

PETER NIERRAS, PETITIONER, VS. HON. AUXENCIO C. DACUYCUIY AND HON. ANTONIO S. LOPEZ, IN THEIR CAPACITY AS PRESIDING JUDGE, BRANCH IV, COURT OF FIRST INSTANCE OF LEYTE, PALO, LEYT...*G.R. Nos. 59568-76. January 11, 1990*

Ponente: PARAS, J.

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Before Us is a petition for certiorari with preliminary injunction for the annulment of the resolution dated September 17, 1981 of the respondent Judge Auxencio C. Dacuycuiy in nine (9) criminal cases, entitled "People of the Philippines v. Peter Nierras" docketed as Criminal Cases Nos. 4379, 4380, 4381, 4382, 4383, 4384, 4385, 4386 and 4387, for estafa under Article 315 (2-d) of the Revised Penal Code which denied petitioner's motion to quash. Said motion to quash was filed by petitioner on the ground of double jeopardy as these offenses were already included in Criminal Cases Nos. 3790, 3791, 3792, 3793, 4085, 4122, 4123, 4124, and 4125, entitled "People of the Philippines v. Peter Nierras", for violation of the Bouncing Checks Law or Batas Pambansa Blg. 22, pending before the lower court. In both sets of criminal cases, petitioner entered a plea of not guilty upon arraignment before the lower court. However, immediately after his plea of not guilty in these estafa cases, petitioner moved in open court to be allowed to withdraw his plea of not guilty upon his filing of a motion to quash, which was denied by respondent Judge ruling as follows:

"The motion to quash should be and is hereby denied. Accused Peter Nierras allegedly issued the checks in favor of complainant Pilipinas Shell Petroleum Corporation in payment of oil products which the latter delivered to him simultaneously with the issuance of the checks.

"xxx xxx xxx

"x x x The crime of estafa committed by means of bouncing checks is not committed by mere issuance of a check. Under Art. 315, par. 2 (d) of the Revised Penal Code, as amended by Republic Act 4885, the following are the elements of estafa: (1) the postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack of or insufficiency of funds to cover the check; and (3) damage to the payee thereof (People v. Sabio, 86 SCRA 568). Under Batas Pambansa Bilang 22 (1979) the mere issuance of a check without sufficient funds issued in payment of a simultaneous obligation and the check was dishonored upon presentation for that estafa is committed under the Revised Penal Code. At the same time the drawer will also be liable under Batas Pambansa Bilang 22 for offense of issuing a check without sufficient funds" (pp. 1-2, Resolution On Motion To Quash dated September 17, 1981; Annex 'MM', Petition). (p. 100, Rollo)

The issue now submitted for Our consideration is whether the filing of the nine (9) other informations for estafa against petitioner under the Revised Penal Code after he had earlier been charged with violation of Batas Pambansa Blg. 22 for issuing the same bouncing checks will put him in jeopardy of being convicted twice for the same offenses. In other words, can petitioner be held liable for the nine criminal cases for violation of Batas Pambansa Blg. 22, and separately also be held liable for the crime of estafa under Article 315 (2-d) of the Revised

Penal Code for the issuance of the same bouncing checks?

It appears that petitioner, a customer of Pilipinas Shell Petroleum Corporation, purchased oil products from it. Simultaneous with the delivery of the products, he issued nine (9) checks in payment thereof. Upon presentation to the Philippine National Bank at Naval, Leyte, said checks were dishonored for the reason that his account was already closed. Thereafter, Pilipinas Shell Petroleum Corporation repeatedly demanded of petitioner either to deposit funds for his checks or pay for the oil products he had purchased but he failed and refused to do either.

Petitioner argues that he would be placed in double jeopardy as all the elements of estafa under Article 315 (2-d) of the Revised Penal Code are also present in that crime punishable under Batas Pambansa Bilang 22 namely (1) "the postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack or insufficiency of funds to cover the check and (3) damage to the payee thereof."

Petitioner's contentions are devoid of merit.

Petitioner is charged with two (2) distinct and separate offenses, first under Section 1 of Batas Pambansa Bilang 22 approved on April 3, 1979 which provides that:

"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 in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed TWO HUNDRED THOUSAND PESOS or both such fine and imprisonment at the discretion of the court."

and, second, under Article 315, (2-d) of the Revised Penal Code which states as follows:

"Art. 315. Swindling (estafa). Any person who shall defraud another by any of the means mentioned hereinbelow x x x

"xxx xxx xxx

"2. By means of any of the following false pretenses or fraudulent acts, executed prior to or simultaneously with the commission of the fraud;

"xxx xxx xxx

"(d) By postdating a check or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check."

What petitioner failed to mention in his argument is the fact that deceit and damage are essential elements in Article 315 (2-d) Revised Penal Code, but are not required in Batas Pambansa Bilang 22. Under the latter law, mere issuance of a check that is dishonored gives rise to the presumption of knowledge on the part of the drawer that he issue same without sufficient funds and hence punishable (*People v. Veridiano*, 132 SCRA 523) which is not so under the Penal Code. Other differences between the two also include the following: (1) a drawer of a dishonored check may be convicted under Batas Pambansa Bilang 22 even if he had issued the same for a pre-existing obligation, while under Article 315 (2-d) of the Revised Penal Code, such circumstance negates criminal liability; (2) specific and different penalties are imposed in each of the two offenses; (3) estafa is essentially a crime against property, while violation of Batas Pambansa Bilang 22 is principally a crime against public interest as it does injury to the entire banking system; (4) violations of Article 315 of the Revised Penal Code are mala in se, while those of Batas Pambansa Bilang 22 are mala prohibita.

These differences are better understood by presenting the pertinent discussions on the passage of Batas Pambansa Bilang 22 between the author of the bill, former Solicitor General and Member of the Batasang Pambansa, the Honorable Estelito P. Mendoza, presented in the memorandum for the government, as follows:

"MR. MENDOZA. If there is evidence demonstrating that the act committed does not only violate this proposed Act but also the Revised Penal Code, there will be further prosecution under the Revised Penal Code. That is why it is proposed in this Act that there be a single uniform penalty for all violations in this Act. However the court is given the discretion whether to impose imprisonment or fine or both or also in whatever severity the court may consider appropriate under the circumstances.

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"MR. VELOSO, F. The other way around, it is not so. So precisely, if I file a case for estafa against a particular person for issuance of a bouncing check, then necessarily I can also be prosecuted under this proposed bill. On the other hand, if a person is prosecuted under the proposed bill, it does not necessarily follow that he can be prosecuted for estafa.

"MR. MENDOZA. This is simply because that in a certain set of circumstances, the offense under this Act is the only offense committed while under a different set of circumstances, not only the offense described in this Act is committed but also estafa. So that, for example, if a check with sufficient funds is issued in payment of a pre-existing obligation and the position of the Government should turn out to be correct that there is no estafa, then the drawer of the check would only be liable under this Act but not under the Revised Penal Code. But if he issues a check in payment, or contemporaneously with incurring, of an obligation, then he will be liable not only for estafa but also for violation for this Act. There is a difference between the two cases. In that situation where the check was issued in payment of a pre-existing obligation, the issuance of the check does not cause damage to the payee and so it is but appropriate that he should not be Held for estafa but only for violating this Act. But if he issued a check to induce another to part with a valuable consideration and the check bounces, then he does inflict an injury to the payee of the check apart from violating this law. In that case, it should be but fair that he be subject to prosecution not only for estafa but also for violating this law.

"MR. VELOSO, F. Yes, I agree with the Solicitor General an that point but my worry is with respect to situations where there is prosecution first to estafa.

"MR. MENDOZA. Well, if there is estafa

"MR. VELOSO, F. Estafa committed by the issuance of a bouncing check, in which case it will be mandatory on the part of the prosecuting official to also file a case for violation of this offense under the proposed bill.

"MR. MENDOZA. Yes, that is correct. In such a situation because of the offender did not only cause injury on account of the issuance of the check but did issue a bouncing check penalized under this Act, then he will be liable for prosecution under both laws. I would admit that perhaps in such situation, the penalty may be somewhat severe. As a matter of fact, in other jurisdictions, the issuance of bouncing checks is penalized with substantially lower penalty. However, because of the situation in the Philippines, the situation being now relatively grave that practically everybody is complaining about bouncing checks, may be it is necessary at least initially, at this point in time for us to impose a rather severe penalty and even allow liability not only under this Act but also for estafa. Then perhaps after the necessary discipline has been inculcated in our people and that the incidence of the offense has been reduced, we may then decide to amend the law and reduce the penalty. But at this time, shall we say the evil is of such magnitude that only a dramatic and expeditious effort to prosecute persons who issue bouncing checks maybe necessary to curb quickly this evil." (explanations given by Solicitor General ESTELITO P. MENDOZA at the Batasan Pambansa during his sponsorship speech of BP 22 which he authored, pages 1037-1038, Record of the Batasan, Plenary Session No. 70, Dec. 4, 1978). (Italics supplied)." (pp. 115-117, Rollo or pp. 9-11, Memorandum for respondents).

Furthermore, Section 5 of Batas Pambansa Bilang 22 provides that:

"Prosecution under this Act shall be without prejudice to any liability for violation of any provision of the Revised Penal Code."

While the filing of the two sets of Information under the provisions of Batas Pambansa Bilang 22 and under the provisions of the Revised Penal Code, as amended, on estafa, may refer to identical acts committed by petitioner, the prosecution thereof cannot be limited to one offense, because a single criminal act may give rise to a multiplicity of offenses and where there is variance or differences between the elements of an offense in one law and another law as in the case at bar there will be no double jeopardy because what the rule on double jeopardy prohibits refers to identity of elements in the two (2) offenses. Otherwise stated prosecution for the same act is not prohibited. What is forbidden is prosecution for the same offense. Hence, the mere filing of the two (2) sets of informations does not itself give rise to double jeopardy (*People v. Miraflores*, 115 SCRA 570).

In the instant petition, certiorari is not the proper remedy. We have held in *Acharon v. Purisima, et al.* (13 SCRA 309) that "when a motion to quash a criminal case is denied, remedy is not certiorari but to go to court without prejudice to reiterating special defenses invoked in the motion, and if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law", invoking the rule laid down in *People v. Magdaluyo* (1 SCRA 990). If the petitioner cannot appeal at this stage of the proceeding, it is because there is still a necessity for the trial on the merits wherein the parties may present proofs in support of their contentions and not because the remedy of appeal is unavailing.

WHEREFORE, premises considered, the petition for certiorari is hereby DISMISSED for lack of merit.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., no part, formerly counsel for Pilipinas Shell Petroleum Corporation, Cebu Office.

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