

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE FRANCIS MILITANTE, COURT OF FIRST INSTANCE OF CEBU, BRANCH XII AND ROSITA ABULE, RESPONDENTS.

G.R. No. 57467. October 23, 1982

Ponente: MELENCIO-HERRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-57467/>

MELENCIO-HERRERA, J.:

The issue for resolution is the correctness of the Order of dismissal by respondent Judge of Criminal Case No. CU-5791 for Violation of Batas Pambansa Blg. 22, or the Bouncing Checks Law, on the ground of double jeopardy, because of the pendency of an Estafa case against the same accused that arose out of the same facts.

On September 23, 1980, an Information for Violation of BP Blg. 22 was filed against private respondent before the Court of First Instance of Cebu, Branch XII. The text of that Information follows:

"That on the 3rd day of July, 1979, in the Barangay of San Isidro, Municipality of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, did then and there, wilfully, unlawfully and feloniously draw and issue Check No. D179347 postdated July 10, 1979 against the Bank of the Philippine Islands San Nicolas Branch, San Nicolas, Cebu City, a banking institution doing business in the City of Cebu, Philippines, to apply on account in the amount of TWENTY NINE THOUSAND EIGHT HUNDRED AND THIRTY TWO PESOS (P29,832.00) Philippine Currency, in favor of Lourdes B. Bacus, knowing that at the time she drew and issued Check No. D179347 her account with the drawee bank had already been closed, as a result of which, upon its presentment on July 10, 1979 to the bank for payment, it was dishonored and rejected, to the damage and prejudice of Lourdes B. Bacus in the amount aforestated."[1]

Before arraignment, the accused filed a Motion to Quash on the ground of double jeopardy because of a previous criminal case of Estafa that had been filed against her on April 21, 1980 before Branch VII of the same Court arising out of the same acts and omission. The Information in the Estafa case reads:

"That on or about the 3rd day of July 1979, in Barangay San Isidro, Municipality of Talisay, Province of Cebu, x x x the said accused, did then and there x x x with intent to gain, by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of fraud, to wit, said accused knowing that she has no sufficient funds deposited with Bank of the Philippine Islands, San Nicolas Branch, Cebu, or that her account was already closed and without informing complainant Lourdes Bacus of that circumstance, with intent to defraud the latter, issued Bank of Philippine Islands check No. 179347 dated July 10, 1979 in the amount of P29,832.00 which check was issued simultaneous with the asportation of property, but which check when presented for encashment with the Bank, the same was dishonored for the reason that the account of the accused herein with the Bank was already closed x x x to the damage and prejudice of said Mrs. Lourdes Bacus in the amount of P29,832.00, Philippine currency."[2]

The prosecution opposed the quashal of the second Information contending that there is no double jeopardy as both cases are still pending, and that the accused is charged with two different offenses punishable by different

penalties under different statutes.

On April 21, 1981, respondent Court dismissed the second case ruling that to prosecute the accused for Violation of BP Blg. 22 would constitute a violation of her constitutional right not to be put in jeopardy of punishment for the same offense. Reconsideration of that ruling was denied by respondent Judge on May 5, 1981.

The Provincial Fiscal of Cebu filed with this Court this special civil action for Certiorari seeking to set aside the Order of dismissal as well as the Order affirming it. The Solicitor General and private respondent were required to submit their respective Comments. Only the Solicitor General did, notwithstanding several extensions given to private respondent.

We resolved to give due course.

Under Section 9, Rule 117, of the Rules of Court, the following requisites must obtain in order that the protection against double jeopardy may inure in favor of an accused person, to wit: (1) A valid Complaint or Information or other formal charge sufficient in form and substance to sustain a conviction; (2) a competent Court; (3) the defendant had pleaded to the charge; (4) the defendant had been convicted, or acquitted, or the case against him dismissed or otherwise terminated without his express consent; (5) the second offense charged is the same as the first, or is an attempt to commit the same or a frustration thereof, or that the second offense necessarily includes or is necessarily included in the offense or information.[3]

It appearing that the accused had not even pleaded to the charge of Violation of BP Blg. 22, and that the Estafa case has not been terminated either by a judgment of conviction or acquittal or by a dismissal without the express consent of the accused, the pro-prosecution having merely rested its case, the plea of double jeopardy is unavailing.

WHEREFORE, the Petition is hereby granted. The questioned Orders of April 21, 1981 and May 5, 1981 are set aside, and respondent Judge is ordered to proceed with the trial of Criminal Case No. CU-5791 until its termination, and to render judgment accordingly.

SO ORDERED.

Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Teehankee, J., (Chairman), on official leave.

[1] pp. 122-123, Rollo.

[2] pp. 123-124, *ibid*.

[3] *People vs. Pilpa*, 79 SCRA 81 (1977).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.