OFFICIAL GAZETTE · SPECIAL FOURTEENTH DIVISION · JUNE 28, 2010

EVELYN MAMIIT DIOKNO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

CA-G.R. CR NO. 32121, June 28, 2010

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Court of Appeals

This is a Petition for Review filed under Rule 42 of the Rules of Court questioning the June 2, 2008 Decision and November 11, 2008 Order of the Regional Trial Court (RTC) of Rosario, Batangas, Branch 87, which modified the Decision of the Municipal Trial Court (MTC) of Padre Garcia, Batangas and which denied petitioner's Motion for Reconsideration, respectively, in Criminal Case No. R07-028.

Herein petitioner Evelyn Mamiit Diokno was charged for the crime of Violation of Batas Pambansa Bilang 22 for having allegedly drawn and issued United Coconut Planters Bank (UCPB) Check No. 0051244 and Rural Bank of Padre Garcia, Inc. (RBPGI) Check No. 0010572, both in favor of private respondent Access Bank (formerly Rural Bank of Laurel [Bats.], Inc.). The said checks were however dishonored due to "Accounts Closed".

It appears that on April 1, 1997, petitioner obtained a loan from Access Bank, Padre Garcia Branch, in the amount of Php 334,000.00 and on the said date, she issued a blank check with serial no. 0010572, drawn against Rural Bank of Padre Garcia, Inc. as guarantee of the said loan. When the promissory note of the said loan became due and demandable, Access Bank allegedly completed the blank check which was pre-signed by petitioner. When encashed with the drawee bank, the check was dishonored due to "Account Closed".

On August 11, 1997, petitioner obtained another loan from the same Bank (Access Bank), in the amount of Php270,000.00 and issued a blank check with serial no. 0051244 drawn against UCPB as guarantee of the said loan. When the promissory note for said loan had become due and demandable, Access Bank again allegedly completed the blank check which was pre-signed by petitioner but said check, when encashed with the drawee bank, was likewise dishonored due to "Accounts Closed".

Despite repeated demands upon petitioner to make good the money value of the checks she issued amounting to Php334,000.00 and Php270,000.00, she failed to pay the amounts thereof to the alleged damage and prejudice of the private respondent Access Bank. Hence, petitioner was indicted for violation of Section 1, paragraph 1 of Batas Pambansa Blg, 22 (BP No. 22) otherwise known as the Bouncing Checks Law, in two separate amended complaints both dated September 29, 2000.

Upon arraignment on the two cases, petitioner pleaded not guilty to the crimes charged. Trial on the merits ensued with both the prosecution and defense presenting their respective evidence. After the conclusion of the trial, the MTC rendered a decision dated June 19, 2006 finding petitioner guilty of violation of BP No. 22. Thus:

> "WHEREFORE, the Court finds the accused EVELYN MAMIIT DIOKNO, guilty beyond reasonable doubt of the crime of Violation of the first paragraph of Section 1 of Batas Pambansa Blg. 22 in the above-entitled cases and sentences her, as follows:
>
> - In CRIM. CASE NO. 1994 - to pay the penalty of fine of P200,000.00, with subsidiary imprisonment in case of inability to pay the fine, and the costs of this suit.

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> - In CRIM. CASE NO. 1995 - to pay the penalty of fine of P200,000.00, with subsidiary imprisonment in case of inability to pay the fine, and the costs of this suit.
>
> By way of civil liability the accused is also ordered to pay to the Access Bank [Rural Bank of Laurel (Bats.), Inc.] the total amount of P599,000.00, representing the face value of United Coconut Planters Bank Check No. 0051244 and Rural Bank of Padre Garcia, Inc. Check No. 0010572, less the P5,000.00 already paid by the accused.
>
> IT IS SO ORDERED." (Rollo, p. 48)

Dissatisfied with the said Decision, petitioner filed an appeal with the court a quo (RTC), on the ground that the June 19, 2006 Order of the MTC is contrary to law and evidence.

On June 2, 2008, the RTC rendered a Decision modifying the Order of the MTC by absolving petitioner from criminal liability but ordering her to pay private respondent Access Bank the face value of the checks less the amount she already paid. The dispositive portion of the assailed Decision of the RTC reads as follows:

> "WHEREFORE, in view thereof, the Decision of the Municipal Trial Court of Padre Garcia, Batangas is MODIFIED. Appellant Evelyn Mamiit Diokno is ACQUITTED of the charge of violation of B.P. 22 on the ground of failure of the prosecution to prove the guilt of the accused beyond reasonable doubt. However, in accordance with the ruling in Rico versus Court of Appeals, she is therefore hereby ordered to pay private complainant bank the face value of the checks less the P5,000.00 pesos already paid by the accused now in the total amount of P599,000.00 with 12% interest per annum from the filing of the information until the amount due is fully paid.
>
> No pronouncement as to cost.
>
> SO ORDERED." (Rollo, p. 33)

Feeling aggrieved, petitioner filed a Petition for Review with this Court on the following grounds:

> I
>
> WITH DUE RESPECT, THE COURT A QUO SERIOUSLY ERRED IN AWARDING THE CIVIL LIABILITY OF ACCUSED-APPELLANT NOTWITHSTANDING THE CLEAR SHOWING THAT THE PROSECUTION EVIDENCE NOW AVAILABLE ON RECORD IS PATENTLY INSUFFICIENT TO SUSTAIN TO AWARD THE FACE VALUE OF THE SUBJECT CHECKS.
>
> II
>
> ACCUSED'S CONSTITUTIONAL PRESUMPTION OF INNOCENCE MUST PREVAIL AS THE PROSECUTION FAILED TO ESTABLISH HER GUILT BEYOND REASONABLE DOUBT (Rollo, p. 007).

Petitioner essentially questions the RTC's findings as to her civil liability which ordered her to pay private respondent bank the face value of the checks in the total amount of Php599,000.00 with 12% interest per annum from the filing of the information until the amount due is fully paid.

Much of her protestations centered basically on two bones of contention: (1) that the subject checks are not considered as a valid order to the bank to pay as the entries thereon were supplied by the bank without her authority, knowledge and consent; and (2) that the prosecution failed to prove that the subject checks were made, drawn or issued to apply on account or for value.

In the instant petition, petitioner zeroed-in on the testimony of the prosecution's witness that the blanks in the subject checks were filled up not by petitioner but by the typewriter of the bank, suggestive of the fact that

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petitioner had not drawn the subject checks in due form nor issued the same complete in form. Petitioner then maintained that the first element of the crime charged (B.P. No. 22), i.e., the making, drawing and issuance of a check had not been proven. In such a case the incompleteness and unauthorized drawing of the said checks did not make the same as a valid order to the bank to pay, and the drawer is not under obligation to deposit or maintain sufficient funds or to make arrangement with the bank for its payment.

Petitioner likewise averred that the second element of the crime charged was also not sufficiently proven. She insisted that while the prosecution claimed that the subject blank checks were issued to guarantee two loans allegedly obtained by her (petitioner), no clear and concrete evidence was adduced as to the very existence of said loans. In other words, petitioner claimed that the prosecution failed to prove that the check was made or drawn and issued to apply on account or for value.

The Supreme Court in the case of Dy vs. People, G.R. No. 158312, November 14, 2009, held that even if the checks were given in blank, this alone did not make its issuance invalid. While Section 191 of the Negotiable Instruments Law define "issue" as the first delivery of an instrument, complete in form, to a person who takes it as a holder, it must however be noted that "delivery" of such instrument is the final act essential to the negotiability of an instrument (Dy vs. People, supra.). As such, when the checks were delivered, the holder thereof becomes a holder with prima facie authority to fill the blanks. Thus, Section 14 of the Negotiable Instruments law provides:

> "Sec. 14. Blanks; when may be filled. — Where the instrument is wanting in any material particular, the person in possession thereof has a pima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount..."

Hence, the law merely requires that the instrument be in the possession of a person other than the drawer or maker. From such possession, together with the fact that the instrument is wanting in a material particular, the law presumes agency to fill up the blanks (Dy vs. People, G.R. No. 158312, November 14, 2009). Because of this presumption of authority, the burden of proof that there was no authority or that authority granted was exceeded, is carried by the person who questions such authority (Lunaria vs. People, G. R No. 160127, November 11, 2008).

It must be stated at the outset that petitioner did not deny having physically transferred the subject checks in favor of private respondent Access Bank. Apart from her own avowal of delivery, petitioner also admitted during the trial that she affixed her signature on the said two blank checks - a UCPB Check with serial no. 0051244 and a Rural Bank of Padre Garcia check with serial no. 0010572 worth Php334,000.00 (See: MTC Decision, Rollo, p. 46). She likewise stated before the MTC that the UCPB check was issued as a back-up check for the tax declaration in connection with a loan she obtained from the Laurel Bank (now Access Bank) and the other Rural Bank of Padre Garcia check was used to guarantee a loan in the amount of Php334,000.00.

By the fact of delivery in favor of private respondent Access Bank, the latter being the holder thereof has a prima facie authority to fill-up the blanks on the subject check. In the case at bar, petitioner has not sufficiently established the lack of authority on the part of the bank to fill up the blanks in the subject checks. She adduced no clear and convincing evidence to show that the bank was not authorized to fill-up the blanks on the check. Thus, having failed to prove lack of authority on the part of Access Bank, it can be legally presumed that said Bank was within its rights to complete the entries on the checks by filling up the blanks therein. In any case, it is not a valid defense for the petitioner to say that the subject checks signed in blank were not valid orders for her to pay the bank, as Section 14 of the Negotiable Instruments Law conceded the prima facie authority of the person in possession of the instrument to fill it up.

Petitioner also claimed that Access Bank cannot be considered a holder for value as the consideration (or the loan

transaction) for which the checks were issued were not sufficiently proven. This Court is again not swayed. It must be noted that during the trial before the MTC, petitioner admitted that he issued the UCPB check as a back-up check for the tax declaration and the other check (the Rural Bank of Padre Garcia check) as a security for a loan amounting to Php334,000.00, which to date remained unpaid. With the foregoing, consideration (for which the checks were issued) was then sufficiently established by the testimony and admission of petitioner herself.

What the law punishes is simply the issuance of a bouncing check and not the purpose for which it was issued nor the terms and conditions relating thereto. If inquiry into the reason for which the checks are issued, or the terms and conditions of their issuance is required, the public's faith in the stability and commercial value of checks as currency substitutes will certainly erode (Dy vs. People, G.R. No. 158312, November 14, 2008).

The gravamen of the offense under BP Blg. 22 is the act of issuing a worthless check or a check that is dishonored upon its presentment for payment, not the non-payment of the obligation (Lunaria vs. People, G.R. No. 160127, November 11, 2008). Thus, petitioner's assertion of lack or failure of consideration must perforce fail in view of the fact that petitioner herself acknowledged that she obtained a loan from Access Bank with the subject checks as security thereof.

Indeed, exoneration from criminal liability does not follow similar exoneration from civil liability. The criminal and civil liability of an accused are separate and distinct from each other. One is meant to punish the offender while the other is intended to repair the damage suffered by the aggrieved party (Dy vs. People, G.R. No. 158312, November 14, 2008). So for the purpose of indemnifying the latter, the offense need not be proved beyond reasonable doubt, but only by preponderance of evidence. Hence, where the facts established by the preponderance of evidence so warrant, an accused, who was absolved from criminal liability, maybe held civilly liable, as in this case.

WHEREFORE, in the light of the foregoing, the assailed Decision dated June 2, 2008 and the Order dated November 11, 2008 of the Regional Trial Court (RTC) of Rosario, Batangas, Branch 87, in Criminal Case No. R07-028 are hereby AFFIRMED.

SO ORDERED.

Villamor and Ybanez,[*] JJ., concur.

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[*] Acting Junior Member per Office Order No. 144-10-ABR dated June 08, 2010.

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