

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. CECILIA QUE YABUT AND HON. JESUS DE VEGA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, BRANCH II, RESPONDENTS.

G.R. No. L-42847. April 29, 1977

Ponente: MARTIN, J.

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MARTIN, J.:

Two novel questions of law are presented to Us in these petitions to review on certiorari the quashal orders of the Court of First Instance of Bulacan, sitting at Malolos, the rule on venue or jurisdiction in a case of estafa for postdating or issuing a check without or with insufficient funds, and second, whether the new law on checks punishes the postdating or issuance thereof in payment of a pre-existing obligation.

Private respondent Cecilia Que Yabut in L-42847 was accused of estafa by means of false pretenses before the Court of First Instance of Bulacan, presided over by respondent Judge Jesus de Vega. The information, docketed as Criminal Case 1404, charges:

"That during the period from February 22, to February 26, 1975, in the Municipality of Malolos, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Cecilia Que Yabut, as treasurer of the Yabut Transit Line, by means of false pretenses and pretending to have sufficient funds in the Merchants Banking Corporation, located and doing business in Caloocan City, prepared, issued and make out Check Nos. CB-19035 B, CB-190396 and CB-190397. dated February 22, 1975, February 24, 1975 and February 26, 1975. in the total sum of ₱6,568.94, drawn against the Merchants Banking Corporation, payable to Freeway Tires Supply, owned and operated by Alicia P. Andan. in payment of articles and merchandise delivered to and received by said accused, gave and delivered the said checks to the said Freeway Tires supply, the said accused Cecilia Que Yabut well knowing that at the time there was no or insufficient funds in the said Merchants Banking Corporation, and upon presentation of the said checks to the bank, the checks were dishonored and in spite of repeated demands by the owner of the Freeway Tires Supply to deposit the necessary funds to cover the checks within the reglementary period enjoined by law, failed and refused to do so, to the damage and prejudice of Alicia P. Andan, owner and operator of the Freeway Tires Supply, in the total amount of ₱6,568.94."

Instead of entering a plea, respondent Cecilia Que Yabut filed a motion to quash on September 1, 1975, contending that the acts charged do not constitute the offense as there is no allegation that the postdated checks were issued and delivered to the complainant prior to or simultaneously with the delivery of the merchandise, the crime of estafa not being indictable when checks are postdated or issued in payment of pre-existing obligation; and the venue was improperly laid in Malolos, Bulacan, because the postdated checks were issued and delivered to, and received by. the complainant in the City of Caloocan, where she (respondent Que Yabut) holds office.

An opposition was interposed by the People, maintaining that the new law on checks (Rep. Act No. 4885, amending Art. 315, par. 2 (d), Revised Penal Code) penalizes the postdating or issuance thereof in payment of pre-existing obligation and that the Malolos court can exercise jurisdiction over the case, since the last ingredient

of the offense, i.e., damage, transpired in Bulacan (residence of complainant) after the dishonor of the checks for lack of funds.

Judge Jesus de Vega quashed the information, as prayed for by respondent Que Yabut, on November 10, 1975 for the reason "that the proper venue in this case is Caloocan City and not Bulacan." Whether estafa lies for postdating or issuing a check in payment of a pre-existing obligation was not resolved by respondent Judge.

The People's motion for reconsideration of this dismissal order was denied on January 12, 1976.

The other private respondent, Geminiano Yabut, Jr. (L-42902), husband of respondent Cecilia Que Yabut, stood charged in Criminal Case 1405-M before the Court of First Instance of Bulacan, presided over by Judge Edgardo L. Paras, of the crime of estafa under Art. 315, par. 2 (d) of the Revised Penal Code in that:

"(D)uring the period from February 23 to April 9, 1975, in the municipality of Malolos, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Geminiano Yabut, Jr., as president of the Yabut Transit Line, by means of false pretenses and pretending to have sufficient funds in the Merchants Banking Corporation and Manufacturers Bank and Trust Company, located and doing business in Caloocan City, prepared, issued and make out Check Nos. CB-192041 B, CB-192043 B, 423123, CB-191988 B, 423124, CB-192044 B, CB-192045 B, CB-193737 B, CB-193738 B, CB-193739 B, CB-199953B, CB-199954B, CB-199955B, and CB-199956B, dated February 23, 26, 27, March 1, 3, 10, 11, 12, April 4, 7, 8 and 9, 1975 in the total sum of ₱37,206.00, drawn against the Merchants Banking Corporation and Manufacturers Bank and Trust Company, payable to the Freeway Tires Supply and Freeway Caltex Station, owned and operated by Alicia P. Andan, in payment of articles and merchandise delivered to and received by said accused, gave and delivered the said checks to said Freeway Tires Supply and Freeway Caltex Station, the said accused Geminiano Yabut, Jr. well knowing that at the time there was no or insufficient funds in the said Merchants Banking Corporation and Manufacturers Bank and Trust Company, and upon presentation of the said checks to the bank, the checks were dishonored and in spite of repeated demands by the owner of the Freeway Tires Supply and Freeway Caltex Station to deposit the necessary funds to cover the checks within the reglementary period enjoined by law, failed and refused to do so, to the damage and prejudice of Alicia P. Andan, owner and operator of the Freeway Tires Supply and Freeway Caltex Station in the total sum of ₱37,206.00."

Like his wife, respondent Geminiano Jr. moved to quash the information on two grounds: (1) the facts recited do not constitute an offense because the checks were issued in payment of a pre-existing obligation; and (2) the venue was improperly laid, considering that the postdated checks were issued and delivered to and received by the complainant in the City of Caloocan, where respondent holds office.

On October 13, 1975, Judge Paras quashed the information because "(t)he elements of the crime (issuance of the rubber check, attempted encashment, and refusal to honor) alleged in the Information all took place within the territorial jurisdiction, not of Bulacan, but of Caloocan City."

The People moved for reconsideration, but on February 9, 1976, the motion was denied.

Hence, the two petitions for review on certiorari were filed by the People of the Philippines.

We find both petitions to be impressed with merits.

1. Estafa by postdating or issuing a bad check under Art. 315, par. 2 (d) of the Revised Penal Code may be a transitory or continuing offense.[1] Its basic elements of deceit and damage[2] may independently arise in separate places. In the event of such occurrence, the institution of the criminal action in either place is legally allowed. Section I4(a), Rule 110 of the Revised Rules of Court provides: "In all criminal prosecutions the action shall be instituted and tried in the Court of the municipality or province wherein the offense was committed or any

one of the essential ingredients thereof took place. "The theory is that a person indicted with a transitory offense may be validly tried in any jurisdiction where the offense was in part committed.[3] However, if all the acts material and essential to the crime and requisite of its consummation occurred in one municipality or province, the court of that municipality or province has the sole jurisdiction to try the case.

The estafa charged in the two informations involved in the case before Us appears to be transitory or continuing in nature. Deceit has taken place in Malolos, Bulacan, while the damage in Caloocan City, where the checks were dishonored by the drawee banks there. Jurisdiction can, therefore, be entertained by either the Malolos court or the Caloocan court. While the subject checks were written, signed, or dated in Caloocan City, they were not completely made or drawn there, but in Malolos, Bulacan, where they were uttered and delivered. That is the place of business and residence of the payee. The place where the bills were written, signed, or dated does not necessarily fix or determine the place where they were executed. What is of decisive importance is the delivery thereof. The delivery of the instrument is the final act essential to its consummation as an obligation.[4] An undelivered bill or note is inoperative. Until delivery, the contract is revocable.[5] And the issuance as well as the delivery of the check must be to a person who takes it as a holder, which means "(Ota payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof." [6] Delivery of the check signifies transfer of possession, whether actual or constructive, from one person to another with intent to transfer title thereto.[7] Thus, the penalizing clause of the provision of Art. 315, par. 2 (d) states: "By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check." Clearly, therefore, the element of deceit thru the issuance and delivery of the worthless checks to the complainant took place in Malolos, Bulacan, conferring upon a court in that locality jurisdiction to try the case.

Modesto Yambao's receipt of the bad checks from Cecilia Que Yabut or Geminiano Yabut Jr. in Caloocan City cannot, contrary to the holding of the respondent Judges, be licitly taken as delivery of the checks to the complainant Alicia P. Andan at Caloocan City to fix the venue there. He did not take delivery of the checks as holder, i.e., as "payee" or "indorsee." And there appears to be no contract of agency between Yambao and Andan so as to bind the latter for the acts of the former. Alicia P. Andan declared in that sworn testimony before the investigating fiscal that Yambao is but her "messenger" or "part-time employee." [8] There was no special fiduciary relationship that permeated their dealings. For a contract of agency to exist, the consent of both parties is essential, the principal consent of both parties is essential, the principal consents that the other party, the agent, shall act on his behalf, and the agent consents so to act.[9] It must exist as a fact. The law makes no presumption thereof. The person alleging it has the burden of proof to show, not only the fact of its existence, but also its nature and extent.[10] This is more imperative when it is considered that the transaction dealt with involves checks, which are not legal tender, and the creditor may validly refuse the same as payment of obligation.[11]

Furthermore, the place of business of the offended party, the Freeway Tires Supply and Freeway Caltex Station, is at Malolos, Buacan, from where the tire and gas purchases were made by the two private respondents. As a consequence, payment thereof should be considered effected at Malolos, Bulacan. "(I)f the undertaking is to deliver a determinate thing, the payment shall be made wherever the thing might be at the moment the obligation was constituted.[12] The receipt by the two private respondents at Caloocan City of the tires and gas supplies from Malolos, Bulacan, signifies but the consummation of the contract between the parties. It was the result of an obligation previously contracted at Malolos, Bulacan.[13] The averments in the informations do not indicate that the complainant is an ambulant peddler of tires and gas, but maintains a fixed and determinate place of business at Malolos, Bulacan. Obligations, therefore, contracted as regards her business must presumptively be at her place of business.

2. In general terms, a prosecution for issuing a worthless check with intent to defraud is in the county where the check was uttered and delivered.[14] Thus, where a check was drawn in Merced County and made payable at a Merced County bank, but delivered to a merchant in Sacramento County by the drawer's agent, the Sacramento County courts had jurisdiction of a prosecution against the drawer for uttering a check without funds or credit with intent to defraud.[15] The venue of the offense lies at the place where the check was executed and delivered to the payee[16] Since in the instant case it was in Malolos, Bulacan where the checks were uttered and delivered to complainant Andan, at which place, her business and residence were also located, the criminal prosecution of estafa may be lodged therein.[17] As earlier pointed out, the giving of the checks by the two private respondents in Caloocan City to Modesto Yambao cannot be treated as valid delivery of the checks, because Yambao is a mere "messenger" or "part-time employee" and not an agent of complainant Alicia P. Andan.

3. The next point of inquiry is whether or not the postdating or issuing of a worthless check in payment of & pre-existing obligation constitutes estafa under Art. 315, par. 2 (d) of the Revised Penal Code. We feel, however, that due to the absence of concrete evidence on the specific nature of the obligation assumed or supposedly discharged by the issuance of the bad checks, resolution of this controversial issue on the basis of the averments in the criminal informations alone is not yet ripe. As revealed by the pleadings, the parties are at divergence on the character of the obligation for which the private respondents issued the checks intended as payment thereof. Private respondents maintain that the obligation is a pre-existing one. The prosecution, on the other hand, represented to the trial courts in its Opposition to the Motions to Quash: "We will prove by our evidence that said checks are not in payment of a preexisting obligation"[18] The deferment of the resolution becomes more imperative when it is considered that the question raised is one of first impression and of consequential far-ranging effects on transactions in checks.

4. Ad interim, We hold that the facts charged in the informations against private respondents, contrary to their claim, constitute estafa under Art. 315, par. 2 (d) of the Revised Penal Code. In considering a motion to quash based on the ground "(t)hat the facts charged do not constitute an offense,"[19] the point of resolution is whether the facts alleged, if hypothetically admitted, would meet the essential elements of the offense as defined in the law.[20] The facts alleged in the criminal charge should be taken as they are.[21] An analysis of the two informations involved in the present case convinces Us that the facts charged therein substantially constitute the integral elements of the offense as defined in the law. And the averments in the two informations sufficiently inform the two private respondents of the nature and cause of the accusations against them, thereby defeating any constitutional objection of lack of notice.[22]

ACCORDINGLY, the appealed orders of the respondent trial courts ordering the quashal of the estafa informations against the two private respondents in the petitions at bar are hereby reversed and set aside. The informations, as they are, substantially conform with the crime charged as defined in the law. Let the arraignment of the private respondents in the criminal cases below be set at the earliest date and, thereafter, the trial on the merits to proceed immediately. No costs.

SO ORDERED.

Makasiar and Antonio, JJ., concur.

Munoz Palma, J., concurs in the result on the basis of the allegations in the Informations.

Teehankee, J., (Chairman) concurs in a separate opinion.

[1] Tuazon v. Cruz, L.-27410. August 28, 1975, 66 SCRA 238-239.

- [2] US v. Rivera 23 Phil. 390 (1912)
- [3] Moran, Comments on the Rules of Court Vol. 4, 1970 ed.. at 61: People v. Yumang, L-19569. May 30, 1964. 11 SCRA 299: Tuzon v. Cruz, ante.
- [4] People v. Larue, 83 P. 2d 725.
- [5] Ogden, Negotiable Instruments, 5th ed.. at 107.
- [6] Sec. 190, Negotiable Instruments Law.
- [7] Bailey, Brady on Bank Checks, 3rd ed. at 57-59; Sec. 190, Negotiable Instruments Law.
- [8] See Annex "I". Petition in L-42902.
- [9] Chitty on Contracts. Vol. II. 1968 ed.. at 2.
- [10] Sec Padilla. Civil Code Annotated, Vol. VI. 1974 ed.. at 208. citing Rochem on Agency.
- [11] Tolentino. Civil Code. Vol. IV. 1962 ed.. at 283: Art. 1249. Civil Code of the Philippines.
- [12] Art. 1251. Civil Code of the Philippines.
- [13] A contract of sale is consensual in nature. (Art. 1475. Civil Code of the Philippines.).

[14] 22 C.J.S. 475.

- [15] People v. Descant. 124 P. 2d 864. 51 CA 2d 343.
- [16] Edwards v. State. 337 SW 2d 865; State v. Kaufman. 308 SW 2d 333; Shepherd v. Slate. 352 SW 2d 621.
- [17] See State v. Billington, 36 NW 2d 393.
- [18] See Annex "D", p. 6, Petition in L-42902; Annex (Motion to Quash), p. 5. in L-42847.
- [19] Sec. 2(a), Rule 117, Revised Rules of Court.
- [20] People v. Segovia, 103 Phil. 1162. unrep. (1958).
- [21] People v. Supnad. 117 Phil. 617 (1963).
- [22] See Moran, Comments on the Rules of Court. Vol. 4. 1970 ed.. at 25.

CONCURRING.

TEEHANKEE, J.,

I concur on the ground that the informations expressly allege that the crimes of estafa were committed by respondents-accused "in the Municipality of Malolos, Province of Bulacan." Respondents' motions to quash on the ground of improper venue, viz., that the checks issued by them were issued by them and received by complainant elsewhere (in Caloocan City) must yield to the express allegations of the informations, bearing in mind that what determines jurisdiction are the allegations in the information and that venue is sufficiently conferred wherein any one of the essential ingredients of the offense charged took place.

A quashal motion raising the question of lack of jurisdiction of the offense charged raises a simple question of law

and imports on the part of the accused-movant a hypothetical admission of the facts alleged in the information. (Rule 117 Sees. 2 and 6; cf. IV Moran's Rules of Court 1970 ed., pp. 224, 238 and cases cited).

The informations actually charge that estafa was committed in two aspects: by obtaining the goods by means of false pretenses and pretending to have sufficient funds for the checks issued in payment of the goods, and by issuing checks without sufficient funds. (Article 315. pars. 2(a) and (d). Revised Penal Code). The questions of jurisdiction re the first aspect has been duly resolved by upholding the lower court's jurisdiction under the allegations of the informations. The question raised as to the second aspect, viz., whether the amendatory Act on checks (Republic Act No. 4885 approved June 17, 1967) now includes the act of issuing a bad check in payment of a pre-existing obligation in the crime of estafa, has been properly ruled as premature. The question of law raised thereby cannot now be resolved until the facts, e.g., whether or not the checks were issued in payment of pre-existing obligations, shall have been duly established at the trial.

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