

RICARDO A. LLAMADO, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 99032. March 26, 1997

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

Before us is a petition to review the decision[1] of the Court of Appeals which affirmed the decision of the Regional Trial Court of Manila in Criminal Case No. 85-38653 convicting petitioner of Violation of Batas Pambansa Blg. 22, otherwise known as the Bouncing Checks Law, and sentencing him to suffer imprisonment of one (1) year of prision correccional and to pay a fine of P200,000.00 with subsidiary imprisonment in case of insolvency, and to reimburse Leon Gaw the amount of P186,500.00 plus the costs of suit.

The facts of the case, as found by the Court of Appeals, are as follows:

“Accused-appellant, Ricardo Llamado, together with Jacinto Pascual, was charged with violation of Batas Pambansa Blg. 22 and pleaded “not guilty” of the crime charged.

“Accused Jacinto Pascual remained at large. Thus trial on the merits was conducted against accused-appellant, Ricardo Llamado, only.

“Accused Ricardo Llamado and his co-accused Jacinto Pascual were the Treasurer and President, respectively, of the Pan Asia Finance Corporation.

“As found by the trial court, private complainant, Leon Gaw, delivered to accused the amount of P180,000.00, with the assurance of Aida Tan, the secretary of the accused in the corporation, that it will be repaid on 4 November 1983, plus interests thereon at 12% plus a share in the profits of the corporation, if any.

“Upon delivery of the money, accused Ricardo Llamado took it and placed it inside a deposit box. Accused Jacinto Pascual and Ricardo Llamado signed Philippine Trust Company Check No. 047809, postdated 4 November 1983, in the amount of P186,500.00 in the presence of private complainant.

“The aforesaid check was issued in payment of the cash money delivered to the accused by private complainant, plus interests thereon for sixty (60) days in the amount of P6,500.00.

“On 4 November 1983, private complainant deposited the check in his current account with the Equitable Banking Corporation which later informed the complainant that said check was dishonored by the drawee bank because payment was stopped, and that the check was drawn against insufficient funds. Private complainant was also notified by the Equitable Banking Corporation that his current account was debited for the amount of P186,500.00 because of the dishonor of the said check.

“Private complainant returned to Aida Tan to inform her of the dishonor of the check. Aida Tan received the check from private complainant with the assurance that she will have said check changed with cash. However, upon his return to Aida Tan, the latter informed him that she had nothing to do with the check.

“Thereupon, private complainant went to accused Ricardo Llamado on 11 November 1983 to inform him of

the dishonor of the check. Accused offered in writing to pay private complainant a portion of the amount equivalent to 10% thereof on 14 or 15 November 1983, and the balance to be rolled over for a period of ninety (90) days. This offer was accepted by private complainant.

“Accused, however, failed to remit to private complainant the aforesaid 10% on or before 15 November 1983 and to roll over the balance of the money.

“Private complainant then demanded from the accused the payment of P186,500.00 but accused failed to pay and instead, accused offered to return to private complainant only 30% of his money which was refused by the latter. Thus, the filing of the complaint for violation of Batas Pambansa No. 22 against the accused.”[2]

On the other hand, petitioner’s version of the relevant facts, is as follows:

“It was the practice in the corporation for petitioner to sign blank checks and leave them with Pascual so that Pascual could make disbursements and enter into transactions even in the absence of petitioner.

“One of the checks which petitioner signed in blank and gave to Pascual is the check in question, Exhibit “A.”

“The check was later issued to private complainant, filled up with the amount P186,500.00 and date November 4, 1983.

“The check was dishonored on November 7, 1983 when private complainant presented it for payment because its payment had been stopped (Exhibits A-6 and A-7). However, there were also no sufficient funds in the account to cover the amount of the check.

“Private complainant went to see Aida Tan, the ‘Secretary’ of Pan-Asia Finance Corporation, about the dishonor of the check because ‘she was the one who handled [sic] the check and gave it to me.’ He returned the check to Aida Tan who gave him a receipt for it (Exhibit C), and promised ‘to return the cash money.’ However, she did not do so. Instead, she returned the check to private complainant (pp. 9-11, tsn, January 6, 1986; p. 9, tsn, January 6, 1986).

“On November 11, 1983, private complainant entered into an agreement (Exhibit H) with petitioner whereby Pan-Asia Finance Corporation would pay private complainant 10% of the P186,500.00 by November 14, or 15, and the balance will be rolled over for 90 days (pp. 1-4, tsn, June 30, 1986). Private respondent was not however paid as agreed upon.

“In late 1985, petitioner was charged with violation of BP 22 under the following Information: xxx”[3]

After trial on the merits, the trial court rendered judgment convicting the accused of violation of Batas Pambansa No. 22, the dispositive portion of which reads:

“WHEREFORE, judgment is hereby rendered finding the Accused Ricardo A. Llamado guilty of Violation of Batas Pambansa No. 22 and hereby sentences him to suffer imprisonment for a period of one (1) year of prison correccional and to pay a fine of P200,000.00, with subsidiary imprisonment in case of insolvency. The Accused is likewise condemned to reimburse Leon Gaw the aforesaid amount of P186,500.00 plus the costs of suit.

SO ORDERED.”

On appeal, the Court of Appeals affirmed the trial court’s decision.

In this petition, petitioner alleges that:

1. respondent Court of Appeals erred because it convicted petitioner of the charge of violation of Batas Pambansa Blg. 22 although the check was only a contingent payment for investment which had not been proven to be successful, thus the check was not issued “to apply on account or for value” within the

contemplation of the batas;

2. respondent Court of Appeals erred because it convicted petitioner of the charge for merely signing the check in question without being actually involved in the transaction for which the check was issued, in disregard of the pronouncement of this Court in *Dingle vs. IAC*, 148 SCRA 595;

3. respondent Court of Appeals erred because it refused to apply the “novation theory” recognized by this Court in *Ong v. Court of Appeals*, 124 SCRA 578, and *Guingona, Jr. v. City Fiscal of Manila*, 128 SCRA 577, despite admission by private complainant that before the charge was filed in court or even the prosecutor he had entered into a new agreement with petitioner supplanting the check in question;

4. respondent Court of Appeals erred because it held petitioner personally liable for the amount of the check in question, although it was a check of the Pan Asia Finance Corporation and he signed the same in his capacity as Treasurer of the corporation.

The petition is without merit.

For clarity, petitioner’s second allegation shall be discussed first. Petitioner argues that respondent court erred in disregarding the pronouncement in *Dingle vs. IAC*,^[4] that “absent knowledge by the maker or drawer of the issuance of a check much less of the transaction and the fact of dishonor, the accused should be acquitted.”

The respondent court did not err. In *Dingle vs. IAC*, the petitioner was acquitted because: 1.) from the testimony of the sole prosecution witness, it was established that he dealt exclusively with petitioner’s co-signatory; 2.) nowhere in the prosecution witness’ testimony was the name of petitioner ever mentioned in connection with the transaction and the issuance of the check; and, 3.) the prosecution witness therein categorically stated that it was Nestor Dingle, petitioner’s co-signatory who received his two letters of demand. These lent credence to the testimony of petitioner that she signed the questioned checks in blank together with her husband without any knowledge of its issuance, much less of the transaction and the fact of dishonor. Moreover, while Paz Dingle and her husband Nestor Dingle owned the business, the business was managed by Nestor, petitioner Paz’s co-signatory.

The above circumstances in *Dingle vs. IAC* do not obtain in the case at bar. Here, the private complainant testified that upon delivery of the money, petitioner took it and placed it inside a deposit box; that Jacinto Pascual and petitioner Ricardo Llamado signed the questioned check, postdated November 4, 1983, in the amount of P186,500.00 in the presence of private complainant; notice of the fact of dishonor of the check was made on petitioner, who offered in writing^[5] to pay private complainant a portion of the amount equivalent to 10% thereof on 14 or 15 November 1983, and the balance to be rolled over for a period of 90 days.

Petitioner denies knowledge of the issuance of the check without sufficient funds and involvement in the transaction with private complainant. However, knowledge involves a state of mind difficult to establish. Thus, the statute itself creates a prima facie presumption, i.e., that the drawer had knowledge of the insufficiency of his funds in or credit with the bank at the time of the issuance and on the check’s presentment for payment.^[6] Petitioner failed to rebut the presumption by paying the amount of the check within five (5) banking days from notice of the dishonor.^[7] His claim that he signed the check in blank which allegedly is common business practice, is hardly a defense. If as he claims, he signed the check in blank, he made himself prone to being charged with violation of BP 22. It became incumbent upon him to prove his defenses. As Treasurer of the corporation who signed the check in his capacity as an officer of the corporation, lack of involvement in the negotiation for the transaction is not a defense.

Petitioner alleges that the respondent court erred when it convicted petitioner of violation of BP 22 when the check was only a contingent payment for investment which had not been proven to be successful, thus the check

was not issued “to apply on account or for value” within the contemplation of the *batas*. This contention is untenable.

The check was issued for an actual valuable consideration of P180,000.00, which private complainant handed to Aida Tan, a secretary in petitioner’s office. In fact, petitioner admits that private complainant made an investment in said amount with Pan-Asia Finance Corporation. Petitioner contends that the money which private complainant gave the corporation was intended for investment which they agreed will be returned to private complainant with interests, only if the project became successful. But then, if this were true, the check need not have been issued because a receipt and their written agreement would have sufficed.

True, 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 a mode of payment. But to determine the reason 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.[8] So, what the law punishes is the issuance of a bouncing check 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 is *malum prohibitum*. [9]

With regard to petitioner’s third allegation, the “novation theory” recognized by this Court in certain cases, does not apply in the case at bar. While private complainant agreed to petitioner’s offer to pay him 10% of the amount of the check on November 14 or 15, 1983 and the balance to be rolled over for 90 days, this turned out to be only an empty promise which effectively delayed private complainant’s filing of a case for Violation of BP 22 against petitioner and his co-accused. As admitted by petitioner in his Memorandum, private complainant was never paid as agreed upon.

Petitioner’s argument that he should not be held personally liable for the amount of the check because it was a check of the Pan Asia Finance Corporation and he signed the same in his capacity as Treasurer of the corporation, is also untenable. The third paragraph of Section 1 of BP Blg. 22 states:

“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.”

IN VIEW WHEREOF, the petition is hereby DENIED and the decision of respondent court AFFIRMED in toto. SO ORDERED.

Regalado, (Chairman), Romero, Puno, and Mendoza, JJ., concur.

[1] Penned by Justice Fernando A. Santiago, concurred in by Justices Rodolfo A. Nocon and Pedro A. Ramirez.

[2] Court of Appeals Decision, pp. 1-2; Rollo, pp. 26-27.

[3] Memorandum for petitioner, pp. 5-6; Rollo, pp. 141-142.

[4] March 16, 1987, L-75243, 148 SCRA 595.

[5] Exh. “H”, Original Record, p. 29.

[6] *Lozano vs. Martinez, et al.*, December 18, 1986, L-63419, 146 SCRA 323; *Significant Issues Involving the Bouncing Check Law*, 156 SCRA 349.

[7] *Ibid.*

[8] People vs. Nitafan, etc., et al., October 22, 1992, G.R. No. 75954, 215 SCRA 79; Notes and Comments on the Bouncing Checks Law, by Judge David Nitafan.

[9] Cruz vs. Court of Appeals, June 17, 1994, G.R. No. 108738, 233 SCRA 301.

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