

94 Phil. 640

[G.R. No. L-6791. March 29, 1954]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. QUE PO LAY,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MONTEMAYOR, J.:

Que Po Lay is appealing from the decision of the Court of First Instance of Manila, finding him guilty of violating Central Bank Circular No. 20 in connection with section 34 of Republic Act No. 265, and sentencing him to suffer six months imprisonment, to pay a fine of P1,000 with subsidiary imprisonment in case of insolvency, and to pay the costs.

The charge was that the appellant who was in possession of foreign exchange consisting of U. S. dollars, U. S. checks and U. S. money orders amounting to about \$7,000 failed to sell the same to the Central Bank through its agents within one day following the receipt of such foreign exchange as required by Circular No. 20. The appeal is based on the claim that said circular No. 20 was not published in the Official Gazette prior to the act or omission imputed to the appellant, and that consequently, said circular had no force and effect. It is contended that Commonwealth Act No. 638 and Act 2930 both require said circular to be published in the Official Gazette, it being an order or notice of general applicability. The Solicitor General answering this contention says that Commonwealth Act No. 638 and 2930 do not require the publication in the Official Gazette of said circular issued for the implementation of a law in order to have force and effect.

We agree with the Solicitor General that the laws in question do not

require the publication of the circulars, regulations or notices therein mentioned in order to become binding and effective. All that said two laws provide is that laws, resolutions, decisions of the Supreme Court and Court of Appeals, notices and documents required by law to be of no force and effect. In other words, said two Acts merely enumerate and make a list of what should be published in the Official Gazette, presumably, for the guidance of the different branches of the Government issuing same, and of the Bureau of Printing.

However, section 11 of the Revised Administrative Code provides that statutes passed by Congress shall, in the absence of special provision, take effect at the beginning of the fifteenth day after the completion of the publication of the statute in the Official Gazette. Article 2 of the new Civil Code (Republic Act 386) equally provides that laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. It is true that Circular No. 20 of the Central Bank is not a statute or law but being issued for the implementation of the law authorizing its issuance, it has the force and effect of law according to settled jurisprudence. (See *U. S. vs. Tupasi Molina*, 29 Phil., 119 and authorities cited therein.) Moreover, as a rule, circulars and regulations especially like the Circular No. 20 of the Central Bank in question which prescribes a penalty for its violation should be published before becoming effective, this, on the general principle and theory that before the public is bound by its contents, especially its penal provisions, a law, regulation or circular must first be published and the people officially and specifically informed of said contents and its penalties.

Our old Civil Code (Spanish Civil Code of 1889) has a similar provision about the effectivity of laws (Article V thereof), namely, that laws shall be binding twenty days: after their promulgation, and that their promulgation shall be understood as made on the day of the termination of the publication of the laws in the Gazette. Manresa, commenting on this article is of the opinion that the word "laws" include regulations and circulars issued in accordance with the game. He says:

“El Tribunal Supremo, ha interpretado el artículo 1.º del Código Civil en Sentencia de 22 de Junio de 1910, en el sentido de que bajo la denominación genérica de leyes, se comprenden también los *Reglamentos*, Reales decretos, Instrucciones, *Circulares* y Reales ordenes dictadas de conformidad con las mismas por el Gobierno en uso de su potestad. También el poder ejecutivo lo ha venido entendiendo así, como lo prueba el hecho de que muchas de sus disposiciones contienen la advertencia de que empiezan a regir el mismo día de su publicación en la Gaceta, advertencia que sería perfectamente inútil si no fuera de aplicación al caso el artículo 1.º del Código Civil.” (*Manresa, Código Civil Español*, Vol. I. p. 52)

In the present case, although Circular No. 20 of the Central Bank was issued in the year 1949, it was not published until November 1951, that is, about 3 months after appellant’s conviction of its violation. It is clear that said circular, particularly its penal provision, did not have any legal effect and bound no one until its publication in the Official Gazette or after November 1951. In other words, appellant could not be held liable for its violation, for it was not binding at the time he was found to have failed to sell the foreign exchange in his possession within one day following his taking possession thereof.

But the Solicitor General also contends that this question of non-publication of the Circular is being raised for the first time on appeal in this Court, which cannot be done by appellant. Ordinarily, one may raise on appeal any question of law or fact that has been raised in the court below and which is within the issues made by the parties in their pleadings. (Section 19, Rule 48 of the Rules of Court). But the question of non-publication is fundamental and decisive. If as a matter of fact Circular No. 20 had not been published as required by law before its violation, then in the eyes of the law there was no such circular to be violated and consequently appellant committed no violation of the circular or committed any offense, and the trial court may be said to have had no jurisdiction. This question may be raised at any stage of the proceeding whether or not raised in the court below.

In view of the foregoing, we reverse the decision appealed from and acquit the appellant, with costs de officio.

Paras C. J., Bengzon, Padilla, Reyes, Bautista Angelo, Labrador, Concepcion and Diokno, JJ., concur.

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