

**CARAM RESOURCES CORP. AND RAYMUND B. TEJADA,
COMPLAINANTS, VS. JUDGE MAXIMO C. CONTRERAS, METC,
BRANCH 61, MAKATI, METRO MANILA, RESPONDENT.**

A.M. No. MTJ-93-849. October 26, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In a verified complaint filed on 2 June 1993 by Caram Resources Corporation (hereinafter CARAM) and Raymund B. Tejada, respondent Judge Maximo C. Contreras, Presiding Judge of Branch 61 of the Metropolitan Trial Court (MeTC) of Makati, was charged with gross ignorance of the law and gross misconduct allegedly committed in relation to Criminal Cases Nos. 142359-142362, which involved the violation of Batas Pambansa Blg. 22, also known as the Bouncing Checks Law.

The complainants allege that on 4 February 1991, the accused in the aforesaid cases, Teresita J. Dizon, applied for and obtained a personal loan from CARAM payable in installments. She issued a promissory note and postdated Bank of the Philippine Islands (BPI) checks for the installments due and payable on specified dates. Four of these checks, dated 31 July 1991, 31 August 1991, 30 September 1991, and 31 October 1991, each for P1,259.00, were dishonored when presented to the bank because the account against which they were drawn had been closed.

CARAM then charged Dizon with the violation of B.P. Blg. 22 and in due course the aforesaid criminal cases were filed against her. After joint trial, the MeTC, per the respondent Judge, handed down a decision^[1] acquitting Dizon on the ground of reasonable doubt. The court made the following ratiocinations in support of its judgment, which are quoted in full due to their importance to the resolution of this complaint:

"These cases are classic examples of the principal reason why there is at present a proliferation of criminal cases for violation of BP 22. It appears that lending and financing institutions are now imposing as a condition precedent to the approval and grant of loan applications the issuance of postdated checks by their borrowers to cover the installment payments due on the loans. While the issue of whether or not BP 22 covers checks dishonored by reason of 'Account Closed' or 'Without Funds' had been resolved in the case of *Miller vs. CA*, et al. 189 SCRA XI and that what the law sought to penalize is the mere issuance of rubber checks irrespective of the nature of the obligation to be paid by them and that such act constitutes *malum prohibitum*, the factual circumstances of these four (4) cases cast serious doubts on the applicability of the doctrine in the *Miller* case. In fact, its application to these cases would violate the cardinal rule under our Constitution that no person shall be imprisoned for failure to pay his debt. Consider the following facts duly established.

1. Accused Teresita J. Dizon is a borrower of the private complainant Caram Resources Corporation which is a corporation engaged, among others, in the lending business;
2. The accused applied for a loan of P10,000.00 payable within one year (Exhibit "B") and she was required to execute a promissory note with two (2) co-makers for P15,548.00 payable within one year at P1,259.00 a month starting April 4, 1991;

3. Under the promissory note, the monthly installments of P1,259.00 for twelve months obviously included already interests and charges to the principal otherwise there would be no reason or explanation why a loan of P10,000.00 would become more than P15,000.00 upon the execution of the promissory note;
4. Before the approval of this loan, the accused was required as a condition precedent to open a checking account and to issue at one time in favor of the financing company all the twelve postdated checks at a face value of P1,259.00 each to correspond to the twelve months installments under the promissory note;
5. The accused opened the account with the BPI Family Bank but because the account was made without any deposit, the same was closed by the bank also in the same month it was opened and before the due date of the first postdated check;
6. When the first postdated check bounced for the reason 'Account Closed,' the accused verbally informed the financing company that her account was already closed and consequently, all the twelve postdated checks she had issued would certainly bounced [sic] upon presentment;
7. The first four (4) postdated checks having been dishonored for reason of 'Account Closed,' she replaced them with cash (Exhibits "1", "2", "3" and "4");
8. When she failed to settle the face value of the succeeding four (4) postdated checks namely: BPI Check No. 55155 dated July 31, 1991, Check No. 55156 dated August 31, 1991, Check No. 55157 dated September 30, 1991 and Check No. 55158 dated October 31, 1991 (Exhibits "A", "A-1", "B", "B-1", "C", "C-1", "D", and "D-1") which were dishonored for the same reason of 'Account Closed', the instant criminal charges for violation of BP 22 were instituted;
9. During the pendency of these cases the accused paid P5,000.00 in replacement of the four postdated checks subject matter of the present charges against her; but the private complainant Caram Resources Corporation contends that this payment was credited only to interests and insufficient to settle her account under her promissory note;
10. The record is bereft of any showing that the accused was advised orally or in writing by the Caram Resources Corporation that her payment of P5,000.00 (Exhibit "5") was only to settle the interests and insufficient to cover the face value of the four (4) checks in question;
11. That only the first postdated check was returned to the accused by the private complainant which retained the other postdated checks notwithstanding the payments in replacement thereof already made by the accused.

It had been held that the gravamen of the offense under BP 22 is the act of making and issuing a worthless check or a check which is dishonored upon its presentation for payment. But the question is, what if the issuance of the worthless checks were without consideration and made with the consent, encouragement and instigation of the payee who kept the worthless postdated checks for its own private reason? The court finds that the twelve postdated checks were issued by the accused without any consideration. These checks were issued at one time and were merely used as guarantees to insure the monthly collection of the loan granted to the accused under the promissory note, Exhibit "B". As a matter of fact, this court believes that the issuance of the postdated checks did not affect public interest since the unfunded postdated checks were merely kept on file by the payee to be used as a Damocles sword over the head of the borrower to insure compliance and collection of the monthly installments. Under these circumstances, has the accused committed an offense *malum prohibitum*? If so, what about the payee who encouraged, instigated and promoted the act constituting the gravamen of the offenses? In the case of *Magno vs. Court of Appeals, et al.*, G.R. 96132, June 26, 1992 it was held therein, among others:

"This maneuvering has serious implications especially with respect to the threat of the penal sanction of the law in

issue, as in this case. And, with a willing court system to apply the full harshness of the special law in question, using the 'mala prohibita' doctrine, the noble objective of the law is tainted with materialism and opportunism in the highest degree.'

'For all intends and purposes, the law was devised to safeguard the interests of the banking system and the legitimate public checking account user. It did not intend to shelter or favor nor encourage users of the system to enrich themselves through manipulations and circumvention of the noble purpose and objective of the law. Least, should it be used also as a means of jeopardizing honest-to--goodness transactions with some color of 'get-rich' scheme to the prejudice of well-meaning businessmen who are the pillars of society.'

'x x x In the instant case, there is no doubt that petitioner's four (4) checks were used to collateralized an accommodation, and not to cover the receipt of an actual 'account or credit for value' as this was absent, and therefore petitioner should not be punished for mere issuance of the checks in question. Following the aforecited theory (that criminal law is founded upon... moral disapprobation x x x of action which are immoral, i.e., which are detrimental (or dangerous) to those conditions upon which depend the existence and progress of human society. x x x that morality is generally founded and built upon a certain concurrence in the moral opinions of all x x x). In petitioner's stead the 'potential wrongdoer, whose operation could be a menace to society, should not be glorified by convicting the petitioner.'

As heretofore stated, the postdated checks issued by the accused were without any consideration but merely employed as coercive guarantees that the monthly installments due under the promissory note would be complied with by the borrower. The payee Caram Resources Corporation thru its credit and collection officer is aware of the unfunded account by the accused even before the first postdated check fell due. When they approved the loan of the accused after the execution of the promissory note and the issuance of the twelve postdated checks, Caram Resources Corporation never took any step to verify whether or not the account opened by the accused was funded. In fact, this court is inclined to believe that the financing company Caram Resources Corporation was not interested on whether or not the postdated checks issued by their borrowers were funded or not. It merely kept the checks on file to be brought out only on its respective due dates to coerce payment under pain of criminal charges in case of failure of the borrower to replace them with cash. It is quite obvious that this law BP 22 has been used by Caram Resources Corporation contrary to its purpose. It has encouraged their borrowers to commit unwittingly criminal offenses in their urgent financial need. The financial company had taken undue advantage of BP 22 to the extent that they had assumed an arbitrary power and authority to apply whatever payments their borrowers had made to interests, charges, penalties, etc. other than the principal loans of their borrowers. As a result, accounting problems arise between lender and borrower. This is one of the reasons the accused refused to make further payment on her four postdated checks in question claiming excessive collection on the part of the financing company. Borrowers, like the accused, who had complied with the issuance of postdated checks are absolutely helpless to question the application of their payments. Either they conform or face criminal charges for violation of BP 22. However, this court refuses to become a tool to this highly anomalous practice of financing companies to coerce their borrowers to pay according to their demands under pain of imprisonment if they resist. This court entertains serious doubts that the accused had committed a criminal offense penalized under BP 22."

The dispositive portion of the decision reads as follows:

"WHEREFORE, on ground of reasonable doubt, the court hereby acquits Teresita J. Dizon in these four (4) criminal cases without prejudice on the part of the private complainant to institute the proper civil action regarding the civil liability of the said accused. The cash bond posted for the provisional liberty of said accused is accordingly cancelled. Without cost.

SO ORDERED."

The complainants argue that in view of the respondent's findings that Dizon had obtained a loan payable in one year, that as security therefor she had executed a promissory note, and that her payment of P5,000.00 was in replacement of the subject four dishonored checks, then there was no basis at all for the respondent's conclusion that "the postdated checks issued by the accused were without any consideration but merely employed as coercive guarantees." They further assail the respondent's declaration that "the factual circumstances of [the] four (4) cases cast serious doubts on the applicability of the doctrine in the Miller case,"[2] and that its application to these cases would even "violate the cardinal rule under the Constitution that no person shall be imprisoned for failure to pay his debt." According to the complainants, it has long been settled that B.P. Blg. 22 is constitutional; accordingly, if its constitutionality is still doubtful to the respondent then he has failed to keep abreast with the rulings of this Court, thus showing his incompetence and gross ignorance of law.

As further proof of such incompetence and ignorance of law, the complainants cite the following portions from the respondent's decision wherein he indulged in baseless and general conclusions: (a) "before the approval of her loan the accused was required as a condition precedent to open a checking account"; (b) "the accused opened the account with the BPI Family Bank but because the account was made without any deposit, the same was closed by the bank also in the same month it was opened but before the due date of the first postdated check"; (c) there was no showing that "the accused was advised orally in writing by the Caram Resources Corporation that the payment of P5,000.00 (Exhibit "5") was only to settle the interests and insufficient to cover the face value of the four (4) checks in question"; (d) "the issuance of the postdated checks did not affect public interest since the unfunded postdated checks were merely kept on file by the payee to be used as a Damocles sword over the head of the borrower to insure compliance and collection of the monthly installments"; (e) "the Caram Resources Corporation never took any step to verify whether or not the account opened by the accused was funded"; and (f) "the court was even inclined to believe that the financing company Caram Resources Corporation was not interested on whether or not the postdated checks issued by their borrower were funded or not."

The complainants assert that there is no evidence that CARAM required Dizon to open a checking account with the BPI. No bank would allow the opening of a checking account without any deposit. They aver that the payment of P5,000.00 was made during the pendency of the cases in his sala and any compromise or payment for settlement is tantamount to an admission of guilt. The subject checks were never kept on file and were never used as a damocles sword because the demand letter was in fact sent to the accused requiring her to make good her dishonored checks and despite her receipt of the letter, she did not avail of the 5-day period granted her by B.P. Blg. 22 to make good the checks, and it was not the duty of CARAM to verify whether or not Dizon opened the account or funded it as such inquiry is even prohibited under R.A. No. 1405, the Secrecy of Bank Deposits Law.

In his Comment, the respondent defends his decision by contending that the postdated checks in question were issued without consideration "for the reason that the loan was covered by the promissory note which also served as the receipt of consideration"; hence, the "promissory note is a complete and perfected contract" and since "it constitutes the law between the parties," nothing else outside it "may bind the borrower." Accordingly, "to require Dizon to issue the postdated checks to cover the installment payments under the promissory note was highly anomalous, superfluous and unnecessary," and the only reason for requiring the issuance thereof was "to coerce Dizon to pay the amount the Caram Resources was demanding." He further avers that he is not biased when he held that the four criminal cases against the accused are the principal reasons for the proliferation of criminal cases for the violation of B.P. Blg. 22, for he took judicial notice of the fact that for the period from January to September 1993, the MeTC of Makati received 662 criminal cases for violation of B.P. Blg. 22.

The respondent does not question the constitutionality of B.P. Blg. 22; in fact, he states, it is "a sound and good law." What he detests is the manner employed by CARAM which took undue advantage of the law contrary to its

intention to protect the public interest.

As to his assailed conclusion that the accused was asked to open a checking account, he asserts that this was due to the "vagueness of the testimonial evidence." And refuting the complainants' assertion that the payment by Dizon of P5,000.00 during the pendency of the cases was an admission of guilt, he asseverates that since the loan was covered by a promissory note, and the postdated checks were issued without consideration, the partial settlement of the obligation was not an admission of guilt.

Further, the respondent contends that while the facts in *Magno vs. Court of Appeals*[3] are different, the doctrine it laid down "is relevant and applicable to the cases in question."

By way of special defense, the respondent expresses his suspicion that this administrative complaint "was filed by Caram Resources Corporation and its credit manager obviously to harass, if not to control, the undersigned and the other judges of this court who are handling several criminal cases being filed by complainant Caram Resources for violation of the bouncing checks against their delinquent borrowers"; and that nothing supports the claim of Tejada that he was or is the duly authorized representative of CARAM to institute the four criminal cases and this complaint.

On 17 January 1994, the complainants filed their Reply to the Comment.

In the Resolution of 31 January 1994, the parties were required to inform this Court if they would submit this case for decision on the basis of the pleadings already filed. In their respective manifestations filed on 18 February 1994 and 4 March 1994, the parties informed the Court that they were submitting this case for decision on the basis of the pleadings already filed.

It has long been settled that B.P. Blg. 22 is not unconstitutional or, more specifically, that it does not transgress the constitutional inhibition against imprisonment for non-payment of debt.

In the Decision of 18 December 1986 in *Lozano vs. Martinez* and seven other companion cases,[4] this Court explicitly ruled:

"The gravamen of the offense punished by BP 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property, but an offense against public order.

Admittedly, the distinction may seem at first blush to appear elusive and difficult to conceptualize. But precisely in the failure to perceive the vital distinction lies the error of those who challenge the validity of BP 22.

It may be constitutionally impermissible for the legislature to penalize a person for non-payment of a debt *ex contractu*. But certainly it is within the prerogative of the lawmaking body to proscribe certain acts deemed pernicious and inimical to public welfare. Acts *mala in se* are not the only acts which the law can punish. An act may not be considered by society as inherently wrong, hence, not *malum in se*, but because of the harm that it inflicts on the community, it can be outlawed and criminally punished as *malum prohibitum*. The state can do this in the exercise of its police power.

The police power of the state has been described as the 'most essential, insistent and illimitable of powers' which enables it to prohibit all things hurtful to the comfort, safety and welfare of society. It is a power not emanating from or conferred by the constitution, but inherent in the state, plenary, 'suitably vague and far from

precisely defined, rooted in the conception that man in organizing the state and imposing upon the government limitations to safeguard constitutional rights did not intend thereby to enable individual citizens or group of citizens to obstruct unreasonably the enactment of such salutary measures to ensure communal peace, safety, good order and welfare.'

The enactment of BP 22 is a declaration by the legislature that, as a matter of public policy, the making and issuance of a worthless check is deemed a public nuisance to be abated by the imposition of penal sanctions."^[5]

This Court further stated that the clear intent of the legislature was to make the offense *malum prohibitum*.^[6] Malice and intent in issuing a worthless check are thus immaterial.^[7] It is committed by the very fact of its performance,^[8] i.e., the mere act of issuing a worthless check.^[9]

In the four criminal cases before him, the prosecution proved and the accused Dizon admitted that a loan was granted to her and in connection therewith she executed a promissory note wherein she bound herself to pay the loan in twelve installments. She then issued postdated checks to cover the installments as they fall due. The checks were drawn against her current account with the BPI. She closed her account in the same month when she obtained the loan so that when the four checks were presented for payment they were dishonored. The respondent even found that:

"On cross-examination, she testified that... she issued the four checks in question in payment of this promissory note; that she closed her checking account also in February because the bookkeeper of the bank to whom she entrusted the money failed to deposit it on the same date."^[10]

Clearly, the facts irretrievably brought the accused within the purview of Section 1 of B.P. Blg. 22, and the respondent was bound by his oath to apply the law. He was not at liberty to ignore it.

When the respondent stated in effect that to hold her liable thereunder "would violate the cardinal rule under the Constitution that no person shall be imprisoned for failure to pay his debt" and that the postdated checks were without consideration and were in the nature of "guarantees to ensure the monthly collection" despite Dizon's admission that they were payments for the loan and that she herself closed her account resulting in the dishonor of the checks upon presentment, the respondent either exposed his ignorance of the law and the jurisprudence built thereon or simply ignored or disregarded the above pronouncements of this Court and chose to make his own.

Canon 18 of the Canons of Judicial Ethics provides that:

"A judge should be mindful that his duty is the application of the general law to particular instances, that ours is a government of laws and not of men, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law."

And considering that by tradition and in our system of judicial administration this Court has the last word on what the law is, and that its decisions applying or interpreting the laws or the Constitution form part of the legal system of the country,^[11] all other courts should take their bearings from the decisions of this Court,^[12] ever mindful of what this Court said fifty-seven years ago in *People vs. Vera*^[13] that "[a] becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation."

In *Vivo vs. Cloribel*,^[14] this Court stressed what it said in the 1958 case of *People vs. Santos*^[15] thus:

"Now, if a Judge of a lower Court feels, in the fulfillment of his mission of deciding cases, that the application of a doctrine promulgated by this Superiority is against his way of reasoning, or against his conscience, he may state his opinion on the matter, but rather than disposing of the case in accordance with his personal views he must first think that it is his duty to apply the law as interpreted by the Highest Court of the Land, and that any deviation from the principle laid down by the latter would unavoidably cause, as a sequel, unnecessary inconveniences, delays and expenses to the litigants. And if despite of what is here said, a Judge, still believes that he cannot follow Our rulings, than he has no other alternative than to place himself in the position that he could properly avoid the duty of having to render judgment on the case concerned (Art. 9, C.C.), and he has only one legal way to do that."

The case of Magno v. Court of Appeals^[16] which the respondent cited is inapplicable to the four cases before him. It was established in that case that the postdated checks were not in fact drawn or issued "to apply on account or for value" but to cover a warranty deposit which the accused therein did not withdraw.

As shown in his ratiocinations earlier quoted, the respondent could not hide his bias against CARAM, whose business practice he loathes. The expression of his sentiments was uncalled for in the cases against Teresita Dizon and prejudged CARAM's other transactions regardless of their legality and morality. Such expression deviates from that norm of conduct which is essential in the fair and impartial administration of justice.

WHEREFORE, for ignorance of the law and misconduct, respondent JUDGE MAXIMO C. CONTRERAS is hereby ordered to pay a fine of Ten Thousand Pesos (P10,000.00) with a warning that a repetition of the same or similar acts will be dealt with more severely by this Court.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Annex "A" of Complaint; Rollo 26-38.

[2] Miller vs. Court of Appeals, G.R. No. 90562 (Resolution), 9 July 1990, 189 SCRA xi.

[3] 210 SCRA 471 [1992].

[4] 146 SCRA 323 [1986].

[5] Id. at 338-339 (citations omitted).

[6] Citing Record of Batasan, vol. 3, P.B. No. 70. See also Que vs. People, 154 SCRA 160 [1987].

[7] People vs. Grospe, 157 SCRA 154 [1988].

[8] People vs. Manzanilla, 156 SCRA 279 [1987].

[9] People vs. Laggui, 171 SCRA 305 [1989].

[10] Decision, 5-6.

[11] Article 8, Civil Code.

[12] Albert vs. Court of First Instance, 23 SCRA 948 [1968].

[13] 65 Phil. 56, 82 [1937].

[14] 18 SCRA 713 [1966].

[15] 56 O.G. 3546; 104 Phil. 551 [1958].

[16] Supra at note 3.

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