

JOVENCIO LIM AND TERESITA LIM, PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES, THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 217, THE CITY PROSECUTOR OF QUEZON CITY, AND WILSO...

G.R. No. 149276. September 27, 2002

Ponente: CORONA, J.

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CORONA, J.:

The constitutionality of PD 818, a decree which amended Article 315 of the Revised Penal Code by increasing the penalties for estafa committed by means of bouncing checks, is being challenged in this petition for certiorari, for being violative of the due process clause, the right to bail and the provision against cruel, degrading or inhuman punishment enshrined under the Constitution.

The antecedents of this case, as gathered from the parties' pleadings and documentary proofs, follow.

In December 1991, petitioner spouses issued to private respondent two postdated checks, namely, Metrobank check no. 464728 dated January 15, 1992 in the amount of P365,750 and Metrobank check no. 464743 dated January 22, 1992 in the amount of P429,000. Check no. 464728 was dishonored upon presentment for having been drawn against insufficient funds while check no. 464743 was not presented for payment upon request of petitioners who promised to replace the dishonored check.

When petitioners reneged on their promise to cover the amount of check no. 464728, the private respondent filed a complaint-affidavit before the Office of the City Prosecutor of Quezon City charging petitioner spouses with the crime of estafa under Article 315, par. 2 (d) of the Revised Penal Code, as amended by PD 818.

On February 16, 2001, the City Prosecutor issued a resolution finding probable cause against petitioners and recommending the filing of an information for estafa with no bail recommended. On the same day, an information for the crime of estafa was filed with Branch 217 of the Regional Trial Court of Quezon City against petitioners. The case was docketed as Criminal Case No. Q-01-101574. Thereafter, the trial court issued a warrant for the arrest of herein petitioners, thus:

It appearing on the face of the information and from supporting affidavit of the complaining witness and its annexes that probable cause exists, that the crime charged was committed and accused is probably guilty thereof, let a warrant for the arrest of the accused be issued.

No Bail Recommended.

SO ORDERED.[1]

On July 18, 2001, petitioners filed an "Urgent Motion to Quash Information and Warrant of Arrest" which was denied by the trial court. Likewise, petitioners' motion for bail filed on July 24, 2001 was denied by the trial court on the same day. Petitioner Jovencio Lim was arrested by virtue of the warrant of arrest issued by the trial court

and was detained at the Quezon City Jail. However, petitioner Teresita Lim remained at large.

On August 22, 2001, petitioners filed the instant petition for certiorari imputing grave abuse of discretion on the part of the lower court and the Office of the City Prosecutor of Quezon City, arguing that PD 818 violates the constitutional provisions on due process, bail and imposition of cruel, degrading or inhuman punishment.

In a resolution dated February 26, 2002, this Court granted the petition of Jovencio Lim to post bail pursuant to Department of Justice Circular No. 74 dated November 6, 2001 which amended the 2000 Bail Bond Guide involving estafa under Article 315, par. 2 (d), and qualified theft. Said Circular specifically provides as follows:

xxx xxx xxx

3) Where the amount of fraud is P32,000.00 or over in which the imposable penalty is reclusion temporal to reclusion perpetua, bail shall be based on reclusion temporal maximum, pursuant to Par. 2 (a) of the 2000 Bail Bond Guide, multiplied by P2,000.00, plus an additional of P2,000.00 for every P10,000.00 in excess of P22,000.00; Provided, however, that the total amount of bail shall not exceed P60,000.00.

In view of the aforementioned resolution, the matter concerning bail shall no longer be discussed. Thus, this decision will focus on whether or not PD 818 violates Sections 1 and 19 of Article III of the Constitution, which respectively provide:

Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

x x x

Section 19 (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. x x x.

We shall deal first with the issue of whether PD 818 was enacted in contravention of Section 19 of Article III of the Constitution. In this regard, the impugned provision of PD 818 reads as follows:

SECTION 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by:

1st. The penalty of reclusion temporal if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the later sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos but the total penalty which may be imposed shall in no case exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed reclusion perpetua;

2nd. The penalty of prision mayor in its maximum period, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos.

3rd. The penalty of prision mayor in its medium period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By prision mayor in its minimum period, if such amount does not exceed 200 pesos.

Petitioners contend that, inasmuch as the amount of the subject check is P365,750, they can be penalized with reclusion perpetua or 30 years of imprisonment. This penalty, according to petitioners, is too severe and disproportionate to the crime they committed and infringes on the express mandate of Article III, Section 19 of the Constitution which prohibits the infliction of cruel, degrading and inhuman punishment.

Settled is the rule that a punishment authorized by statute is not cruel, degrading or disproportionate to the nature of the offense unless it is flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community. It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution.[2] Based on this principle, the Court has consistently overruled contentions of the defense that the penalty of fine or imprisonment authorized by the statute involved is cruel and degrading.

In *People vs. Tongko*,[3] this Court held that the prohibition against cruel and unusual punishment is generally aimed at the form or character of the punishment rather than its severity in respect of its duration or amount, and applies to punishments which never existed in America or which public sentiment regards as cruel or obsolete. This refers, for instance, to those inflicted at the whipping post or in the pillory, to burning at the stake, breaking on the wheel, disemboweling and the like. The fact that the penalty is severe provides insufficient basis to declare a law unconstitutional and does not, by that circumstance alone, make it cruel and inhuman.

Petitioners also argue that while PD 818 increased the imposable penalties for estafa committed under Article 315, par. 2 (d) of the Revised Penal Code, it did not increase the amounts corresponding to the said new penalties. Thus, the original amounts provided for in the Revised Penal Code have remained the same notwithstanding that they have become negligible and insignificant compared to the present value of the peso.

This argument is without merit. The primary purpose of PD 818 is emphatically and categorically stated in the following:

WHEREAS, reports received of late indicate an upsurge of estafa (swindling) cases committed by means of bouncing checks;

WHEREAS, if not checked at once, these criminal acts would erode the people's confidence in the use of negotiable instruments as a medium of commercial transaction and consequently result in the retardation of trade and commerce and the undermining of the banking system of the country;

WHEREAS, it is vitally necessary to arrest and curb the rise in this kind of estafa cases by increasing the existing penalties provided therefor.

Clearly, the increase in the penalty, far from being cruel and degrading, was motivated by a laudable purpose, namely, to effectuate the repression of an evil that undermines the country's commercial and economic growth, and to serve as a necessary precaution to deter people from issuing bouncing checks. The fact that PD 818 did not increase the amounts corresponding to the new penalties only proves that the amount is immaterial and inconsequential. What the law sought to avert was the proliferation of estafa cases committed by means of bouncing checks. Taking into account the salutary purpose for which said law was decreed, we conclude that PD 818 does not violate Section 19 of Article III of the Constitution.

Moreover, when a law is questioned before the Court, the presumption is in favor of its constitutionality. To justify its nullification, there must be a clear and unmistakable breach of the Constitution, not a doubtful and argumentative one.[4] The burden of proving the invalidity of a law rests on those who challenge it. In this case, petitioners failed to present clear and convincing proof to defeat the presumption of constitutionality of PD 818.

With respect to the issue of whether PD 818 infringes on Section 1 of Article III of the Constitution, petitioners claim that PD 818 is violative of the due process clause of the Constitution as it was not published in the Official Gazette. This claim is incorrect and must be rejected. Publication, being an indispensable part of due process, is imperative to the validity of laws, presidential decrees and executive orders.[5] PD 818 was published in the Official Gazette on December 1, 1975.[6]

With the foregoing considerations in mind, this Court upholds the constitutionality of PD 818.

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Morales, and Callejo, Sr., JJ., concur. Puno, J., no part due to relation to counsel. Mendoza, J., on leave.

[1] Rollo, p. 29.

[2] *People vs. Estoista*, 93 Phil. 647 (1954).

[3] 290 SCRA 597 (1998).

[4] *Lacson vs. Executive Secretary*, 301 SCRA 298 (1999).

[5] *Tañada vs. Tuvera*, 146 SCRA 446 (1986).

[6] 71 O.G. 8097 (1975).

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