

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. DAVID G. NITAFAN, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 52, MANILA, AND K.T. LIM ALIAS MARIANO LIM, RESPONDENTS.

G.R. No. 75954. October 22, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Failing in his argument that B.P. 22, otherwise known as the “Bouncing Check Law”, is unconstitutional,[1] private respondent now argues that the check he issued, a memorandum check, is in the nature of a promissory note, hence, outside the purview of the statute. Here, his argument must also fail.

The facts are simple. Private respondent K.T. Lim was charged before respondent court with violation of B.P. 22 in an Information alleging -

“That on x x x January 10, 1985, in the City of Manila x x x the said accused did then and there wilfully, unlawfully and feloniously make or draw and issue to Fatima Cortez Sasaki x x x Philippine Trust Company Check No. 117383 dated February 9, 1985 x x x in the amount of P143,000.00, x x x well knowing that at the time of issue he x x x did not have sufficient funds in or credit with the drawee bank x x x which check x x x was subsequently dishonored by the drawee bank for insufficiency of funds, and despite receipt of notice of such dishonor, said accused failed to pay said Fatima Cortez Sasaki the amount of said check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.”[2]

On 18 July 1986, private respondent moved to quash the Information on the ground that the facts charged did not constitute a felony as B.P. 22 was unconstitutional and that the check he issued was a memorandum check which was in the nature of a promissory note, perforce, civil in nature. On 1 September 1986, respondent judge, ruling that B.P. 22 on which the Information was based was unconstitutional, issued the questioned Order quashing the Information. Hence, this petition for review on certiorari filed by the Solicitor General in behalf of the government.

Since the constitutionality of the “Bouncing Check Law” has already been sustained by this Court in *Lozano v. Martinez*[3] and the seven (7) other cases decided jointly with it,[4] the remaining issue, as aptly stated by private respondent in his Memorandum, is whether a memorandum check issued postdated in partial payment of a pre-existing obligation is within the coverage of B.P. 22.

Citing *U.S. v. Isham*,[5] private respondent contends that although a memorandum check may not differ in form and appearance from an ordinary check, such a check is given by the drawer to the payee more in the nature of a memorandum of indebtedness and, as such, partakes of the nature of a promissory note, and should be sued upon in a civil action.

We are not persuaded.

A memorandum check is in the form of an ordinary check, with the word “memorandum”, “memo” or “mem”

written across its face, signifying that the maker or drawer engages to pay the bona fide holder absolutely, without any condition concerning its presentment.[6] Such a check is an evidence of debt against the drawer, and although may not be intended to be presented,[7] has the same effect as an ordinary check,[8] and if passed to a third person, will be valid in his hands like any other check.[9]

From the above definition, it is clear that a memorandum check, which is in the form of an ordinary check, is still drawn on a bank and should therefore be distinguished from a promissory note, which is but a mere promise to pay. If private respondent seeks to equate memorandum check with promissory note, as he does, to skirt the provisions of B.P. 22, he could very well have issued a promissory note, and this would have exempted him from the coverage of the law. In the business community, a promissory note, certainly, has less impact and persuadability than a check.

Verily, a memorandum check comes within the meaning of Sec. 185 of the Negotiable Instruments Law which defines a check as “a bill of exchange drawn on a bank payable on demand.” A check is also defined as “[a] written order or request to a bank or persons carrying on the business of banking, by a party having money in their hands, desiring them to pay, on presentment, to a person therein named or bearer, or to such person or order, a named sum of money,” citing 2 Dan. Neg. Inst. 528; *Blair v. Wilson*, 28 Gratt. (Va.) 170; *Deener v. Brown*, 1 MacArth. (D.C.) 350; *In re Brown*, 2 Sto. 502, Fed. Cas. No. 1,985. See *Chapman v. White*, 6 N.Y. 412, 57 Am. Dec. 464.[10] Another definition of check is that it is “[a] draft drawn upon a bank and payable on demand, signed by the maker or drawer, containing an unconditional promise to pay a sum certain in money to the order of the payee,” citing *State v. Perrigoue*, 81 Wash. 2d 640, 503 p. 2d 1063, 1066.[11]

A memorandum check must therefore fall within the ambit of B.P. 22 which does not distinguish but merely provides that “[a]ny person who makes or draws and issues any check knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank x x x which check is subsequently dishonored x x x shall be punished by imprisonment x x x x” (underscoring supplied).[12] *Ubi lex non distinguit nec nos distinguere debemus*.

But even if We retrace the enactment of the “Bouncing Check Law” to determine the parameters of the concept of “check”, We can easily glean that the members of the then Batasang Pambansa intended it to be comprehensive as to include all checks drawn against banks. This was particularly the ratiocination of Mr. Estelito P. Mendoza, co-sponsor of Cabinet Bill No. 9 which later became B.P. 22, when in response to the interpellation of Mr. Januario T. Seño, Mr. Mendoza explained that the draft or order must be addressed to a bank or depository,[13] and accepted the proposed amendment of Messrs. Antonino P. Roman and Arturo M. Tolentino that the words “draft or order”, and certain terms which technically meant promissory notes, wherever they were found in the text of the bill, should be deleted since the bill was mainly directed against the pernicious practice of issuing checks with insufficient or no funds, and not to drafts which were not drawn against banks.[14]

A memorandum check, upon presentment, is generally accepted by the bank. Hence, it does not matter whether the check issued is in the nature of a memorandum as evidence of indebtedness or whether it was issued in partial fulfillment of a pre-existing obligation, for what the law punishes is the issuance itself of a bouncing check[15] and 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, whether as a deposit, as a guarantee, or even as an evidence of a pre-existing debt, is *malum prohibitum*. [16]

We are not unaware that a memorandum check may carry with it the understanding that it is not to be presented at the bank but will be redeemed by the maker himself when the loan falls due. This understanding may be manifested by writing across the check “Memorandum”, “Memo” or “Mem”. However, with the promulgation of

B.P. 22, such understanding or private arrangement may no longer prevail to exempt it from penal sanction imposed by the law. To require that the agreement surrounding the issuance of checks be first looked into and thereafter exempt such issuance from the punitive provisions of B.P. 22 on the basis of such agreement or understanding would frustrate the very purpose for which the law was enacted - to stem the proliferation of unfunded checks. After having effectively reduced the incidence of worthless checks changing hands, the country will once again experience the limitless circulation of bouncing checks in the guise of memorandum checks if such checks will be considered exempt from the operation of B.P. 22. It is common practice in commercial transactions to require debtors to issue checks on which creditors must rely as guarantee of payment, or as evidence of indebtedness, if not as mode of payment. To determine the reasons for which checks are issued, or the terms and conditions for their issuance, will greatly erode the faith the public reposes in the stability and commercial value of checks as currency substitutes, and bring about havoc in trade and in banking communities.[17]

WHEREFORE, the petition is GRANTED and the Order of respondent Judge of 1 September 1986 is SET ASIDE. Consequently, respondent Judge, or whoever presides over the Regional Trial Court of Manila, Branch 52, is hereby directed forthwith to proceed with the hearing of the case until terminated.

SO ORDERED.

Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon, Melo and Campos, Jr., JJ., concur.
Narvasa, C.J., on leave

[1] In *Lozano v. Martinez*, G.R. No. 63419, 18 December 1986, 146 SCRA 323, We sustained the constitutionality of B.P. 22 as a valid exercise of police power of the state and ruled that it did not conflict with the constitutional prohibition against imprisonment for non-payment of debt.

[2] Information, Rollo, pp. 3-4.

[3] G.R. No. 63419, 18 December 1986; 146 SCRA 323.

[4] *Lobaton v. Cruz*, G.R. Nos. 66839-42; *Datuin v. Paño*, G.R. No. 71654; *Violago v. Paño*, G.R. Nos. 74524-25; *Abad v. Gerochi, Jr.*, G.R. Nos. 75122-49; *Aguiluz VII v. Presiding Judge of Br. 154*, G.R. Nos. 75812-13; *Hojas v. Penaranda*, G.R. Nos. 75765-67; and *People v. Nitafan*, G.R. No. 75789.

[5] 17 Wall 496, 21 L. Ed. 728.

[6] *Franklin Bank v. Freeman*, 16 Pick. 535.

[7] *Cushing v. Gore*, 15 Mass. 69.

[8] *Dykers v. Leather Manufacturers' Bank*, 11 Page 612.

[9] *Franklin Bank v. Freeman*, *supra*.

[10] *Bouvier's Law Dictionary*, Third Rev., Vol. I, St. Paul, Minn., West Publishing Co., 8th Ed., p. 475.

[11] *Black's Law Dictionary*, Fifth Ed., St. Paul, Minn., West Publishing Co., p. 215.

[12] Sec. 1, B.P. 22.

[13] Journal No. 70, December 4, 1978, p. 259, *Batasan Record*, First Regular Session, 1978-1979.

[14] Journal No. 72, December 6, 1978, p. 270, Batasan Record, First Regular Session, 1978-1979.

[15] See *People v. Veridiano II*, G. R. No. 62243, October 12, 1984; 132 SCRA 523.

[16] See *Que v. People*, G. R. Nos. 75217-18, September 21, 1987; 154 SCRA 160.

[17] *Lozano v. Martinez*, *supra*.

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