

ISIDRO PABLITO M. PALANA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 149995. September 28, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For review is the Decision of the Court of Appeals in CA-G.R. CR No. 21879 dated September 17, 2001,[1] affirming the September 23, 1997 Decision of the Regional Trial Court of Makati City, Branch 63, in Criminal Case No. 91-5617 convicting petitioner Isidro Pablito Palana with violation of Batas Pambansa (B.P.) Blg. 22 otherwise known as the “Bouncing Checks Law”.

On August 19, 1991, petitioner was charged with violation of B.P. Blg. 22 in an Information which reads as follows:

That on or about September 1987, in the Municipality of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused did, then and there, willfully, unlawfully and knowingly make or draw and issue to Alex B. Carlos to apply on account or for the value the check described below:

Check No. : 326317PR

Drawn Against : Asian Savings Bank

Paseo de Roxas Branch

In the amount of : P590,000.00

Postdated : February 15, 1988

Payable to : Dr. Alex B. Carlos

said accused well knowing that at the time of issue, he did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check when presented for payment within (90) days from the date thereof, was subsequently dishonored by the drawee bank for the reason Drawn Against Insufficient Funds and despite receipt of notice of such dishonor, the accused failed to pay said payee the face amount of said check or make arrangement for full payment within five (5) banking days after receiving notice.[2]

On January 30, 1992, the case was archived due to petitioner’s non-apprehension despite the issuance of a warrant for his arrest.[3] On June 27, 1995, the warrant of arrest was recalled and set aside[4] after petitioner posted the required bail. He was arraigned on July 25, 1995 when he pleaded not guilty to the offense charged.[5]

Private complainant Alex B. Carlos testified that sometime in September 1987, petitioner and his wife borrowed money from him in the amount of P590,000.00. To secure the payment of the loan, petitioner issued a postdated check for the same amount in favor of the complainant.[6] However, when the check was presented for payment,

it was dishonored by the bank for insufficiency of funds. Subsequent demand notwithstanding, petitioner failed to make good the said dishonored check.[7]

Petitioner alleged that the amounts given to him by private complainant was an investment by the latter who was his business partner. He argued that the subject check was not issued in September 1987 to guarantee the payment of a loan since his checking account was opened only on December 1, 1987.[8] He claimed that private complainant cajoled him to issue a check in his favor allegedly to be shown to a textile supplier who would provide the partnership with the necessary raw materials. Petitioner alleged that when the check was issued sometime in February 1988,[9] complainant knew that the same was not funded.[10]

After trial on the merits, the Regional Trial Court rendered on September 23, 1997 a Decision[11] finding petitioner guilty as charged, the dispositive portion of which reads:

Wherefore, this court finds the accused Isidro Pablito M. Palana guilty as charged and sentences him to a prison term of Six (6) months and to indemnify the private complainant the sum of P590,000.00 plus legal interest from filing of this case until full payment.

SO ORDERED.

Petitioner appealed but it was dismissed by the Court of Appeals which affirmed the trial court's decision in toto.[12]

Both the trial court and the Court of Appeals found that the check was issued as a guaranty for the loan, thereby rejecting petitioner's "investment theory". In ruling against the existence of a partnership between them, the trial court noted that the so-called partnership venture, Palana's General Merchandising, was registered on December 1, 1987 only in the name of petitioner.[13] The Court of Appeals also held that the act of lending money does not necessarily amount to an investment of capital.

Hence, the instant petition raising the following issues:

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDING OF THE LOWER COURT DISREGARDING THE DEFENSE OF THE ACCUSED THAT THE ISSUANCE OF THE SUBJECT ASIAN BANK CHECK, WAS NOT FOR A CONSIDERATION OR FOR VALUE, AS THE ACCUSED WAS ONLY TRICKED BY THE PRIVATE COMPLAINANT TO ISSUE THE SAID CHECK AS A MEANS OF BINDING THE ACCUSED TO RETURN HIS INVESTMENT IN THE PARTNERSHIP WHICH WAS THEN SUFFERING FROM BUSINESS REVERSALS.

II.

THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDINGS OF THE LOWER COURT THAT THE REGIONAL TRIAL COURT HAS JURISDICTION OVER THE CASE, DESPITE THE FACT THAT AT THE TIME THE ACCUSED WAS ARRAIGNED ON JULY 25, 1995 R.A. 7691 EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURT WAS ALREADY IN EFFECT.[14]

The issues to be resolved are: 1) whether petitioner was guilty of violation of B.P. Blg. 22; and 2) whether the Regional Trial Court has jurisdiction over the case.

Petitioner's argument that it is the Metropolitan Trial Court and not the Regional Trial Court which has jurisdiction over the case pursuant to R.A. 7691 is without merit.

It is hornbook doctrine that jurisdiction to try a criminal action is determined by the law in force at the time of the institution of the action[15] and not during the arraignment of the accused. The Information charging petitioner

with violation of B.P. Blg. 22 was filed on August 19, 1991. At that time, the governing law determinative of jurisdiction is B.P. Blg. 129[16] which provides:

Sec. 20. Jurisdiction in criminal cases. — Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance by the latter.

x x x x

Sec. 32. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases. – Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

x x x x

(2) Exclusive original jurisdiction over all offenses punishable with imprisonment of not exceeding four years and two months, or a fine of not more than four thousand pesos, or both such fine and imprisonment, regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: Provided, however, That in offenses involving damage to property through criminal negligence they shall have exclusive original jurisdiction where the imposable fine does not exceed twenty thousand pesos.

Violation of B.P. Blg. 22 is punishable with imprisonment of not less than 30 days but not more than one 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 P200,000.00, or both fine and imprisonment [17] at the discretion of the court. In the present case, the fine imposable is P200,000.00 hence, the Regional Trial Court properly acquired jurisdiction over the case.[18] The Metropolitan Trial Court could not acquire jurisdiction over the criminal action because its jurisdiction is only for offenses punishable with a fine of not more than P4,000.00.

The subsequent amendment of B.P. 129 by R.A. No. 7691, “An Act Expanding the Jurisdiction of the Municipal Trial Courts, Municipal Circuit Trial Courts and the Metropolitan Trial Court”[19] on June 15, 1994 cannot divest the Regional Trial Court of jurisdiction over petitioner’s case. Where a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the cause is not affected by new legislation placing jurisdiction over such proceedings in another tribunal unless the statute expressly provides, or is construed to the effect that it is intended to operate on actions pending before its enactment. Indeed, R.A. No. 7691 contains retroactive provisions. However, these only apply to civil cases that have not yet reached the pre-trial stage. Neither from an express proviso nor by implication can it be construed that R.A. No. 7691 has retroactive application to criminal cases pending or decided by the Regional Trial Courts prior to its effectivity.[20] The jurisdiction of the RTC over the case attached upon the commencement of the action by the filing of the Information and could not be ousted by the passage of R.A. No. 7691 reapportioning the jurisdiction of inferior courts, the application of which to criminal cases is prospective in nature.[21]

After a careful review of the records, this Court sustains petitioner’s conviction for violation of B.P. Blg. 22. The elements of the offense penalized under B.P. Blg. 22 are as follows: (1) the accused makes, draws, or issues any check to apply on account or for value; (2) the accused 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 (3) 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.

Each element of the offense was duly proven by the prosecution. Petitioner admitted that at the time he issued the subject check, he knew that he does not have sufficient funds in or credit with the drawee bank for payment of such check. Consequently, when the check was presented for payment, it was dishonored by the drawee bank for insufficiency of funds. Thereafter, he received demand letters to pay the amount of the check from private complainant but he did not comply with it.[22]

In ruling that the amount of the check was for consideration or value, both the trial court and the Court of Appeals upheld private complainant's claim that the check was issued as a guaranty for the loan and rejected petitioner's "investment theory". The issue as to whether the amount of the subject check represents the amount of the money loaned by private complainant to petitioner or as an investment in the alleged partnership is a factual question involving the credibility of witnesses. Where the issue is one of credibility, the appellate court will not generally disturb the findings of the lower court considering that it is in a better position to settle that issue since it had the advantage of hearing the witnesses and observing their conduct during the trial, which circumstances carry great weight in assessing their credibility. In the present case, we see no reason to reverse the finding of the trial court as affirmed by the Court of Appeals that the amount of the subject check was a loan and not an investment.[23]

Upon issuance of a check, in the absence of evidence to the contrary, it is presumed that the same was issued for valuable consideration, which may consist either in some right, interest, profit or benefit accruing to the party who makes the contract, or some forbearance, detriment, loss or some responsibility, to act, or labor, or service given, suffered or undertaken by the other side. Since it was established that petitioner received money from private complainant in various amounts,[24] petitioner cannot now claim that the checks were not issued for value.[25]

The allegation that the check was intended to be shown to potential suppliers is not a valid defense. In *Cueme v. People*,[26] the Court held thus:

The allegation of petitioner that the checks were merely intended to be shown to prospective investors of her corporation is, to say the least, not a defense. The gravamen of the offense punished under B.P. Blg. 22 is the act of making or issuing a worthless check or a check that is dishonored upon its presentment for payment. The law has made the mere act of issuing a bad check *malum prohibitum*, an act proscribed by the legislature for being deemed pernicious and inimical to public welfare. Considering the rule in *mala prohibita* cases, the only inquiry is whether the law has been breached. Criminal intent becomes unnecessary where the acts are prohibited for reasons of public policy, and the defenses of good faith and absence of criminal intent are unavailing.

The checks issued, even assuming they were not intended to be encashed or deposited in a bank, produce the same effect as ordinary checks. What the law punishes is the issuance of a rubber check itself and not the purpose for which the check was issued nor the terms and conditions relating to its issuance. This is not without good reasons. To determine the purpose as well as the terms and conditions for which checks are issued will greatly erode the faith the public reposes in the stability and commercial value of checks as currency substitutes, and bring about havoc in the trading and banking communities. Besides, the law does not make any distinction as to the kind of checks which are the subject of its provisions, hence, no such distinction can be made by means of interpretation or application. What is important is the fact that petitioner deliberately issued the checks in question and those checks were dishonored upon presentment for payment.

Hence, the agreement surrounding the issuance of a check is irrelevant to the prosecution and conviction of the petitioner.[27]

The alleged inconsistency in the date of issuance of the subject check is likewise immaterial. Issuance, as defined under the Negotiable Instruments Law, is the first delivery of the check.[28] In the case at bar, the Information alleged that the check was postdated February 15, 1988 although issued in or about September 1987. During trial,

petitioner testified that the Checking Account was opened only on December 1, 1987 and that the check was issued sometime in February 1988.

The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.[29] In a prosecution for violation of B.P. 22, the time of the issuance of the subject check is material since it forms part of the second element of the offense that at the time of its issuance, petitioner knew of the insufficiency of funds. However, it cannot be said that petitioner was prejudiced by such variance nor was surprised by it. Records show that petitioner knew at the time he issued the check that he does not have sufficient funds in the bank to cover the amount of the check. Yet, he proceeded to issue the same claiming that the same would only be shown to prospective suppliers, a defense which is not valid.

Moreover, there is no merit in petitioner's allegation that private complainant knew that the check is not funded. Both the trial court and the Court of Appeals found that the subject check was issued as guaranty for payment of the loan hence, was intended to apply for account or for value. As such, it was incumbent upon petitioner to see to it that the check is duly covered when presented for payment.

Pursuant to Supreme Court Administrative Circular No. 12-2000, as clarified by Administrative Circular No. 13-2001, the alternative penalty of fine may be imposed in lieu of imprisonment considering that the prosecution failed to prove or allege that petitioner is not a first-time offender.[30] Hence, in lieu of imprisonment, a fine of P200,000.00 shall be imposed upon petitioner.[31]

WHEREFORE, the assailed decision of the Court of Appeals in CA-G.R. CR No. 21879 dated September 17, 2001, finding petitioner ISIDRO PABLITO M. PALANA guilty of violating Batas Pambansa Blg. 22, is **AFFIRMED** with **MODIFICATION**. Petitioner is ordered to pay private complainant the amount of P590,000.00, representing the value of the check, with six (6%) percent interest from date of filing of the Information until the finality of the decision, the amount of which, inclusive of the interest, is subject to twelve percent (12%) interest, from finality of the decision until fully paid. In lieu of imprisonment, petitioner is ordered to pay a fine of P200,000.00.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1]Rollo, pp. 22-27. Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Eubulo G. Verzola and Marina L. Buzon.

[2] Records, p. 1.

[3] Id. at 15.

[4] Id. at 20.

[5] Id. at 23-24.

[6] TSN, November 21, 1995, pp. 10-11.

[7] Records, pp. 63-64.

[8] Id. at 66; TSN, June 13, 1996, p. 11.

[9] TSN, April 29, 1997, p. 17.

[10] Id. at 12; Records, pp. 3-4.

[11] Records, pp. 111-112; penned by Judge Salvador S. Abad Santos.

[12] Rollo, p. 27.

[13] TSN, September 9, 1997, p. 17; Records, p. 5.

[14] Id. at 11-12.

[15] *Yu Oh v. Court of Appeals*, 451 Phil. 380, 387 (2003).

[16] THE JUDICIARY REORGANIZATION ACT OF 1980.

[17] B.P. Blg. 22, Sec. 1.

[18] See *Lee v. Court of Appeals*, G.R. No. 145498, January 17, 2005, 448 SCRA 455, 470.

[19] The inferior courts were granted jurisdiction to try cases punishable by imprisonment of not more than six (6) years irrespective of the amount of fine.

[20] *People v. Velasco*, 322 Phil. 146, 158-159 (1996).

[21] Id. at 160.

[22] TSN, April 29, 1997, pp. 18-20; TSN, September 9, 1997, p. 16.

[23] See *Cueme v. People*, 390 Phil. 294, 302 (2000).

[24] TSN, April 29, 1997, p. 7; September 9, 1997, p. 6 .

[25] See *Ongson v. People*, G.R. No. 156169, August 12, 2005, 466 SCRA 656, 671-672.

[26] *Supra* at 303-304.

[27] *Ruiz v. People*, G.R. No. 160893, November 18, 2005, 475 SCRA 476, 491-492.

[28] NEGOTIABLE INSTRUMENTS LAW, Sec. 191.

[29] *Andaya v. People*, G.R. No. 168486, June 27, 2006, 493 SCRA 539, 558.

[30] *Young v. Court of Appeals*, G.R. No. 140425, March 10, 2005, 453 SCRA 109, 121.

[31] Violation of B.P. Blg. 22 is punishable with imprisonment of not less than 30 days but not more than one year or a fine of not less than but not more than double the amount of the check which fine shall in no case exceed P200,000.00, or both fine or imprisonment.

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