DOMINGO ROCO, PETITIONER, VS. HON. EDWARD B. CONTRERAS, PEOPLE OF THE PHILIPPINES AND CAL'S POULTRY SUPPLY CORPORATION, RESPONDENTS.

G.R. NO. 158275. June 28, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

Assailed and sought to be set aside in this appeal by way of a petition for review on certiorari under Rule 45 of the Rules of Court are the following issuances of the Court of Appeals in CA-G.R. SP No. 66038, to wit:

- Decision dated 20 August 2002,[1] dismissing the appeal filed by herein petitioner Domingo Roco contra the 18 October 2000 resolution of the Regional Trial Court (RTC) at Roxas City, denying due course to and dismissing his petition for certiorari in SP Case No. 7489; and

- Resolution dated 12 May 2003,[2] denying petitioner's motion for reconsideration.

The material facts are not at all disputed:

Petitioner Domingo Roco was engaged in the business of buying and selling dressed chicken. Sometime in 1993, he purchased his supply of dressed chicken from private respondent Cal's Poultry Supply Corporation (Cal's Corporation, for short), a domestic corporation controlled and managed by one Danilo Yap. As payment for his purchases, petitioner drew five (5) checks payable to Cal's Corporation against his account with the Philippine Commercial and Industrial Bank (PCIB), which checks bear the following particulars:

Check No. Date Amount
004502 26 April 1993 P329,931.40
004503 4 May 1993 P319,314.40
004507 19 May 1993 P380,560.20
004511 26 May 1993 P258,660.20
004523 22 May 1993 P141,738.55.

Cal's Corporation deposited the above checks in its account with PCIB but the bank dishonored them for having been drawn against a closed account. Thereafter, Cal's Corporation filed criminal complaints against petitioner for violation of Batas Pambasa Blg. 22 (BP 22), otherwise known as the Bouncing Checks Law.

After preliminary investigation, five (5) informations for violation of BP 22 were filed against petitioner before the Municipal Trial Court in Cities (MTCC), Roxas City, thereat docketed as Crim. Cases No. 94-2172-12 to 94-2176-12, all of which were raffled to Branch 2 of said court.

Meanwhile, and even before trial could commence, petitioner filed with the Bureau of Internal Revenue (BIR) at Iloilo City a denunciation letter against Cal's Corporation for the latter's alleged violation of Section 258 in relation to Section 263 of the National Internal Revenue Code in that it failed to issue commercial invoices on its

sales of merchandise. Upon BIR's investigation, it was found that Cal's Corporation's sales on account were unavoidable, hence, the corporation had to defer the issuance of "Sales Invoices" until the purchases of its customers were paid in full. With respect to the sales invoices of petitioner, the investigation disclosed that the same could not, as yet, be issued by the corporation precisely because the checks drawn and issued by him in payment of his purchases were dishonored by PCIB for the reason that the checks were drawn against a closed account. Accordingly, the BIR found no prima facia evidence of tax evasion against Cal's Corporation.[3]

Thereupon, trial of the criminal cases proceeded. After the prosecution rested, the MTCC declared the cases submitted for decision on account of petitioner's failure to adduce evidence in his behalf. Later, the same court rendered a judgment of conviction against petitioner.

Therefrom, petitioner went on appeal to the Regional Trial Court, contending that he was unlawfully deprived of his right to due process when the MTCC rendered judgment against him without affording him of the right to present his evidence. Agreeing with the petitioner, the RTC vacated the MTCC decision and remanded the cases to it for the reception of petitioner's evidence.

On 11 March 1999, during the pendency of the remanded cases, petitioner filed with the MTCC a "Request for Issuance of Subpoena Ad Testificandum and Subpoena Duces Tecum", requiring Vivian Deocampo or Danilo Yap, both of Cal's Corporation or their duly authorized representatives, to appear and testify in court on 19 May 1999 and to bring with them certain documents, records and books of accounts for the years 1993-1999, to wit:

> a) Sales Journal for the year 1993;
> b) Accounts Receivable Journal for the year 1993;
> c) Sales Ledger for the year 1993;
> d) Accounts Receivable Ledger for the year 1993 (in its absence, Accounts Receivable Ledger for the years 1994, 1995, 1996, 1997, 1998 or 1999);
> e) Audited Income Statement for the years 1993, 1994, 1995, 1996, 1997, 1998 and Income Statements as of February 1999;
> f) Audited Balance Sheet for the years 1993, 1994, 1995, 1996, 1997, 1998 and Balance Sheet as of February 1999; and
> g) Income Tax Returns for the years 1993, 1994, 1995, 1996 and 1997.

The prosecution did not object to this request.

When the cases were called on 19 May 1999, the MTCC, then presided by Acting Judge Geomer C. Delfin, issued an order granting petitioner's aforementioned request and accordingly directed the issuance of the desired subpoenas.

During the trial of 14 July 1999, the private prosecutor manifested that it was improper for the trial court to have directed the issuance of the requested subpoenas, to which the petitioner countered by saying that Judge Delfin's order of 19 May 1999 had become final and hence, immutable. Nonetheless, the trial court issued an order allowing the prosecution to file its comment or opposition to petitioner's request for the issuance of subpoenas.

The prosecution did file its opposition, thereunder arguing that:

> a) Vivian Deocampo, who previously testified for Lota Briones-Roco in Criminal Cases Nos. 94-2177-12 to 94-2182-12 before Branch 1 of the MTC, had earlier attested to the fact that the following documents, records and books of accounts for 1993 sought by petitioner were already burned:
>
> 1. Audited Income Statement for the years 1993, 1994, 1995, 1996, 1997, 1998 and Income Statement as of February 1999;

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2. Audited Balance Sheet for the years 1993, 1994, 1995, 1996, 1997, 1998 and Balance Sheet as of February 1999; and

3. Income Tax Returns for the years 1993, 1994, 1995, 1996 and 1997.

b) the Sales Ledger for the year 1993 cannot be produced because Cal's Corporation did not maintain such ledger; and

c) the account Receivable Ledger for the periods from 1993, the Income Statement for 1993 and the Balance Sheet as of February 1999, cannot also be produced because Cal's Corporation recently computerized its accounting records and was still in the process of completing the same.

For its part, the corporation itself maintained that the production of the above-mentioned documents was inappropriate because they are immaterial and irrelevant to the crimes for which the petitioner was being prosecuted.

In a resolution dated 19 October 1999, the MTCC, this time thru its regular Presiding Judge, Judge Edward B. Contreras, denied petitioner's request on the following grounds: (a) the requested documents, book ledgers and other records were immaterial in resolving the issues posed before the court; and (b) the issuance of the subpoenas will only unduly delay the hearing of the criminal cases.

His motion for reconsideration of the denial resolution having been similarly denied by Judge Contreras, petitioner then went to the RTC on a petition for certiorari with plea for the issuance of a writ of preliminary injunction and/or temporary restraining order, imputing grave abuse of discretion on the part of Judge Contreras, which petition was docketed in the RTC as SP Case No. V-7489.

In a resolution dated 18 October 2000, the RTC denied due course to and dismissed the petition for petitioner's failure to show that Judge Contreras committed grave abuse of discretion amounting to excess or lack of jurisdiction. A motion for reconsideration was thereafter filed by petitioner, but it, too, was likewise denied.

Undaunted, petitioner went on appeal via certiorari to the Court of Appeals in CA-G.R. SP No. 66038.

As stated at the outset hereof, the Court of Appeals, in a decision dated 20 August 2002,[4] dismissed the petition and accordingly affirmed the impugned resolutions of the RTC. With his motion for reconsideration having been denied by the same court in its resolution of 12 May 2003,[5] petitioner is now with us via the present recourse on his submissions that -

I.

XXX THE DENIAL OF THE REQUEST FOR THE ISSUANCE OF SUBPOENA AD TESTIFICANDUM AND SUBPOENA DUCES TECUM IS VIOLATIVE OF THE CONSTITUTIONAL RIGHT OF THE ACCUSED AS ENSHRINED IN ART. III, SEC. 14 (2) OF THE CONSTITUTION; and

II.

XXX THERE MUST BE A BALANCING OF INTEREST BETWEEN THE RIGH [sic] OF AN ACCUSED TO PROVE HIS INNOCENCE AND THE RIGHT OF A COMPLAINANT TO THE SPEEDY DISPOSITION OF HIS CASE.

As we see it, the pivotal issue is whether or not the three (3) courts below committed reversible error in denying petitioner's request for the issuance of subpoena ad testificandum and subpoena duces tecum in connection with the five (5) criminal cases for violation of BP 22 filed against him and now pending trial before the MTCC.

We rule in the negative.

A subpoena is a process directed to a person requiring him to attend and to testify at the hearing or trial of an action or at any investigation conducted under the laws of the Philippines, or for the taking of his deposition.[6]

In this jurisdiction, there are two (2) kinds of subpoena, to wit: subpoena ad testificandum and subpoena duces tecum. The first is used to compel a person to testify, while the second is used to compel the production of books, records, things or documents therein specified. As characterized in H.C. Liebenow vs. The Philippine Vegetable Oil Company:[7]

> The subpoena duces tecum is, in all respects, like the ordinary subpoena ad testificandum with the exception that it concludes with an injunction that the witness shall bring with him and produce at the examination the books, documents, or things described in the subpoena.

Well-settled is the rule that before a subpoena duces tecum may issue, the court must first be satisfied that the following requisites are present: (1) the books, documents or other things requested must appear prima facie relevant to the issue subject of the controversy (test of relevancy); and (2) such books must be reasonably described by the parties to be readily identified (test of definiteness). Again, to quote from H.C. Liebenow:[8]

> In determining whether the production of the documents described in a subpoena duces tecum should be enforced by the court, it is proper to consider, first, whether the subpoena calls for the production of specific documents, or rather for specific proof, and secondly, whether that proof is prima facie sufficiently relevant to justify enforcing its production. A general inquisitorial examination of all the books, papers, and documents of an adversary, conducted with a view to ascertain whether something of value may not show up, will not be enforced. (Emphasis supplied)

Further, in Universal Rubber Products, Inc. vs. CA, et al.,[9] we held:

> Well-settled is Our jurisprudence that, in order to entitle a party to the issuance of a 'subpoena duces tecum,' it must appear, by clear and unequivocal proof, that the book or document sought to be produced contains evidence relevant and material to the issue before the court, and that the precise book, paper or document containing such evidence has been so designated or described that it may be identified. (Emphasis supplied)

Going by established precedents, it thus behooves the petitioner to first prove, to the satisfaction of the court, the relevancy and the definiteness of the books and documents he seeks to be brought before it.

Admittedly, the books and documents that petitioner requested to be subpoenaed are designated and described in his request with definiteness and readily identifiable. The test of definiteness, therefore, is satisfied in this case.

It is, however, in the matter of relevancy of those books and documents to the pending criminal cases that petitioner miserably failed to discharge his burden.

In the recent case of Aguirre vs. People of the Philippines,[10] the Court reiterated the following discussions regarding violations of BP 22:

> xxx what the law punishes is the issuance of a bouncing check not the purpose for which it was issued nor the terms and conditions relating to its issuance. The mere act of issuing a worthless check is malum prohibitum. (Cruz vs. Court of Appeals, 233 SCRA 301). All the elements, therefore, of the violation of Batas Pambansa Blg. 22 are all present in the instant criminal cases and for which the accused is solely liable, to wit: [a] the making, drawing and issuance of any check to apply to account or for value; [2] the knowledge of the maker, drawer or issuer that at the time of issue 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] subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. (Navarro vs. Court of Appeals, 234 SCRA 639).

We stress that the gravamen of the offense under BP 22 is the act of making or issuing a worthless check or a check that is dishonored upon its presentment for payment.[11] The offense is already consummated from the very moment a person issues a worthless check, albeit payment of the value of the check, either by the drawer or by the drawee bank, within five (5) banking days from notice of dishonor given to the drawer is a complete defense because the prima facie presumption that the drawer had knowledge of the insufficiency of his funds or credit at the time of the issuance of the check and on its presentment for payment is thereby rebutted by such payment.[12]

Here, petitioner would want it appear that the books and documents subject of his request for subpoena duces tecum are indispensable, or, at least, relevant to prove his innocence. The Court disagrees.

Based on the records below and as correctly pointed out by the Court of Appeals, petitioner had been issued by Cal's Corporation with temporary receipts in the form of yellow pad slips of paper evidencing his payments, which pad slips had been validated by the corporation itself. Clear it is, then, that the production of the books and documents requested by petitioner are not indispensable to prove his defense of payment. In the words of the appellate court:

> The Petitioner admitted, when he testified in the Regional Trial Court, that he had been issued temporary receipts in the form of yellow pad slips of paper, by the Private Respondent, for his payments which were all validated by the Private Respondent (Exhibits '8' and 'F' and their submarkings). Even if the temporary receipts issued by the Private Respondent may not have been the official receipts for Petitioner's payments, the same are as efficacious and binding on the Private Respondent as official receipts issued by the latter.

We do not find any justifiable reason, and petitioner has not shown any, why this Court must have to disbelieve the factual findings of the appellate court. In short, the issuance of a subpoena duces tecum or ad testificandum to compel the attendance of Vivian Deocampo or Danilo Yap of Cal's Corporation or their duly authorized representatives, to testify and bring with them the records and documents desired by the petitioner, would serve no purpose but to further delay the proceedings in the pending criminal cases.

Besides, the irrelevancy of such books and documents would appear on their very face thereof, what the fact that the requested Audited Income Statements, Audited Balance Sheets, Income Tax Returns, etc. pertained to the years 1994 to 1999 which could not have reflected petitioner's alleged payment because the subject transaction happened in 1993. Again, we quote from the assailed decision of the Court of Appeals:

> The checks subject of the criminal indictments against the Petitioner were drawn and dated in 1993. The Petitioner has not demonstrated the justification, for the production of the books/records for 1994, and onwards, up to 1999. Especially so, when the "Informations" against the Petitioner, for violations of BP 22, were filed, with the Trial Court, as early as 1994.

We are inclined to believe, along with that court, that petitioner was just embarking on a "fishing expedition" to derail "the placid flow of trial".

With the above, it becomes evident to this Court that petitioner's request for the production of books and documents referred to in his request are nakedly calculated to merely lengthen the proceedings in the subject criminal cases, if not to fish for evidence. The Court deeply deplores petitioner's tactics and will never allow the same.

WHEREFORE, the instant petition is DENIED and the challenged decision and resolution of the Court of Appeals AFFIRMED.

Costs against petitioner.

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SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

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[1] Penned by then Associate Justice (now a member of this Court) Romeo J. Callejo, Sr., with Associate Justices Remedios Salazar-Fernando and Danilo B. Pine, concurring; Rollo, pp. 14-35.

[2] Rollo, p. 41.

[3] Rollo, pp. 126-127.

[4] Rollo, pp. 14-35.

[5] Rollo, p. 41.

[6] Caamic vs. Galapon, Jr., 237 SCRA 390, 395 [1994].

[7] 39 Phils. 60, 67 [1918].

[8] Supra, p. 69.

[9] 215 Phils. 85, 91 [1984], citing Arnaldo vs. Locsin, 69 Phil. 113, 120 [1939].

[10] 416 Phils. 163, 170 [2001].

[11] Cueme vs. People, 390 Phils. 294, 303 [2000].

[12] Navarro vs. Court of Appeals and People of the Philippines, 234 SCRA 639, 644 [1994].

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