

[WITH RESOLUTION OF AUGUST 31, 1960]*G.R. No. L-9275. June 30, 1960*

Ponente: GUTIERREZ DAVID, J.

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Francisco Tan alias Lim Te alias Tan Sek and Felino Co were charged in the Court of First Instance of Pampanga with violation of Circular No. 20 of the Central Bank of the Philippines, in relation with section 34 of Republic Act No. 265. The specific provisions of the circular alleged to have been violated are those found in paragraphs 4 (a) and 4(b) thereof. Paragraph 4(a) requires any person who receives foreign exchange to sell it to the Central Bank or its authorized agents within one business day following the receipt of such foreign exchange, and prohibits the disposition without a license by the Bank of such foreign exchange except to designated agents of the said bank. Paragraph 4(b) prohibits the purchase of foreign exchange, directly or indirectly, except from or through authorized agents of the Central Bank.

After due trial, the defendants were found guilty and sentenced as follows: Francisco Tan to suffer imprisonment of from 2 years as minimum to 4 years as maximum, and to pay a fine of P10,000.00 and one-half of the costs; Felino Co to suffer imprisonment of from 6 months as minimum to 2 years as maximum and to pay a fine of P2,000.00 plus one-half of the costs. The court also sentenced them to suffer subsidiary imprisonment in case of insolvency and decreed the forfeiture, in favor of the Government, of various U. S. postal money orders and bank drafts, a U. S. treasury check, a traveller's check \$800 in military payment certificates (commonly known as scrips) and P500 in Philippine currency. From that sentence, the defendants appealed to the Court of Appeals but that court certified the case to this Court on the ground that the constitutionality or validity of a law and executive order or regulation is in question.

The record shows that sometime in June, 1952, the defendant Felino Co, an employee of the other defendant, Francisco Tan, persuaded Edward S. Custer, an American serviceman stationed at Clark Air Force Base in Angeles, Pampanga, but living outside the base, to buy for him (Co) money orders at the post office located at the base. Pursuant to their agreement, Custer received a commission of P30 for every \$100 worth of money orders he bought.

Later in that same month, prior to Custer's departure for Japan, defendant Francisco Tan gave him \$2,000 in military payment certificates or scrips for the purchase of a car in Japan. Custer, however, was not able to buy the car and, following Tan's instructions, bought instead 5 U. S. postal money orders of \$100 each in his name. Upon his return to the Philippines on August 5, 1952, Custer delivered the money orders to Tan together with the \$1,500 in scrips, the balance of the amount given him by Tan. In the presence of Custer, defendant Co signed Custer's name on the space for the indorsee's signature leaving out in blank the space intended for the indorsee's name. As his commission, Custer received P150 from Tan. Also in the month of August, 1952, Co gave Custer various sums with which to buy bank drafts for Tan at the branch of the National City Bank of New York in Clark Air Base, with instructions to put them in his folks' name. Custer had some of his airmen friends buy the bank drafts and he himself, bought some for Tan. Thereafter he delivered them to Tan and received his corresponding

commission therefor.

The defendants and Custer transacted not only in money orders and bank drafts but also in other kinds of dollar instruments. Thus, on August 22, 1952, Co, at the instance of Tan, gave Custer four sealed envelopes and requested the latter to post them at the U. S. Post Office inside the Clark Air Base. The envelopes were addressed to certain persons in California and Hongkong and contained 28 U.S. postal money orders, one U. S. treasury check, one traveller's check and 25 bank drafts.

On August 25, 1952, Co again delivered \$4,000 in scrips for the purpose of buying bank drafts for Tan. Custer turned over the entire amount to Airman Alberto Gonzales and asked him to buy the bank drafts. That same morning Gonzales bought two drafts for \$1,000 each, which he placed in Ouster's writing box.

On that same day, August 25, 1952, Capt. William McMahon of the U. S. Air Force, then detailed to the Office of Special Investigation (OSI) at Clark Air Base, searched Ouster's writing desk in the base and there found the four envelopes containing the U. S. postal money orders, checks and bank drafts belonging to Tan, as well as the bank drafts which Airman Gonzales had deposited there earlier in the morning. Confiscating the dollar instruments, Capt. McMahon placed Ouster under arrest. Airman Gonzales was apprehended in the afternoon with two other \$1,000 bank drafts in his possession which he bought with the \$2,000 left of the \$4,000 given to him by Ouster. On being questioned later, Custer admitted having received from Tan the scrips with which said dollar instruments were purchased.

When the defendants came to know of the arrest of Custer and Gonzales as well as the seizure of the aforesaid money orders, checks and bank drafts, they lost no time in contacting Capt. McMahon. Acting under instructions from his superior, Capt. McMahon, as per previous arrangement, went to the Spic and Span Night Club in Angeles, Pampanga, and talked with the defendants. At that meeting, Tan admitted ownership only of the two envelopes addressed to California, but at subsequent meetings, he also admitted ownership of the other two envelopes addressed to Hongkong, and offered McMahon \$1,000 and P500 for the return of the four envelopes to him.

Capt. McMahon reported the offer to his superior. He also notified Antonio Laforteza, chief intelligence operative of the Central Bank, agents of the National Bureau of Investigation, officers of the Military Intelligence Service and the Philippine Constabulary, who all planned the arrest of Tan and Co at the time of the delivery of the bribe money.

At about midday of November 14, 1952, in a private dining room of the San Fernando Hotel, Capt. McMahon delivered to Tan the aforementioned dollar instruments or foreign exchange and asked Tan to sign a receipt for them. The receipt containing a list of the dollar instruments was also signed by Co as a witness. After taking delivery of the said dollar instruments, Tan then gave Capt. McMahon the bribe money consisting of \$800 in scrips and P500 with an apology because he was not able to bring the full amount agreed upon. It was at this juncture that Laforteza, the agents of the NBI, the Military Intelligence Service and Constabulary officers, and the officer of the OSI barged into the private dining room, placed Tan and Co under arrest, and seized the dollar instruments. From Capt. McMahon, the officers of the OSI got the receipt Tan and Co signed, the \$800 in scrips and the P500 in Philippine currency.

Defendants-appellants in their brief do not deny that they had no license or permit from the Central Bank to deal in foreign exchange. They claim, however, under their first assignment of error, that defendant Tan was not the owner of the dollar instruments here in question; that said defendant Tan merely loaned Custer P6,000 on one occasion and on another gave him P8,000 to purchase a Buick car; and that after he, defendant Tan, was made to believe that he could not collect said amounts from Custer in any other way, he tried to work for the release of the

said dollar instruments * * *." Regarding this claim, the trial court said:

"The denial by the accused of Tan's acquisition and ownership of the bank drafts, the checks and the money orders seized from Custer avail them nothing. In the first place, Tan in the letters Exhibits 10 and 12 admitted ownership of the instruments and demanded their return to him. The letters were signed by Tan's lawyer, it is true, but the latter could not have made the admission and the demands without instructions from Tan.

"In the second place, Tan also admitted ownership of the money orders, the bank drafts, and the checks to Captain McMahon. Of course, Tan and Co denied this fact on the witness stand and stated that when McMahon learned that Custer was heavily indebted to Tan, for a sum of money McMahon proposed to turn over the instruments to Tan in payment of Custer's debt to him; hence their presence at the San Fernando Hotel on November 14, 1952, to receive them. But if their testimony on this point is true, they gave no explanation why McMahon should have promptly notified his superiors of the seizure of the instruments from Custer and Gonzales, depositing the instruments in his office (see Exhibits N, N-1 and N-2), and kept his superiors posted on every move Tan made to recover the instruments—Tan's first call after he learned of the seizure, their first meeting at the Spic & Span Club, their frequent meetings thereafter, and the final meeting on November 13, 1952, when they agreed to meet at the San Fernando Hotel at noon the next day for the turnover and the payment of the bribe and why, after that final meeting, McMahon should have promptly communicated the arrangements to his superiors and aided them to entrap Tan and Co at the San Fernando hotel on November 14, 1952.

"Furthermore, by merely making a cursory examination of the contents of the envelope McMahon handed to him before he signed the receipt Exhibit Q and received the money orders, that bank drafts and the checks, Tan revealed his familiarity with the instruments. He could not have gained that familiarity without having been previously in possession of them. Then too the total value of those instruments is more than P14,000, whereas Custer only received P8,000 from Tan. True, the accused now claim that Custer also borrowed P6,000 from Tan, but their claim is, of highly doubtful credibility, to say the least, because of the admitted absence of receipt showing the indebtedness and because Tan himself stated on the witness stand that he made no mention of the supposed debt to McMahon when, according to him and Co, the negotiations which led to the delivery of the instruments to them on November 14, 1952, precisely concerned Custer's alleged indebtedness to Tan.

"In the third place, Tan admitted to Antonio Laforteza, the chief intelligence operative of the Central Bank, that he delivered the checks, the bank drafts and the money orders to Custer for mailing and that after they were seized from Custer he made representations to McMahon for the return of the instruments to him (Tan). He claims that Exhibit T was prepared in his absence and without his intervention and that he was afterwards compelled to sign the document through threats and intimidation, but the fact that he even had a portion of the document crossed out before he signed it is not consistent with alleged threats and intimidation. And the court is satisfied that he understands and speaks sufficient Tagalog to have answered the questions in Tagalog. Furthermore, Exhibit T is not a confession. In fact, Tan's defense partly rests on matters he stated in the document. If the investigator could compel Tan to sign Exhibit T, he should have done better to suit his purpose by making him sign a confession, and the fact that he did not do so belies the alleged threats and intimidation."

Examining the record, we find no reason for rejecting the above findings of the trial court, which are amply supported and it is well-settled that in the absence of compelling reasons, its determination is best left to the trial judge who had the advantage of hearing the parties testify and of observing their demeanor on the witness stand.

Defendants, in support of their contention that they had committed no crime, cite the letter of the Acting Deputy Governor of the Central Bank dated May 20, 1953, which allegedly indicate that the Central Bank "had no case against Francisco Tan." The letter, however, does not bear out the contention. In said letter, the Acting Deputy Governor of the Central Bank simply gave an opinion that "so far, the Central Bank does not have sufficient

evidence against Tan." Needless to say, that was merely an opinion of the Acting Deputy Governor at the time the letter was written and as such is not controlling; it is not he but the prosecuting officer of the Government who determines whether or not there is sufficient evidence to warrant the institution of a criminal action.

It is also argued that Custer was improperly utilized as a witness against defendants, because as a co-conspirator, he should have been made a co-defendant. It appears however, from the facts established by the evidence that Custer was not a co-conspirator but a mere agent or tool of the defendants in the purchase and dispositions of the dollar instruments in question. The alleged irregularity, moreover, is being raised for the first time on appeal. If counsel believed that Custer should have been made a co-defendant, they should have taken the necessary steps when this case was still in the trial court.

Under the second assignment of error, defendants maintain that they are exempt from the operation of Circular No. 20 by virtue of Notification No. 13, also a circular issued by the Central Bank. Paragraph 1(b) of the said Notification relied upon by counsel for the defense reads:

"1. Individuals who are residents of the Philippines and who are citizens of foreign countries and not also Philippine citizens are hereby exempted from the provisions of Central Bank Circular No. 20, dated Dec. 9, 1949 with respect to:

* * * * *

"(b) Property, including bank balances, physically situated elsewhere than in the Philippines on or prior to December 9, 1949, or the date on which the foreign citizen became a resident, which ever is later, or acquired subsequent to that date from a non-resident, and foreign payments, transfers and other dealings with non-residents involving such property." Contrary to defendants' claim, the dollar instruments or foreign exchange purchased by Tan thru Custer were not "property physically situated elsewhere than in the Philippines." Neither do they relate to "foreign payments, transfers or other dealings with non-residents."

It is established that defendants personally received from and delivered to Custer, a resident of the Philippines, foreign exchange (scripts, bank drafts and U.S. postal money orders) and also received scrips from personnel of the U. S. Army when such personnel were in Angeles, Pampanga. It should here be stated that under the Bases Agreement concluded between the Republic of the Philippines and the United States over American military bases on March 14, 1947, the Philippine Government never abdicated its sovereignty over the bases as part of the Philippine territory. (See *Molina vs. Panaligan*, G. R. No. L-10842, May 27, 1957.) At any rate, section 2(b) of said Notification No. 13 provides that:

"2. The exemption granted to resident foreign citizens under this notification does not:

* * * * *

"(b) Authorize any resident foreign citizen to buy foreign exchange or sell, transfer, or otherwise surrender foreign exchange to anyone in the Philippines other than as provided in Central Bank Circular No. 20 or regulations, notifications, rulings, instructions, or licenses issued thereunder."

The above provisions does not permit resident aliens, such as the defendants herein, to buy, sell, transfer or otherwise surrender foreign exchange in the Philippines except from or to the Central Bank or its authorized agents as enjoined in Circular No. 20. In the case at bar, defendants not only purchased foreign exchange but also attempted to dispose of them through the mail. Under Circular No. 21, issued pursuant to Circular No. 20, attempted or frustrated exportation of gold and foreign exchange are punishable. (See *People vs. Jolliffe*, 105 Phil., 677; *People vs. Lira Ho et al.*, 106 Phil., 887.)

Under the third assignment of error, it is claimed that inasmuch as the dollar instruments in question had been in

the possession of the defendants for only about five minutes when they were seized by government authorities, defendants could not have violated Circular No. 20, which penalizes such possession when it extends for more than 24 hours. The evidence, however, shows that defendants accepted military payment certificates or scrips in Angeles, Pampanga, and delivered them to Custer for the purpose of buying from abroad an automobile or U. S. postal money orders. Custer bought the postal money orders and these dollar instruments remained in the possession of defendant Tan from August 2, 1952 to August 22, 1952. It is also on record that Tan, thru his co-defendant Co, delivered to Custer 4 envelopes containing postal money orders, U. S. treasury check, traveller's check and bank drafts. These various dollar instruments must have also been in the possession of the defendants, long before they were seized.

In any event, the purchase of foreign exchange, directly or indirectly, without the necessary license or permit from persons or entities other than the Central Bank or its authorized agents constitutes a violation of Circular No. 20, regardless of the length of possession of said foreign exchange.

Under the fourth assignment of error defendants contend that Circular No. 20, cannot be considered a valid penal law because (1) it has not been approved by the President of the Philippines; (2) it contravenes international agreements to which the Philippines is a party; (3) its context does not indicate that it was an emergency measure which temporarily suspends or restricts sales of exchange; (4) it could only be issued as an emergency measure during a crisis and has no more force or effect since the emergency it seeks to remedy never existed or no longer exists; and (5) it constitutes an undue delegation of legislative power. The issues raised may now be considered settled by the decisions of this Court in the cases of *People vs. Jolliffe*, supra; *People vs. Koh, et al.*, 105 Phil., 925; *People vs. Henderson*, 105 Phil., 859; and *s People vs. Lim Ho, et al.*, supra, wherein the validity of Central Bank Circular No. 20 was assailed on identical grounds.

In all the above cited cases, this Court held that Circular No. 20, which subjects to licensing by the Central Bank all transactions in gold and foreign exchange, was in fact approved by the President of the Philippines. As regards the necessity of approval by the International Monetary Fund, this Court said in *People vs. Koh*, supra, that "it is not incumbent upon the prosecution to prove that the provisions of Circular No. 20 complied with all pertinent international agreements binding on our Government, The Central Bank and the President certify that it accords therewith, and it is presumed that said officials know whereof they spok,e, and that they performed their duties properly. It is rather for the defense to show conflict, if any, between the circular, and our international commitments."

With respect to the contention that the authority of the Monetary Board to suspend or restrict the sales of exchange to license is temporary in nature and may be exercised only during an exchange crisis, and that the context of the circular in question does not indicate that it was a temporary emergency measure, this Court again said in *People vs. Jolliffe*, supra; "It is not necessary, however, for the legality of said circular that its temporary character be stated on its face, so long as the circular has been issued during an exchange crisis, for the purpose of combating the same. In the absence of evidence to the contrary, which has not been offered in the present, it is presumed that the provisions of sec. 74 of Republic Act 265, under the authority of which the aforementioned circular was issued, has been complied with. Besides, the fact that there has been an exchange crisis in the Philippines and that such crisis, not only existed at the time of the issuance of said circular in 1949 and 1950, but, also, has remained in existence up to the present, may be taken judicial cognizance of."

Regarding the allegation that the grant of authority to the Central Bank to issue the same constitutes an undue delegation of legislative power, this Court has also held in the case of *People vs. Jolliffe* that the standards set forth in the Central Bank Charter (Rep. Act No. 265) are "sufficiently concrete and definite to vest in the delegated authority the character of administrative details in the enforcement of the law and to place the grant of

said authority beyond the category of a delegation of legislative powers * * *."

Defendants further contend, under the fifth assignment of error, that even if Circular No. 20 is valid, they are still entitled to an acquittal because the transaction in dollars was between the servicemen of the U. S. Armed Forces inside the Clark Air Force Base. In view of the facts established by the evidence, this contention cannot be sustained.

Under their last assignment of error, defendants maintain that the acts committed by them did not adversely affect the dollar reserves of the Philippines. We fail to see what bearing this contention has in the instant case, but it may not be amiss to state here that the restrictions on foreign exchange imposed by Central Bank Circular No. 20, as testified to by Central Bank officials, have a double purpose, namely, the replacement of the dollars disbursed from the international reserve and the acquisition of dollars to augment it. As observed by the trial court, Circular No. 20 is also intended to bring back our dwindling' international reserve to a level sufficient to meet our normal demands for foreign exchange, and every dollar that should be added, but is not, to said international reserve adversely affects the country economy.

Finding no error in the judgment appealed from, we hereby affirm it in toto, with costs against appellants.

Paras C. J., Bengzon, Labrador, Concepcion, Reyes, J.B.L., and Barrera, JJ., concur.

Padilla and Montemayor, JJ., took no part.

RESOLUTION

August 31, 1960

GUTIERREZ DAVID, J.:

This is a motion for reconsideration filed by appellants praying that the decision rendered by this Court on June 30, 1960 affirming the judgment of conviction by the court below be set aside and a new one rendered acquitting them of the crime charged.

Citing section 73 of Republic Act No. 265, providing that the Central Bank may engage in foreign exchange transactions, with the governments and banking institutions therein enumerated, and section 74 of the same Act, authorizing the Monetary Board to temporarily suspend or restrict sales of exchange by the Central Bank, counsel for appellants argues that the Central Bank is not authorized by its charter to engage in foreign exchange transactions with the public, or to license such transactions of private individuals. Counsel, therefore, contends that Circular No. 20, insofar as it requires private persons who received foreign exchange to sell it to the Central Bank or to its authorized agents, and prohibits the purchase, sale, or disposition of such foreign exchange by private persons except from or to designated agents of the Central Bank, is null and void.

The contention cannot be sustained. the validity of the circular in question has already been upheld by this court in the case of *People vs. Koh et al.*, 105 phil., 925. in fact, it has been enforced in the cases of the *People vs. Jolliffe*, 105 phil., 677 and *People vs. Henderson*, 105 phil., 859).

In answer to counsels arguments, it should here be stated that section 74 of Republic Act No. 265 expressly provides that "Notwithstanding the provisions of the third paragraph of the preceding section, in order to protect the international reserve of the Central Bank during an exchange crisis and to give the Monetary Board and the Government time in which to take constructive measures to combat such a crisis, the Monetary Board * * * may

temporarily suspend or restrict sales of exchange by the Central Bank and may subject all transactions in gold and foreign exchange to license by the Central Bank. * * *." The power granted in the above quoted section is so broad in terms that it evidently covers all sales, purchases or dispositions of foreign exchange, whether they be by the Central Bank itself or by the general public or private entities. It will be remembered that the circular in question was issued in view of our rapidly declining dollar reserves. Considering the responsibilities, objectives and powers of the Central Bank—among them "to protect the international reserve of the Central Bank during an exchange crisis and to give the Monetary Board and the Government time in which to take constructive measures to combat such a crisis" (sec. 74), "to take such remedial measures as are appropriate" to protect the international stability of the peso, when the international reserve is falling (sec. 70)—it is not difficult to conclude that Circular No. 20 was a valid exercise of the regulatory powers delegated by the Central Bank Act (Republic Act No. 265). That circular is in harmony with the objectives sought to be achieved by the law.

Section 73 of the Central Bank Act relied upon by counsel to support appellant's theory that the Central Bank may engage in foreign exchange transactions only with the entities (banks) therein enumerated, is obviously a general rule for observance during normal times, and is subject to the exception provided in section 74 to the effect that during an exchange crisis, such as the period when the crime in question was committed by appellants, the Monetary Board is expressly authorized to subject all transactions in gold and foreign exchange to license by the Central Bank. It is significant to note that Circular No. 20 was reported to Congress, as required by section 34 of Republic Act No. 265, and Congress has subsequently ratified the same by enacting laws directly connected with or having direct relation to the existing foreign exchange control.[1]

Finally, it requires no effort to understand that appellants' position if upheld, would discourage the public to deal with the Central Bank or with any other bank authorized by it. This could easily lead to rampant and unrestrained blackmarketing and thus defeat the purpose of the law. That effect the law could not have intended.

Counsel also argues that the Central Bank has no jurisdiction to license foreign exchange transactions in American bases in this country. This argument is not new and has been found untenable as extensively discussed in the decision sought to be reconsidered.

In view of the foregoing, the motion for reconsideration is denied.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Barrera, JJ., concur.

[1] Among these laws are Rep. Act. No. 426 (Import Control Law); Rep. Acts Nos. 601, 814, 871, 1175 and 1197, all legislations imposing an excise tax of 17% on the value in Philippine peso of foreign exchange sold and/or authorized to be sold by the Central Bank or its authorized agents.

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