

**RICARDO SUAREZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES
AND A.H. SHOPPERS' MART, INC., RESPONDENTS.***G.R. No. 172573. June 19, 2008*

Ponente: PUNO, CJ.

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This Petition for Review on Certiorari assails the Decision[1] and Resolution[2] of the Court of Appeals, dated November 21, 2005 and April 10, 2006 respectively, in CA-G.R. SP No. 00284. The Court of Appeals set aside the Regional Trial Court's (RTC's) Omnibus Decision[3] dated August 30, 2004 and Order[4] dated September 13, 2004, and reinstated the Municipal Trial Court in Cities' (MTCC's) Joint Decision[5] dated April 23, 2004 in Criminal Case Nos. 14988 and 14989. The MTCC found petitioner Ricardo Suarez guilty of two (2) counts of violation of Batas Pambansa (B.P.) Blg. 22.

Petitioner is Ricardo Suarez, the owner of a grocery store, Suarez Commercial. Respondent A.H. Shoppers' Mart, Inc. (Shoppers' Mart) is a business establishment engaged in operating a grocery and department store.

Petitioner opened a credit line to purchase goods with Shoppers' Mart.[6] As payment for the goods, petitioner issued two postdated checks payable to the order of Shoppers' Mart: (1) Development Bank of the Philippines (DBP) Check No. 0008784 dated September 18, 1998 for the amount of PhP 82,812.00; and (2) DBP Check No. 0008777 dated September 26, 1998 for the amount of PhP 75,000.00.[7] Shoppers' Mart deposited the checks. However, DBP dishonored the checks for having been drawn against a closed account.[8] Shoppers' Mart sent the petitioner a demand letter dated March 22, 2002 to pay for the value of the checks, but the petitioner failed to make payment.[9]

Two informations for violation of B.P. Blg. 22 were filed against the petitioner before the MTCC.[10] Both informations are similarly worded except with respect to the check number, amount involved, and date corresponding to the check's issuance. The information in Criminal Case No. 14988 reads as follows:

That, on or about the 18[th] day of September, 1998, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully and well that he did not have sufficient funds deposited with the bank, did, then and there feloniously make out and issue Development Bank of the Philippines Check No. 0008784 in the amount of EIGHTY TWO THOUSAND AND EIGHT H/UNDRED TWELVE PESOS (P 82,812.00), Philippine Currency, drawn against Development Bank of the Philippines (DBP) Tagbilaran City Branch, Tagbilaran City, and to pay Shoppers Mart, and thereafter, did, then and there willfully, unlawfully and feloniously pass on, give and deliver the same to Shoppers Mart, in payment of a certain obligation; however, upon presentment of the check to the drawee bank for encashment or payment within a period of ninety (90) days from the date appearing thereon, the same was dishonored and refused payment for the reason "ACCOUNT CLOSED" and the accused neither paid nor made arrangement with the drawee bank within five (5) banking days from receipt of notice of non-payment, to the damage and prejudice of said Shoppers Mart, in the amount to be proved during the trial of the case.

Acts committed contrary to the provisions of Batas Pambansa Blg. 22.[11]

Criminal Case Nos. 14988 and 14989 were consolidated and jointly tried. When arraigned, petitioner pleaded not guilty to the charges against him.[12] During trial, the prosecution presented one witness, Dolores Huan Agbayani, the Collection Manager of Shoppers' Mart.[13] Petitioner filed a Demurrer to Evidence without leave of court, on the ground that no notice of dishonor had been sent to and received by him.[14] On January 26, 2004, the MTCC denied the Demurrer.[15]

On April 23, 2004, the MTCC found petitioner guilty of violating B.P. Blg. 22 in both cases. The dispositive portion of its Joint Decision states:

WHEREFORE, the Court finds accused Ricardo Suarez GUILTY beyond reasonable doubt in each of the two (2) counts of Violation of Batas Pambansa Bilang 22 as charged in the two (2) informations and hereby imposes a penalty of FINE of:

- EIGHTY FIVE THOUSAND PESOS (P 85,000.00) in Crim. Case No. 14988;
- SEVENTY FIVE THOUSAND PESOS (P 75,000.00) in Crim. Case No. 14989,

with subsidiary imprisonment in case of insolvency and to pay costs in each case.

Accused is likewise ordered to pay complainant the total amount of P157,812.00 representing the total face value of the two (2) dishonored checks plus legal interest of six (6%) percent per annum from the filing of these cases on July 12, 2002 until finality of this judgment and twelve (12%) percent per annum from finality of this judgment until full payment and the sum of P5,000.00 as attorney's fees and litigation expenses.

SO ORDERED.[16]

Petitioner appealed to the RTC, which ruled that the provision in B.P. Blg. 22 regarding criminal liability runs counter to the constitutional provision against imprisonment for nonpayment of a debt. The RTC modified the MTCC decision, viz:

WHEREFORE, in view of all the foregoing, the assailed Decision is modified and another judgment is hereby entered absolving herein accused Ricardo Suarez from criminal liability under BP Blg. 22. However, the civil liability imposed upon him in the Decision is hereby affirmed.[17]

On November 9, 2004, respondents assailed the RTC decision before the Court of Appeals.[18] The Court of Appeals set aside the RTC decision and reinstated the MTCC decision, holding that the RTC decision is void for absolving the petitioner of criminal liability despite a finding that he violated B.P. Blg. 22.[19]

Petitioner filed a Motion for Reconsideration before the Court of Appeals, reiterating the argument that the prosecution failed to prove that he had been sent and received a notice of dishonor, which is essential to support a conviction of B.P. Blg. 22.[20] The Court of Appeals denied the motion.[21]

Petitioner insists on the same argument before this Court. The Solicitor General supports the petitioner's argument and recommends the petitioner's acquittal for violation of B.P. Blg. 22.[22] Thus, the sole issue for resolution is whether the prosecution proved the element of knowledge of insufficiency of funds to hold the petitioner liable for violation of B.P. Blg. 22.

To commit a violation of B.P. Blg. 22,[23] the following elements must be present and proved:

- the making, drawing and issuance of any check to apply for account or for value;
- 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
- the 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.[24]

B.P. Blg. 22 creates a presumption of knowledge of insufficiency of funds under the following circumstances:

Sec. 2. Evidence of knowledge of insufficient funds. — The making, drawing, and issuance of a check payment of which is refused by the drawee because of insufficient funds or credit with such bank, when presented within ninety days from the date of the check, shall be prima facie evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.[25]

The presumption arises when it is proved that the issuer had received this notice, and that within five banking days from its receipt, he failed to pay the amount of the check or to make arrangements for its payment.[26] The full payment of the amount appearing in the check within five banking days from notice of dishonor is a complete defense.[27] Accordingly, procedural due process requires that a notice of dishonor be sent to and received by the petitioner to afford the opportunity to avert prosecution under B.P. Blg. 22.[28]

The evidence shows that the prosecution proved that a notice of dishonor was sent to petitioner through registered mail. The prosecution presented a copy of the demand letter and properly authenticated the registry return receipt.[29] However, it is not enough for the prosecution to prove that a notice of dishonor was sent to the petitioner. It is also incumbent upon the prosecution to show "that the drawer of the check received the said notice because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check." [30]

A review of the records shows that the prosecution did not prove that the petitioner received the notice of dishonor. Registry return cards must be authenticated to serve as proof of receipt of letters sent through registered mail. Thus, we held:

...it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that "[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it." [31]

The failure of the prosecution to properly authenticate and identify the signature on the registry return card as that of the petitioner is evident from the testimony of its sole witness, the Collection Manager of Shoppers' Mart:

Q:

The return card evidencing actual receipt by the defendant, it is also included in Branch 2, City Court?

A:

Yes, sir.

Q:

I show you a return receipt, is this the return receipt you are referring to?

A:

Yes, sir.[32]

The presentation of the registry card, with an unauthenticated signature, does not meet the required proof beyond reasonable doubt that the petitioner received such notice, especially considering that he denied receiving it.[33] As there is insufficient proof that the petitioner received notice of dishonor, the presumption that he had

knowledge of insufficiency of funds cannot arise.

IN VIEW WHEREOF, the assailed November 21, 2005 Decision and April 10, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 00284, reinstating the April 23, 2004 Joint Decision of the MTCC in Tagbilaran City, Branch 1, in Criminal Case Nos. 14988 and 14989 convicting the petitioner of two (2) counts of violation of B.P. Blg. 22, are MODIFIED. Petitioner is ACQUITTED on reasonable doubt. However, the civil liability imposed on petitioner in the Joint Decision of the MTCC is AFFIRMED.

SO ORDERED.

WE CONCUR:

Antonio T. Capio
Associate Justice

RENATO C. CORONA
Associate Justice

ADOLFO S. AZCUNA
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

[1] Rollo, pp. 24-34.

[2] Id. at 35-36.

[3] CA rollo, pp. 32-33.

[4] Id. at 38.

[5] MTCC records, pp. 107-111.

[6] Rollo, p. 25.

[7] Id.

[8] Id.

[9] Id. at 26.

[10] Id.

[11] Id.

[12] Id. at 27.

[13] TSN, November 12, 2003, pp. 1-18.

[14] MTCC records, pp. 90-92.

[15] Id. at 93-94.

[16] Id. at 111.

[17] CA rollo, p. 33.

[18] Id. at 2-8.

[19] Rollo, pp. 30-33.

[20] Id. at 46-55.

[21] Id. at 35-36.

[22] Id. at 86-97.

[23] Batas Pamabansa Blg. 22 (1979).

Section 1 states:

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.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

[24] Sycip, Jr. v. Court of Appeals, 385 Phil. 143, 154 (2000).

[25] B.P. Blg. 22, Sec. 2.

[26] King v. People, 377 Phil. 692, 710 (1999).

[27] Lao v. Court of Appeals, G.R. No. 119178, June 20, 1997, 274 SCRA 572, 594.

[28] Id.

[29] TSN, November 12, 2003, pp. 9-11.

[30] Cabrera v. People, 454 Phil. 759, 774 (2003).

[31] Ting v. Court of Appeals, 398 Phil. 481, 494 (2000).

[32] TSN, November 12, 2003, pp. 11-12.

[33] Del Rosario v. Cedillo, A.M. No. MTJ-04-1577, October 21, 2004, 441 SCRA 70, 77.

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