

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. CHARLES E. HENDERSON III, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 10829-30. May 29, 1959

Ponente: BENGZON, J.

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BENGZON, J.:

In two separate informations, the above-mentioned defendants were charged before the Manila Court of First Instance with violations of Central Bank Circular No. 31 in connection with section 34 of Republic Act No. 265, because as officers of Henderson Trippe (Philippines) Inc., they obtained two excessive allocations of foreign exchange for the purchase of cattle from Australia to the Philippines by falsely representing the price to be \$114.20 per head, when as a matter of fact, they knew the price to be only \$66.20 per head, (\$43.90 in the other information).

Through their counsel, defendants moved to quash the informations on several grounds, some of which were:

- That Special Prosecutor Guillermo B. Guevara had no legal authority to sign the informations;
- That no preliminary investigation had been conducted as to Charles E. Henderson III and Augustus S. Trippe;
- That the allegedly violated Circular No. 31 was illegal; and ;
- That assuming the legality of Circular No. 31, the facts described in the informations do not constitute violations thereof.

After hearing the parties, the judge overruled the first, second and fourth objections, as well as other objections Testing on procedural requirements; but he sustained objection No. 3, declared Circular No. 31 to be illegal, and therefore dismissed the informations.

Both the People and the defendants appealed, the former maintaining the legality of Circular No. 31, and the latter insisting on its three other objections above-stated.

The People's Appeal.—The trial judge opined that as Circular No. 31 had been avowedly issued by virtue of the powers of the Central Bank and Monetary Board under section 74 of Republic Act 265, it was invalid because it had not been approved (a) by at least five Members of the Monetary Board, and (6) by the President of the Philippines, and because (c) it was not in accordance with the Executive and International Agreements of which the Republic is now a member.

As to the first ground, the record shows that Circular No. 31 has been approved by the vote of seven members of the Board; and defendants do not now insist on it.

As to the third ground, it has not been established how the Circular conflicts with other executive or international

agreements. On the other hand, the People contends that Circular No. 20 of the Bank had been approved by the International Monetary Fund, and that Circular No. 31 constituted merely an implementation thereof. And defendants herein, in their brief as appellees, paid no particular attention to this phase of the controversy. There remains for consideration, the lack of Presidential approval. Fully to understand the issue involved, it is necessary to transcribe section 74 of Republic Act 265:

SEC. 74. Emergency restrictions on exchange operations.— 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, with concurrence of at least five of its members, and with the approval of the President of the Philippines, may temporarily suspend or restrict sales of exchange by the Central Bank and may subject t all transactions in gold and foreign exchange to license by the Central Bank. The adoption of the emergency measures authorized in this section shall be subjects to any executive and international agreements to which the Republic of the Philippines is a party."

In view of our rapidly declining dollar reserves, the Monetary Board by unanimous vote of all its six members present at its meeting of December 9, 1949, approved Circular No. 20 entitled "Restriction on Gold and Foreign Exchange Transactions". Consisting of nine paragraphs,. its first read as follows:

"1. Pursuant to the provisions of Republic Act No. 265 (Central Bank Act) the Monetary Board, by unanimous vote and with the approval of the President of the Philippines, and in accordance with Executive and International Agreements to which the Republic of the Philippines is a party, hereby restricts sales of exchange by the Central Bank and subjects all transactions in gold and foreign exchange to licensing.by the Central Bank."

One of its paragraph provided that no person or company shall purchase foreign exchange directly or indirectly except from or through authorized agents of the Central Bank. And its last paragraph gave notice that "further regulations in respect to transactions covered by this Circular will be issued separately".

Said Circular No. 20 carried the President's approval. Other circulars were later issued, among them Circular No. 31 (December 1951) section 6 of which provides:

"Any person, directly or through his agent or representative, who shall apply with the Central Bank or any of its Authorized Agents for purchase of foreign exchange who shall make material misrepresentations in any application or other papers or documents required in accordance with the exchange control regulations issued by the Central Bank by virtue of which misrepresentations, the Central Bank or any of its Authorized Agents was led to grant him on exchange license for any purpose, shall be guilty of violating this section."

The People admits that this Circular No. 31 bore no specific sanction of the President of the Philippines. It contends, however, that such approval was unnecessary, because it merely implemented or clarified Circular No. 20 by defining different violations of said Circular, which had the Chief Executive's imprimatur.

This issue may now be considered settled by our recent decision in *People vs. Jolliffe*[2] wherein the validity of k Central Bank Circular No. 21 was assailed on identical grounds: lack of Presidential endorsement. This Circular merely implemented Central Bank Circular No. 20, by providing that "any person desiring to export gold in any form, including jewelry * * * must obtain a license from the Central Bank." Prosecuted for exporting gold bullion without license of the Bank, in violation of said Circular No. 21 and section 34 of Republic Act 265, Jolliffe attacked the validity thereof for lack of Executive sanction. Resolving the issue, we held that after the President had approved Central Bank Circular No. 20, other circulars to implement it did not need Presidential approval. Speaking through Mr. Justice Concepcion, we explained that "the original circular subjecting to licensing by the Central Bank" all transactions in gold and foreign exchange", is Circular No. 20, which, as approved and

published, stated, that, "pursuant to the provisions of Republic Act No. 265", it had been adopted by "the Monetary Board, by unanimous vote and with the approval of the President of the Philippines." What is more, the last paragraph of Circular No. 20, provides that "further regulations in respect to transactions covered by this circular will be issued separately." Thus, the President had approved not only the "licensing by the Central Bank" of "all transactions in gold and foreign exchange but, also, the issuance, subsequently to the promulgation of Circular No. 20, of "further regulations in respect" of such transactions. Said further regulations were incorporated into Circular No. 21, which thus bears the stamp of presidential sanction, although this is not specifically required by law. It is only the decision of the Monetary Board to subject to license by the Central Bank all transactions in gold and foreign exchange that needs the approval of the President. Once the same has been given, the details in the implementation of said decision may be determined by said. Board, through such regulations as may be promulgated from time to time. The assent of the President is not a prerequisite to the validity and effectivity of these regulations, as distinguished from the aforementioned decision thereby sought to be enforced or executed. The authority of the Monetary Board to make regulations is governed, not by section 74 of Republic Act No. 265, but by section 14 thereof * * *."

Needless to say, Circular No. 31 now in question, stands on the same footing as Circular No. 21. It must be declared valid. .

Defendants' Appeal.— In their first assignment of error, accused-appellants assail the validity of this prosecution because the information had been signed by "Guillermo B. Guevara, Special Prosecutor".

It appears that Judge Guevara —a practicing attorney — was designated by the President as special investigator of certain alleged anomalies in the Government and in connection therewith, the Secretary of Justice assigned him "to assist the City Fiscal of Manila in the investigation and prosecution of violations of the Central Bank Act, including violations of circulars and regulations issued by the Monetary Board, Central Bank * * * relative to importation and exchange control". This designation was lawfully done under section 1686 of the Administrative Code, as amended.

After conducting an investigation of written charges against the officers of Henderson Trippe (Philippines) Inc., Judge Guevara filed the informations against herein defendants, who now question his authority to initiate the proceeding, inasmuch as said investigation and prosecution had been carried out and filed without the consent of the City Fiscal of Manila.

The question is not new. We have held in *People vs. Dinglasan*³ that a lawyer appointed by the Secretary of Justice, pursuant to section 1686 of the Revised Administrative Code, as amended, to assist the City Fiscal, is authorized to sign informations, make investigations and conduct prosecutions. This lawyer does not need to secure the consent of the corresponding Fiscal to start a prosecution. In fact, it is not a secret that the power in said section has often been exercised by the Department of Justice, whenever it did not see eye to eye with the Fiscal on certain matters involving offenses and/or prosecutions.

Concerning the appellants' contention that Republic Act 1201, section 38-A, has given the City Fiscal of Manila, rather the Prosecution Division of that Office, the exclusive power to investigate and sign informations, we agree with the trial court's interpretation of said section as merely referring to the internal administrative organization of the office, establishing therein a sort of division of labor for purposes of efficiency.

In the second assignment of error, defendants Charles E. Henderson III and Augustus S. Trippe, claim a procedural irregularity by asserting that the prosecutor had not given them the benefit of a preliminary investigation.

We have before us the transcript of the notes of the investigation conducted. Therein the "respondents" named were Alfred Segal and Mr. Helmuth Koenig; but the investigation was really against the corporation Henderson Trippe (Philippines) Inc. as shown by the following heading of such notes:

"IN THE MATTER OF THE CHARGES FILES) BY THE CENTRAL BANK AGAINST THE HENDERSON TRIPPE (PHILIPPINES) INC. FOR VIOLATION OF THE REGULATIONS OF THE MONETARY BOARD AND IN RESPONSE TO THE SUBPOENA ISSUED BY JUDGE GUILLERMO B. GUEVARA, DATED JANUARY 23, 1956 MESSRS. ALFRED SEGAL AND HELMUTH KOENIG APPEARED PERSONALLY THIS MORNING, JANUARY 25, 1956, AT 10:00 SHARP"

And the written charges specifically mentioned said officers along with others.

In fact, Attorney Lobrin, who appeared for the above "respondents" also appeared for the officers of the corporation, (including naturally, Henderson III and Trippe, who were admittedly President and Director, respectively, of the corporation under probe.

Moreover, the statute concerning preliminary investigations merely requires that the accused shall be given a chance to be heard where such accused can be subpoenaed and appears before the investigating fiscal, with the right to cross-examine the complainant and his witnesses. From the notes, one could gather that during the investigation, Judge Guevara told Mr. Segal and Atty. Lobrin to convey to Henderson III the information that he "would welcome his presence here if he deems it wise for the protection of his interests to do so". And in fact, Henderson appeared and witnessed the investigation. That was, in our opinion, sufficient compliance with the statute. He did not ask nor was he denied the right to cross-examine. As to Augustus Trippe, it seems he was abroad, and it was unnecessary to give him a chance, because he could not be subpoenaed. At any rate, his interests were represented by the Attorney representing the corporate officers.

We find no mistake on this score.

In their last assignment, defendants claim that, admitting the validity of Circular No. 31, the informations on file do not describe any criminal offense. For the purposes of this assignment, one of the informations must be copied below: (except for the figures, the other is the same).

"INFORMATION"

"* * * * *"

"That on or about June 8, 1954, and for some time prior and subsequent thereto, in the City of Manila and within the jurisdiction of this Honorable Court, the said defendants, being then and there the President, Vice-President and General Manager, and Director, respectively, of a domestic corporation known as the Henderson Trippe (Philippines), Inc. conspiring together confederating with each other, and through the use of false pretenses and gross misrepresentations, did then and there opened, or caused to be opened, Letter of Credit No. 61329 through the Philippine National Bank, one of the agent banks of the Central Bank, in the sum . of \$91,360, U. S. dollars, of which Henderson Trippe Shipping (Australia), Pty., Ltd., represented by the defendant Augustus's. Trippe. in Australia is the beneficiary, on the strength of a representation made to the said agent bank, the Philippine National Bank, that the letter of credit would be used to finance the purchase of 800 heads of cattle in Australia, at the agreed price of \$114.20 F. O. B., per head, including feed and fodder, as per "firm offer" which the defendants accompanied or caused to be accompanied to the application for the Letter of Credit, when in fact and in truth, as the defendants well knew, the real cost F. O. B. per head of the cattle, including feed and fodder was \$66.20 only; that in pursuance to the plan of the defendants to withdraw more foreign exchange than legally and actually necessary, defendant Augustus S. Trippe for and on behalf of a dummy entity under the style of Henderson-Trippe Shipping (Australia) Pty., Ltd., posed himself as shipper of the cattle and withdrew from and/or negotiated the Letter of Credit 61329 in the sum of \$74,226.76 for 578

heads, that is, on the basis of \$128.42 per head, instead of \$38,263.60 or \$66.20 per head, thereby defrauding the dollar reserve of the country in the sum of \$35,963.16."

The prosecution alleges violation of Circular No. 31, particularly of section 6, herein-before quoted.

It seems quite clear from the information above transcribed that the defendants as officers of Henderson Trippe (Philippines) Inc. applied for — and got — foreign exchange (91,360 U. S. dollars) for the purchase of cattle in Australia, and in so doing, they made the material misrepresentation that such head of cattle would cost \$114.20, whereas they knew that it would cost \$66.20 only. No better description can be made of a violation of the above provision of section 6, Circular No. 31. And section 34 of Republic Act 265 provides the penalty for such violation.

Wherefore, overruling the defendants' assignments of error, and sustaining the appeal of the prosecution, we hereby direct the return of the expediente to the court below for further proceedings in accordance with this opinion. So ordered.

Paras, C. J., Montemayor, Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.
Reyes, A., J., concurs in the result.

[1] Or not shown to accord with.

[2] *supra*, p. 677.

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