

**GEOFFREY F. GRIFFITH, PETITIONER, VS. HON. COURT OF APPEALS,
RTC JUDGE EDWIN A. VILLASOR, MTC JUDGE MANUEL D.L.
VILLAMAYOR AND PHELPS DODGE PHILS., INC., RESPONDENTS.**

G.R. No. 129764. March 12, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Assailed in this petition is the decision[1] dated March 14, 1997 of the Court of Appeals in CA-G.R. SP No. 19621, affirming the Regional Trial Court's decision[2] finding petitioner Geoffrey F. Griffith guilty on two counts for violation of Batas Pambansa Blg. 22 (the Bouncing Checks Law), and sentencing him to suffer imprisonment for a period of six months on each count, to be served consecutively. Also assailed is the Court of Appeals' resolution[3] dated July 8, 1997 denying petitioner's motion for reconsideration.

The facts are as follows:

In 1985, Phelps Dodge Philippines, Inc. leased its lot and factory building to Lincoln Gerard, Inc. for a term of two years at a monthly rental of P75,000. When Lincoln Gerard, Inc. incurred rental arrearages, Geoffrey F. Griffith, in his capacity as president of Lincoln Gerard, Inc., issued the following checks:

Far East Bank and Trust Co. Check No. 06B-C-075065, dated April 15, 1986 for P100,000.00, payable to Phelps Dodge Phils. Inc.; and

Far East Bank and Trust Co. Check No. 06B-C-075066, dated May 1, 1986 for P115,442.65, payable to Phelps Dodge Phils. Inc.[4]

The voucher for these checks contained the following instruction:

These checks are not to be presented without prior approval from this Corporation to be given not later than May 30, 1986.

Also written on the face of the voucher was the following note:

However, if written approval of Lincoln Gerard, Inc. is not given before May 30, 1986, Phelps Dodge, Phils. shall present the cheques for payment. This is final and irrevocable.[5]

On May 29, 1986, Griffith wrote Phelps Dodge not to present the said checks for payment on May 30, 1986 because they could not be funded due to a four-week labor strike that had earlier paralyzed the business operations of Lincoln Gerard.[6]

Previously, in a letter dated May 20, 1986, Phelps Dodge, through its treasurer Ricardo R. Manarang, advised Lincoln Gerard that it was transferring the contents of the Lincoln Gerard warehouse in the leased premises since a new tenant was moving in. Phelps Dodge told Lincoln Gerard that its properties would be placed "in our compound and under our custody."[7]

On June 2, 1986,[8] when no further communication was received from Lincoln Gerard, Phelps Dodge presented the two checks for payment but these were dishonored by the bank for having been drawn against insufficient funds. Three days later, Phelps Dodge sent a demand letter to Lincoln Gerard, apprising Griffith of the dishonor of the checks and asking him to fund them within the time prescribed by law.[9] Lincoln Gerard still failed to fund the checks but Griffith sent a letter to Phelps Dodge, explaining Lincoln's inability to fund said checks due to the strike.[10] Subsequently, on June 19, 1986, Phelps Dodge notified Lincoln Gerard that its properties would be foreclosed. Phelps Dodge went ahead with the foreclosure and auction sale on June 20, 1986,[11] despite Lincoln Gerard's protest.[12]

On May 10, 1988, two informations for violation of B.P. 22 docketed as Criminal Cases Nos. 73260 and 73261 were filed against petitioner before the Regional Trial Court. The motion for reconsideration filed by Griffith was dismissed, and so were his petition for review filed before the Department of Justice and later on his motion to quash filed before the RTC. Griffith then filed a petition for certiorari before the Court of Appeals that was likewise denied.

Meanwhile, on November 6, 1987, Lincoln Gerard lodged a complaint for damages docketed as Civil Case No. 55276 before the Regional Trial Court of Pasig, Branch 69, against Phelps Dodge and the notary public who conducted the auction sale.[13] On July 19, 1991, the trial court ruled that the foreclosure and auction sale were invalid, but applied the proceeds thereof to Lincoln Gerard's arrearages. It also ordered Phelps Dodge to return to Lincoln Gerard the P1,072,586.88 as excess.[14] The court stated:

The evidence shows that defendant corporation had already received the amount of P254,600 as a result of the invalid auction sale. The latter amount should be applied to the rental in arrears owed by the plaintiff corporation to the defendant corporation (P301,953.12). Thus, the plaintiff corporation still owes the defendant corporation the amount of P47,953.12 as rental arrears. In order to get the true and real damages that defendant corporation should pay the plaintiff corporation, the balance of the rental arrears should be deducted from the amount of P1,120,540.00, the total value of the items belonging to the plaintiff corporation and sold by the defendant corporation at a public auction. The net result is P1,072,586.88. [15]

On appeal, the Court of Appeals affirmed the RTC decision, and this became final and executory.[16]

On August 25, 1994, the criminal cases against Griffith pending before the RTC were remanded to the Metropolitan Trial Court (MeTC), in view of Republic Act No. 7691 that expanded the jurisdiction of the MeTC.

On July 25, 1995, the MeTC, in Criminal Cases Nos. 41678 and 41679, found Griffith guilty on both counts for violation of B.P. 22,[17] and sentenced him to suffer imprisonment for six months on each count, to be served consecutively. Thus:

WHEREFORE, premises considered, this court finds the accused GEOFFREY F. GRIFFITH, GUILTY OF VIOLATION of Section 1 of Batas Pambansa Blg. 22, otherwise known as the Bouncing Checks Law on two counts.

The accused is therefore hereby sentence (sic) to suffer imprisonment for a period of SIX (6) MONTHS in Criminal Case No. 41678 and another SIX (6) MONTHS in Criminal Case No. 41679, both of which shall be served consecutively.

Considering that the civil aspect of these cases has already been decided by the Regional Trial Court Branch 69, Pasig, regardless of its finality, of which this court has no record, this Court shall not resolve the same because they are either "Res Judicata" or "Pendente Litis".

SO ORDERED.[18]

On appeal, the RTC affirmed in toto the lower court's decision.

Petitioner then appealed his conviction to the Court of Appeals. In a consolidated decision dated March 14, 1997, the appellate court ruled:

WHEREFORE, absent any prima facie merit in it, the Petition for Review under consideration is hereby DENIED DUE COURSE. Costs against petitioner.

SO ORDERED. [19]

Petitioner moved for a reconsideration of said decision but this was denied by the appellate court in a resolution dated July 8, 1997.[20] Hence, this petition seeking reversal of the CA decision and resolution on the criminal cases, anchored on the following grounds:

- THE COURT OF APPEALS' DECISION DATED 14 MARCH 1997 AND ITS RESOLUTION DATED 8 JULY 1997 ARE CONTRARY TO THE RULING IN MAGNO V. COURT OF APPEALS, WHERE THIS HONORABLE COURT LAID DOWN THE DOCTRINE THAT A CONVICTION UNDER B.P. 22 CANNOT BE BASED ON AN INVERSE APPLICATION OF THE ELEMENT OF KNOWLEDGE.
- THE COURT OF APPEALS' DECISION DATED 14 MARCH 1997 AND ITS RESOLUTION DATED 8 JULY 1997 RESULT IN AN UNCONSTITUTIONAL APPLICATION OF THE PROVISIONS OF B.P. 22.
- THE COURT OF APPEALS' DECISION DATED 14 MARCH 1997 AND ITS RESOLUTION DATED 8 JULY 1997 STATING THAT PAYMENT THROUGH NOTARIAL FORECLOSURE BEFORE THE FILING OF THE CRIMINAL INFORMATION UNDER B.P. 22 DOES NOT ABATE CRIMINAL LIABILITY, ARE ERRONEOUS AND RESULT IN THE INIQUITOUS INTERPRETATION OF THE LAW.
- THE COURT OF APPEALS' DECISION DATED 14 MARCH 1997 AND ITS RESOLUTION DATED 8 JULY 1997 ARE INCONSISTENT WITH ITS OWN FINDINGS AND CONCLUSIONS IN A RELATED CASE (CA-G.R. NO. 20980) INVOLVING THE SAME PETITIONER AND RESPONDENT AND THE SAME TRANSACTION SUBJECT OF THIS CASE.
- THE COURT OF APPEALS' DECISION DATED 14 MARCH 1997 AND ITS RESOLUTION DATED 8 JULY 1997 WHICH RELIED ON THE RULING IN THE CASE OF LIM V. COURT OF APPEALS ON VENUE TO JUSTIFY ITS FINDING THAT PETITIONER HAS COMMITTED TWO COUNTS OF VIOLATION OF B.P. 22, ARE CONTRARY TO LAW AND JURISPRUDENCE. [21]

Petitioner points out that he communicated to Phelps Dodge through a note on the voucher attached to the checks, the fact that said checks were unfunded at the time of their issuance. Petitioner contends that this good faith on his part negates any intent to put worthless checks in circulation, which is what B.P. 22 seeks to penalize. Moreover, as regards the second check that was postdated, petitioner contends that there could not be any violation of B.P. 22 with said check since the element of knowledge of insufficiency of funds is absent. Petitioner could not have known at the time of its issuance that the postdated check would be dishonored when presented for payment later on.

Petitioner argues that his conviction in this case would be violative of the constitutional proscription against imprisonment for failure to pay a debt, since petitioner would be punished not for knowingly issuing an unfunded check but for failing to pay an obligation when it fell due.

Petitioner also asserts that the payment made by Lincoln Gerard through the proceeds of the notarial foreclosure and auction sale extinguished his criminal liability.

On the other hand, private respondent contends that all the elements that comprise violation of B.P. 22 are present

in this case. Moreover, the payment in this case was made beyond the five-day period, counted from notice of dishonor, provided by the law and thus did not extinguish petitioner's criminal liability.

For the State, the Solicitor General contends that Lincoln Gerard assured Phelps Dodge, through the note on the voucher attached to the checks, that said checks would be covered with sufficient funds by May 30, 1996, which assurance was "final and irrevocable".^[22] The OSG also argues that B.P. 22 does not distinguish between a check that is postdated and one that is not, for as long as the drawer issued the checks with knowledge of his insufficient funds and the check is dishonored upon presentment.

There is no unconstitutional punishment for failure to pay a debt in this case, since according to the OSG, what B.P. 22 penalizes is the act of making and issuing a worthless check that is dishonored upon presentation for payment, not the failure to pay a debt.^[23]

The OSG asserts that the supposed payment that resulted from Phelps Dodge's notarial foreclosure of Lincoln Gerard's properties could not bar prosecution under B.P. 22, since damage or prejudice to the payee is immaterial. Moreover, said payment was made only after the violation of the law had already been committed. It was made beyond the five-day period, from notice of dishonor of the checks, provided under B.P. 22.

The principal issue in this case is whether petitioner Geoffrey F. Griffith, president of Lincoln Gerard, Inc., has been erroneously convicted and sentenced for violation of the Bouncing Checks Law (Batas Pambansa Blg. 22). His conviction on two counts and sentence of six months imprisonment for each count by the respondent MTC Judge Manuel Villamayor was upheld by respondent RTC Judge Edwin Villasor and affirmed by the respondent Court of Appeals. But private respondent appears to have collected more than the value of the two checks in question before the filing in the trial court of the case for violation of B.P. 22. Hence, petitioner insists he has been wrongfully convicted and sentenced. To resolve this issue, we must determine whether the alleged payment of the amount of the checks two years prior to the filing of the information for violation of B.P. 22 justifies his acquittal.

Whether there is an unconstitutional application of the provisions of B.P. 22 in this case, however, does not appear to us an appropriate issue for consideration now. A purported constitutional issue raised by petitioner may only be resolved if essential to the decision of a case and controversy. But here we find that this case can be resolved on other grounds. Well to remember, courts do not pass upon constitutional questions that are not the very *lis mota* of a case.^[24]

In the present case, the checks were conditionally issued for arrearages on rental payments incurred by Lincoln Gerard, Inc. The checks were signed by petitioner, the president of Lincoln Gerard. It was a condition written on the voucher for each check that the check was not to be presented for payment without clearance from Lincoln Gerard, to be given at a specific date. However, Lincoln Gerard was unable to give such clearance owing to a labor strike that paralyzed its business and resulted to the company's inability to fund its checks. Still, Phelps Dodge deposited the checks, per a note on the voucher attached thereto that if written approval was not received from Lincoln Gerard before May 30, 1986, the checks would be presented for payment. "This is final and irrevocable", according to the note that was written actually by an officer of Phelps Dodge, not by petitioner. The checks were dishonored and Phelps Dodge filed criminal cases for violation of B.P. 22 against petitioner. But this filing took place only after Phelps Dodge had collected the amount of the checks, with more than one million pesos to spare, through notarial foreclosure and auction sale of Lincoln Gerard's properties earlier impounded by Phelps Dodge.

In our view, considering the circumstances of the case, the instant petition is meritorious.

The Bouncing Checks Law “was devised to safeguard the interest of the banking system and the legitimate public checking account user.”[25] It was not designed to favor or encourage those who seek to enrich themselves through manipulation and circumvention of the purpose of the law.[26] Noteworthy, in Administrative Circular No. 12-2000, this Court has expressed a policy preference for fine as penalty in cases of B.P. 22 violations rather than imprisonment to “best serve the ends of criminal justice.”

Moreover, while the philosophy underlying our penal system leans toward the classical school that imposes penalties for retribution,[27] such retribution should be aimed at “actual and potential wrongdoers”.[28] Note that in the two criminal cases filed by Phelps Dodge against petitioner, the checks issued were corporate checks that Lincoln Gerard allegedly failed to fund for a valid reason duly communicated to the payee. Further, it bears repeating that Phelps Dodge, through a notarial foreclosure and auction that were later on judicially declared invalid, sold Lincoln Gerard’s property for cash amounting to P1,120,540[29] to satisfy Phelps Dodge claim for unpaid rentals. Said property was already in Phelps Dodge’s custody earlier, purportedly because a new tenant was moving into the leased premises. The obligation of Lincoln Gerard to Phelps Dodge for said rentals was only P301,953.12.[30] Thus, by resorting to the remedy of foreclosure and auction sale, Phelps Dodge was able to collect the face value of the two checks, totalling P215,442.65. In fact, it impounded items owned by Lincoln Gerard valued far in excess of the debt or the checks. This was the situation when, almost two years after the auction sale, petitioner was charged with two counts of violation of B.P. 22. By that time, the civil obligation of Lincoln Gerard, Inc. to Phelps Dodge Phils. Inc. was no longer subsisting, though respondent Court of Appeals calls the payment thereof as involuntary.[31] That the money value of the two checks signed by petitioner was already collected, however, could not be ignored in appreciating the antecedents of the two criminal charges against petitioner. Because of the invalid foreclosure and sale, Phelps Dodge was ordered to pay or return P1,072,586.88 to Lincoln Gerard, per decision of the Regional Trial Court of Pasig, Branch 69, which became final after it was affirmed by the appellate court. We cannot, under these circumstances, see how petitioner’s conviction and sentence could be upheld without running afoul of basic principles of fairness and justice. For Phelps Dodge has, in our view, already exacted its proverbial pound of flesh through foreclosure and auction sale as its chosen remedy.

That is why we find quite instructive the reasoning of the Court of Appeals earlier rendered in deciding the petition for Certiorari and Injunction, Griffith v. Judge Milagros Caguioa, CA-G.R. SP No. 20980, in connection with the petitioner’s motion to quash the charges herein before they were tried on the merits.[32]

Said Justice C. Francisco with the concurrence of Justices Reynato S. Puno and Asaali S. Isnani:

“...We are persuaded that the defense has good and solid defenses against both charges in Criminal Cases Nos. 73260-61. We can even say that the decision rendered in Branch 69 in Civil Case No. 55276, well-written as it is, had put up a formidable obstacle to any conviction in the criminal cases with the findings therein made that the sale by public auction of the properties of Lincoln was illegal and had no justification under the facts; that also the proceeds realized in the said sale should be deducted from the account of Lincoln with Phelps, so that only P47,953.12 may only be the rentals in arrears which Lincoln should pay, computed at P301,953.12 less P254,600.00; that out of what had happened in the case as the trial court had resolved in its decision, Phelps is duty bound to pay Lincoln in damages P1,072,586.88 from which had been deducted the amount of P47,953.12 representing the balance of the rental in arrearages; and that consequently, there is absolutely no consideration remaining in support of the two (2) subject checks.”[33]

Petitioner’s efforts to quash in the Court of Appeals the charges against him was frustrated on procedural grounds because, according to Justice Francisco, appeal and not certiorari was the proper remedy.[34] In a petition for certiorari, only issues of jurisdiction including grave abuse of discretion are considered, but an appeal in a criminal case opens the entire case for review.

While we agree with the private respondent that the gravamen of violation of B.P. 22 is the issuance of worthless checks that are dishonored upon their presentment for payment, we should not apply penal laws mechanically.[35] We must find if the application of the law is consistent with the purpose of and reason for the law. *Ratione cessat lex, et cessat lex.* (When the reason for the law ceases, the law ceases.) It is not the letter alone but the spirit of the law also that gives it life. This is especially so in this case where a debtor's criminalization would not serve the ends of justice but in fact subvert it. The creditor having collected already more than a sufficient amount to cover the value of the checks for payment of rentals, via auction sale, we find that holding the debtor's president to answer for a criminal offense under B.P. 22 two years after said collection, is no longer tenable nor justified by law or equitable considerations.

In sum, considering that the money value of the two checks issued by petitioner has already been effectively paid two years before the informations against him were filed, we find merit in this petition. We hold that petitioner herein could not be validly and justly convicted or sentenced for violation of B.P. 22. Whether the number of checks issued determines the number of violations of B.P. 22, or whether there should be a distinction between postdated and other kinds of checks need no longer detain us for being immaterial now to the determination of the issue of guilt or innocence of petitioner.

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals in CA-G.R. No. 19621 dated March 14, 1997, and its resolution dated July 8, 1997, are REVERSED and SET ASIDE. Petitioner Geoffrey F. Griffith is ACQUITTED of the charges of violation of B.P. 22 in Criminal Cases Nos. 41678 and 41679.

Costs de officio.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 34-42.

[2] Id. at 118-139.

[3] Id. at 44-45.

[4] Id. at 35, 58-59.

[5] Id. at 60.

[6] Id. at 61. For brevity, "Inc." is omitted henceforth.

[7] Records, p. 102.

[8] Id. at 403.

[9] Rollo, p. 35.

[10] Ibid.

[11] Records, p. 404.

[12] Rollo, p. 36.

[13] Ibid.

[14] Rollo, p. 87.

[15] Ibid. See also CA Rollo, pp. 54-55.

[16] Rollo, p.15. The case was docketed as CA-G.R. CV No. 36426 and the decision was dated December 29, 1995.

[17] SECTION 1. Checks without sufficient funds.—Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

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.

[18] CA Rollo, p. 61. Phelps Dodge did not appear to have made a reservation regarding the civil aspect of the B.P. 22 case. The trial court was referring to the civil case for damages that Lincoln Gerard had earlier filed against Phelps Dodge.

[19] Id. at 98.

[20] Id. at 125-126.

[21] Rollo, pp. 17-18.

[22] A second note on the voucher states that if Lincoln does not give written notice to Phelps before May 30, 1986, the checks would be deposited for payment. "This is final and irrevocable," it further says. This note was in fact written by an officer of Phelps. See Rollo, pp. 14, 74.

[23] Citing *Lozano v. Martinez*, G.R. No. L-63419, 146 SCRA 323, 338 (1986).

[24] *Hontiveros v. Regional Trial Court, Br. 25, Iloilo City*, G.R. No. 125465, 309 SCRA 340, 354 (1999).

[25] *Magno v. Court of Appeals*, G.R. No. 96132, 210 SCRA 471, 478 (1992).

[26] Ibid.

[27] L.B. REYES, I THE REVISED PENAL CODE 21 (13th ed., 1993).

[28] *Supra*, note 25 at 479.

[29] Rollo, p. 87.

[30] Id. at 85.

[31] Id. at 40.

[32] Id. at 99-106, Decision marked as Annex “M”.

[33] Id. at 103.

[34] Id. at 104-105.

[35] Supra,, note 25 at 473.

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