

RUTH D. BAUTISTA, PETITIONER, VS. COURT OF APPEALS, OFFICE OF THE REGIONAL STATE PROSECUTOR, REGION IV, AND SUSAN ALOÑA, RESPONDENTS.

G.R. No. 143375. July 06, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This petition for certiorari presents a new dimension in the ever controversial Batas Pambansa Bilang 22 or The Bouncing Checks Law. The question posed is whether the drawer of a check which is dishonored due to lack of sufficient funds can be prosecuted under BP 22 even if the check is presented for payment after ninety (90) days from its due date. The burgeoning jurisprudence on the matter appears silent on this point.

Sometime in April 1998 petitioner Ruth D. Bautista issued to private respondent Susan Aloña Metrobank Check No. 005014037 dated 8 May 1998 for P1,500,000.00 drawn on Metrobank Cavite City Branch. According to private respondent, petitioner assured her that the check would be sufficiently funded on the maturity date.

On 20 October 1998 private respondent presented the check for payment. The drawee bank dishonored the check because it was drawn against insufficient funds (DAIF).

On 16 March 1999 private respondent filed a complaint-affidavit with the City Prosecutor of Cavite City.[1] In addition to the details of the issuance and the dishonor of the check, she also alleged that she made repeated demands on petitioner to make arrangements for the payment of the check within five (5) working days after receipt of notice of dishonor from the bank, but that petitioner failed to do so.

Petitioner then submitted her own counter-affidavit asserting in her defense that presentment of the check within ninety (90) days from due date thereof was an essential element of the offense of violation of BP 22. Since the check was presented for payment 166 days after its due date, it was no longer punishable under BP 22 and therefore the complaint should be dismissed for lack of merit. She also claimed that she already assigned private respondent her condominium unit at Antel Seaview Condominium, Roxas Boulevard, as full payment for the bounced checks thus extinguishing her criminal liability.

On 22 April 1999, the investigating prosecutor issued a resolution recommending the filing of an Information against petitioner for violation of BP 22, which was approved by the City Prosecutor.

On 13 May 1999 petitioner filed with the Office of the Regional State Prosecutor (ORSP) for Region IV a petition for review of the 22 April 1999 resolution. The ORSP denied the petition in a one (1)-page resolution dated 25 June 1999. On 5 July 1999 petitioner filed a motion for reconsideration, which the ORSP also denied on 31 August 1999. According to the ORSP, only resolutions of prosecutors dismissing a criminal complaint were cognizable for review by that office, citing Department Order No. 223.

On 1 October 1999 petitioner filed with the Court of Appeals a petition for review of the resolution of the ORSP, Region IV, dated 22 April 1999 as well as the order dated 31 August 1999 denying reconsideration. The appellate

court issued the assailed Resolution dated 26 October 1999 denying due course outright and dismissing the petition.[2] According to respondent appellate court -

A petition for review is appropriate under Rule 42 (1997 Rules of Civil Procedure) from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction, filed in the Court of Appeals. Rule 43 x x x provides for appeal, via a petition for review x x x from judgment or final orders of the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals. Petitioner's "Petition for Review" of the ORSP resolution does not fall under any of the agencies mentioned in Rule 43 x x x x It is worth to note that petitioner in her three (3) assigned errors charged the ORSP of "serious error of law and grave abuse of discretion." The grounds relied upon by petitioner are proper in a petition for certiorari x x x x Even if We treat the "Petition for Review" as a petition for certiorari, petitioner failed to allege the essential requirements of a special civil action. Besides, the remedy of petitioner is in the Regional Trial Court, following the doctrine of hierarchy of courts x x x x (*italics supplied*)

First, some ground rules. This case went to the Court of Appeals by way of petition for review under Rule 43 of the 1997 Rules of Civil Procedure. Rule 43 applies to "appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of quasi-judicial functions." [3]

Petitioner submits that a prosecutor conducting a preliminary investigation performs a quasi-judicial function, citing *Cojuangco v. PCGG*, [4] *Koh v. Court of Appeals*, [5] *Andaya v. Provincial Fiscal of Surigao del Norte* [6] and *Crespo v. Mogul*. [7] In these cases this Court held that the power to conduct preliminary investigation is quasi-judicial in nature. But this statement holds true only in the sense that, like quasi-judicial bodies, the prosecutor is an office in the executive department exercising powers akin to those of a court. Here is where the similarity ends.

A closer scrutiny will show that preliminary investigation is very different from other quasi-judicial proceedings. A quasi-judicial body has been defined as "an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making." [8]

In *Luzon Development Bank v. Luzon Development Bank Employees*, [9] we held that a voluntary arbitrator, whether acting solely or in a panel, enjoys in law the status of a quasi-judicial agency, hence his decisions and awards are appealable to the Court of Appeals. This is so because the awards of voluntary arbitrators become final and executory upon the lapse of the period to appeal; [10] and since their awards determine the rights of parties, their decisions have the same effect as judgments of a court. Therefore, the proper remedy from an award of a voluntary arbitrator is a petition for review to the Court of Appeals, following Revised Administrative Circular No. 1-95, which provided for a uniform procedure for appellate review of all adjudications of quasi-judicial entities, which is now embodied in Rule 43 of the 1997 Rules of Civil Procedure.

On the other hand, the prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. [11] While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal. [12]

Hence, the Office of the Prosecutor is not a quasi-judicial body; necessarily, its decisions approving the filing of a criminal complaint are not appealable to the Court of Appeals under Rule 43. Since the ORSP has the power to resolve appeals with finality only where the penalty prescribed for the offense does not exceed prison

correctional, regardless of the imposable fine,[13] the only remedy of petitioner, in the absence of grave abuse of discretion, is to present her defense in the trial of the case.

Besides, it is well-settled that the courts cannot interfere with the discretion of the fiscal to determine the specificity and adequacy of the offense charged. He may dismiss the complaint forthwith if he finds it to be insufficient in form or substance or if he finds no ground to continue with the inquiry; or, he may otherwise proceed with the investigation if the complaint is, in his view, in due and proper form.[14]

In the present recourse, notwithstanding the procedural lapses, we give due course to the petition, in view of the novel legal question involved, to prevent further delay of the prosecution of the criminal case below, and more importantly, to dispel any notion that procedural technicalities are being used to defeat the substantive rights of petitioner.

Petitioner is accused of violation of BP 22 the substantive portion of which reads -

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 in full upon 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 (30) 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 *x x x x (italics supplied)*.

An analysis of Sec. 1 shows that The Bouncing Checks Law penalizes two (2) distinct acts: First, making or drawing and issuing any check to apply on account or for value, knowing at the time of issue that the drawer does not have sufficient funds in or credit with the drawee bank; and, second, having sufficient funds in or credit with the drawee bank 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.[15]

In the first paragraph, the drawer knows that he does not have sufficient funds to cover the check at the time of its issuance, while in the second paragraph, the drawer has sufficient funds at the time of issuance but fails to keep sufficient funds or maintain credit within ninety (90) days from the date appearing on the check. In both instances, the offense is consummated by the dishonor of the check for insufficiency of funds or credit.

The check involved in the first offense is worthless at the time of issuance since the drawer had neither sufficient funds in nor credit with the drawee bank at the time, while that involved in the second offense is good when issued as drawer had sufficient funds in or credit with the drawee bank when issued.[16] Under the first offense, the ninety (90)-day presentment period is not expressly provided, while such period is an express element of the second offense.[17]

From the allegations of the complaint, it is clear that petitioner is being prosecuted for violation of the first paragraph of the offense.

Petitioner asserts that she could not be prosecuted for violation of BP 22 on the simple ground that the subject

check was presented 166 days after the date stated thereon. She cites Sec. 2 of BP 22 which reads -

Sec. 2. Evidence of knowledge of insufficient funds. - The making, drawing and issuance of a check payment which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be prima facie evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee (*italics supplied*).

Petitioner interprets this provision to mean that the ninety (90)-day presentment period is an element of the offenses punished in BP 22. She asseverates that "for a maker or issuer of a check to be covered by B.P. 22, the check issued by him/her is one that is dishonored when presented for payment within ninety (90) days from date of the check. If the dishonor occurred after presentment for payment beyond the ninety (90)-day period, no criminal liability attaches; only a civil case for collection of sum of money may be filed, if warranted." To bolster this argument, she relies on the view espoused by Judge David G. Nitafan in his treatise -[18]

Although evidentiary in nature, section 2 of the law must be taken as furnishing an additional element of the offense defined in the first paragraph of section 1 because it provides for the evidentiary fact of "knowledge of insufficiency of funds or credit" which is an element of the offense defined in said paragraph; otherwise said provision of section 2 would be rendered without meaning and nugatory. The rule of statutory construction is that the parts of a statute must be read together in such a manner as to give effect to all of them and that such parts shall not be construed as contradicting each other. The same section cannot be deemed to supply an additional element for the offense under the second paragraph of section 1 because the 90-day presentment period is already a built-in element in the definition of said offense (*italics supplied*).

We are not convinced. It is fundamental that every element of the offense must be alleged in the complaint or information, and must be proved beyond reasonable doubt by the prosecution. What facts and circumstances are necessary to be stated must be determined by reference to the definitions and the essentials of the specific crimes.[19]

The elements of the offense under BP 22 are (a) the making, drawing and issuance of any check to apply to account or for value; (b) the maker, drawer or issuer knows 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; and, (c) the 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.[20]

The ninety (90)-day period is not among these elements. Section 2 of BP 22 is clear that a dishonored check presented within the ninety (90)-day period creates a prima facie presumption of knowledge of insufficiency of funds, which is an essential element of the offense. Since knowledge involves a state of mind difficult to establish, the statute itself creates a prima facie presumption of the existence of this element from the fact of drawing, issuing or making a check, the payment of which was subsequently refused for insufficiency of funds.[21] The term prima facie evidence denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts, or to counterbalance the presumption of innocence to warrant a conviction.[22]

The presumption in Sec. 2 is not a conclusive presumption that forecloses or precludes the presentation of evidence to the contrary.[23] Neither does the term prima facie evidence preclude the presentation of other evidence that may sufficiently prove the existence or knowledge of insufficiency of funds or lack of credit.

Surely, the law is not so circumscribed as to limit proof of knowledge exclusively to the dishonor of the subject

check when presented within the prescribed ninety (90) day period. The deliberations on the passage of BP 22 (then known as Cabinet Bill No. 9) between the author, former Solicitor General Estelito P. Mendoza, and Bataan Assemblyman Pablo Roman prove insightful -

MR. ROMAN:

x x x x Under Section 1, who is the person who may be liable under this Section? Would it be the maker or the drawer? How about the endorser, Mr. Speaker?

MR. MENDOZA:

Liable.

MR. ROMAN:

The endorser, therefore, under Section 1 is charged with the duty of knowing at the time he endorses and delivers a check

MR. MENDOZA:

If the endorser is charged for violation of the Act then the fact of knowledge must be proven by positive evidence because the presumption of knowledge arises only against the maker or the drawer. It does not arise as against endorser under the following section (*italics supplied*).

MR. ROMAN:

But under Section 1, it says here: "Any person who shall make or draw or utter or deliver any check." The preposition is disjunctive, so that any person who delivers any check knowing at the time of such making or such delivery that the maker or drawer has no sufficient funds would be liable under Section 1.

MR. MENDOZA:

That is correct Mr. Speaker. But, as I said, while there is liability even as against endorser, for example, the presumption of knowledge of insufficient funds arises only against the maker or drawer under Section 2.

MR. ROMAN:

Yes, Mr. Speaker. It is true; however, under Section 1, endorsers of checks or bills of exchange would find it necessary since they may be charged with the knowledge at the time they negotiate bills of exchange they have no sufficient funds in the bank or depository.

MR. MENDOZA:

In order that an endorser may be held liable, there must be evidence showing that at the time he endorsed the check he was aware that the drawer would not have sufficient funds to cover the check upon presentation. That evidence must be presented by the prosecution. However, if the one charged is the drawer, then that evidence need not be presented by the prosecution because that fact would be established by presumption under Section 2 (*italics supplied*).[24]

An endorser who passes a bad check may be held liable under BP 22, even though the presumption of knowledge does not apply to him, if there is evidence that at the time of endorsement, he was aware of the insufficiency of funds. It is evident from the foregoing deliberations that the presumption in Sec. 2 was intended to facilitate proof of knowledge and not to foreclose admissibility of other evidence that may also prove such knowledge. Thus, the only consequence of the failure to present the check for payment within ninety (90) days from the date stated is that there arises no *prima facie* presumption of knowledge of insufficiency of funds. But the prosecution may still prove such knowledge through other evidence. Whether such evidence is sufficient to sustain probable cause to

file the information is addressed to the sound discretion of the City Prosecutor and is a matter not controllable by certiorari. Certainly, petitioner is not left in a lurch as the prosecution must prove knowledge without the benefit of the presumption, and she may present whatever defenses are available to her in the course of the trial.

The distinction between the elements of the offense and the evidence of these elements is analogous or akin to the difference between ultimate facts and evidentiary facts in civil cases. Ultimate facts are the essential and substantial facts which either form the basis of the primary right and duty or which directly make up the wrongful acts or omissions of the defendant, while evidentiary facts are those which tend to prove or establish said ultimate facts.[25] Applying this analogy to the case at bar, knowledge of insufficiency of funds is the ultimate fact, or element of the offense that needs to be proved, while dishonor of the check presented within ninety (90) days is merely the evidentiary fact of such knowledge.

It is worth reiterating that courts will not normally interfere with the prosecutor's discretion to file a criminal case when there is probable cause to do so. Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[26] The prosecutor has ruled that there is probable cause in this case, and we see no reason to disturb the finding.

WHEREFORE, the assailed Resolution of the Court of Appeals dated 26 October 1999 which dismissed the petition for review questioning the resolution of the Office of the Regional State Prosecutor, Region IV, dated 22 April 1999, and its order dated 31 August 1999 denying reconsideration is **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Mendoza, Buena, and De Leon, Jr., JJ., concur.

Quisumbing, J., on official leave.

[1] Docketed as I.S. No. 99-302.

[2] Resolution penned by Associate Justice Mariano M. Umali, concurred in by Associate Justices Quirino D. Abad Santos, Jr., and Romeo J. Callejo, Sr., of the Court of Appeals Fourth Division; Rollo, pp. 100-102.

[3] Sec. 1, Rule 43, 1997 Rules of Civil Procedure.

[4] G.R. Nos. 92319-20, 2 October 1990, 190 SCRA 226.

[5] No. L-40428, 17 December 1975, 70 SCRA 298.

[6] No. L-29826, 30 September 1976, 73 SCRA 131.

[7] G.R. No. 53373, 30 June 1987, 151 SCRA 462.

[8] Presidential Anti-Dollar Salting Task Force v. Court of Appeals, G.R. No. 83578, 16 March 1989, 171 SCRA 348.

[9] G.R. No. 120319, 6 October 1995, 249 SCRA 162.

[10] Citing *Volkschel Labor Union v. National Labor Relations Commission*, No. L-39686, 25 June 1980, 98 SCRA 314.

[11] *Tandok v. Resultan*, G.R. Nos. 59241-44, 5 July 1989, 175 SCRA 37.

[12] See Note 8.

- [13] Department of Justice (DOJ) Department Order No. 223, as amended by DOJ DO No. 359.
- [14] Ocampo IV v. Ombudsman, G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725; Crespo v. Mogul, see Note 7.
- [15] People v. Manzanilla, G.R. Nos. 66003-04, 11 December 1987, 156 SCRA 279.
- [16] Nitafan, David G., Notes and Comments on the Bouncing Checks Law (BP Blg. 22), 1993 Ed., p. 39.
- [17] Ibid.
- [18] Ibid.
- [19] Balitaan v. CFI Batangas, Br. II, 201 Phil. 311 (1982).
- [20] People v. Laggui, G.R. Nos. 76262-63, 16 March 1989, 171 SCRA 305.
- [21] Lozano v. Martinez, G.R. No. 63419, 18 December 1986, 146 SCRA 323.
- [22] Salonga v. Cruz Pano, G.R. No. 59524, 18 February 1985, 134 SCRA 438.
- [23] See Note 21.
- [24] Record of the Batasan Plenary Session No. 70, 4 December 1978, p. 1044.
- [25] See Tantuico, Jr. v. Republic, G.R. No. 89114, 2 December 1991, 204 SCRA 428.
- [26] Yap v. Intermediate Appellate Court, G.R. No. 68464, 22 March 1993, 220 SCRA 245; Qui v. Intermediate Appellate Court, G.R. No. 66865, 13 January 1989, 169 SCRA 137.

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