

**BENITO LIM, PETITIONER, VS. HON. JUDGE RODOLFO D. RODRIGO,
REGIONAL TRIAL COURT, BRANCH VII, FIRST JUDICIAL REGION
(BAGUIO CITY), LA TRINIDAD, BENGUET, SILVESTRE H. BELLO III,
D...**

G.R. No. 76974. November 18, 1988

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

People v. Yabut, L-42902, April 29, 1977, 76 SCRA 624; People v. Hon. Manzanilla, G.R. Nos. 66003-04, December 11, 1987 and People v. Grospe, G.R. Nos. 74053-54, January 20, 1988 are authorities for granting the writ of certiorari being applied for by herein petitioner Benito Lim against the Order dated November 28, 1986 of public respondent Judge Rodolfo D. Rodrigo decreeing the withdrawal of the Information charging private respondent Ko Hu with violation of the Bouncing Check Law.[1]

The antecedents are as follows:

Sometime in 1982, private respondent Ko Hu issued five (5) Unionbank (Divisoria) postdated checks in the aggregate amount of P200,000.00 allegedly in payment of a certain obligation to petitioner Benito Lim. Said checks were handed to petitioner's brother, Vicente Lim, at the private respondent's office at No. 504 Nueva Street, Metro Manila, for delivery to petitioner in Baguio City.

When presented in due course for payment by petitioner at his depositary bank at Baguio City, the checks were dishonored for having been drawn against a closed account.

In view of this development, petitioner lodged before the Baguio City Fiscal's Office an affidavit-complaint against private respondent for violation of B.P. Blg. 22. This led the filing of the Information,[2] subject matter of the instant petition, docketed as Criminal Case No. 2089-R(688) of the Regional Trial Court of Baguio City, Branch VII, presided by public respondent Judge Rodolfo D. Rodrigo.

The filing of the Information in court notwithstanding, private respondent filed with the Fiscal's Office a motion for reconsideration with prayer for the withdrawal of the Information on the ground of improper venue. The reviewing Fiscal, finding the ground invoked by private respondent to be meritorious, recommended the withdrawal of said Information. The corresponding motion was filed in court, which was opposed by petitioner, who likewise filed before the Ministry of Justice a petition for review of the fiscal's recommendation to withdraw the Information in Criminal Case No. 2009-R(688). In both recourse, petitioner failed, the Deputy Minister of Justice having dismissed his petition for review in a Resolution dated October 2, 1986 and the respondent Judge having granted the motion to withdraw the information in an order dated November 28, 1986. Hence, the instant petition.

The sole issue in the petition at bar is: where does the venue lie in this particular prosecution for violation of B.P. Blg. 22?

The parties are not at odds with respect to the applicability of the principles enunciated in the case of *People v. Yabut*, supra, that the venue of the offense lies at the place where the check was executed and delivered to the payee and that the place where a check was written, signed or dated does not necessarily fix the place where it was executed, as what is of decisive importance is the delivery thereof which is the final act essential to its consummation as an obligation. The disagreement springs from the parties' conflicting conclusions as to when and where delivery was effected in the case at bar.

Petitioner contends that delivery was completed in Baguio City as his brother Vicente Lim did not take the checks in question from private respondent as a holder nor as his agent; while the Solicitor General in representation of public respondents considers Vicente Lim as petitioner's agent so as to make the delivery of the checks to him in Manila, delivery likewise to petitioner.

We rule for the petitioner.

In the aforecited case of *People v. Yabut*, supra, this Court stated:

"Modesto Yambao's receipt of the bad checks from Cecilia Que Yabut or Geminiano Yabut, Jr. in Caloocan City cannot, contrary to the holding of the respondent Judges, be licitly taken as delivery of the checks to the complainant Alicia P. Andan at Caloocan City to fix the venue there. He did not take delivery of the checks as holder, i.e., as 'payee' or 'indorsee'. And there appears to be no contract of agency between Yambao and Andan so as to bind the latter for the acts of the former, Alicia P. Andan declared in that sworn testimony before the investigating fiscal that Yambao is but her 'messenger' or 'part-time employee.' There was no special fiduciary relationship that permeated their dealings. For a contract of agency to exist, the consent of both parties is essential, the principal consents that the other party, the agent, shall act on his behalf, and the agent consents so to act. It must exist as a fact. The law makes no presumption thereof. The person alleging it has the burden of proof to show, not only the fact of its existence, but also its nature and extent. This is more imperative when it is considered that the transaction dealt with involves checks, which are not legal tender, and the creditor may validly refuse the same as payment of obligation." (at p. 630)

These observations and conclusions apply with full force and effect to the almost identical set of facts obtaining in the case at bar. The "delivery" contemplated by law "must be to a person who takes it (the bad check) as a holder, which means 'the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof'".[3] Petitioner's brother, Vicente Lim, cannot be said to have taken the bad checks in question in the concept of a holder for he is neither the payee or indorsee thereof. Neither could he be deemed the agent of petitioner with respect thereto, for he was purposely sent to private respondent to get certain stock certificates and not the checks in dispute. Thus, as declared by Lim in his affidavit:[4]

"5. That at one time when I was asked again by my brother to purchase some of the vinyl portable closets, he asked me to get from Mr. Ko Hu certain stock certificates which the latter is supposed to deliver to my brother;

"6. That instead of stock certificates, I was given several post-dated checks by Mr. Ko Hu to be delivered to my brother. In exchange of the post dated checks, I surrendered to Mr. Ko Hu a temporary receipt by him for the sum of P200,000.00;

"7. That my brother was surprised to find out that I got several post-dated checks instead of stock certificates he was expecting;

"x x x x x x x x "

The instructions given by petitioner to his brother relating specifically to stock certificates, Vicente Lim was constituted agent of petitioner, if at all, only with respect to said stock certificates. Such agency, assuming it existed, cannot be presumed to extend to the bad checks, for as earlier stated, "the transaction dealt with involves

checks, which are not legal tender, and the creditor may validly refuse the same as payment of obligation." [5] More so, as petitioner did not even expect the checks in question.

Upon these considerations, we rule that Vicente Lim, like Modesto Yambao in the Yabut case, is a mere messenger or conduit. Delivery to him cannot be considered as delivery to petitioner. Delivery was therefore effected to petitioner in Baguio City as to likewise fix the venue therein; aside from Manila where the checks were executed and subsequently dishonored.

Besides, it was held in *People v. Hon. Manzanilla*, supra, that as "violation of the bad checks act is committed when one 'makes or draws and issues any checks to apply on account or for value, knowing at the time of issue that he does not have sufficient funds' or 'having sufficient funds in or credit with the drawee bank x x x 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,'" "knowledge" is an essential ingredient of the offense charged. As defined by the statute, knowledge, is, by itself, a continuing eventuality, whether the accused be within one territory or another. This being the case, the Regional Trial court of Baguio City has jurisdiction to try Criminal Case No. 2089-R(688).

Moreover, we ruled in the same case of *People v. Hon. Manzanilla*, reiterated in *People v. Grospe*, supra, that jurisdiction or venue is determined by the allegations in the information. The allegation in the information under consideration that the offense was committed in Baguio City is therefore controlling and sufficient to vest jurisdiction upon the Regional Trial Court of Baguio City.

WHEREFORE, the instant petition is hereby GRANTED. The Order dated November 28, 1968 in Criminal Case No. 2089-R(688) of the Regional Trial Court of Baguio City, Branch VII, is set aside and the Information in said case is reinstated. The Trial Court is directed to proceed with the case without further delay.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Batas Pambansa Blg. 22

[2] Annex "A", Petition, pp. 12-13, Rollo

[3] *People v. Yabut*, supra, *People v. Grospe*, supra

[4] Annex "F", Petition, p. 31, Rollo

[5] *People v. Yabut*, supra

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