

ANG TEK LIAN, PETITIONER, VS. THE COURT OF APPEALS, RESPONDENT.

G.R. No. L-2516. September 25, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

For having issued a rubber check, Ang Tek Lian was Convicted of estafa in the court of first instance of Manila. The Court of Appeals affirmed the verdict.

It appears that, knowing he had no funds therefor, Ang Tek Lian drew on Saturday, November 16, 1946, the check Exhibit A upon the China Banking Corporation for the sum of P4,000, payable to the order of "cash". He delivered it to Lee Hua Hong in exchange for money which the latter handed in the act. On November 18, 1946, the next business day, the check was presented by Lee Hua Hong to the drawee bank for payment, but it was dishonored for insufficiency of funds, the balance of the deposit of Ang Tek Lian on both dates being P335 only.

The Court of Appeals believed the version of Lee Huan Hong who testified that "on November 16, 1946, appellant went to his (complainant's) office, at 1217 Herran, Paco, Manila, and asked him to exchange Exhibit—which he (appellant) then brought with him—with cash alleging that he needed badly the sum of P4,000 represented by the check, but could not withdraw it from the bank, it being then already closed; that in view of this request and relying upon appellant's assurance that he had sufficient funds in the bank to meet Exhibit A, and because they used to borrow money from each other, even before the war, and appellant owns a hotel and restaurant known as the North Bay Hotel, said complainant delivered to him, on the same date, the sum of P4,000 in cash; that despite repeated efforts to notify him that the check had been dishonored by the bank, appellant could not be located anywhere, until he was summoned in the City Fiscal's Office in view of the complaint for estafa filed in connection therewith; and that appellant has not paid as yet the amount of the check, or any part thereof."

Inasmuch as the findings of fact of the Court of Appeals are final, the only question of law for decision is whether under the fact a found, estafa had been accomplished.

Article 315, paragraph (d), subsection 2 of the Revised Penal Code, punishes swindling committed "By postdating a check, or issuing such check in payment of an obligation the offender knowing that at the time he had no funds in the bank, or the funds deposited by him in the bank were not sufficient to cover the amount of the check, and without informing the payee of such circumstances".

We believe that under this provision of law Ang Tek Lian was properly held liable. In this connection, it must be stated that, as explained in *People vs. Fernandez*, 59 Phil., 615, estafa is committed by issuing either a post-dated check or an ordinary check to accomplish the deceit.

It is argued, however, that as the check had been made payable to "cash" and had not been endorsed by Ang Tek Lian, the defendant is not guilty of the offense charged. Based on the proposition that "by uniform practice of all banks in the Philippines a check so drawn is invariably dishonored", the following line of reasoning is advanced

in support of the argument:

" * * * When, therefore, he (the offended party), accepted the check (Exhibit A) from the appellant, he did so with full knowledge that it would be dishonored upon presentment. In that sense, the appellant could not be said to have acted fraudulently because the complainant, in so accepting the check as it was drawn, must be considered, by every rational consideration, to have done so fully aware of the risk he was running thereby". (Brief for the appellant, p. 11).

We are not aware of the uniformity of such practice. Instances have undoubtedly occurred wherein the Bank required the endorsement of the drawer before honoring a check payable to "cash". But cases there are too, where no such requirement had been made. It depends upon the circumstances of each transaction.

Under the Negotiable Instruments Law (sec. 9 [d]), a check drawn payable to the order of "cash" is a check payable to bearer, and the bank may pay it to the person presenting it for payment without the drawer's endorsement.

"A check payable to the order of cash is a bearer instrument. *Bacal vs. National City Bank of New York* (1933) 146 Misc. 732, 262 N. Y. S. 839; *Cleary vs. De Beck Plate Glass Co.* (1907) 54 Misc. 537, 104 N. Y. S. 831; *Massachusetts Bonding & Insurance Co. vs. Pittsburgh Pipe & Supply Co.* (Tex. Civ. App., 1939), 135 S. W. (2d) 818. See also *H. Cook & Son vs. Moody* (1916) 17 Ga. App. 465, 87 S. E., 713."

"Where a check is made payable to the order, of 'cash', the word cash 'does not purport to be the name of any person', and hence the instrument is payable to bearer. The drawee bank need not obtain any endorsement of the check, but may pay it to the person presenting it without any endorsement, * * *" (*Zollmann, Banks and Banking*, Permanent Edition, Vol. 6, p. 494).

Of course, if the bank is not sure of the bearer's identity or financial solvency, it has the right to demand identification and/or assurance against possible complications,—for instance, (a) forgery of drawer's signature, (b) loss of the check by the rightful owner, (c) raising of the amount payable, etc. The bank may therefore require, for its protection, that the endorsement of the drawer—or of some other person known to it—be obtained. But where the Bank is satisfied of the identity and/or the economic standing of the bearer who tenders the check for collection, it will pay the instrument without further question; and it would incur no liability to the drawer in thus acting.

"A check payable to bearer is authority for payment to the holder. Where a check is in the ordinary form, and is payable to bearer, so that no endorsement is required, a bank, to which it is presented for payment, need not have the holder identified, and is not negligent in failing to do so. * * *". (*Michie on Banks and Banking*, Permanent Edition, Vol. 5, P. 343).

"* * * Consequently, a drawee bank to which a bearer check is presented for payment need not necessarily have the holder identified and ordinarily may not be charged with negligence in failing to do so. See Opinions 6C:2 and 6C:3. If the bank has no reasonable cause for suspecting any irregularity, it will be protected in paying a bearer check, 'no matter what facts unknown to it may have occurred prior to the presentment.' 1 *Morse, Banks and Banking*, sec. 393.

"Although a bank is entitled to pay the amount of a bearer check without further inquiry, it is entirely reasonable for the bank to insist that the holder give satisfactory proof of his identity, * * *". (*Patois Digest*, Vol. I, p. 1089).

Anyway, it is significant, and conclusive, that the form of the check Exhibit A was totally unconnected with its dishonor. The Court of Appeals declared that it was returned unsatisfied because the drawer had insufficient funds—not because the drawer's endorsement was lacking.

Wherefore, there being no question as to the correctness of the penalty imposed on the appellant, the writ of

certiorari is denied and the decision of the Court of Appeals is hereby affirmed, with costs.

Moran, C.J., Ozaeta, Paras, Pablo, Tuason, and Reyes, JJ., concur.

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