

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. REGINO VERIDIANO II, AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF ZAMBALES AND OLONGAPO CITY, BRANCH I, AND BENITO GO BIO...

G.R. No. 62243. October 12, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Private respondent Benito Go Bio, Jr. was charged with violation of Batas Pambansa Bilang 22 in Criminal Case No. 5396 in the then Court of First Instance of Zambales, presided by respondent judge. The information reads:

"That on or about and during the second week of May 1979, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, guaranteeing the authenticity and genuineness of the same and with intent to defraud one Filipinas Tan by means of false pretenses and pretending to have sufficient funds deposited in the Bank of the Philippine Island, did then and there willfully, unlawfully and feloniously make and issue Bank of Philippine Island Check No. D-357726 in the amount of P200,000.00 Philippine Currency, said accused well knowing that he has no sufficient funds at the Bank of the Philippine Island and upon presentation of the said check to the bank for encashment, the same was dishonored for the reason that the said accused has no sufficient funds with the said bank and despite repeated demands made by Filipinas Tan on the accused to redeem the said check or pay the amount of P200,000.00, said accused failed and continues to fail to redeem the said check or to pay the said amount, to the damage and prejudice of said Filipinas Tan in the aforementioned amount of P200,000.00 Philippine Currency." (pp. 23-24, Rollo)

Before he could be arraigned respondent Go Bio, Jr. filed a Motion to Quash the information on the ground that the information did not charge an offense, pointing out that at the alleged commission of the offense, which was about the second week of May 1979, Batas Pambansa Bilang 22 has not yet taken effect.

The prosecution opposed the motion contending, among others, that the date of the dishonor of the check, which is on September 26, 1979, is the date of the commission of the offense; and that assuming that the effectivity of the law - Batas Pambansa Bilang 22 - is on June 29, 1979, considering that the offense was committed on September 26, 1979, the said law is applicable.

In his reply, private respondent Go Bio, Jr. submits that what Batas Pambansa Bilang 22 penalizes is not the fact of the dishonor of the check but the act of making or drawing and issuing a check without sufficient funds or credit.

Resolving the motion, respondent judge granted the same and cancelled the bail bond of the accused. In its order of August 23, 1982, respondent judge said:

"The Court finds merit to the contention that the accused cannot be held liable for bouncing checks prior to the effectivity of Batas Pambansa Bilang 22 although the check may have matured after the effectivity of the said

law. No less than the Minister of Justice decreed that the date of the drawing or making and issuance of the bouncing check is the date to reckon with and not on the date of the maturity of the check. (Resolution No. 67, S. 1981, *People's Car vs. Eduardo N. Tan*, Feb. 3, 1981; Resolution No. 192, S. 1981, *Ricardo de Guia vs. Agapito Miranda*, March 20, 1981).

"Hence, the Court believes that although the accused can be prosecuted for swindling (*Estafa*, Article 315 of the Revised Penal Code), the Batas Pambansa Bilang 22 cannot be given a retroactive effect to apply to the above entitled case." (pp. 49-50, *Rollo*)

Hence, this petition for review on certiorari, petitioner submitting for review respondent judge's dismissal of the criminal action against private respondent Go Bio, Jr. for violation of Batas Pambansa Bilang 22, otherwise known as the Bouncing Checks Law.

Petitioner contends that Batas Pambansa Bilang 22 was published in the April 9, 1979 issue of the Official Gazette. Fifteen (15) days therefrom would be April 24, 1979, or several days before respondent Go Bio, Jr. issued the questioned check around the second week of May 1979; and that respondent judge should not have taken into account the date of release of the Gazette for circulation because Section 11 of the Revised Administrative Code provides that for the purpose of ascertaining the date of effectivity of a law that needed publication, "the Gazette is conclusively presumed to be published on the day indicated therein as the date of issue."

Private respondent Go Bio, Jr. argues that although Batas Pambansa Bilang 22 was published in the Official Gazette issue of April 9, 1979, nevertheless, the same was released only on June 14, 1979 and, considering that the questioned check was issued about the second week of May 1979, then he could not have violated Batas Pambansa Bilang 22 because it was not yet released for circulation at the time.

We uphold the dismissal by the respondent judge of the criminal action against the private respondent.

The Solicitor General admitted the certification issued by Ms: Charito A. Mangubat, Copy Editor of the Official Gazette Section of the Government Printing Office, stating -

"This is to certify that Volume 75, No. 15, of the April 9, 1979 issue of the Official Gazette was officially released for circulation on June 14, 1979." (p. 138, *Rollo*)

It is therefore, certain that the penal statute in question was made public only on June 14, 1979 and not on the printed date April 9, 1979. Differently stated, June 14, 1979 was the date of publication of Batas Pambansa Bilang 22. Before the public may be bound by its contents especially its penal provisions, the law must be published and the people officially informed of its contents and/or its penalties. For, if a statute had not been published before its violation, then in the eyes of the law there was no such law to be violated and, consequently, the accused could not have committed the alleged crime.

The effectivity clause of Batas Pambansa Bilang 22 specifically states that "This Act shall take effect fifteen days after publication in the Official Gazette." The term "publication" in such clause should be given the ordinary accepted meaning, that is, to make known to the people in general. If the Batasang Pambansa had intended to make the printed date of issue of the Gazette as the point of reference in determining the effectivity of the statute in question, then it could have so stated in the special effectivity provision of Batas Pambansa Bilang 22.

When private respondent Go Bio, Jr. committed the act, complained of in the Information as criminal, in May 1979, there was then no law penalizing such act. Following the special provision of Batas Pambansa Bilang 22, it became effective only on June 29, 1979. As a matter of fact, in May 1979, there was no law to be violated and, consequently, respondent Go Bio, Jr. did not commit any violation thereof.

With respect to the allegation of petitioner that the offense was committed on September 26, 1979 when the check was presented for encashment and was dishonored by the bank, suffice it to say that the law penalizes the act of making or drawing and issuance of a bouncing check and not only the fact of its dishonor. The title of the law itself states:

"AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES."

and, Sections 1 and 2 of said Batas Pambansa Bilang 22 provide:

"SECTION 1. 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 x x x shall be punished x x x.

"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.

x x x x x x x x

"SECTION 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 x x x." (Italics supplied)

ACCORDINGLY, the order of respondent judge dated August 23, 1982 is hereby AFFIRMED. No costs.

SO ORDERED.

Melencio-Herrera, Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.

Teehankee, Acting C.J., concurs on the ground that actual publication of the penal law is indispensable for its effectivity (Pesigan vs. Angeles, 129 SCRA 174).

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