon which the criminal case is based. The resolution of the issues raised in this intra-corporate dispute will ultimately determine the guilt or innocence of [respondents] in the crime of estafa initiated by Jose Buban. It must be remembered that one of the elements of the crime of estafa with abuse of confidence under paragraph 1 (b) of Article 315 of the Revised Penal Code is a demand made by the offended party to the offender. A valid demand must therefore be made by an offended party to the offender.[8]

The appellate court added that since respondents are challenging the authority of Buban, then the validity of Buban's demand to turn over or remit the rentals is put in question. The appellate court concluded that if the supposed authority of Buban is found to be defective, it is as if no demand was ever made, hence the prosecution for *estafa* cannot prosper.

Petitioner filed a motion for reconsideration but it was denied in a Resolution dated 27 February 2009.

In this petition for review on *certiorari*, petitioner raises the lone ground of whether the Court of Appeals erred in declaring that there exists a prejudicial question which calls for the suspension of the criminal proceedings before the trial court.

Petitioner argues that any decision of the trial court in the SEC cases with respect to the question of who are the lawful

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[8] *Id*. at 42. (Emphasis omitted).

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officers or directors of Anaped is not determinative of the liability of respondents to remit the rental collections in favor of Anaped. Petitioner proffers that a corporation has a personality distinct and separate from its individual stockholders. Petitioner emphasizes that at the time the demand for remittance of the rental collections was made against respondents, Buban was an officer of Anaped and until such time that his authority is validly revoked, all his previous acts are valid and binding. Moreover, petitioner avers that the duty of respondents to remit the collection still subsists even during the pendency of the SEC cases as the money remitted goes directly to the corporation and not to the person who demanded the remittance. Finally, petitioner opines that question pertaining to the authority of Buban to demand remittance may only be considered as a defense in the estafa case and not as a ground to suspend the proceedings.

A prejudicial question is one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.[9]

Section 7, Rule 111 of the 2000 Rules of Criminal Procedure prescribes the elements that must concur in order for a civil case to be considered a prejudicial question, to wit:

> Section 7. *Elements of prejudicial question*. — The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

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[9] *Pimentel v. Pimentel, et al*., 645 Phil. 1, 6 (2010) citing *Go v. Sandiganbayan (First Division)*, 559 Phil. 338, 341 (2007).

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Aptly put, the following requisites must be present for a civil action to be considered prejudicial to a criminal case as to cause the suspension of the criminal proceedings until the final resolution of the civil case: (1) the civil case involves facts intimately related to those upon which the criminal prosecution would be based; (2) in the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined; and (3) jurisdiction to try said question must be lodged in another tribunal.[10]

As correctly stated by the Court of Appeals, SEC Case No. 05-97-5659 does not present a prejudicial question to the criminal case for *estafa*. It is an action for accounting of all corporate funds and assets of Anaped, annulment of sale, injunction, receivership and damages. Even if said case will be decided against respondents, they will not be adjudged free from criminal liability. It also does not automatically follow that an accounting of corporate funds and properties and annulment of fictitious sale of corporate assets would result in the conviction of respondents in the *estafa* case.

With respect to SEC Case No. 03-99-6259, however, we affirm the Court of Appeals' finding that a prejudicial question exists. The Complaint in SEC Case No. 03-99-6259 prays for the nullification of the election of Anaped directors and officers, including Buban. Essentially, the issue is the authority of the aforesaid officers to act for and behalf of the corporation.

On the other hand, the issue in the criminal case pertains to whether respondents committed *estafa*. Under Article 315, paragraph 1 (b) of the RPC, the elements of *estafa* with abuse of confidence are as follows: (1) that the money, goods or other personal property is 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; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;

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[10] *Sabandal v. Tongco*, 419 Phil. 13, 17 (2001) citing *Prado v. People*, 218 Phil. 573, 577 (1984).

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(3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is demand by the offended party to the offender.[11]

The elements of demand and misappropriation bear relevance to the validity or invalidity of the authority of Anaped directors and officers. In *Omictin v. Court of Appeals*,[12] we held that since the alleged offended party is the corporation, the validity of the demand for the delivery rests upon the authority of the person making such a demand on the company's behalf. If the supposed authority of the person making the demand is found to be defective, it is as if no demand was ever made, hence the prosecution for estafa cannot prosper. The Court added that mere failure to return the thing received for administration or under any other obligation involving the duty to deliver or return the same or deliver the value thereof to the owner could only give rise to a civil action and does not constitute the crime of *estafa*.[13]

It is true that the accused may be convicted of the felony under Article 315, paragraph 1 (b) of the Revised Penal Code if the prosecution proves misappropriation or conversion by the accused of the money or property subject of the Information. In a prosecution for *estafa*, demand is not necessary where there is evidence of misappropriation or conversion.[14] The phrase, "to misappropriate to one's own use" has been said to include "not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right."[15] In this case, the resolution of the issue of misappropriation by respondents depends upon the result of SEC Case No. 03-99-

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[11] *Jandusay v. People*, G.R. No. 185129, 17 June 2013, 698 SCRA 619, 625 citing *Asejo v. People*, 555 Phil. 106, 112-113 (2007).

[12] G.R. No. 148004, 541 Phil. 68, 79 (2007).

[13] *Id*.

[14] *Lee v. People*, 495 Phil. 239, 250 citing *Salazar v. People,* 439 Phil. 762 (2002) citing *United States v. Ramirez*, 9 Phil. 67 (1907) and *Sy v. People*, 254 Phil. 693 (1989).

[15] *Quinto v. People*, 365 Phil. 259, 270 (1999).

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6259. If it is ruled in the SEC case that the present Anaped directors and officers were not validly elected, then respondent Victoria may have every right to refuse remittance of rental to Buban. Hence, the essential element of misappropriation in *estafa* may be absent in this case.

In this connection, we find important the fact, noted by the CA, that:

> It appears from the record of the case that Victoria Arambulo for the last twenty (20) years had been tasked with the management and collection of rentals of the real properties the Reyes siblings inherited from their parents, Ana and Pedro Reyes.[16]

As earlier mentioned, SEC Case No. 03-99-6259 is a petition filed by Victoria and her brothers Domingo and Reynaldo questioning the very authority of their elder siblings Rodrigo and Emerenciana, as well as the Anaped Board of Directors and Officers, including Buban to act for and in behalf of the corporation. We find this issue consonant with the provisions of the Corporation Code which provides in Section 23 that:

> 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 and until their successors are elected and qualified.

In *Valle Verde Country Club, Inc. v. Africa*,[17] we said that:

> The underlying policy of the Corporation Code is that the business and affairs of the corporation must be governed by a board of directors whose members have stood for election, and who have actually been elected by the stockholders, on an annual basis. Only

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[16] *Rollo*, p. 42.

[17] 614 Phil. 390, 400 (2009).

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in that way can the directors' continued accountability to shareholders, and the legitimacy of their decisions that bind the corporation's stockholders, be assured. The shareholder vote is critical to the theory that legitimizes the exercise of power by the directors or officers over properties that they do not own.

From the foregoing, it is clear that, should respondents herein prevail in SEC Case No. 03-99-6259, then Buban, who does not own either by himself or in behalf of Anaped which is the owner, the property heretofore managed by Victoria, cannot demand remittance of the rentals on the property and Victoria does not have the obligation to turn over the rentals to Buban.

Verily, the result of SEC Case No. 03-99-6259 will determine the innocence or guilt of respondents in the criminal case for *estafa*.

WHEREFORE, the petition is **DENIED.** The Decision and Resolution of the Court of Appeals dated 5 February 2008 and 27 February 2009 enjoining the Regional Trial Court of Caloocan City, Branch 121 from hearing Criminal Case No. C-62784 until the termination of SEC Case No. 03-99-6259, are **AFFIRMED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

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[*] Additional member per Raffle dated 20 April 2015.