



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

JOCELYN ASISTIO y G.R. No. 200465
CONSINO,

Petitioner, Present:

- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
BERSAMIN,*
VILLARAMA, JR., and
REYES, JJ.

PEOPLE OF THE PHILIPPINES
AND MONICA NEALIGA,
Respondents.

Promulgated:

April 20, 2015

X-----X

DECISION

PERALTA, J.:

Assailed in this petition for *certiorari* under Rule 65 of the Rules of Court are the Court of Appeals (CA) Decision¹ dated August 31, 2011 and its Resolution² dated January 31, 2012 in CA-G.R. CR No. 32363. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the assailed Orders dated 14 October 2008 and 12 February 2009 of Branch 40, Regional Trial Court of Manila, in Criminal Case No. 01-197750, are hereby **REVERSED** and **SET ASIDE**. Accordingly, let the records of this case be **REMANDED** to

* Designated Acting Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 10, 2014.

¹ Penned by Associate Justice Romeo F. Barza, with Associate Justices Rosalinda Asuncion-Vicente and Socorro B. Inting, concurring; *rollo*, pp. 38-51.

² *Id.* at 52-53. (Emphasis in the original)

Branch 40 of the Regional Trial Court of Manila, for further appropriate proceedings.

SO ORDERED.³

The factual and procedural antecedents are as follows:

Petitioner Jocelyn Asistio y Consino was charged with violation of Section 46 of the Cooperative Code of the Philippines (Republic Act No. [RA] 6938).⁴ The accusatory portion of the Information filed against her reads:

That on or about July 27, 1998, in the City of Manila, Philippines, the said accused, being then the Chairperson and Managing Director of A. Mabini Elementary School Teachers Multi-Purpose Cooperative, and as such, have a complete control and exclusively manage the entire business of A. Mabini Elementary School Teachers Multi-Purpose Cooperative, did then and there willfully, unlawfully and feloniously acquires, in violation of her duty as such and the confidence reposed on her, personal interest or equity adverse to A. Mabini Elementary School Teachers Multi-Purpose Cooperative by then and there entering into a contract with Coca Cola Products at A. Mabini Elementary School Teachers Multi-Purpose Cooperative in her own personal capacity when in truth and in fact as the said accused fully well knew, the sale of Coca-Cola products at A. Mabini Elementary School Teachers Multi-Purpose Cooperative should have accrued to A. Mabini Elementary School Teachers Multi-Purpose Cooperative to the damage and prejudice of A. Mabini Elementary School Teachers Multi-Purpose Cooperative.

CONTRARY TO LAW.⁵

Upon her arraignment, petitioner entered a plea of “not guilty.”

Trial on the merits ensued.

The prosecution sought to prove that petitioner, then Chairperson of the A. Mabini Elementary School Teachers Multi-Purpose Cooperative, had entered into an exclusive dealership agreement with Coca-Cola Bottlers

³ *Id.* at 50-51. (Emphasis in the original)

⁴ Section 46. *Liability of Directors, Officers and Committee Members.* - **Directors, officers and committee members, who willfully and knowingly** vote for or assent to patently unlawful acts or who are guilty of gross negligence or bad faith in directing the affairs of the cooperative or **acquire any personal or pecuniary interest in conflict with their duty as such directors, officers or committee member** shall be liable jointly and severally for all damages or profits resulting therefrom to the cooperative, members and other persons.

When a director, officer or committee member attempts to acquire or acquires, in violation of his duty, any interest or equity adverse to the cooperative in respect to any matter which has been reposed in him in confidence, he shall, as a trustee for the cooperative, be liable for damages and for double the profits which otherwise would have accrued to the cooperative. (Emphasis ours)

⁵ *Rollo*, p. 39.

Philippines, Inc., (*Coca Cola*) for the sale of softdrink products at the same school. By virtue of a Memorandum of Agreement between the school and the Cooperative, Dr. Nora T. Salamanca, the school principal, directed petitioner to submit her financial reports during her tenure as Chairperson. Instead, petitioner claimed that the principal had no business and authority to require her to produce financial statements, and that the said reports had been posted on the school bulletin board.

The school principal then created an audit committee to look into the financial reports of the Cooperative. The committee was composed of Aurora Catabona (Chairperson), Monica Nealiga (member), with Noemi Olazo (Chairperson-auditor) and Sylvia Apostol (auditor), who later executed their respective affidavits in support of the charge against petitioner. Based on the documents obtained from Coca-Cola, including the records of actual deliveries and sales, and the financial statements prepared by petitioner, the audit committee found that petitioner defrauded the Cooperative and its members for three (3) years in the following amounts: School Year (S.Y.) 1998-1999 – ₱54,008.00; S.Y. 1999-2000 – ₱40,503.00; and S.Y. 2000-2001 – ₱8,945.00. Despite requests for her to return to the Cooperative the amounts she had allegedly misappropriated, petitioner failed and refused to do so. Thus, the Cooperative issued a Board Resolution authorizing the filing of criminal charges against petitioner.

After the presentation and offer of evidence by the prosecution, petitioner moved to dismiss the case by way of Demurrer to Evidence with prior leave of court. She argued, among other matters, that the Regional Trial Court (RTC) of Manila, Branch 40, does not have jurisdiction over the case, as the crime charged (*Violation of Section 46 of RA 6938*) does not carry with it a sanction for which she can be held criminally liable.

On October 14, 2008, the RTC dismissed the case for lack of jurisdiction, thus:

Considering that the MeTCs, MTC, MCTCs have exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offense or predicated thereon, and considering that violation of [Sec.] 46 of R.A. 6938 would be punishable by imprisonment of not less than six (6) months nor more than one (1) year and a fine of not less than one thousand pesos (₱1,000.00), or both at the discretion of the Court, this Court (RTC) has no jurisdiction to hear and determine the instant case which properly pertains to the first level courts.

WHEREFORE, premises considered, this Court finds and holds that it has no jurisdiction over the offense charged. Accordingly, the

instant case is hereby **DISMISSED**. This Court having no jurisdiction, further discussions over the defense' allegation that there was a violation of the principle of primary jurisdiction and that the private complainants used a falsified resolution to purposely empower them to file the instant case become moot and academic.

IT IS SO ORDERED.⁶

On February 12, 2009, the RTC denied for lack of merit the private prosecutor's motion for a reconsideration of the order of dismissal.⁷ The RTC held:

Nowhere in said [Sec.] 46 of R.A. 6938 does it provide for penal sanctions/liability for violation of acts or omission prescribed therein. If ever, the liability is only for damages and for double the profits which otherwise would have accrued to the cooperative. It is a fundamental rule in law that an act or omission is not a crime unless there is a law making it so and providing a penalty therefor. Otherwise put, the facts charged in the information do not charge an offense. And even assuming *arguendo* that they do constitute an offense, the penalty therefor is that provided under paragraph 4 of [Section] 124 of R.A. [6938] which is “*imprisonment of not less than six (6) months nor more than one (1) year and a fine of not less than one thousand pesos (□1,000.00), or both at the discretion of the court,*” which falls under the exclusive jurisdiction of the first, not the second level court.

Another factor which strongly militates against the cause of the prosecution is the undisputed fact that before this case was filed in Court, conciliation/mediation process for the amicable settlement of the dispute was not availed of by the private complainants who are all members (directors) of the A. Mabini Elementary School Teachers Multi-Purpose Cooperative in accordance with the by-laws of the Cooperative and the Cooperative Code itself and the Guidelines for the Implementation of Conciliation/Mediation of Cooperative dispute (*Memo Circular No. 2007-05, Series of 2007*). The dispute involving the parties is certainly a dispute and issue between and among directors, officers or members of the A. Mabini Elementary School Teachers Multi-Purpose Cooperative which is governed by the Guidelines.

Prior availment and exhaustion of administrative remedies until the Office of the President as outlined in the Cooperative Code and in its implementing rules not having been resorted to by the complainants, the rule on primary jurisdiction was violated and this Court acquired no jurisdiction to hear and determine the present case.⁸

Dissatisfied, the People of the Philippines, represented by the Office of the Solicitor General (*OSG*), appealed the order of dismissal to the CA.

⁶ *Id.* at 34-35. (Emphasis in the original)

⁷ *Id.* at 36-37.

⁸ *Id.*

On August 31, 2011, the CA rendered a Decision reversing and setting aside the RTC Orders dated October 14, 2008 and February 12, 2009 and remanded the case records to the RTC for further proceedings. On January 31, 2012, the CA denied petitioner's motion for reconsideration of its decision.⁹

Aggrieved, petitioner filed this petition for *certiorari* under Rule 65 of the Rules of Court, raising the following issues:

1. WHETHER IN REVERSING THE REGIONAL TRIAL COURT'S DECISION OF DISMISSAL, HAS THE HON. COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE CLEAN, UNAMBIGUOUS AND CATEGORICAL PROVISION OF PARAGRAPH 4 OF [SECTION] 124 OF RA-6938 IN REFERENCE TO THE PENAL SANCTION FOR VIOLATION OF [SEC.] 46 OF THE COOPERATIVE [CODE], RA-6938 AND ADOPTING FOR ITS DECISION ONE DERIVED FROM ITS INTERPRETATION OF A SUPPOSED STATUTORY CONSTRUCTION WHICH INTERPRETATION, EVEN SUBJECT PETITIONER TO A HIGHER PENALTY OF 5 YEARS TO 10 YRS. WHICH WAS TO JUSTIFY THAT THE RTC SHOULD NOT HAVE DISMISSED THE CASE AND USED IT AS A GROUND TO REVERSE THE DECISION OF THE HON. REGIONAL TRIAL COURT.

2. WHETHER THE HON. COURT OF APPEALS IGNORED THE OTHER GROUNDS ASSIGNED FOR THE DISMISSAL OF THE CRIMINAL CHARGE OTHER THAN THE VIOLATION OF [SECTION] 46 OF RA-6938, (COOPERATIVE CODE). THAT THERE WAS A VIOLATION OF THE RULE ON PRIMARY JURISDICTION – EXHAUSTION OF ADMINISTRATIVE REMEDIES IN THE COOPERATIVE LEVEL BEFORE GOING TO COURT.

3. WHETHER THE HON. COURT OF APPEALS' ORDER REMANDING THE CASE BACK TO THE REGIONAL TRIAL COURT FOR FURTHER PROCEEDINGS IGNORED THE RULE THAT DISMISSAL OF THE CHARGE ON DEMURRER TO EVIDENCE AMOUNTS TO AN ACQUITTAL, AND THE DISMISSAL IS NOT APPEALABLE.

4. WHETHER REMANDING THE CASE BACK TO THE REGIONAL TRIAL COURT FOR FURTHER PROCEEDINGS SUBJECT THE PETITIONER-ACCUSED TO DOUBLE JEOPARDY AND TO HIGHER PENALTY HAS NOT BEEN CONSIDERED.

5. [WHETHER THE RESPONDENT'S CONTENTION THAT A NEW AND AMENDED COOPERATIVE CODE RA-9520 COULD

⁹ *Id.* at 52-53.

POSSIBLE APPLY TO THIS CASE AGAINST THE PETITIONER,
VIOLATIVE OF EXPOSE (SIC) FACTO LAW.¹⁰

The petition has no merit.

Prefatorily, the Court notes that petitioner filed a special civil action for *certiorari* under Rule 65 of the Rules of Court, as amended, instead of an appeal by *certiorari* under Rule 45, which the OSG points out as the proper remedy to assail the CA decision.

Petitioner asserts that she filed the petition pursuant to Rule 65, because the assailed CA decision is tainted with grave abuse of discretion. She posits that the Court ordered the exclusion of the CA as one of the party respondents, and considered the petition as one filed under Rule 45, since the focal issue raised in the petition is a question of law calling for an interpretation of Sections 46 and 124 of RA 6938, in relation to Batas Pambansa (*B.P.*) Blg. 129, or the Judiciary Reorganization Act of 1980, as amended by RA 7691. She adds that had she chosen to file an appeal by *certiorari*, the Court would be faced with the same question of law.

Petitioner's contentions are untenable.

As a rule, the remedy from a judgment or final order of the CA is appeal *via* petition for review under Rule 45 of the Rules of Court.¹¹ In *Mercado v. Court of Appeals*,¹² the Court had again stressed the distinction between the remedies provided for under Rule 45 and Rule 65, to wit:

x x x [T]he proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not identical to a petition for certiorari under Rule 65. Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific ground therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that to be taken under Rule 45. x x x.¹³

In *Artistica Ceramica, Inc., v. Ciudad Del Carmen Homeowner's Association, Inc.*,¹⁴ the Court explained that one of the requisites of

¹⁰ *Id.* at 14-15.

¹¹ *Artistica Ceramica, Inc., v. Ciudad Del Carmen Homeowner's Association, Inc.*, 635 Phil. 21, 30 (2010).

¹² 484 Phil. 438 (2004).

¹³ *Mercado v. Court of Appeals, supra*, at 444.

¹⁴ *Supra* note 11.

certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. It is also well settled that a party cannot file a petition both under Rules 45 and 65 of the Rules of Court because said procedural rules pertain to different remedies and have distinct applications. The remedy of appeal under Rule 45 and the original action for *certiorari* under Rule 65 are mutually exclusive and not alternative or cumulative. Thus, when petitioner adopts an improper remedy, petition may be dismissed outright.

However, the Court may set aside technicality for justifiable reasons as when the petition before it is clearly meritorious and filed on time both under Rules 45 and 65.¹⁵ In accordance with the liberal spirit which pervades the Rules of Court and in the interest of justice, the Court may treat the petition as having been filed under Rule 45. Here, no justifiable reasons were proffered by petitioner for a more liberal interpretation of procedural rules. Although it was filed on time both under Rules 45 and 65, the petition at bench lacks substantive merit and raises only questions of law which should have been duly made in a petition for review on *certiorari* under Rule 45.¹⁶

On the substantive issue of which court has jurisdiction over petitioner's criminal case for violation of Section 46 (Liability of Directors, Officers and Committee Members) of RA 6938, the Court affirms the CA ruling that it is the RTC, not the Metropolitan Trial Court (*MeTC*), which has jurisdiction over her case.

In criminal cases, the jurisdiction of the court is determined by the averments of the complaint or Information, in relation to the law prevailing at the time of the filing of the complaint or Information, and the penalty provided by law for the crime charged at the time of its commission.¹⁷ Section 32 of B.P. Blg. 129, as amended, provides that the MeTC has exclusive jurisdiction over offenses punishable with imprisonment not exceeding six years, irrespective of the amount of fine:

Sec. 32. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases. – Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

x x x x

¹⁵ *International Corporate Bank, Inc. v. Court of Appeals*, 532 Phil. 479, 487-488 (2006).

¹⁶ *Pahila-Garrido v. Tortogo*, G.R. No. 156358, August 17, 2011, 655 SCRA 553, 569.

¹⁷ *Guinhawa v. People*, 505 Phil. 383, 401-402 (2005).

(2) Exclusive original jurisdiction over **all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine**, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: *Provided, however*, That in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof. (Emphasis added)

Offenses punishable with imprisonment exceeding six years, irrespective of the amount of fine, fall under the exclusive original jurisdiction of the RTC, in accordance with Section 20 of B.P. Blg. 129, as amended:

Section 20. Jurisdiction in criminal cases. – Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter.

Petitioner insists that Section 46 (Liability of Directors, Officers and Committee Members) of RA 6938 provides only for a civil liability but not a criminal sanction, hence, the MeTC has jurisdiction over her criminal case which is punishable under paragraph 4 of Section 124:

Section 124. Penal Provisions. - The following acts or omissions affecting cooperatives are hereby prohibited:

(4) **Any violation of any provision of this Code for which no penalty is imposed shall be punished by imprisonment of not less than six (6) months nor more than one (1) year** and a fine of not less than One thousand pesos (□1,000.00), or both at the discretion of the court. (Emphasis added)

Petitioner argues that the provisions of Section 46 (Liability of Directors, Officers and Committee Members), Section 47 (Compensation) and Section 124 (Penal Provisions) of RA 6938, are plain, unambiguous, and categorical. She submits that statutory construction of such clear provisions, especially if prejudicial to her rights as an accused and would subject her to higher penalty, should not be allowed.

On the other hand, the OSG maintains that the RTC has jurisdiction over petitioner's case pursuant to paragraph 3 of Section 124 of RA 6938:

(3) **A director, officer or committee member who violated the provisions of Section 47 (liability of directors, officers and committee members), Section 50 (disloyalty of a director) and Section 51 (illegal use of confidential information) shall upon conviction suffer a fine of not less than Five thousand pesos (₱5,000.00), or imprisonment of not less than five (5) years but not more than ten (10) years or both at the court's discretion;** (Emphasis supplied)

The OSG points out that Section “47” in the above-quoted provision is a clerical error because the “liability of directors, officers and committee members” is undisputedly governed by Section 46 of RA 6938, while Section 47 thereof deals with the compensation of directors, officers and employees, to wit:

Section 46. *Liability of Directors, Officers and Committee Members.* - Directors, officers and committee members, who willfully and knowingly vote for or assent to patently unlawful acts or who are guilty of gross negligence or bad faith in directing the affairs of the cooperative or acquire any personal or pecuniary interest in conflict with their duty as such directors, officers or committee member shall be liable jointly and severally for all damages or profits resulting therefrom to the cooperative, members and other persons.

When a director, officer or committee member attempts to acquire or acquires, in violation of his duty, any interest or equity adverse to the cooperative in respect to any matter which has been reposed in him in confidence, he shall, as a trustee for the cooperative, be liable for damages and for double the profits which otherwise would have accrued to the cooperative.

Section 47. *Compensation.* - (1) In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation except for reasonable per diem: *Provided*, That any compensation other than per diems may be granted to directors by a majority vote of the members with voting rights at a regular or special general assembly meeting specifically called for the purpose: *Provided further*, that no additional compensation other than per diems shall be paid during the first year of existence of any cooperative.

The Court sustains the OSG's contention. Petitioner failed to present any compelling reason to warrant a departure from the exhaustive CA ruling on why the RTC, not the MeTC, has jurisdiction over her criminal case for violation of Section 46 of RA 6938, thus:

The Court, in order to carry out the obvious intent of the legislature, may correct clerical errors, mistakes or misprints which, if uncorrected, would render the statute meaningless, empty or nonsensical or would defeat or impair its intended operation, so long as the meaning intended is apparent on the face of the whole enactment and no specific provision is abrogated. To correct the error or mistake is to prevent the nullification of the statute and give it a meaning and purpose. For it is the duty of the court to give a statute a sensible construction, one that will

effectuate legislative intent and avoid injustice or absurdity. It is its duty to arrive at the legislative intent and in doing so, it should not adopt an arbitrary rule under which it must be held without variance or shadow of turning the legislature intended to make a typographical error, the result of which would be to make nonsense of the act, and not to carry out the legislative scheme, but to destroy it.

X X X X

Clearly, the accused-appellee cannot insist that reference to [Sec.] 124, paragraph 4, as the trial court did, is necessary and therefore, warranted the dismissal of the criminal case for lack of jurisdiction. To reiterate, [Sec.] 46 of the Code, entitled "Liability of Directors, Officers, and Committee Members," provides for violations under which the said officers could be held liable for, and the corresponding liability for damages and profits from the said violations. Since the said [section] does not provide for penal sanction, an application of [Sec.] 124, paragraph 3 should follow as the said provision evidently refers to the penal sanction on erring **directors, officers and committee members**. It would make no sense if we were to follow what clearly appears to be a clerical error, that is, applying [Sec.] 124, paragraph 4 instead, just because paragraph 3 of the same [section] refers to [Sec.] 47, which upon examination of the Code provides for the "Compensation" of the directors, officers and other employees of the cooperative.

We, thus, agree with the contention of the People that [Section] 124 (3) should refer to "[Section] 46 (*Liability of Directors, Officers and Committee Members*, [Section] 49 (*Disloyalty of a Director*) and [Section] 51 (*Illegal use of confidential information*)." Following this interpretation, violation of [Sec.] 46, therefore, is punishable by a fine of not less than Five thousand pesos (₱5,000.00), or imprisonment of not less than five (5) years but not more than ten (10) years or both at the court's discretion, which under B.P. Blg. 129, shall be within the jurisdiction of the RTC.¹⁸

It may not be amiss to point out that the clerical error noted by the OSG in Section 124 (3) of RA 6938 on the liability of directors, officers and committee members, has been recognized and duly corrected when the legislature enacted RA 9520, entitled "An Act Amending the Cooperative Code of the Philippines to be known as the Philippine Cooperative Code of 2008." Pertinent portions of the corrected provision read:

ART. 45. *Liability of Directors, Officers and Committee Members.*
– Directors, officers and committee members, who are willfully and knowingly vote for or assent to patently unlawful acts or who are guilty of gross negligence or bad faith in directing the affairs of the cooperative or acquire any personal or pecuniary interest in conflict with their duty as such directors, officers or committee members shall be liable jointly and severally for all damages or profits resulting therefrom to the cooperative, members, and other persons.

X X X X

¹⁸ Rollo, pp. 46-48. (Citations omitted)

ART. 140. *Penal Provisions.* – The following acts or omissions affecting cooperatives are hereby prohibited:

X X X X

(5) A director, officer or committee member who violated the provisions of **Article 45 on the Liability of Directors, Officers and Committee Members**, Article 48 on the Disloyalty of a Director, and Article 49 on the Illegal Use of Confidential Information shall upon conviction suffer a fine of not less than Five hundred thousand pesos (P500,000.00) nor more than Five hundred thousand pesos (P500,000.00) or imprisonment of not less than five (5) years but not more than ten (10) years or both at the court's discretion; [Emphasis added]

On whether the rule on exhaustion of administrative remedies was violated when the Cooperative filed a criminal case against petitioner without undergoing conciliation/mediation proceedings pursuant to the Cooperative Code and the By-laws of the Cooperative, the Court rules in the negative. Conciliation or mediation is not a pre-requisite to the filing of a criminal case for violation of RA 6938 against petitioner, because such case is not an intra-cooperative dispute. As aptly pointed out by the CA:

Neither can the accused-appellee insist that this is an intra-cooperative dispute and should have been resolved at the cooperative level. As aptly argued by the People, this is not an intra-cooperative dispute. Intra-cooperative dispute is a dispute arising between or among members of the same cooperative. The instant case is a dispute between the Cooperative and its former chairperson, the accused-appellee. The Board Resolution authorizing the filing of the criminal complaint by the Board of Directors, for and in behalf of the Cooperative, is proof that this is not an intra-cooperative dispute, and within the jurisdiction of the regular court.¹⁹

Moreover, it is well settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability, and her role in the prosecution of the offense is limited to that of a witness for the prosecution.²⁰ In petitioner's criminal case for violation of Section 46 of RA 6938, the State is the real offended party, while the Cooperative and its members are mere private complainants and witnesses whose interests are limited to the civil aspect thereof. Clearly, such criminal case can hardly be considered an intra-cooperative dispute, as it is not one arising between or among members of the same cooperative.

¹⁹ *Id.* at 49.

²⁰ *People v. Santiago*, 255 Phil. 851, 861 (1989).

On whether the dismissal of the charge against petitioner on demurrer to evidence amounts to an acquittal, hence, final and unappealable, the Court rules in the negative.

In *Gutib v. Court of Appeals*,²¹ the Court stressed that demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The Court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.

In *People v. Sandiganbayan*,²² the Court explained the general rule that the grant of a demurrer to evidence operates as an acquittal and is, thus, final and unappealable, to wit:

The demurrer to evidence in criminal cases, such as the one at bar, is "*filed after the prosecution had rested its case,*" and when the same is granted, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a *dismissal of the case on the merits, tantamount to an acquittal of the accused.*" Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there.²³

In this case, however, the RTC granted the demurrer to evidence and dismissed the case not for insufficiency of evidence, but for lack of jurisdiction over the offense charged. Notably, the RTC did not decide the case on the merits, let alone resolve the issue of petitioner's guilt or innocence based on the evidence proffered by the prosecution. This being the case, the October 14, 2008 RTC Order of dismissal does not operate as an acquittal, hence, may still be subject to ordinary appeal under Rule 41 of the Rules of Court.²⁴ As aptly noted by the CA:

The accused-appellee is also of a mistaken view that the dismissal of the case against her is an acquittal. It should be emphasized that "acquittal is always based on the merits, that is, the defendant is acquitted because the evidence does not show that the defendant's guilt is beyond reasonable doubt; but dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissal terminates the proceeding,

²¹ 371 Phil. 293, 300 (1999).

²² 488 Phil. 293 (2004).

²³ *People v. Sandiganbayan*, *supra*, at 309-310. (Italics in the original).

²⁴ Section 1. *Subject of appeal.* - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. x x x

either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance, etc.”²⁵

On whether the remand of the criminal case to the RTC violated her right against double jeopardy due to its earlier dismissal on the ground of lack of jurisdiction, the Court rules in the negative and upholds the CA in ruling that the dismissal having been granted upon petitioner's instance, double jeopardy did not attach, thus:

The accused-appellee cannot also contend that she will be placed in double jeopardy upon this appeal. It must be stressed that the dismissal of the case against her was premised upon her filing of a demurrer to evidence, and the finding, albeit erroneous, of the trial court that it is bereft of jurisdiction.

The requisites that must be present for double jeopardy to attach are: (a) a valid complaint or information; (b) a court of competent jurisdiction; (c) the accused has pleaded to the charge; and (d) the accused has been convicted or acquitted or the case dismissed or terminated without the express consent of the accused.

Definitely, there is no double jeopardy in this case as the dismissal was with the accused-appellee's consent, that is, by moving for the dismissal of the case through a demurrer to evidence. As correctly argued by the People, where the dismissal was ordered upon or with express assent of the accused, he is deemed to have waived his protection against doubly jeopardy. In this case at bar, the dismissal was granted upon motion of petitioners. Double jeopardy, thus, did not attach.²⁶

The Court also finds no merit in petitioner's new argument that the prosecution of her case before the RTC for violation of Section 46 of RA 6938 in Criminal Case No. 07-197750 is barred by *res judicata* because the MeTC of Manila, Branch 22, in a Resolution²⁷ dated August 13, 2012, granted her demurrer to evidence and acquitted her in a criminal case for falsification of private document in Criminal Case No. 370119-20-CR.²⁸ In support of her flawed argument, petitioner points out that the private complainants [officers and directors of the Cooperative] and the subject matter [unreported sales profits of Coca-Cola products] of both cases are the same, and that the case for violation of Section 46 of RA 6938 is actually and necessarily included in the case for falsification of private documents.

At the outset, *res judicata* is a doctrine of civil law and thus has no bearing on criminal proceedings.²⁹ At any rate, petitioner's argument is

²⁵ *Rollo*, p. 50.

²⁶ *Id.* at 49-50. (Citations omitted)

²⁷ Annex “A” of Reply to Comment, *id.* at 106-134.

²⁸ *Id.* at 126-130.

²⁹ *Trinidad v. Office of the Ombudsman*, 564 Phil. 382, 389 (2007).

incidentally related to double jeopardy which embraces a prohibition against being tried for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Section 7³⁰ of Rule 117 lays down the requisites in order that the defense of double jeopardy may prosper. There is double jeopardy when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first.³¹ As to the first requisite, the first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.³²

In this case, there is no dispute that the first and second requisites of double jeopardy are present in view of the MeTC Resolution³³ dated August 13, 2012 which granted petitioner's demurrer to evidence and acquitted her in a criminal case for falsification of private document in Criminal Case No. 370119-20-CR. Petitioner's argument dwells on whether the third requisite of double jeopardy — a second jeopardy is for the same offense as in the first — is present. Such question of identity or lack of identity of offenses is addressed by examining the essential elements of each of the two offenses charged, as such elements are set out in the respective legislative definitions of the offense involved.³⁴

Thus, the remaining question to be resolved is whether the offense charged in the information for Section 46 of RA 6938 necessarily includes or is necessarily included in a crime for falsification of private document under Article 172 of the Revised Penal Code, as amended (*RPC*). The test to determine whether an offense necessarily includes or is necessarily included in the other is provided under Section 5, Rule 120 of the Rules of Court:

An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential

³⁰ SEC. 7. *Former conviction or acquittal; double jeopardy.* — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

³¹ *People v. Cavaling*, 355 Phil. 1, 24 (1998) citing *Guerrero v. Court of Appeals*, 327 Phil. 496, 506 (1996) and *People v. Leviste*, 325 Phil. 525, 537 (1996).

³² *SSgt. Pacoy v. Hon. Cajigal*, 560 Phil. 598, 612 (2007).

³³ Annex "A" of Reply to Comment, *rollo*, pp. 106-134.

³⁴ *People v. Relova*, G.R. No. L-45129, March 6, 1987, 148 SCRA 292, 306.

ingredients of the former constitute or form part of those constituting the latter.

After a careful examination of the Informations filed against petitioner for falsification of private document in Criminal Case No. 370119-20-CR and for violation of Section 46, RA 6938 in Criminal Case No. 01-197750, the Court holds that the first offense for which petitioner was acquitted does not necessarily include and is not necessarily included in the second offense.

The Information for falsification of private document, on the one hand, alleged that petitioner, being then the Chairperson and Managing Director of A. Mabini Elementary School Teachers Multi-Purpose Cooperative, as part of her duty to prepare financial reports, falsified such report for the School Year 1999-2000, in relation to the sales profits of Coca-Cola products in violation of Article 172 (2)³⁵ of the RPC. The elements of falsification of private document under Article 172, paragraph 2 of the RPC are: (1) that the offender committed any of the acts of falsification, except those in paragraph 7, Article 171;³⁶ (2) that the falsification was committed in any private document; and (3) that the falsification caused damage to a third party or at least the falsification was committed with intent to cause such damage.

The Information for violation of Section 46 of RA 6938 alleged, on the other hand, that being then such officer and director of the Cooperative, petitioner willfully acquired personal interest or equity adverse to it, in violation of her duty and of the confidence reposed upon her, by entering into a contract with Coca-Cola in her own personal capacity, knowing fully well that the sales profits of such products should have accrued to the Cooperative. The essential elements of violation of Section 46 of RA 6938 are (1) that the offender is a director, officer or committee member; and (2) that the offender willfully and knowingly (a) votes for or assents to patently unlawful acts; (b) is guilty of gross negligence or bad faith in directing the

³⁵ Art. 172. *Falsification by private individual and use of falsified documents.* — The penalty of prison correccional in its medium and maximum periods and a fine of not more than ₱5,000 pesos shall be imposed upon:

x x x x

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

x x x

³⁶ Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of prison mayor and a fine not to exceed P5,000 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:

x x x x

7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original;

x x x

affairs of the cooperative; or (c) acquires any personal or pecuniary interest in conflict with their duty as such directors, officers or committee member.

Verily, there is nothing common or similar between the essential elements of the crimes of falsification of private document under Article 172 (2) of the RPC and that of violation of Section 46 of RA 6938, as alleged in the Informations filed against petitioner. As neither of the said crimes can be said to necessarily include or is necessarily included in the other, the third requisite for double jeopardy to attach—a second jeopardy is for the same offense as in the first—is, therefore, absent. Not only are their elements different, they also have a distinct nature, *i.e.*, the former is *malum in se*, as what makes it a felony is criminal intent on the part of the offender, while the latter is *malum prohibitum*, as what makes it a crime is the special law enacting it.

Moreover, in *People v. Doriguez*,³⁷ the Court held:

It is a cardinal rule that the protection against double jeopardy may be invoked only for the same offense or identical offenses. A simple act may offend against two (or more) entirely distinct and unrelated provisions of law, and if one provision requires proof of an additional fact or element which the other does not, an acquittal or conviction or a dismissal of the information under one does not bar prosecution under the other. Phrased otherwise, where two different laws (or articles of the same code) defines two crimes, prior jeopardy as to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same fact, if each crime involves some important act which is not an essential element of the other.³⁸

Since the Informations filed against petitioner were for separate and distinct offenses as discussed above—the first against Article 172 (2) of the Revised Penal Code and the second against Section 46 of the Cooperative Code (RA 6938)—one cannot be pleaded as a bar to the other under the rule on double jeopardy. Besides, it is basic in criminal procedure that an accused may be charged with as many crimes as defined in our penal laws even if these arose from one incident. Thus, where a single act is directed against one person but said act constitutes a violation of two or more entirely distinct and unrelated provisions of law, or by a special law and the Revised Penal Code, as in this case, the prosecution against one is not an obstacle to the prosecution of the other.³⁹


³⁷ 133 Phil. 295 (1968).

³⁸ *People v. Doriguez, supra*, at 305.

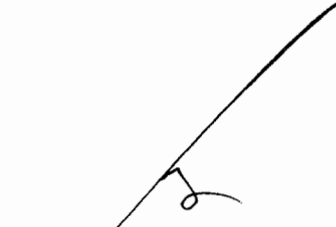
³⁹ *People v. Pat*, 324 Phil. 723, 737 (1996), citing *People v. Tiozon*, G.R. No. 89823, June 19, 1991, 198 SCRA 368, 379 citing *People v. Doriguez, supra*.

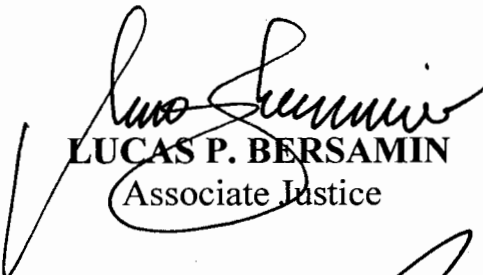
WHEREFORE, premises considered, the petition is **DENIED**, and the Court of Appeals Decision dated August 31, 2011 and its Resolution dated Jan. 31, 2012 in CA-G.R. CR No. 32363, are **AFFIRMED**.

SO ORDERED.

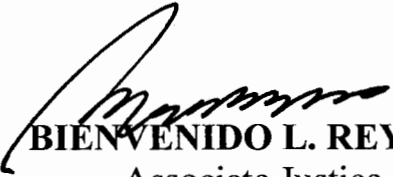

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

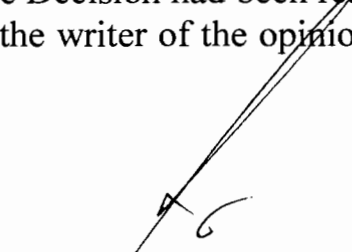

LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

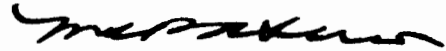
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice