

YEK BEN KOO, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND BENJAMIN LEE, RESPONDENTS.

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GALAPATE-LAGUILLES, J:

For Our consideration is petitioner Yek Ben Koo's Motion for Reconsideration and Supplement to Motion for Reconsideration of the Decision dated May 24, 2013, which affirmed his conviction for violation of Batas Pambansa Blg. 22 and sentenced him to a penalty of imprisonment of one (1) month and one (1) day, in addition to fine.

In his Motion, Koo raises the following issues for reconsideration:

I.

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT IN FINDING THE PETITIONER PERSONALLY LIABLE FOR THE CORPORATE CHECKS SUBJECT OF THIS CASE.

II.

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT IN FINDING THE PETITIONER LIABLE FOR A CRIMINAL ACTION THAT HAS PRESCRIBED.

III.

THE HONORABLE COURT OF APPEAL ERRED IN IMPOSING AN ADDITIONAL PENALTY OF IMPRISONMENT OF ONE (1) MONTH AND ONE (1) DAY.[1]

As regards, the first issue, Koo insists that he is not liable for the issuance of the bum checks to Golden Dragon Metal Products by Importex Philippines, where he acted as President and General Manager. According to him, he issued the said checks in his capacity as corporate officer, hence, he is not personally liable thereof.

We are not swayed by his asseverations as We emphatically ruled that a corporate officer who actually signed the bum checks is liable for its issuance. We reiterate, thus:

The liability of the said corporate officer or employee under BP 22 attaches from the moment he committed the wrongful act of signing or issuing a check despite the knowledge of the insufficiency of funds in the account of the drawer corporation.[2] Meaning, he is personally liable for violating a penal statute and he cannot hide behind the doctrine that “a corporate officer is not liable for a corporate act.” Thus, the payee Golden Dragon can exact payment of money for which the worthless checks were issued. This precedes from the fact that the offender's liability under BP 22 is distinct from the obligation of the company that arises from a contract, i.e. loan or a sale transaction, as was in this case.

The case of *Gosiaco v. Ching, et al.*[3] is apropos, thus:

When a corporate officer issues a worthless check in the corporate name he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who with intent to defraud another of money or property, draws or issues a check on any bank with knowledge that he has no sufficient funds in such bank to meet the check on presentment. Moreover, the personal liability of the corporate officer is predicated on the principle that he cannot shield himself from liability from his own acts on the ground that it was a corporate act and not his personal act. As we held in *Llamado v. Court of Appeals*:

Petitioner's argument that he should not be held personally liable for the amount of the check because it was a check of the Pan Asia Finance Corporation and he signed the same in his capacity as Treasurer of the corporation, is also untenable. The third paragraph of Section 1 of BP Blg. 22 states: "Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act."

Anent the second issue, Koo argues yet again that the criminal action had already prescribed due to non-payment of docket fees within the reglementary period for filing the action, which is four years from the date of commission thereof. This is a mere rehash of the arguments in his appellant's Brief which We have extensively discussed in Our assailed Decision, viz:

We emphasize that the reglementary period was tolled when the complaint was filed in June 1999, which shall run again when the case is dismissed for reason not constituting double jeopardy. In this case, the consolidated cases for violation of BP 22 were not dismissed but were merely ordered archived on April 14, 2003[4] for failure to pay the docket fees pursuant to Supreme Court Circular No. 57-97. Meaning, the prescriptive period remained suspended. Thus, the payment of docket fees on December 19, 2003[5] were made within the reglementary period.

Even if We consider the cases to have been dismissed on April 14, 2003 for non-payment of docket fees, and not merely ordered archived, the 4-year prescriptive period has not yet lapsed when the cases were reinstated on December 3, 2003[6], upon Motion to Revive[7] filed by the private complainant, and the corresponding docket fees paid on December 19, 2003. It must be underscored that when the prescriptive period was tolled by the filing of the complaint in June 1999, only two (2) years and five (5) months had elapsed from the date of the commission of the offense in January 1997. The time between June 1999 and April 13, 2003 shall not be included in reckoning the prescriptive period because the same corresponds to the period of suspension of the running of the 4-year prescriptive period. The said period ran again on April 14, 2003 if We deem the archival of the cases tantamount to dismissal and it shall end one (1) year and seven (5) months thereafter, or in

November 2004. Accordingly, the reinstatement of the cases and the payment of docket fees were timely made.

In his last-ditch effort to evade criminal liability, Koo argues in his Supplement to Motion for Reconsideration that the criminal cases for violation of BP 22 should have been dismissed pursuant to Supreme Court Circular No. 70-97 dated October 21, 1997, which reads:

3. The complainant shall have a period of ten (10) days from receipt of the letter within which to pay the filing fees. Should the complainant fail to pay the filing fees within the ten (10)-day period stated herein, the case folder shall be archived. After the lapse of two (2) months, the records may be disposed of.

We do not agree. Koo attempts to stretch the language of the aforecited Supreme Court Circular to fit his untenable assertion. The said Circular is clearly worded; it gave the trial court the discretion to dispose of the records of the case. The phrase “the records may be disposed of” certainly could not be equated to a consequent dismissal of the case. For, notably, the requisite docket fees pertains merely to the civil aspect of the case. Besides, if, indeed, it was the intention of the Supreme Court to allow the dismissal of BP 22 cases based simply on the non-payment of the docket fees, the same could have been so expressly provided in the same Circular-that non-payment of the docket fees after the lapse of two months warrants the dismissal of the case, and not merely the disposition thereof.

With regard to the third issue concerning the additional penalty of imprisonment, We find the same meritorious. In Our assailed Decision, We sentenced Koo, in addition to the fine imposed by the trial court, a penalty of imprisonment of one (1) month and one (1) day bearing in mind his cavalier regard of the intent of BP 22. However, We are now convinced that the imposition of fine alone will serve the ends of criminal justice. We, thus, adopt leniency in imposing the lighter penalty of fine. Likewise, We do not want to deprive Koo the needed latitude, if not freedom, in engaging in business activities that would redound to the country's economy without the appurtenant restrictions, if not stigma, of incarceration.

WHEREFORE, the Motion for Reconsideration is partly GRANTED. The Decision May 24, 2013 is hereby AMENDED to the effect that the additional penalty of imprisonment of one (1) month and one (1) day imposed on Yek Ben Koo is DELETED. Consequently, the Warrant of Arrest against the same accused is now RECALLED. The dispositive portion of the assailed Decision will now read:

WHEREFORE, the instant appeal is DENIED for lack of merit. The Decision dated February 25, 2010 of the Regional Trial Court (Branch 10) of Manila is AFFIRMED.

SO ORDERED.

SO ORDERED.

Punzalan Castillo, (Chairperson), and Lazaro-Javier, JJ., concur.

[1] Rollo, p. 430.

[2] See *Mitra v. People*, G.R. No. 191404, July 5, 2010.

[3] G.R. No. 173807, April 16, 2009.

[4] Records, Vol. I, p. 43.

[5] See Preliminary Conference Order dated May 10, 2007, *supra*.

[6] Records, Vol., p. 46.

[7] Records, Vol. I, pp. 44-45.

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