

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT VS. FRANCISCO T. KOH, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 12407. May 29, 1959

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

The above six defendants were charged before the Manila Court of First Instance with violation of Central Bank Circular Nos. 20 and 31 in connection with sec. 34 of Republic Act No. 266, which violation had been committed according to the information as follows:

"That on or about the 25th day of May 1953, and for sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused being then the officers, directors, and/or stockholders of the Villanueva Steamship Company, Inc., a corporation duly organized, existing, and doing business under the laws of the Philippines, conspiring and confederating together and mutually helping one another, did then and there wilfully and unlawfully make material misrepresentations in an application to purchase foreign exchange filed with the Central Bank and in the other papers or documents required in accordance with the exchange control regulations issued by the same, among other things, to wit: the said accused made it appear that the Villanueva Steamship Company, Inc., was purchasing the vessel known as the "T. S. S. Jolly" from its alleged owner, the Kiau Hing Shipping Company of Hongkong, for the price of U. S. \$1,148,000, when in truth and in fact as all the accused well knew, the owner and seller of the vessel to the Villanueva Steamship Company, Inc., was the Concordia Steamship Company of Hongkong, managed and operated by Wheelock, Marden & Co., Ltd. of Hongkong and that the vessel was actually worth and in fact was purchased by the Villanueva Steamship Company, Inc. for the amount of U. S. \$266,000, by virtue of which misrepresentations the Central Bank was led to grant, as in fact it granted, the Villanueva Steamship Company, Inc. an exchange license to remit abroad the total amount of U. S. \$1,148,000; that after the said exchange license had been granted as above described, the accused remitted abroad the total amount of U. S. \$1,148,000 of which amount only U. S. \$266,000 was paid to the Concordia Steamship Company, and in furtherance of their conspiracy, did and then and there wilfully and unlawfully utilize the balance of U. S. \$882,000 for other purpose and/or sell the same in the blackmarket, thereby defrauding the dollar reserves of the Republic of the Philippines in the total sum of U. S. "\$882,000, to its great damage and prejudice."

Through their counsel, two defendants moved to quash on the grounds, first, that the facts set forth in the information did not constitute an offense, the Circulars allegedly violated being invalid; and second, because even if the Circulars were valid, the information charged two separate offenses.

After considering the arguments of both sides, the trial judge upheld the grounds stated in the motion; and finding that such grounds were also applicable to the other defendants, ordered the dismissal of the information. The prosecution appealed in due time.

In holding the Circulars to be invalid, His Honor said it was not shown they were approved by the President nor that they were issued in accordance with executive and/or international agreements to which the Republic is a party. It should be stated in this connection that the Circulars were issued in pursuance of sec. 74 of Republic Act

No. 265, which reads:

"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 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 subject to any executive and international agreements to which the Republic of the Philippines is a party." ;

Except for the two objections above listed, there is no question that Circular No. 20 complies with sec. 74. But as to the first objection, it is enough to point out that the Circular begins with this paragraph:

"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."

Besides the presumption of regularity of official transactions, there is a certification of the Executive Secretary that the President approved Circular No. 20. That is enough. It would be superfluous to require the prosecution to further prove Presidential approval where the Circular itself says so, and is published in the Official Gazette which, by the way, is printed under the supervision of Malacañan.

Circular No. 31 being a mere implementation of Circular No. 20 does not need Presidential sanction.[1]

As to the international aspects, it is not incumbent upon the prosecution to prove that the provisions of Circular No. 20 complied with all pertinent international agreements binding on our Government. The Central Bank and the President certify that it accords therewith, and it is presumed that said officials knew whereof they spoke, and that they performed their duties properly. It is rather for the defense to show conflict, if any, between the Circular and our international commitments.

Executive regulations are valid only when they are not contrary (they are subject) to the laws and the Constitution. Yet none would think of requiring the Fiscal to prove that this rule or Circular does not conflict with the Constitution or the laws. The onus probasudi rests with defendants.

Appellees' counsel have quoted here some provisions of the International Monetary Fund Agreement. But none of them may be interpreted to prohibit the action taken by our Central Bank. In fact, there are of record, the annual reports of the International Monetary Fund of April 30.. 1950 and 1951, commenting on the exchange controls of the Philippines without any criticism or opposition.

We are quoted in this connection the following provision in the Agreement between the Philippines and the United States concerning Trade and Related Matters:

"The value of Philippine Currency in relation with the United States dollar shall not be changed and the convertibility of Philippine pesos in United States dollars shall not be suspended, and no restriction shall be imposed on the transfer of funds from the Philippines to the United States except by agreement with the President of the United States." (Italics ours)

But there is an official statement of the American Embassy in Manila wherein it is said that the United States "would concur" in the adoption of such temporary measures (exchange controls) by the Philippine Government as

might be deemed appropriate for safeguarding the dollar reserves of the Philippines. From the tenor of the statement, one could conclude that the U. S. Government did not object to, even approved the imposition of dollar exchange restrictions.

We are, therefore, constrained to uphold Circulars Nos. 20 and 31 of the Central Bank. In fact, we enforced in *People vs. Jolliffe* [2] and in *People vs. Henderson, et al.*[3]

The trial judge received two offenses described in the information: (a) violation of sec. 6 and (b) violation of section 7, Central Bank Circular No. 31. Defendants made the false representation that the vessel had been purchased from Kian Hing Shipping Co. for \$1,143,000.00 whereas in truth as all of them knew, the vessel had been bought from Concordia Steamship Co. for the amount of \$266,000.00 only. This is the first violation; the second, consisted in their having used, of the dollars allocated for the purchase of a ship, \$882,000.00 for purposes other than such acquisition and/or for sale "in the black market".

Undoubtedly, there are two offenses. Indeed the prosecution so admits; albeit both may be charged, so it contends, in one information, because the first was a necessary means to commit the other. In our view, this position may not be successfully maintained. Even if the ship had not been overpriced, the dollar allocation for its purchase could have been destined to other transactions, in violation of section 7 of Circular No. 37.

Needles to add, section 34 of Republic Act No. 265 fixes the penalty for such violations.

Wherefore, sustaining the order of dismissal on account of duplicity, we hereby direct the return of the record so that the People may amend its information, or present two separate informations as the circumstances may warrant.[4]

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

[1] *People vs. Henderson III, et al.*, supra, p. 859.

[2] supra, p. 677.

[3] supra, p. 859.

[4] Section 7 and 8, Rule 113.

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