

**OFELIA V. ARCETA, PETITIONER, VS. THE HONORABLE MA.
CELESTINA C. MANGROBANG, PRESIDING JUDGE, BRANCH 54,
METROPOLITAN TRIAL COURT OF NAVOTAS, METRO MANILA,
RESPONDENT.**

G.R. No. 152895. June 15, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For resolution are two consolidated[1] petitions under Rule 65 of the Rules of Court, for certiorari, prohibition and mandamus, with prayers for a temporary restraining order. Both assail the constitutionality of the Bouncing Checks Law, also known as Batas Pambansa Bilang 22.

In G.R. No. 152895, petitioner Ofelia V. Arceta prays that we order the Metropolitan Trial Court (MeTC) of Navotas, Metro Manila, Branch 54, to cease and desist from hearing Criminal Case No. 1599-CR for violation of B.P. Blg. 22, and then dismiss the case against her. In G.R. No. 153151, petitioner Gloria S. Dy also prays that this Court order the MeTC of Caloocan City to cease and desist from proceeding with Criminal Case No. 212183, and subsequently dismiss the case against her. In fine, however, we find that what both petitioners seek is that the Court should revisit and abandon the doctrine laid down in *Lozano v. Martinez*,[2] which upheld the validity of the Bouncing Checks Law.

The facts of these cases are not in dispute.

1. G.R. No. 152895

The City Prosecutor of Navotas, Metro Manila charged Ofelia V. Arceta with violating B.P. Blg. 22 in an Information, which was docketed as Criminal Case No. 1599-CR. The accusatory portion of said Information reads:

That on or about the 16th day of September 1998, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously make or draw and issue to OSCAR R. CASTRO, to apply on account or for value the check described below:

Check No

:

00082270

Drawn Against

:

The Region Bank

In the Amount of

:

P740,000.00

Date

:

December 21, 1998

Payable to

:

Cash

said accused well-knowing that at the time of issue Ofelia V. Arceta did not have sufficient funds or credit with the drawee bank for the payment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for reason "DRAWN AGAINST INSUFFICIENT FUNDS," and despite receipt of notice of such dishonor, the accused failed to pay said payee with the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

CONTRARY TO LAW.[3]

Arceta did not move to have the charge against her dismissed or the Information quashed on the ground that B.P. Blg. 22 was unconstitutional. She reasoned out that with the Lozano doctrine still in place, such a move would be an exercise in futility for it was highly unlikely that the trial court would grant her motion and thus go against prevailing jurisprudence.

On October 21, 2002,[4] Arceta was arraigned and pleaded "not guilty" to the charge. However, she manifested that her arraignment should be without prejudice to the present petition or to any other actions she would take to suspend proceedings in the trial court.

Arceta then filed the instant petition.

2. G.R. No. 153151

The Office of the City Prosecutor of Caloocan filed a charge sheet against Gloria S. Dy for violation of the Bouncing Checks Law, docketed by the MeTC of Caloocan City as Criminal Case No. 212183. Dy allegedly committed the offense in this wise:

That on or about the month of January 2000 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously make and issue Check No. 0000329230 drawn against PRUDENTIAL BANK in the amount of P2,500,000.00 dated January 19, 2000 to apply for value in favor of ANITA CHUA well knowing at the time of issue that she has no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment which check was subsequently dishonored for the reason "ACCOUNT CLOSED" and with intent to defraud failed and still fails to pay the said complainant the amount of P2,500,000.00 despite receipt of notice from the drawee bank that said check has been dishonored and had not been paid.

Contrary to Law.[5]

Like Arceta, Dy made no move to dismiss the charges against her on the ground that B.P. Blg. 22 was

unconstitutional. Dy likewise believed that any move on her part to quash the indictment or to dismiss the charges on said ground would fail in view of the Lozano ruling. Instead, she filed a petition with this Court invoking its power of judicial review to have the said law voided for Constitutional infirmity.

Both Arceta and Dy raise the following identical issues for our resolution:

- [a] Does section 1 really penalize the act of issuing a check subsequently dishonored by the bank for lack of funds?
- [b] What is the effect if the dishonored check is not paid pursuant to section 2 of BP 22?
- [c] What is the effect if it is so paid?
- [d] Does section 2 make BP 22 a debt collecting law under threat of imprisonment?
- [e] Does BP 22 violate the constitutional proscription against imprisonment for non-payment of debt?
- [f] Is BP 22 a valid exercise of the police power of the state?[6]

After minute scrutiny of petitioners' submissions, we find that the basic issue being raised in these special civil actions for certiorari, prohibition, and mandamus concern the unconstitutionality or invalidity of B.P. Blg. 22. Otherwise put, the petitions constitute an oblique attack on the constitutionality of the Bouncing Checks Law, a matter already passed upon by the Court through Justice (later Chief Justice) Pedro Yap almost two decades ago. Petitioners add, however, among the pertinent issues one based on the observable but worrisome transformation of certain metropolitan trial courts into seeming collection agencies of creditors whose complaints now clog the court dockets.

But let us return to basics. When the issue of unconstitutionality of a legislative act is raised, it is the established doctrine that the Court may exercise its power of judicial review only if the following requisites are present: (1) an actual and appropriate case and controversy exists; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question raised is the very *lis mota* of the case.[7] Only when these requisites are satisfied may the Court assume jurisdiction over a question of unconstitutionality or invalidity of an act of Congress. With due regard to counsel's spirited advocacy in both cases, we are unable to agree that the abovesited requisites have been adequately met.

Perusal of these petitions reveals that they are primarily anchored on Rule 65, Section 1[8] of the 1997 Rules of Civil Procedure. In a special civil action of certiorari the only question that may be raised is whether or not the respondent has acted without or in excess of jurisdiction or with grave abuse of discretion.[9] Yet nowhere in these petitions is there any allegation that the respondent judges acted with grave abuse of discretion amounting to lack or excess of jurisdiction. A special civil action for certiorari will prosper only if a grave abuse of discretion is manifested.[10]

Noteworthy, the instant petitions are conspicuously devoid of any attachments or annexes in the form of a copy of an order, decision, or resolution issued by the respondent judges so as to place them understandably within the ambit of Rule 65. What are appended to the petitions are only copies of the Informations in the respective cases, nothing else. Evidently, these petitions for a writ of certiorari, prohibition and mandamus do not qualify as the actual and appropriate cases contemplated by the rules as the first requisite for the exercise of this Court's power of judicial review. For as the petitions clearly show on their faces petitioners have not come to us with sufficient cause of action.

Instead, it appears to us that herein petitioners have placed the cart before the horse, figuratively speaking. Simply

put, they have ignored the hierarchy of courts outlined in Rule 65, Section 4[11] of the 1997 Rules of Civil Procedure. Seeking judicial review at the earliest opportunity does not mean immediately elevating the matter to this Court. Earliest opportunity means that the question of unconstitutionality of the act in question should have been immediately raised in the proceedings in the court below. Thus, the petitioners should have moved to quash the separate indictments or moved to dismiss the cases in the proceedings in the trial courts on the ground of unconstitutionality of B.P. Blg. 22. But the records show that petitioners failed to initiate such moves in the proceedings below. Needless to emphasize, this Court could not entertain questions on the invalidity of a statute where that issue was not specifically raised, insisted upon, and adequately argued.[12] Taking into account the early stage of the trial proceedings below, the instant petitions are patently premature.

Nor do we find the constitutional question herein raised to be the very *lis mota* presented in the controversy below. Every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative.[13] We have examined the contentions of the petitioners carefully; but they still have to persuade us that B.P. Blg. 22 by itself or in its implementation transgressed a provision of the Constitution. Even the thesis of petitioner Dy that the present economic and financial crisis should be a basis to declare the Bouncing Checks Law constitutionally infirm deserves but scant consideration. As we stressed in *Lozano*, it is precisely during trying times that there exists a most compelling reason to strengthen faith and confidence in the financial system and any practice tending to destroy confidence in checks as currency substitutes should be deterred, to prevent havoc in the trading and financial communities. Further, while indeed the metropolitan trial courts may be burdened immensely by bouncing checks cases now, that fact is immaterial to the alleged invalidity of the law being assailed. The solution to the clogging of dockets in lower courts lies elsewhere.

WHEREFORE, the instant petitions are DISMISSED for utter lack of merit.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Corona, J., on official leave.

[1] Per Resolution of the Court En Banc dated 15 October 2002.

[2] No. L-63419, 18 December 1986, 146 SCRA 323.

[3] *Rollo*, G.R. No. 152895, p. 61.

[4] *Id.* at 76.

[5] *Rollo*, G.R. No. 153151, p. 58.

[6] *Rollo*, G.R. No. 152895, pp. 8-9; *Rollo*, G.R. No. 153151, p. 8.

[7] *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, 19 August 1994, 235 SCRA 506, 518-519 citing *Luz Farms v. Secretary of the Department of Agrarian Reform*, G.R. No. 86889, 4 December 1990, 192 SCRA 51, 58; *Dumlao v. COMELEC*, No. L-52245, 22 January 1980, 95 SCRA 392, 400; *People v. Vera*, No. 45685, 16 November 1937, 65 Phil. 56, 86-89.

[8] SECTION 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to

lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[9] *II Feria and Noche*, Civil Procedure Annotated 456 (2001 Ed.).

[10] *Jalandoni v. Drilon*, G.R. Nos. 115239-40, 2 March 2000, 327 SCRA 107, 121.

[11] SEC. 4. When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding 15 days.

[12] *Reyes v. Court of Appeals*, G.R. No. 118233, 10 December 1999, 378 Phil. 232, 240 citing *City of Baguio, Reforestation Administration v. Hon. Marcos*, G.R. No. L-26100, 28 February 1969, 136 Phil. 569, 579.

[13] *Lacson v. The Executive Secretary*, G.R. No. 128096, 20 January 1999, 361 Phil. 251, 263.

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