

DOMINGO DICO, JR., PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 116566. April 14, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

Before the court is a tug of war of sort between the petitioner, Domingo Dico, Jr., the drawer of the dishonored checks sued upon, and complainant Margie Lim Chao, the payee thereof.

Dissatisfied with the decision of the Court of Appeals in CA-G.R. CV Nos. 11759 and 13149, which affirmed the judgments of Branches 14 and 16 of the Regional Trial Court of Cebu, convicting him of violations of Batas Pambansa Blg. 22 ten (10) counts, accused Domingo Dico, Jr. found his way to this court via these two petitions for review under Rule 45 of the Revised Rules of Court, which have been consolidated.

Is petitioner liable for the violations of Batas Pambansa Blg. 22 charged? Such is the crucial issue at bar.

The complainant, Margie Lim Chao, initiated the filing of six (6) cases, with five (5) counts each, of violations of BP 22 against the petitioner, Domingo Dico, Jr., for issuing more than twenty four (24) checks which were all dishonored upon presentment for payment on due dates. Of the six cases, two (2) cases involving five (5) dishonored checks each, reached this Court through the two petitions under scrutiny. (Rollo, p. 245)

The antecedent facts leading to the filing of the present petitions are as follows:

According to the complainant, Margie Lim Chao, on several occasions in 1986, she supplied accused Domingo Dico, Jr. (Dico), who owns Paulo Bake Shop, bakery materials such as flour, sugar, salt, cooking oil and yeast; that every time she would deliver the said baking materials to his bakeshop, Dico would issue postdated checks in her favor as payment for such ingredients; that altogether, Dico issued to her more than twenty four (24) checks, among which are five (5) checks involved in the complaint for violations of BP 22 which she filed against Dico before Branch 16 of the Regional Trial Court of Cebu. The details of said checks are as follows:

BANK CHECK NO DATE AMOUNT

PCIB 05509 February 3, 1987 P7,000.00

PCIB 05513 February 13, 1987 8,134.00

PCIB 05524 March 2, 1987 5,940.00

PCIB 05525 March 2, 1987 5,000.00

PCIB 07285 March 22, 1987 5,080.00

Complainant further stated that before the checks matured, Dico asked her to defer the depositing or encashment of the said checks for about five (5) months because he had no money; that she granted his request but so as not to make the checks stale, they agreed to change as, in fact, they changed the dates of all the checks to a new common

date, August 3, 1987, after which Dico affixed his signature beside the new date of each check; that when she deposited such checks about a month after their maturity, all the five checks bounced for the reason "Account Closed"; and so she filed a complaint against Dico because the latter refused to redeem subject checks, despite demand. (Rollo, G.R. No. 116566, pp. 50-51)

As his defense, Dico theorized that sometime after the issuance of the checks in question, he and the complainant engaged in a joint business venture to supply and sell automotive parts to the National Irrigation Administration in Zamboanga del Sur. As industrial partners, he secured clients for the partnership, being a native of that place, while the complainant provided the credit facilities for NIA, knowing a number of automotive dealers willing to extend credit up to one hundred twenty (120) days. They divided their profits equally.

Petitioner also alleged that under their agreement, his share in the profits from their NIA transactions would be set-off against his obligations to the complainant for the flour he purchased, which were originally covered by checks; that because of such arrangement, the checks he previously issued were not anymore deposited on their due dates; that for security purposes only, complainant changed the original dates of the checks to a common date of August 3, 1987; that in compliance with the request of complainant, he signed the said checks near the dates thereof, to show his good faith in faithfully remitting his collections from NIA Zamboanga del Sur; that on September 4, 1987, the complainant deposited all the five checks on their new due date but the same bounced because he was not aware that they would be deposited or encashed in view of his agreement with complainant that he would set-off his obligations with her. (Rollo, G.R. No. 116566, Rollo, pp. 17-22)

On April 4, 1991, Branch 14 of the Regional Trial Court of Cebu came out with its verdict against the petitioner, disposing as follows:

"WHEREFORE, judgment is hereby rendered finding the accused Domingo Dico, Jr. guilty beyond reasonable doubt of five counts of violation of Batas Pambansa Blg. 22 in Criminal Cases Nos. CBU-15112, 15113, 15114, 15115 and 15116. He is accordingly sentenced to suffer imprisonment of four (4) months in each case, or twenty (20) months in the five cases.

The costs of these proceedings shall be taxed against the accused.

SO ORDERED." (G.R. No. 116566, Rollo, p. 107)

On December 29, 1993, the Court of Appeals affirmed the said decision. Petitioner's motion for reconsideration was later denied.

On April 20, 1995, the Court of Appeals also affirmed the decision of Branch 16 of the Cebu Regional Trial Court, finding the herein petitioner, Domingo Dico, Jr., guilty of five (5) violations of BP 22, for issuing five (5) more unfunded checks in payment of baking ingredients he procured, and sentencing thus:

"WHEREFORE, judgment is hereby rendered finding defendant Domingo Dico guilty beyond reasonable doubt of violation of BP Blg. 22 on 5 counts, for which he is sentenced as follows:

In Criminal Case No. CBU-14791 - 60 days imprisonment;

In Criminal Case No. CBU-14792 - 60 days imprisonment;

In Criminal Case No. CBU-14793 - 60 days imprisonment;

In Criminal Case No. CBU-14794 - 60 days imprisonment;

In Criminal Case No. CBU-14795 - 60 days imprisonment;

No civil liability is awarded in this case inasmuch as complainant has filed a civil action for the amounts of the

checks in question.

SO ORDERED." (G.R. No. 120149, Rollo, pp. 42-43)

Undaunted, the petitioner is before this court for the reversal of the aforesaid judgments convicting him. Invoking the ruling in *Magno vs. CA* (210 SCRA 471 [1992]), petitioner maintains that he cannot be convicted for violation of B.P. 22 because several factors militate against a strict application of the *mala prohibita* doctrine, viz : (1) the checks were not issued "to apply on account or for value" but as mere warranty deposits to guarantee his obligation in the new partnership; (2) that the profits of the business of the partnership have more than paid his (petitioner's) account for the baking materials he bought, for the payment of which subject checks were issued.

As the drawer of the dishonored checks complained of, although intended merely as a guarantee deposit, the petitioner is liable under B.P. Blg 22.

A check issued as an evidence of debt, though not intended for encashment, has the same effect like any other check. It is within the contemplation of B.P. 22, which is explicit that "any person who makes or draws and issues any check to apply for an account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank x x x which check is subsequently dishonored x x x shall be punished by imprisonment x x x" (*Cruz vs. CA*, 233 SCRA 307 [1994])

When a check is presented for payment, the drawee bank normally honors the same whether issued in payment of an obligation or just as a guaranty of an obligation.

What is penalized by law is the issuance of a bouncing check. The mere act of issuing an unfunded check is a *malum prohibitum*. (*ibid*, p. 301)

In *Que vs. People*, 154 SCRA 160, the court ruled:

"It is now settled that Batas Pambansa Bilang 22 applies even in cases where dishonored checks are issued merely in the form of a deposit or a guarantee. The enactment in question does not make any distinction as to whether the checks within its contemplation are issued in payment of an obligation or merely to guarantee the said obligation. In accordance with the pertinent rule of statutory construction, inasmuch as the law has not made any distinction in this regard, no such distinction can be made by means of interpretation or application. Furthermore, the history of the enactment of subject statute evinces the definite legislative intent to make the prohibition all-embracing, without making any exception from the operation thereof in favor of a guarantee. xxx.

Consequently, what are important are the facts that the accused had deliberately issued the checks in question to cover accounts and that the checks were dishonored upon presentment regardless of whether or not the accused merely issued the checks as a guarantee."

and in *People vs. Nitafan*, 215 SCRA 84, *ratiocinated*:

"We are not unaware that a memorandum check may carry with it the understanding that it is not to be presented at the bank but will be redeemed by the maker himself when the loan falls due. The understanding may be manifested by writing across the check 'Memorandum', 'Memo' or 'Mem'. However, with the promulgation of B.P. 22, such understanding or private arrangement may no longer prevail to exempt it from penal sanction imposed by the law. To require that the agreement surrounding the issuance of checks be first looked into and thereafter exempt such issuance from the punitive provisions of B.P. 22 on the basis of such agreement or understanding would frustrate the very purpose for which the law was enacted - to stem the proliferation of unfunded checks x x x" (G.R. No. 116566, CA Decision dated December 29, 1993, Rollo, pp. 52-53)

The importance of arresting the proliferation of bouncing checks can not be overemphasized. The mischief of circulating unfunded checks is injurious not only to the payee or holder of such checks but to society in general, and the business community, in particular. The nefarious practice "can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest." (Cruz vs. CA, *supra*, p. 308)

Petitioner's stance that the complainant tried to enrich herself unjustly by collecting on already paid checks is anemic of evidentiary support. No evidence of any weight whatsoever was introduced to show a set-off or compensation of the monetary obligations for which the checks in question were issued. It has been established indubitably that the petitioner had drawn and issued the said checks in favor of the complainant as payment of the flour and other baking materials the former bought from the latter. When such checks were deposited, they were all dishonored and returned by the drawee bank for the reason "Account Closed." (TSN, pp. 22-24, July 6, 1994)

The straightforward testimony of the complainant that she agreed with petitioner to redate the same checks, after he pleaded for an extension of time for the payment thereof, is worthy of belief. Had the indebtedness covered by the checks sued upon been paid, the petitioner would have redeemed or taken the checks back in the ordinary course of business. (Section 3 [q] Rule 131, Revised Rules of Court of the Philippines) But the same checks remained in the possession of the complainant who asked for the satisfaction of the obligations involved when said checks became due without the petitioner heeding the demand for him to redeem his checks which bounced.

Petitioner's reliance on the ruling in the case of *Magno vs. Court of Appeals* (*supra*) is misplaced. In said case, the accused, who was in the process of putting up a car repair shop, was provided with credit facilities by LS Finance and Management Corporation (LS Finance) to enable him to lease from MANCOR the needed equipments. As part of their arrangement, LS Finance required a 30% warranty deposit of the "purchase/lease" value of the equipments to be transacted upon, and the accused subsequently issued checks to collateralize an accommodation made by Corazon Teng (Vice President of MANCOR) amounting to Twenty Nine Thousand Seven Hundred (P29,700.00) Pesos as warranty deposit but the said checks bounced. Found guilty under B.P. Blg. 22, the court stressed, on appeal, that the "cash out" made by Mrs. Teng was not used by the accused who was just paying rental on the equipments. To charge him for the refund of a "warranty deposit" he did not withdraw because it was not his own account and it remained with LS Finance, would be to make him pay an unjust "debt", to say the least, since he did not actually receive the amount involved.

In the present case, the petitioner issued the bouncing checks in question to cover the receipt of an actual "account or for value". The checks were issued to pay for the flour and other baking materials which he purchased from the complainant.

Then too, the issues raised here primarily relate to questions of fact. It is well settled that the jurisdiction of this court over cases elevated from the Court of Appeals is confined to the review of errors of law ascribed to the Court of Appeals whose findings of fact are conclusive. Therefore, absent any showing that the findings by the respondent court are entirely devoid of any substantiation on record, the same must stand. (*Bunag Jr. vs. Court of Appeals*, 211 SCRA 440; *Morales vs. Court of Appeals, et.al.*, 197 SCRA 391)

WHEREFORE, the Petition is DISMISSED and the decision of the Court of Appeals in CA-G.R. Nos. 11759 and 13149, finding petitioner guilty of violations of B.P. Blg. 22, AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Romero, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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