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Teehankee,(Chairman), Makasiar, Esguerra, and *Muñoz Palma, JJ.,* concur.

Resolutions reversed and respondent Court ordered to give due course to the appeal.

[No. L-41959. March 31, 1976]

FIRST DIVISION

THE PEOPLE OF THE PHILIPPINES, petitioner, *vs.* HONORABLE ENRIQUE B. INTING, Judge of the City Court of Davao City, and JOSE ALVARADO, respondents.

PETITION FOR REVIEW of an order of the City Court of Davao. Inting, *J.:*

SYNOPSIS

The City Court of Davao dismissed the charge of estafa against the accused "on the ground that the prosecution has failed to prove the crime charged." A petition for review of the dismissal order was filed. The Supreme Court considered the said petition an actual attempt by petitioner to appeal from a judgment of acquittal that has become final and executory upon its promulgation.

Petition for review denied.

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SYLLABUS
of the Ruling of the Court

1. CRIMINAL PROCEDURE; DISMISSAL OF COMPLAINT; PETITION FOR REVIEW THEREOF; AN ACTUAL ATTEMPT TO APPEAL, PLACES ACCUSED IN DOUBLE JEOPARDY.– The petition for review on certiorari of the order dismissing the case "on the ground that the prosecution has failed to prove the crime charged" is an actual attempt by petitioner to appeal from a judgment of acquittal in a criminal case that became final and executory upon its promulgation, an appeal that would place the accused in double jeopardy because there was a trial on the merits and the trial court in the full exercise of its jurisdiction found the evidence of the prosecution insufficient to support conviction of the accused.
2. ID.; ID.; ID.; DENIAL OF PETITION WHEN SOLICITOR GENERAL CONCEDES THERE IS DOUBLE JEOPARDY.– When the Solicitor General who has control of all appeal by the State in criminal cases is in accord that the petition for review (by way of appeal from an acquittal on the merits) would place the accused in double jeopardy, the petition is denied outright without need of going into the correctness of respondent judge's ruling.
3. ID.; ID.; ACQUITTAL; NO APPEAL LIES THEREFROM.– No appeal by the State lies from an acquittal verdict.

APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Hugo E. Gutierrez, Jr. and *Trial Attorney Nanette R. de Castro* for petitioner.

Special Counsel Maximo Llanto for the City Fiscal of Davao City.

Augusto B. Breva for private prosecutor.

Bienvenido Bañez for respondents Judge Inting and Jose Alvarado.

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RESOLUTION

ESQUERRA, *J.:*

Considering that this petition for review on certiorari of the order dated October 21, 1975, of the City Court of Davao, Branch II, in its Criminal Case No. 8053-B, entitled "The People of the Philippines *vs.* Jose Alvarado, for Estafa" which order dismissed the case "on the ground that the prosecution has failed to prove the crime charged", is an actual attempt by the petitioner to appeal from a judgment of acquittal in a criminal case that became final and executory upon its promulgation, an appeal that would, as correctly contended by the Solicitor General, place the accused in double jeopardy because there was a trial on the merits and the trial court in the full exercise of its jurisdiction found the evidence of the prosecution insufficient to support conviction of the accused, this Court resolved to deny the petition for review.

Charged with estafa under Article 315, 3rd case, paragraph 1(b) of the Revised Penal Code, the accused, Jose Alvarado, was acquitted by the trial court on its reasoning that his *failure to return a typewriter he bought from complainant Business Machines Corporation* "with reservation of title, right of repossession and forfeiture of all partial payments upon default", after the postdated check for ₱854.25 issued as payment had been dishonored, *could be simply considered as a breach of civil obligation* and not a violation of Article 315, paragraph 1(b) of the Revised Penal Code.

The Solicitor General in his comment dated January 5, 1976, contends that a *contract to sell* as the one involved herein must be distinguished from a *contract of sale,* and that in the former case the failure of the purchaser to pay

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as agreed would prevent the contract of sale from taking place and the purchaser would be duty bound to return the very same thing received or become liable for estafa under par. (b), sub. no. 1 of Article 315 of the Revised Penal Code. Although he believes that the trial court committed an error in the interpretation of the law and in acquitting the accused, nevertheless he concedes that a correction by appeal of such an error in the guise of a petition for certiorari, an error which is non-jurisdictional in character, would result in a violation of the constitutional inhibition against double jeopardy (Article IV, Section 22, 1973 Constitution).

Since the Solicitor General who has control of all appeals by the State in criminal cases and the private respondent (accused) are in accord that the present petition (by way of appeal from an acquittal on the merits) would place the accused in double jeopardy, the petition must be denied outright without need of going into the correctness of respondent judge's ruling.

Since no appeal by the State lies from an acquittal verdict, the petition must be as it is hereby denied.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and *Martin, JJ.,* concur.

Petition denied.