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Wilfredo V. Lapitan
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Division Clerk of Court
Third Division
FEB 07 2019



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

RUEL FRANCIS M. CABRAL,
Petitioner,

G.R. No. 233174

Present:

PERALTA, J., Chairperson,
LEONEN,
REYES, A.B., JR.,
HERNANDO, and
CARANDANG,* JJ.

- versus -

CHRIS S. BRACAMONTE,
Respondent.

Promulgated:

January 23, 2019

Wilfredo V. Lapitan

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DECISION

PERALTA, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision¹ dated March 27, 2017 and Resolution² dated July 28, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 146746 which set aside the Order³ dated February 26, 2016 of the Regional Trial Court (RTC) of Paranaque City, denying the Motion to Quash the Information charging respondent Chris S. Bracamonte with the crime of estafa.

The antecedent facts are as follows.

* Designated Additional Member per Special Order No. 2624 dated November 28, 2018.

¹ Penned by Associate Justice Mario V. Lopez, with Associate Justices Remedios A. Salazar-Fernando and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 75-80.

² *Id.* at 90.

³ Penned by Judge Aida Estrella Macapagal; *id.* at 41-44.

A

On September 15, 2009, respondent Chris S. Bracamonte and petitioner Ruel Francis Cabral executed a Memorandum of Agreement (*MOA*) in Makati City for the purchase of shares of stock in Wellcross Freight Corporation (*WFC*) and Aviver International Corporation (*AVIVER*). Simultaneous with the signing of the *MOA*, Bracamonte issued a postdated check to Cabral in the amount of ₱12,677,950.15. When the check was presented for payment, however, the drawee bank in Makati City dishonored the same for lack of sufficient funds. Consequently, for failure to settle the obligation, Cabral instituted a complaint for estafa against Bracamonte in Parañaque City. Finding probable cause, the prosecutor filed with the RTC of Parañaque City an Information, the accusatory portions of which read:

That on or about the 15th day of September 2009, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of deceit and false pretenses executed prior to or simultaneous with the commission of the fraud, did then and there willfully, unlawfully, and feloniously defraud Ruel L. Cabral, in the following manner, to wit: the said accused, in the payment of shares of stock, negotiated and delivered to the latter BANCO DE ORO Check No. 0249913, in the amount of P12,677,950.15 with the representation and assurance that the said check [is] good and covered with sufficient funds, the accused well knowing that at the time the check was negotiated and delivered the same was not covered with sufficient funds, said misrepresentation having been made to induce complainant to receive and accept, as complainant in fact received and accepted said check which was dishonored when presented for payment for the reason "NON-SUFF. FUND" and notwithstanding notice of dishonor and demand to make good the check within three (3) days, accused failed and refused and still fails and refuses to pay in cash, to the damage and prejudice of complainant Ruel L. Cabral, in the aforementioned amount of P12,677,950.15.

CONTRARY TO LAW.⁴

After arraignment and presentation of prosecution evidence, Bracamonte moved to quash the Information contending that the venue was improperly laid in Parañaque City, because the postdated check was delivered and dishonored in Makati City. Thus, the prosecution failed to show how the supposed elements of the crime charged were committed in Parañaque City. In contrast, Cabral maintained that the averments in the complaint and Information are controlling to determine jurisdiction. Since the complaint affidavit alleged that negotiations on the *MOA* were conducted in a warehouse in Parañaque City where Cabral was convinced to sell his shares in the two corporations, then the RTC of Parañaque City properly had jurisdiction.

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Rollo, p. 76.

In an Order dated February 26, 2016, the RTC denied the Motion to Quash explaining that it has jurisdiction over the case because Bracamonte employed fraudulent acts against Cabral in Parañaque City prior to the issuance of the postdated check. According to the trial court, a perusal of the Information would show that Cabral was defrauded by Bracamonte in the City of Parañaque. Also, in paragraph 7 of the complaint affidavit, Cabral narrated that it was during their meeting in the old warehouse of AVIVER and WFC located at Km. 17, West Service Road, South Super Highway, Parañaque City that Bracamonte was able to persuade and convince him to sell his entire shares of stock. There, they triumphed in misleading and fooling him until he finally accepted their offer. The RTC held that fundamental is the rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. Moreover, jurisdiction of said courts is determined by the allegations in the complaint or information. Thus, since the complaint affidavit and the Information in the instant case duly alleged that Bracamonte deceived Cabral in Parañaque City, the Parañaque RTC appropriately had jurisdiction over the instant case.⁵

In a Decision dated March 27, 2017, however, the CA set aside the RTC Order and dismissed the Information against Bracamonte. According to the appellate court, in determining the proper venue, the following acts must be considered: (a) Cabral and Bracamonte executed the MOA in Makati City; (b) Bracamonte issued and delivered a postdated check to Cabral in Makati City simultaneous to the signing of the agreement; and (c) the check was presented for payment and was dishonored in Makati City. Applying the elements of estafa, it is clear that deceit took place in Makati City where the worthless check was issued and delivered, while damage was inflicted at the same place where the check was dishonored by the drawee bank. Thus, jurisdiction solely lies in Makati City where all the elements of the crime occurred. The place where the MOA was negotiated does not fix the venue of the offense in view of settled jurisprudence that provides that what is of decisive importance is the delivery of the instrument which is the final act essential to its consummation as an obligation. Finally, the CA added that the fact that Bracamonte had been arraigned and the prosecution completed its presentation of evidence does not affect the propriety of the Motion to Quash for the same may be filed any time since it is predicated on lack of jurisdiction.⁶

Aggrieved by the CA's denial of his Motion for Reconsideration, Cabral filed the instant petition on October 9, 2017 invoking the following argument:

⁵ *Id.* at 77.

⁶ *Id.* at 77-79.

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED WHEN IT HELD THAT THE TRIAL COURT IS DEVOID OF JURISDICTION TO TRY THE CRIMINAL CASE AGAINST BRACAMONTE AS VENUE WAS IMPROPERLY LAID THUS DISMISSING THE INFORMATION.

In his petition, Cabral asserts that averments in the complaint or Information characterize the crime to be prosecuted and the court before which it must be tried. He claims that jurisdiction of courts in criminal cases is determined by the allegations of the complaint or Information, and not by the findings the court may make after the trial. According to Cabral, the crime of estafa is a continuing or transitory offense which may be prosecuted at the place where any of the essential elements of the crime took place. As such, its basic elements of deceit and damage may arise independently in separate places. Here, the allegations in the complaint clearly indicate that the business transactions, with regard to the terms and conditions of the subject MOA, were conducted in a warehouse in Parañaque City as it was there that Bracamonte convinced him to finally sell the shares of stock, which allegations were never refuted by Bracamonte. Thus, the RTC of Parañaque City correctly denied Bracamonte's Motion to Quash as it unmistakably had jurisdiction over the case. Moreover, Cabral added that Bracamonte's motion should be considered barred by laches as it took him four (4) years before he raised the issue of jurisdiction, actively participating in the proceedings by cross-examining the prosecution witness.⁷

We deny the petition.

At the outset, the Court deems it necessary to note that Cabral filed the present petition without the participation of the Office of the Solicitor General (OSG). Time and again, the Court has held that "the authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the OSG." Section 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code explicitly provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. It shall have specific powers and functions to represent the Government and its officers in the Supreme Court and the CA, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. The OSG is the law office of the Government. Thus, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the

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Id. at 13-17.



offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned.⁸

The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant. The interest of the private complainant or the private offended party is limited only to the civil liability. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. The private offended party or complainant may not take such appeal, but may only do so as to the civil aspect of the case.⁹

There have been instances, however, where the Court permitted an offended party to file an appeal without the intervention of the OSG, such as when the offended party questions the civil aspect of a decision of a lower court, when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party, when there is grave error committed by the judge, or when the interest of substantial justice so requires.¹⁰

In the instant case, however, the petition before the Court essentially assails the criminal, and not only the civil, aspect of the CA Decision. Thus, the petition should have been filed only by the State through the OSG and not by Cabral who lacked the personality or legal standing to question the CA Decision. This is especially so because, as will be discussed below, the dismissal of Cabral's complaint was not gravely erroneous nor did it amount to a denial of due process of law that would allow the application of the exceptions mentioned above.

Nevertheless, even assuming the procedural propriety of the instant petition, the Court still resolves to deny the same. Time and again, the Court has held that "territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance of or to try the offense allegedly committed therein by the accused. In all criminal prosecutions, the action shall be instituted and tried in the court of the municipality or territory wherein the offense was committed or where any one of the essential ingredients took place."¹¹ Otherwise stated, the place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. For jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the

⁸ *Chiok v. People*, 774 Phil. 230, 245, (2015), citing *Villareal v. Aliga*, 724 Phil. 47, 57 (2014).

⁹ *Chiok v. People*, *supra*.

¹⁰ *Morillo v. People, et al.*, 775 Phil. 192, 210-211 (2015).

¹¹ *Brodeth v. People*, G.R. No. 197849, November 29, 2017.

court. Thus, a court cannot take jurisdiction over a person charged with an offense allegedly committed outside of its limited territory. In this relation, moreover, it has been held that the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. Once it is so shown, the court may validly take cognizance of the case. However, if the evidence adduced during the trial shows that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction.¹²

Here, the crime allegedly committed by Bracamonte is estafa under Article 315, paragraph 2(d) of the Revised Penal Code. The elements of such crime consists of the following: (1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded. Thus, in this form of estafa, it is not the non-payment of a debt which is made punishable, but the criminal fraud or deceit in the issuance of a check. Deceit has been defined as "the false representation of a matter of fact, whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury."¹³

In the present petition, Cabral vehemently insists that since he alleged in his complaint affidavit that the business transactions with regard to the terms and conditions of the subject MOA were conducted in a warehouse in Parañaque City, the element of deceit definitely occurred therein, and as such, the RTC of Parañaque City has jurisdiction over the case. The Court, however, cannot subscribe to said contention.

Our pronouncement in *Fukuzume v. People*¹⁴ is instructive. There, Fukuzume was charged with estafa before the RTC of Makati City for allegedly enticing private complainant to purchase aluminum scrap wires but thereafter refusing to deliver said wires despite receipt of payment. The Court therein, however, dismissed the case, without prejudice, on the ground that the prosecution failed to prove that the essential elements of the offense took place within the trial court's jurisdiction, to wit:

The crime was alleged in the Information as having been committed in Makati. However, aside from the sworn statement executed by Yu on April 19, 1994, the prosecution presented no other evidence, testimonial or documentary, to corroborate Yu's sworn statement or to prove that any of the above-enumerated elements of the offense charged was committed in Makati. Indeed, the prosecution

¹² *Treñas v. People*, 680 Phil. 368, 380 (2012).

¹³ *Batac v. People*, G.R. No. 191622, June 6, 2018 (Minute Resolution).

¹⁴ 511 Phil. 192 (2005).

failed to establish that any of the subsequent payments made by Yu in the amounts of P50,000.00 on July 12, 1991, P20,000.00 on July 22, 1991, P50,000.00 on October 14, 1991 and P170,000.00 on October 18, 1991 was given in Makati. Neither was there proof to show that the certifications purporting to prove that NAPOCOR has in its custody the subject aluminum scrap wires and that Fukuzume is authorized by Furukawa to sell the same were given by Fukuzume to Yu in Makati. On the contrary, the testimony of Yu established that all the elements of the offense charged had been committed in Parañaque, to wit: that on July 12, 1991, Yu went to the house of Fukuzume in Parañaque; that with the intention of selling the subject aluminum scrap wires, the latter pretended that he is a representative of Furukawa who is authorized to sell the said scrap wires; that based on the false pretense of Fukuzume, Yu agreed to buy the subject aluminum scrap wires; that Yu paid Fukuzume the initial amount of P50,000.00; that as a result, Yu suffered damage. Stated differently, the crime of estafa, as defined and penalized under Article 315, paragraph 2(a) of the Revised Penal Code, was consummated when Yu and Fukuzume met at the latter's house in Parañaque and, by falsely pretending to sell aluminum scrap wires, Fukuzume was able to induce Yu to part with his money.

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From the foregoing, it is evident that the prosecution failed to prove that Fukuzume committed the crime of estafa in Makati or that any of the essential ingredients of the offense took place in the said city. Hence, the judgment of the trial court convicting Fukuzume of the crime of estafa should be set aside for want of jurisdiction, without prejudice, however, to the filing of appropriate charges with the court of competent jurisdiction.¹⁵

Similarly, in the instant case, it was merely stated in the Information, and alleged by Cabral in his complaint affidavit, that the crime of estafa was committed in Parañaque City because it was there that he was convinced to sell the subject shares of stock. Apart from said allegation, however, he did not present any evidence, testimonial or documentary, that would support or corroborate the assertion. Equally guilty of the same failure to substantiate is the trial court which relied merely on Cabral's complaint affidavit in connecting the alleged offense within its territorial jurisdiction. In its Order, the RTC simply denied Bracamonte's Motion to Quash because "in paragraph 7 of the x x x complaint affidavit, Cabral narrated that it was during their meeting in the old warehouse of AVIVER and WFC located at Km. 17, West Service Road, South Super Highway, Parañaque City that Bracamonte was able to persuade and convince him to sell his entire shares of stock x x x. There, they triumphed in misleading and fooling him till finally the latter acceded to their ploy. It was there that he finally accepted their offer."¹⁶ A perusal of said Order, however, would show the RTC's failure to cite any evidence upon which it based its conclusions.

¹⁵ *Id.* at 206-207. (Emphases ours)

¹⁶ *Rollo*, p. 43.

On the contrary, and as the appellate court pointed out, what were actually proven by the evidence on record are the following: (1) Cabral and Bracamonte executed a MOA in Makati City; (2) Bracamonte issued and delivered a postdated check in Makati City simultaneous to the signing of the agreement; (3) the check was presented for payment and was subsequently dishonored in Makati City. As such, the Court does not see why Cabral did not file the complaint before the Makati City trial court. Not only were the MOA and subject check executed, delivered, and dishonored in Makati City, it was even expressly stipulated in their agreement that the parties chose Makati City as venue for any action arising from the MOA because that was where it was executed. It is, therefore, clear from the foregoing that the element of deceit took place in Makati City where the worthless check was issued and delivered, while the damage was inflicted also in Makati City where the check was dishonored by the drawee bank.

To repeat, case law provides that in this form of estafa, it is not the non-payment of a debt which is made punishable, but the criminal fraud or deceit in the *issuance of a check*. Thus, while Cabral is not wrong in saying that the crime of estafa is a continuing or transitory offense and may be prosecuted at the place where any of the essential ingredients of the crime took place, the pieces of evidence on record point only to one place: Makati City. Time and again, the Court has ruled that "in criminal cases, venue or where at least one of the elements of the crime or offense was committed must be proven and not just alleged. Otherwise, a mere allegation is not proof and could not justify sentencing a man to jail or holding him criminally liable. To stress, an allegation is not evidence and could not be made equivalent to proof."¹⁷ Thus, since the evidence adduced during the trial showed that the offense allegedly committed by Bracamonte was committed somewhere else, the trial court should have dismissed the action for want of jurisdiction.

As to Cabral's contention that Bracamonte's motion should be considered barred by laches as it took him four (4) years before he raised the issue of jurisdiction, actively participating in the proceedings by cross-examining the prosecution witness, the rule is settled that an objection based on the ground that the court lacks jurisdiction over the offense charged may be raised or considered *motu proprio* by the court at any stage of the proceedings or on appeal. Moreover, jurisdiction over the subject matter in a criminal case cannot be conferred upon the court by the accused, by express waiver or otherwise, since such jurisdiction is conferred by the sovereign authority which organized the court, and is given only by law in the manner and form prescribed by law.¹⁸

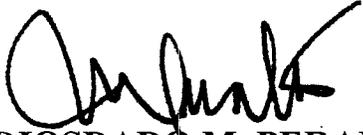
¹⁷ *Brodeth v. People*, *supra* note 11.

¹⁸ *Fukuzume v. People*, *supra* note 14, at 208.

Indeed, it is rather unfair to require a defendant or accused to undergo the ordeal and expense of a trial if the court has no jurisdiction over the subject matter or offense or it is not the court of proper venue. It has been consistently held that “in a criminal case, the prosecution must not only prove that the offense was committed, it must also prove the identity of the accused and the fact that the offense was committed within the jurisdiction of the court.”¹⁹ There being no showing that the offense was committed within Parañaque City, the RTC of that city has no jurisdiction over the case.

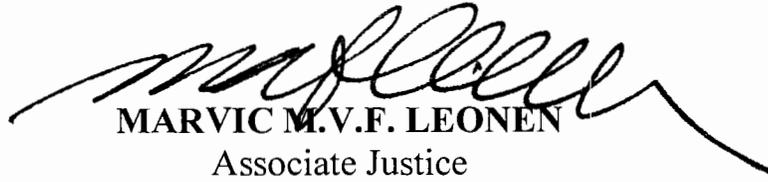
WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Decision dated March 27, 2017 and Resolution dated July 28, 2017 of the Court of Appeals in CA-G.R. SP No. 146746 are **AFFIRMED**. The Information in Criminal Case No. 11-0664 is **DISMISSED** without prejudice.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

¹⁹ *Treñas v. People*, *supra* note 12, at 381.

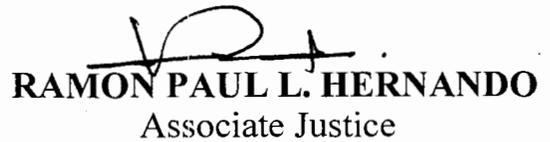
WE CONCUR:



MARVIC M.V.F. LEONEN
Associate Justice



ANDRES B. REYES, JR.
Associate Justice



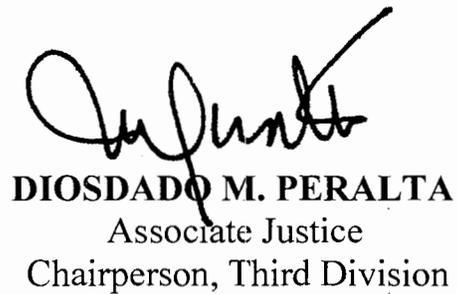
RAMON PAUL L. HERNANDO
Associate Justice



ROSMARI D. CARANDANG
Associate Justice

ATTESTATION

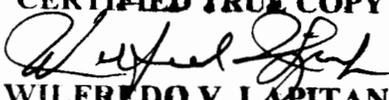
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

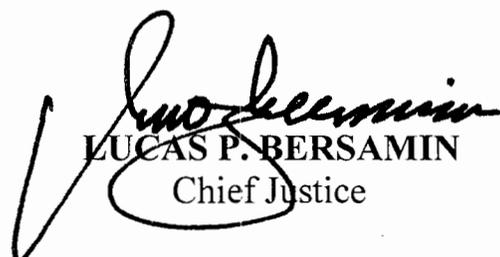


DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

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.

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WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 FEB 07 2019



LUCAS P. BERSAMIN
Chief Justice