

ALEXANDER PADILLA, COMPLAINANT, VS. THE HON. BALTAZAR R. DIZON, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF PASAY CITY, BRANCH 113, RESPONDENT.*A.C. No. 3086. February 23, 1988*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-3086/>**PER CURIAM:**

This is an administrative complaint, dated August 6, 1987, filed by the then Commissioner of Customs, Alexander Padilla, against respondent Baltazar R. Dizon, RTC Judge, Branch 115, Pasay City, for rendering a manifestly erroneous decision due, at the very least, to gross incompetence and gross ignorance of the law, in Criminal Case No. 86-10126-P, entitled "People of the Philippine vs. Lo Chi Pai", acquitting said accused of the offense charged, i.e., smuggling of foreign currency out of the country.

Required by the Court to answer the complaint, the respondent judge filed an Answer, dated October 6, 1987, reciting his "commendable record as a fearless prosecutor" since his appointment as Assistant City Fiscal of Manila on December 4, 1962, until his appointment eventually as RTC Judge on February 18, 1983; that in the reorganization of the judiciary after the February 26, 1986 revolution, he was reappointed to his present position; that his length of service as prosecutor and judge is "tangible proof that would negate the allegations of the petitioner" (should be complainant), whereas the latter did not last long in the service for reasons only known to him; that the decision involved in the complaint was promulgated by respondent on September 29, 1986, but the complaint against him was filed only on August 6, 1987, a clear indication of malice and ill-will of the complainant to subject respondent to harassment, humiliation and vindictiveness; that his decision, of which he submits a copy (Annex A) as part of his Answer, is based on "fundamental principles and the foundation of rights and justice" and that if there are mistakes or errors in the questioned decision, they are committed in good faith. Accordingly, respondent prays for the dismissal of the petition (should be complaint).

The issue before the Court is whether or not the respondent judge is guilty of gross incompetence or gross ignorance of the law in rendering the decision in question. A judge can not be held to account or answer, criminally, civilly or administratively, for an erroneous decision rendered by him in good faith.

The case in which the respondent rendered a decision of acquittal involved a tourist, Lo Chi Fai, who was caught by a customs guard at the Manila International Airport while attempting to smuggle foreign currency and foreign exchange instruments out of the country. Lo Chi Fai was apprehended by a customs guard and two PAFSECOM officers on July 9, 1986, while on board Flight PR 300 of the Philippine Air Lines bound for Hongkong. At the time of his apprehension, he was found carrying with him foreign currency and foreign exchange instruments (380 pieces) amounting to US\$355,349.57, in various currency denominations, to wit: Japanese Yen, Swiss Franc, Australian Dollar, Singapore Dollar, HFL Guilder, French Franc, U.S. Dollar, English Pound, Malaysian Dollar, Deutsche Mark, Canadian Dollar and Hongkong Dollar, without any authority as provided by law. At the time the accused was apprehended, he was able to exhibit two currency declarations which he was supposed to have accomplished upon his arrival in Manila in previous trips, namely, CB Currency Declaration No. 05048, dated May 4, 1986 for US\$39,600.00 and Japanese Yen 4,000,000.00, and CB Currency Declaration No. 06346, dated

June 29, 1986 for Japanese Yen 6,600,000.00.

An information was filed against Lo Chi Fai with the RTC of Pasay City for violation of Sec. 6, Central Bank Circular No. 960, as follows:

"That on or about the 9th day of July, 1986, in the City of Pasay, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Mr. LO CHI FAI, did then and there wilfully, unlawfully and feloniously attempt to take out of the Philippines through the Manila International Airport the following foreign currencies in cash and in checks:

Japanese Yen Y32,800,000.00

Swiss Franc SW. FR 6,9000.00

Australian Dollar A\$ 17,425.00

Singapore Dollar S\$ 9,945.00

Deutsche Marck DM 18,595.00

Canadian Dollar C\$ 13,330.00

Hongkong Dollar HK\$ 15,630.00

HFL Guilder HFL 430.00

French Franc F/ 6,860.00

US Dollar US\$ 73,950.00

English Pound L 5,318.00

Malaysian Dollar M\$ 14,760.00

(in checks)

Australian Dollar A\$ 7,750.00

British Pound L 700.00

US Dollar US\$ 17,630.00

Canadian Dollar C\$ 990.00

without authority from the Central Bank.

Contrary to Law."

The case, which was docketed as Criminal Case No. 86-10126-P, was subsequently raffled to Branch 113, presided by herein respondent Judge Baltazar R. Dizon.

Section 6 of Circular No. 960 of the Central Bank provides as follows:

"Sec. 6. Export, import of foreign exchange; exceptions. No person shall take out or transmit or attempt to take out or transmit foreign exchange in any form, out of the Philippines directly, through other persons, through the mails or through international carriers except when specifically authorized by the Central Bank or allowed

under existing international agreements or Central Bank regulations.

Tourists and non-resident visitors may take out or send out from the Philippine foreign exchange in amounts not exceeding such amounts of foreign exchange brought in by them. For purposes of establishing the amount of foreign exchange brought in or out of the Philippines, tourists and non-resident temporary visitors bringing with them more than US\$3,000.00 or its equivalent in other foreign currencies shall declare their foreign exchange in the form prescribed by the Central Bank at points of entries upon arrival in the Philippines."

The penal sanction is provided by Section 1, P.D. No. 1883, which reads as follows:

"Section 1. Blackmarketing of Foreign Exchange. That any person who shall engage in the trading or purchase and sale of foreign currency in violation of existing laws or rules and regulations of the Central Bank shall be guilty of the crime of blackmarketing of foreign exchange and shall suffer the penalty of reclusion temporal, (minimum of 12 years and 1 day and maximum of 20 years) and a fine of no less than fifty thousand (P50,000.00) Pesos."

At the trial, the accused tried to establish that he was a businessman from Kowloon, Hongkong, engaged in the garment business, in which he had invested 4 to 5 million Hongkong dollars; that he had come to the Philippines 9 to 10 times, although the only dates he could remember were April 2, 1986, May 4, 1986, June 28, 1986 and July 8, 1986; that the reason for his coming to the Philippines was to invest in business in the Philippines and also to play in the casino; that he had a group of business associates who decided to invest in business with him, namely, Wakita Noboyuki, Kobayashi Nabuo, Lee Shiang Pin, Lee Chin and Cze Kai Kwan, who had their own businesses in Japan and Hongkong; that when he came to the Philippines on April 2, 1986, he brought US\$50,000.00 and 8,500,000.00 Japanese Yen which he tried to declare but the Central Bank representative refused to accept his declaration, until he could get a confirmation as to the source of the money, for which reason he contacted his bank in Hongkong and a telex was sent to him on April 3, 1986 (Exh. 4). He also brought in with him US\$39,000.00 and 4,000,000.00 Japanese Yen when he arrived on May 4, 1986 which he declared (Exh. 1). Again, he declared 8,600,000.00 Japanese Yen when he arrived on June 28, 1986 (Exh. 2). He also testified that his business associates, as per their agreement to invest in some business with him in the Philippines, started putting their money for this purpose in a common fund, hence, every time anyone of them came to the Philippines, they would declare the money they were bringing in, and all declarations were handed to and kept by him; these currency declarations were presented at the trial as exhibits for the defense. When asked by the court why he did not present all of these declarations when he was apprehended at the airport, his answer was that he was not asked to present the declaration papers of his associates, and besides, he does not understand English and he was not told to do so. He also testified on cross-examination that the reason he was going back to Hongkong bringing with him all the money intended to be invested in the Philippines was because of the fear of his group that the "revolution" taking place in Manila might become widespread. It was because of this fear that he was urged by his associates to come to Manila on July 8, 1986 to bring the money out of the Philippines.

The respondent judge, in his decision acquitting the accused, stated:

"The factual issue for this Court to determine is whether or not the accused wilfully violated Section 6 of Circular No. 960. The fact that the accused had in his possession the foreign currencies when he was about to depart from the Philippines did not by that act alone make him liable for Violation of Section 6.

What is imperative is the purpose for which the act of bringing foreign currencies out of the country was done - the very intention. It is that which qualifies the act as criminal or not. There must be that clear intention to violate and benefit from the act done. Intent is a mental state, the existence of which is shown by overt acts of a person."

The respondent proceeded to analyze the evidence which, according to him, tended to show that the accused had

no wilfull intention to violate the law. According to the respondent in his decision:

"x x x this Court is persuaded to accept the explanation of the defense that the currencies confiscated and/or seized from the accused belong to him and his business associates above-named. And from the unwavering and unequivocal testimonies of Mr. Templo and all of the Central Bank employees the currencies in question came from abroad and not from the local source which is what is being prohibited by the government. Yes, simply reading the provisions of said circular will readily show that the currency declaration is required for the purpose of establishing the amount of currency being brought by tourist or temporary non-resident visitors into the country. The currency declarations, therefore, is already (sic) intended to serve as a guideline for the Customs authorities to determine the amounts actually brought in by them to correspond to the amounts that could be allowed to be taken out. Indeed, this Court is amazed and really has its misgivings in the manner currency declarations were made as testified to by the Central Bank employees. Why the Bureau of Customs representative never took part in all these declarations testified to by no less than five (5) Central Bank employees? Seemingly, these employees are the favorites of these travellers. It is the hope of this Court that the authorities must do something to remedy the evident flaw in the system for effective implementation of the questioned Central Bank Circular No. 960.

But even with a doubtful mind this Court would not be able to pin criminal responsibility on the accused. This is due to its steadfast adherence and devotion to the rule of law - a factor in restoring the almost lost faith and erosion of confidence of the people in the administration of justice. Courts of Justice are guided only by the rule of evidence."

The respondent judge has shown gross incompetence or gross ignorance of the law in holding that to convict the accused for violation of Central Bank Circular No. 960, the prosecution must establish that the accused had the criminal intent to violate the law. The respondent ought to know that proof of malice or deliberate intent (*mens rea*) is not essential in offenses punished by special laws, which are *mala prohibita*. In requiring proof of malice, the respondent has by his gross ignorance allowed the accused to go scot free. The accused at the time of his apprehension at the Manila International Airport had in his possession the amount of US\$355,349.57 in assorted foreign currencies and foreign exchange instruments (380 pieces), without any specific authority from the Central Bank as required by law. At the time of his apprehension, he was able to exhibit only two foreign currency declarations in his possession. These were old declarations made by him on the occasion of his previous trips to the Philippines.

Although lack of malice or wilfull intent is not a valid defense in a case for violation of Central Bank Circular No. 960, the respondent nonetheless chose to exonerate the accused based on his defense that the foreign currency he was bringing out of the country at the time he was apprehended by the customs authorities were brought into the Philippines by him and his alleged business associates on several previous occasions when they came to the Philippines, supposedly to be used for the purpose of investing in some unspecified or undetermined business ventures; that this money was kept in the Philippines and he precisely came to the Philippines to take the money out as he and his alleged business associates were afraid that the "attempted revolution" which occurred on July 6, 1986 might spread. Such fantastic tale, although totally irrelevant to the matter of the criminal liability of the accused under the information, was swallowed by the respondent judge "hook, line and sinker." It did not matter to the respondent that the foreign currency and foreign currency instruments found in the possession of the accused when he was apprehended at the airport - 380 pieces in all - and the amounts of such foreign exchange did not correspond to the foreign currency declarations presented by the accused at the trial. It did not matter to the respondent that the accused by his own story admitted, in effect, that he was a "carrier" of foreign currency for other people. The respondent closed his eyes to the fact that the very substantial amounts of foreign exchange found in the possession of the accused at the time of his apprehension consisted of personal checks of other people, as well as cash in various currency denominations (12 kinds of currency in all), which clearly belied the

claim of the accused that they were part of the funds which he and his supposed associates had brought to and kept in the Philippines for the purpose of investing in some business ventures. The respondent ignored the fact that most of the CB Currency declarations presented by the defense at the trial were declarations belonging to other people which could not be utilized by the accused to justify his having the foreign exchange in his possession. Although contrary to ordinary human experience and behavior, the respondent judge chose to give credence to the fantastic tale of the accused that he and his alleged business associates had brought in from time to time and accumulated and kept in the Philippines foreign exchange (of very substantial amounts in cash and checks in various foreign currency denominations) for the purpose of investing in business even before they knew and had come to an agreement as to the specific business venture in which they were going to invest. These and other circumstances which make the story concocted by the accused so palpably unbelievable as to render the findings of the respondent judge obviously contrived to favor the acquittal of the accused, thereby clearly negating his claim that he rendered the decision "in good faith." His actions in this case amount to grave misconduct prejudicial to the interest of sound and fair administration of justice.

He not only acquitted the accused Lo Chi Fai, but directed in his decision the release to the accused of at least the amount of US\$3,000.00, allowed, according to respondent, under Central Bank Circular No. 960. This, in spite of the fact that forfeiture proceedings had already been instituted by the Bureau of Customs over the currency listed in the information, which according to the respondent should be respected since the Bureau of Customs "has the exclusive jurisdiction in the matter of seizure and forfeiture of the property involved in the alleged infringements of the aforesaid Central Bank Circular." In invoking the provisions of CB Circular No. 960 to justify the release of US\$3,000.00 to the accused, the respondent judge again displayed gross incompetence and gross ignorance of the law. There is nothing in the said CB Circular which could be taken as authority for the trial court to release the said amount of U.S. currency to the accused. According to the above-cited CB Circular, tourists may take out or send out from the Philippines foreign exchange in amounts not exceeding such amounts of foreign exchange brought in by them; for the purpose of establishing such amount, tourists or non-resident temporary visitors bringing with them more than US\$3,000.00 or its equivalent in other foreign currencies must declare their foreign exchange at points of entries upon arrival in the Philippines. In other words, CB Circular No. 960 merely provides that for the purpose of establishing the amount of foreign currency brought in or out of the Philippines, a tourist upon arrival is required to declare any foreign exchange he is bringing in at the time of his arrival, if the same exceeds the amount of US\$3,000.00 or its equivalent in other foreign currencies. There is nothing in said circular that would justify returning to him the amount of at least US\$3,000.00, if he is caught attempting to bring out foreign exchange in excess of said amount without specific authority from the Central Bank.

Accordingly, the Court finds the respondent Regional Trial Court Judge, Baltazar R. Dizon, guilty of gross incompetence, gross ignorance of the law and grave and serious misconduct affecting his integrity and efficiency, and consistent with the responsibility of this Court for the just and proper administration of justice and for the attainment of the objective of maintaining the people's faith in the judiciary (People vs. Valenzuela, 135 SCRA 712), it is hereby ordered that the Respondent Judge be **DISMISSED** from the service. All leave and retirement benefits and privileges to which he may be entitled are hereby forfeited with prejudice to his being reinstated in any branch of government service, including government-owned and/or controlled agencies or corporations.

This resolution is immediately executory. **SO ORDERED.**

Teehankee, C.J., Yap, Fernan, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Bidin, Sarmiento, Cortes, and Griño-Aquino, JJ., concur.

Narvasa, J., no part, did not participate in deliberation.

Padilla, JJ., no part, related to petitioner.

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