

**PEOPLE OF THE PHILIPPINES AND SAN MIGUEL CORPORATION,
PETITIONERS, VS. NATHANIEL M. GROSPE, PRESIDING JUDGE,
BRANCH 44, REGIONAL TRIAL COURT OF PAMPANGA AND MANUEL
PARULAN, RESP...**

G.R. Nos. 74053-54. January 20, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A special civil action for Certiorari seeking to set aside the Decision of respondent Presiding Judge of Branch 44, Regional Trial Court of Pampanga, dismissing Criminal Case No. 2800 for Violation of B.P. Blg. 22, and Criminal Case No. 2813 for Estafa, for being “bereft of jurisdiction to pass judgment on the accused on the basis of the merits of these cases.”

Respondent-accused, Manuel Parulan, is an authorized wholesale dealer of petitioner San Miguel Corporation (SMC, for short) in Bulacan.

In Criminal Case No. 2800 of the Regional Trial Court of Pampanga, he was charged with Violation of the Bouncing Checks Law (B.P. Blg. 22) for having issued a check on 13 June 1983 for P86,071.20) in favor of SMC but which was dishonored for having been drawn against “insufficient funds” and, in spite of repeated demands, for having failed and refused to make good said check to the damage and prejudice of SMC.

In Criminal Case No. 2813 of the same Court, Respondent- accused was charged with Estafa under Article 315, paragraph 2(d) of the Revised Penal Code for having made out a check on 18 June 1983 in the sum of P11,918.80 in favor of SMC in payment of beer he had purchased, but which check was refused payment for “insufficient funds” and, in spite of repeated demands, for having failed and refused to redeem said check to the damage and prejudice of SMC.

The two cases were tried jointly, the witnesses for both prosecution and defense being the same for the two suits.

Based on the facts and the evidence, Respondent Judge arrived at the following “Findings and Resolution”:

“From the welter of evidence adduced in these two cases, this Court is convinced that the two checks involved herein were issued and signed by the accused in connection with the beer purchases made by him on various occasions at the Guiguinto sales office of SMC at Guiguinto, Bulacan and which checks he handed and delivered to the sales Supervisor of SMC, Mr. Ruben Cornelio, who holds office in that municipality. The Court finds it rather difficult to believe the claim and testimony of the accused that these checks which he admittedly signed and which he delivered to Mr. Cornelio in blank were filled up without his knowledge particularly the amounts appearing therein which in the case of the check involved in Criminal Case No. 2800 amounted to P86,071.20, and, in the case of the checks involved in Criminal Case No. 2813, amounted to P11,918.80. The accused had been engaged in business for some time involving amounts that are quite considerable, and it is hard to believe that he will agree to this kind of arrangement which placed or exposed him to too much risks and uncertainties.

But even as this Court is convinced that the accused had issued these checks to the representative of SMC on the occasions testified to in these cases by the witnesses for the prosecution which two checks were subsequently dishonored due to lack of funds resulting in damage to SMC, the offended party herein, this Court, after considering the totality of the evidence and the circumstances that attended the issuance of these two checks until they were both dishonored by the drawee bank, the Planters Development Bank, at Santa Maria, Bulacan, has come to the conclusion that it is bereft of jurisdiction to pass judgment on the accused on the basis of the merits of these cases.”

which he reasoned out, thus:

“Deceit and damage are the two essential elements that make up the offenses involving dishonored checks. And in order that this Court may have jurisdiction to try these cases, it must be established that both or any one of these elements composing the offenses charged must occur or take place within the area over which this Court has territorial jurisdiction,. Here, however, it is clear that none of these elements took place or occurred within the jurisdiction at area of this Court.

As gleaned from the evidence, the two checks involved herein were issued by the accused at Guiguinto, Bulacan. They were delivered and handed to Supervisor Ruben Cornelio of San Miguel Corporation in his capacity as the representative of the company holding office in that municipality where the transactions of the accused with SMC took place. It was before Supervisor Cornelio at Guiguinto, Bulacan that false assurances were made by the accused that the checks issued by him were good and backed by sufficient funds in his bank, the Planters Development Bank, at Santa Maria, Bulacan, only to turn out later on that this was not so.

The other element of damage pertaining to the offenses charged in these cases was inflicted on the offended party, the SMC, right at the moment the checks issued by the accused were dishonored by the Planters Development Bank, the drawee bank, at Santa Maria, Bulacan which received them from the BPI, San Fernando, Pampanga branch for clearing purposes. The argument advanced by the prosecution in its memorandum filed herein that the two checks were deposited by SMC at the BPI, San Fernando Branch, San Fernando, Pampanga, where it maintained its accounts after receiving these checks from its Guiguinto Sales Office which bank later on made the corresponding deductions from the account of SMC in the amounts covered by the dishonored checks upon receiving information that the checks so issued by the accused had been dishonored by the drawee bank at Santa Maria, Bulacan, is inconsequential. As earlier stated, the element of damage was inflicted on the offended party herein right at the moment and at the place where the checks issued in its favor were dishonored which is in Santa Maria, Bulacan.”

Respondent Judge then decreed:

“WHEREFORE, and in view of all the foregoing, judgment is hereby rendered dismissing these cases for lack of jurisdiction,

“The bail bond posted by the accused in these cases are ordered cancelled.”

This Petition for Certiorari challenges the dismissal of the two criminal cases on the ground that they were issued with grave abuse of discretion amounting to lack of jurisdiction.

Respondent-accused adopts the contrary proposition and argues that the order of dismissal was, in effect, an acquittal not reviewable by certiorari, and that to set the order aside after plea and trial on the merits, would subject Respondent-accused to double jeopardy.

Upon the attendant facts and circumstances, we uphold the Petition.

The principal ground relied upon by Respondent Judge in dismissing the criminal cases is that deceit and damage, the two essential elements that make up the offenses involving dishonored checks, did not occur within the

territorial jurisdiction of his Court in Pampanga, but rather in Bulacan where false assurances were given by Respondent-accused and where the checks he had issued were dishonored. The People maintain, on the other hand, that jurisdiction is properly vested in the Regional Trial Court of Pampanga.

At the outset, it should be pointed out, as the Solicitor General has aptly called attention to, that there are two dishonored checks involved, each the subject of different penal laws and with different basic elements: (1) On June 13, 1983, Respondent-accused issued Planters Development Bank (Santa Maria, Bulacan Branch) [PDB] Check No. 5 9040865 in the sum of P86,071.20 in favor of SMC, which was received by the SMC Supervisor at Guiguinto, Bulacan. The check was forwarded to the SMC Regional Office at San Fernando, Pampanga, where it was delivered to and received by the SMC Finance Officer, who then deposited the check with the Bank of the Philippine Islands (BPI), San Fernando Branch, which is the SMC depository bank. On July 8, 1983, the SMC depository bank received a notice of dishonor of the said check for “insufficiency of funds” from the PDB, the drawee bank in Santa Maria, Bulacan. This dishonored check is the subject of the charge of Violation of the Bouncing Checks Law (BP Big. 22) in Criminal Case No. 2800 of the lower Court (hereafter, the Bouncing Checks Case).

(2) On June 18, 1983, Respondent-accused likewise issued PDB Check No. 19040872 in the amount of P11,918.80 in favor of SMC, which was received also by the SMC Supervisor at Guiguinto, Bulacan, as direct payment for the spot sale of beer. That check was similarly forwarded by the SMC Supervisor to the SMC Regional Office in San Fernando, Pampanga, where it was delivered to the Finance Officer thereat and who, in turn, deposited the check with the SMC depository bank in San Fernando, Pampanga. On July 8, 1983, the SMC depository bank received a notice of dishonor for “insufficiency of funds” from the drawee bank, the PDB, in Santa Maria, Bulacan. This dishonored check is the subject of the prosecution for Estafa by postdating or issuing a bad check under Article 315, paragraph 2(d) of the Revised Penal Code in Criminal Case No. 2813 of the lower Court (briefly, the Estafa Case).

In the crime of Estafa by postdating or issuing a bad check, deceit and damage are essential elements of the offense (*U.S. vs. Rivera*, 23 Phil. 383-390) and have to be established with satisfactory proof to warrant conviction.

For Violation of the Bouncing Checks Law, on the other hand, the elements of deceit and damage are not essential nor required. An essential element of that offense is knowledge on the part of the maker or drawer of the check of the insufficiency of his funds (*Lozano vs. Hon. Martinez*, No. 63419, etc., December 18, 1986; 146 SCRA 323; *Dingle vs. 1AC*, G.R. No. 75243, March 16, 1987, 148 SCRA 595). The Anti-Bouncing Checks Law makes the mere act of issuing a worthless check a special offense punishable thereunder (*Cruz vs. IAC*, No. 66327, May 28, 1984, 129 SCRA 490. Malice and intent in issuing the worthless check are immaterial, the offense being *malum prohibitum* (*Que vs. People of the Philippines, et al.*, G.R. Nos. 75217-18, September 21, 1987). The gravamen of the offense is the issuance of a check, not the non-payment of an obligation (*Lozano vs. Hon. Martinez*, *supra*).

A. With the distinction clarified, the threshold question is whether or not venue was sufficiently conferred in the Regional Trial Court of Pampanga in the two cases.

Section 14 (a) of Rule 110 of the Revised Rules of Court, which has been carried over in Section 15(a) of Rule 110 of the 1985 Rules of Criminal Procedure, specifically provides:

“SEC. 14. Place where action is to be instituted. —

(a) In all criminal prosecutions the action shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place.”

In other words, a person charged with a transitory crime may be validly tried in any municipality or province where the offense was in part committed. In transitory or continuing offenses in which some acts material and essential to the crime and requisite to its consummation occur in one province and some in another, the Court of either province has jurisdiction to try the case, it being understood that the first Court taking cognizance of the case will exclude the others (*Tuzon vs. Cruz*, No. L-27410, August 28, 1975, 66 SCRA 235). However, if all the acts material and essential to the crime and requisite of its consummation occurred in one municipality or territory, the Court of that municipality or territory has the sole jurisdiction to try the case (*People vs. Yabut*, L-42902, April 29, 1977, 76 SCRA 624).

Estafa by postdating or issuing a bad check may be a transitory or continuing offense. Its basic elements of deceit and damage may arise independently in separate places (*People vs. Yabut*, *supra*). In this case, deceit took place in San Fernando, Pampanga, while the damage was inflicted in Bulacan where the check was dishonored by the drawee bank in that place (See *People vs. Yabut*, *supra*). Jurisdiction may, therefore, be entertained by either the Bulacan Court or the Pampanga Court.

For while the subject check was issued in Guiguinto, Bulacan, it was not completely drawn thereat, but in San Fernando, Pampanga, where it was uttered and delivered. "What is of decisive importance is the delivery thereof. The delivery of the instrument is the final act essential to its consummation as an obligation." (*People vs. Larue*, 83 P. 2d 725, cited in *People vs. Yabut*, *supra*). For although the check was received by the SMC Sales Supervisor at Guiguinto, Bulacan, that was not the delivery in contemplation of law to the payee, SMC. Said supervisor was not the person who could take the check as a holder, that is, as a payee or indorsee thereof, with the intent to transfer title thereto. The rule is that the issuance as well as the delivery of the check must be to a person who takes it as a holder; which means "the payee or indorsee of a bill or note, who is in possession of it, or the bearer, thereof (Sec. 190, Negotiable Instruments Law, cited in *People vs. Yabut*, *supra*.) Thus, said representative had to forward the check to the SMC Regional Office in San Fernando, Pampanga, which was delivered to the Finance Officer thereat who, in turn, deposited it at the SMC depository bank in San Fernando, Pampanga. The element of deceit, therefore, took place in San Fernando, Pampanga, where the rubber check was legally issued and delivered so that jurisdiction could properly be laid upon the Court in that locality.

"The estafa charged in the two informations involved in the case before Us appears to be transitory or continuing in nature. Deceit has taken place in Malolos, Bulacan, while the damage in Caloocan City, where the checks were dishonored by the drawee banks there. Jurisdiction can, therefore, be entertained by either the Malolos court or the Caloocan court. While the subject checks were written, signed, or dated in Caloocan City, they were not completely made or drawn there, but in Malolos, Bulacan, where they were uttered and delivered. That is the place of business and residence of the payee. The place where the bills were written, signed or dated does not necessarily fix or determine the place where they were executed. What is of decisive importance is the delivery thereof. The delivery of the instrument is the final act essential to its consummation as an obligation (*People vs. Larue*, 83 P. 2d 725). An undelivered bill or note is inoperative. Until delivery, the contract is revocable (*Ogden, Negotiable Instruments*, 5th ed., at 107). And the issuance as well as the delivery of the check must be to a person who takes it as a holder, which means '(t)he payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof (Sec. 190, Negotiable Instruments Law). Delivery of the check signifies transfer of possession, whether actual or constructive, from one person to another with intent to transfer title thereto (*Bailey, Brady on Bank Checks*, 3rd ed. at 57-59; Sec. 190, Negotiable Instruments Law). Thus, the penalizing clause of the provision of Art. 315, par. 2(d) states: '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,' Clearly, therefore, the element of deceit thru the issuance and delivery, of the worthless checks to the complainant took place in Malolos, Bulacan, conferring upon a court in that locality jurisdiction to try the case."

In respect of the Bouncing Checks Case, the offense also appears to be continuing in nature, it is true that the offense is committed by the very fact of its performance (*Colmenares vs. Villar*, No. L-27126, May 29, 1970, 33 SCRA 186); and that the Bouncing Checks Law penalizes not only the fact of dishonor of a check but also the act of making or drawing and issuance of a bouncing check (*People vs. Hon. Veridiano, II*, No. 62243, 132 SCRA 523). The case, therefore, could have been filed also in Bulacan. As held in *Que vs. People of the Philippines*, G.R. Nos. 75217-18, September 11, 1987 “the determinative factor (in determining venue) is the place of the issuance of the check.” However, it is likewise true that knowledge on the part of the maker or drawer of the check of the insufficiency of his funds, which is an essential ingredient of the offense is by itself a continuing eventuality, whether the accused be within one territory or another (*People vs. Hon. Manzanilla*, G.R. Nos. 66003-04, December 11, 1987). Accordingly, jurisdiction to take cognizance of the offense also lies in the Regional Trial Court of Pampanga.

And, as pointed out in the *Manzanilla* case, jurisdiction or venue is determined by the allegations in the Information, which are controlling (*Arches vs. Bellosillo*, 81 Phil. 190, 193, cited in *Tuzon vs. Cruz*, No. L-27410, August 28, 1975, 66 SCRA 235). The Information filed herein specifically alleges that the crime was committed in San Fernando, Pampanga, and, therefore, within the jurisdiction of the Court below.

B. The dismissal of the subject criminal cases by Respondent Judge, predicated on his lack of jurisdiction, is correctible by Certiorari. The error committed is one of jurisdiction and not an error of judgment on the merits. Well-settled is the rule that questions covering jurisdictional matters may be averred in a petition for certiorari, inclusive of matters of grave abuse of discretion, which are equivalent to lack of jurisdiction (*City of Davao vs. Dept. of Labor*, No. L-19488, January 30, 1965, 13 SCRA 111, 115). An error of jurisdiction renders whatever order of the Trial Court null and void.

C. The present petition for Certiorari seeking to set aside the void Decision of Respondent Judge does not place Respondent- accused in double jeopardy for the same offense. It will be recalled that the questioned judgment was not an adjudication on the merits. It was a dismissal upon Respondent Judge’s erroneous conclusion that his Court had no “territorial jurisdiction” over the cases. Where an order dismissing a criminal case is not a decision on the merits, it cannot bar as *res judicata* a subsequent case based on the same offense (*People vs. Bellosillo*, No. L-18512, December 27, 1963, 9. SCRA 835, 837).

The dismissal being null and void the proceedings before the Trial Court may not be said to have been lawfully terminated. There is therefore, no second proceeding which would subject the accused to double jeopardy.

“Since the order of dismissal was without authority and, therefore, null and void, the proceedings before the Municipal Court have not been lawfully terminated. Accordingly, there is no second proceeding to speak of and no double jeopardy. A continuation of the proceedings against the accused for serious physical injuries is in order.” (*People vs. Mogot*, 131 SCRA 306, 308).

In sum, Respondent Judge had jurisdiction to try and decide the subject criminal case, venue having been properly laid.

WHEREFORE, the Decision of Respondent Judge of February 17, 1986 is hereby set aside and he is hereby ordered to re- assume jurisdiction over Criminal Cases Nos. 2800 and 2813 of his Court and to render judgment of either conviction or acquittal in accordance with the evidence already adduced during the joint trial of said two cases.

SO ORDERED.

Yap (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

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