PABLO C. VILLABER, PETITIONER, VS. COMMISSION ON ELECTIONS AND REP. DOUGLAS R. CAGAS, RESPONDENTS.

G.R. No. 148326. November 15, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

In this petition for certiorari, Pablo C. Villaber, petitioner, seeks the nullification of two Resolutions of the Commission on Elections (COMELEC) in SPA-01-058. The first one was issued by its Second Division on April 30, 2001, disqualifying him as a candidate for the position of Congressman in the First District of the Province of Davao del Sur in the last May 14, 2001 elections, and cancelling his certificate of candidacy; and the second is the en banc Resolution dated May 10, 2001 denying his motion for reconsideration.

Both petitioner Villaber and respondent Douglas R. Cagas were rival candidates for a congressional seat in the First District of Davao del Sur during the May 14, 2001 elections. Villaber filed his certificate of candidacy for Congressman on February 19, 2001,[1] while Cagas filed his on February 28, 2001.[2]

On March 4, 2001, Cagas filed with the Office of the Provincial Election Supervisor, Commission On Elections (COMELEC), Davao del Sur, a consolidated petition[3] to disqualify Villaber and to cancel the latter's certificate of candidacy. Cagas alleged in the said consolidated petition that on March 2, 1990, Villaber was convicted by the Regional Trial Court of Manila, Branch 15, in Criminal Case No. 86-46197 for violation of Batas Pambansa Blg. 22 and was sentenced to suffer one (1) year imprisonment. The check that bounced was in the sum of P100,000.00.[4] Cagas further alleged that this crime involves moral turpitude; hence, under Section 12 of the Omnibus Election Code, he is disqualified to run for any public office. On appeal, the Court of Appeals (Tenth Division), in its Decision dated April 23, 1992 in CA-G.R. CR No. 09017,[5] affirmed the RTC Decision. Undaunted, Villaber filed with this Court a petition for review on certiorari assailing the Court of Appeals Decision, docketed as G.R. No. 106709. However, in its Resolution[6] of October 26, 1992, this Court (Third Division) dismissed the petition. On February 2, 1993, our Resolution became final and executory.[7] Cagas also asserted that Villaber made a false material representation in his certificate of candidacy that he is "Eligible for the office I seek to be elected" - which false statement is a ground to deny due course or cancel the said certificate pursuant to Section 78 of the Omnibus Election Code.

In his answer[8] to the disqualification suit, Villaber countered mainly that his conviction has not become final and executory because the affirmed Decision was not remanded to the trial court for promulgation in his presence.[9] Furthermore, even if the judgment of conviction was already final and executory, it cannot be the basis for his disqualification since violation of B.P. Blg. 22 does not involve moral turpitude.

After the opposing parties submitted their respective position papers, the case was forwarded to the COMELEC, Manila, for resolution.

On April 30, 2001, the COMELEC (Second Division), finding merit in Cagas' petition, issued the challenged Resolution[10] in SPA 01-058 declaring Villaber disqualified as "a candidate for and from holding any elective

public office" and canceling his certificate of candidacy. The COMELEC ruled that a conviction for violation of B.P Blg. 22 involves moral turpitude following the ruling of this Court en banc in the administrative case of People vs. Atty. Fe Tuanda.[11]

Villaber filed a motion for reconsideration but was denied by the COMELEC en banc in a Resolution[12] dated May 10, 2001.

Hence, this petition.

The sole issue for our Resolution is whether or not violation of B.P. Blg. 22 involves moral turpitude.

The COMELEC believes it is. In disqualifying petitioner Villaber from being a candidate for Congressman, the COMELEC applied Section 12 of the Omnibus Election Code which provides:

> "Sec. 12. Disqualifications. - Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months, or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.
>
> "The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified." (Emphasis ours)

As to the meaning of "moral turpitude," we have consistently adopted the definition in Black's Law Dictionary as "an act of baseness, vileness, or depravity in the private duties which a man owes his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman, or conduct contrary to justice, honesty, modesty, or good morals."[13]

In In re Vinzon,[14] the term "moral turpitude" is considered as encompassing "everything which is done contrary to justice, honesty, or good morals."

We, however, clarified in Dela Torre vs. Commission on Elections[15] that "not every criminal act involves moral turpitude," and that "as to what crime involves moral turpitude is for the Supreme Court to determine."[16] We further pronounced therein that:

> "...in International Rice Research Institute vs. NLRC (221 SCRA 760 [1993]), the Court admitted that it cannot always be ascertained whether moral turpitude does or does not exist by merely classifying a crime as malum in se or as malum prohibitum. There are crimes which are mala in se and yet but rarely involve moral turpitude, and there are crimes which involve moral turpitude and are mala prohibita only. In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute." (Emphasis ours)

We reiterate here our ruling in Dela Torre[17] that the determination of whether a crime involves moral turpitude is a question of fact and frequently depends on all the circumstances surrounding the violation of the statute.

In the case at bar, petitioner does not assail the facts and circumstances surrounding the commission of the crime. In effect, he admits all the elements of the crime for which he was convicted. At any rate, the question of whether or not the crime involves moral turpitude can be resolved by analyzing its elements alone, as we did in Dela Torre which involves the crime of fencing punishable by a special law.[18]

Petitioner was charged for violating B.P. Blg. 22 under the following Information:

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> "That on or about February 13, 1986, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously make or draw and issue to Efren D. Sawal to apply on account or for value Bank of Philippine Islands (Plaza Cervantes, Manila) Check No. 958214 dated February 13, 1986 payable to Efren D. Sawal in the amount of P100,000.00, said accused well knowing that at the time of issue he did not have sufficient funds in or credit with the drawee bank for payment of such check in full upon its presentment, which check, when presented for payment within ninety (90) days from the date thereof, was subsequently dishonored by the drawee bank for insufficiency of funds, and despite receipt of notice of such dishonor, said accused failed to pay said Efren D. Sawal the amount of said check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice." (Emphasis ours)

He was convicted for violating Section 1 of B.P. Blg. 22 which provides:

> "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." (Emphasis ours).

The elements of the offense under the above provision are:

- The accused makes, draws or issues any check to apply to account or for value;

- The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, the drawee bank for the payment of the check in full upon its presentment; and

- The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or it would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.[19]

The presence of the second element manifests moral turpitude. In People vs. Atty. Fe Tuanda[20] we held that a conviction for violation of B.P. Blg. 22 "imports deceit" and "certainly relates to and affects the good moral character of a person...."[21] The effects of the issuance of a worthless check, as we held in the landmark case of Lozano vs. Martinez,[22] through Justice Pedro L. Yap, "transcends the private interests of the parties directly involved in the transaction and touches the interests of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public" since the circulation of valueless commercial papers "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."[23] Thus, paraphrasing Black's definition, a drawer who issues an unfunded check deliberately reneges on his private duties he owes his fellow men or society in a manner contrary to accepted and customary rule of right and duty, justice, honesty or good morals.

Petitioner contends that this Court's pronouncement in People v. Atty. Fe Tuanda,[24] insofar as it states that conviction under B.P. Blg. 22 involves moral turpitude, does not apply to him since he is not a lawyer.

This argument is erroneous.

In that case, the Court of Appeals affirmed Atty. Fe Tuanda's conviction for violation of B.P. Blg. 22 and, in addition, suspended her from the practice of law pursuant to Sections 27 and 28 of Rule 138 of the Revised Rules of Court. Her motion seeking the lifting of her suspension was denied by this Court on the ground that the said offense involves moral turpitude. There we said in part:

> "We should add that the crimes of which respondent was convicted also import deceit and violation of her attorney's oath and the Code of Professional Responsibility, under both of which she was bound to 'obey the laws of the land.' Conviction of a crime involving moral turpitude might not (as in the instant case, violation of B.P. Blg. 22 does not) relate to the exercise of the profession of a lawyer; however, it certainly relates to and affects the good moral character of a person convicted of such offense. x x x."[25] (Emphasis ours)

Clearly, in Tuanda, this Court did not make a distinction whether the offender is a lawyer or a non-lawyer. Nor did it declare that such offense constitutes moral turpitude when committed by a member of the Bar but is not so when committed by a non-member.

We cannot go along with petitioner's contention that this Court's ruling in Tuanda has been abandoned or modified in the recent case of Rosa Lim vs. People of the Philippines,[26] which reiterated the ruling in Vaca vs. Court of Appeals.[27] In these two latter cases, the penalty of imprisonment imposed on the accused for violation of B.P. Blg. 22 was deleted by this Court. Only a fine was imposed. Petitioner insists that with the deletion of the prison sentence, the offense no longer involves moral turpitude. We made no such pronouncement. This is what we said in Rosa Lim:

> "In Vaca v. Court of Appeals, we held that in determining the penalty to be imposed for violation of B.P. Blg. 22, the philosophy underlying the Indeterminate Sentence Law applies. The philosophy is to redeem valuable human material, and to prevent unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order. There we deleted the prison sentence imposed on petitioners. We imposed on them only a fine double the amount of the check issued. We considered the fact that petitioners brought the appeal, believing in good faith, that no violation of B.P. Blg. 22 was committed, 'otherwise, they would have simply accepted the judgment of the trial court and applied for probation to evade prison term.' We do the same here. We believe such would best serve the ends of criminal justice."

In fine, we find no grave abuse of discretion committed by respondent COMELEC in issuing the assailed Resolutions.

WHEREFORE, the petition is DISMISSED. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, and De Leon, Jr., JJ., concur.
Carpio, J., no part.

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[1] Rollo, p. 46.

[2] Ibid., p. 45.

[3] Docketed as SPA (PES) No. A-01 - 002; Rollo, pp. 37-44.

[4] Ibid., pp. 47-53.

[5] Ibid., pp. 54-62.

[6] Ibid., p. 63.

[7] Ibid., p. 64.

[8] Ibid., pp. 76-90.

[9] Ibid., p. 81.

[10] Ibid., pp. 29-34.

[11] 181 SCRA 692 (1990).

[12] Rollo, p. 35.

[13] Dela Torre vs. Commission on Elections, 258 SCRA 483, 487 (1996), citing Zari vs. Flores, 94 SCRA 317, 323 (1979); Tak Ng vs. Republic of the Phil., 106 Phil. 727 (1959); Court Administrator vs. San Andres, 197 SCRA 704 (1991); International Rice Research Institute vs. NLRC, 221 SCRA 760 (1993).

[14] 19 SCRA 815 (1967).

[15] Supra, Note No. 13.

[16] Citing International Rice Research Institute vs. NLRC, ibid., at p. 767, and In re: Victorio D. Lanuevo, 66 SCRA 245 (1975).

[17] Supra.

[18] Presidential Decree No. 1612 (Anti-Fencing Law).

[19] Evangeline Danao vs. Court of Appeals and People of the Philippines, G.R. No. 122353, June 6, 2001, citing People vs. Laggui, 171 SCRA 305 (1989).

[20] Supra, Note No. 11.

[21] Ibid..

[22] 146 SCRA 323 (1986).

[23] Ibid., at p. 340.

[24] Supra.

[25] Supra, p. 697.

[26] G.R. No. 130038, Sept. 18, 2000.

[27] 298 SCRA 656 (Nov. 16, 1998).

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