

CHARMINA B. BANAL, PETITIONER, VS. THE HON. TOMAS V. TADEO, JR., PRESIDING JUDGE, RTC-QUEZON CITY, BRANCH 105 AND ROSARIO CLAUDIO, RESPONDENTS.

G.R. Nos. 78911-25. December 11, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari to review and set aside the orders of the respondent Regional Trial Court, Branch 105, Quezon City dated - (1) 8 January 1987 which rejected the appearance of Atty. Nicolito L. Bustos as private prosecutor in Criminal Cases Nos. Q-40909 to Q-40913 where respondent Rosario Claudio is the accused for violation of Batas Pambansa Blg. 22; and (2) 31 March 1987 which denied the petitioner's motion for reconsideration of the order dated 8 January 1987; and for mandamus to allow Atty. Bustos to enter his appearance as private prosecutor in the aforestated criminal cases.

It appears that fifteen (15) separate informations for violation of Batas Pambansa Blg. 22 or the Bouncing Checks law, docketed as Criminal Cases Nos. 40909 - 40913, were filed against respondent Claudio before the Regional Trial Court of Quezon City and originally assigned to Branch 84.

The presiding judge of Branch 84 inhibited himself when respondent Claudio, through counsel, filed a petition for recuse dated May 19, 1986.

The cases were re-raffled and consequently assigned on June 25, 1986 to Branch 105 which was then presided over by Judge Johnico G. Serquina.

During these proceedings, respondent Claudio was finally arraigned on November 20, 1986 where she pleaded not guilty to the charges. Pre-trial was then set on January 8, 1987.

In the meantime, Judge Tomas V. Tadeo, Jr. replaced Judge Serquina as presiding judge of Branch 105.

On January 8, 1987, the respondent court issued an order rejecting the appearance of Atty. Nicolito L. Bustos as private prosecutor on the ground that the charge is for the violation of Batas Pambansa Blg. 22 which does not provide for any civil liability or indemnity and hence, "it is not a crime against property but public order."

The petitioner, through counsel filed a motion for reconsideration of the order dated 8 January 1987 on March 10, 1987.

Respondent Claudio filed her opposition to the motion for reconsideration on March 25, 1987.

In an order dated 31 March 1987, the respondent court denied petitioner's motion for reconsideration.

Hence, this petition questioning the orders of the respondent Court.

The issue to be resolved is whether or not the respondent Court acted with grave abuse of discretion or in excess of its jurisdiction in rejecting the appearance of a private prosecutor.

The respondents make capital of the fact that Batas Pambansa Blg. 22 punishes the act of knowingly issuing worthless checks as an offense against public order. As such, it is argued that it is the State and the public that are the principal complainants and, therefore, no civil indemnity is provided for by Batas Pambansa Blg. 22 for which a private party or prosecutor may intervene.

On the other hand, the petitioner, relying on the legal axiom that "Every man criminally liable is also civilly liable," contends that indemnity may be recovered from the offender regardless of whether or not Batas Pambansa Blg. 22 so provides.

A careful study of the concept of civil liability allows a solution to the issues in the case at bar.

Generally, the basis of civil liability arising from crime is the fundamental postulate of our law that "Every man criminally liable is also civilly liable" (Art. 100, The Revised Penal Code). Underlying this legal principle is the traditional theory that when a person commits a crime he offends two entities namely (1) the society in which he lives in or the political entity called the State whose law he had violated; and (2) the individual member of that society whose person, right, honor, chastity or property was actually or directly injured or damaged by the same punishable act or omission. However, this rather broad and general provision is among the most complex and controversial topics in criminal procedure. It can be misleading in its implications especially where the same act or omission may be treated as a crime in one instance and as a tort in another or where the law allows a separate civil action to proceed independently of the course of the criminal prosecution with which it is intimately intertwined. Many legal scholars treat as a misconception or fallacy the generally accepted notion that the civil liability actually arises from the crime when, in the ultimate analysis, it does not. While an act or omission is felonious because it is punishable by law, it gives rise to civil liability not so much because it is a crime but because it caused damage to another. Viewing things pragmatically, we can readily see that what gives rise to the civil liability is really the obligation and the moral duty of everyone to repair or make whole the damage caused to another by reason of his own act or omission, done intentionally or negligently, whether or not the same be punishable by law. In other words, criminal liability will give rise to civil liability only if the same felonious act or omission results in damage or injury to another and is the direct and proximate cause thereof. Damage or injury to another is evidently the foundation of the civil action. Such is not the case in criminal actions for, to be criminally liable, it is enough that the act or omission complained of is punishable, regardless of whether or not it also causes material damage to another. (See Sangco, *Philippine Law on Torts and Damages*, 1978, Revised Edition, pp. 246-247).

Article 20 of the New Civil Code provides:

"Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same."

Regardless, therefore, of whether or not a special law so provides, indemnification of the offended party may be had on account of the damage, loss or injury directly suffered as a consequence of the wrongful act of another. The indemnity which a person is sentenced to pay forms an integral part of the penalty imposed by law for the commission of a crime (*Quemel v. Court of Appeals*, 22 SCRA 44, citing *Bagtas v. Director of Prisons*, 84 Phil. 692). Every crime gives rise to a penal or criminal action for the punishment of the guilty party, and also to civil action for the restitution of the thing, repair of the damage, and indemnification for the losses (*United States v. Bernardo*, 19 Phil. 265).

Indeed one cannot disregard the private party in the case at bar who suffered the offenses committed against her. Not only the State but the petitioner too is entitled to relief as a member of the public which the law seeks to protect. She was assured that the checks were good when she parted with money, property or services. She

suffered with the State when the checks bounced.

In *Lozano v. Hon. Martinez* (G.R. No. 63419, December 18, 1986) and the cases consolidated therewith, we held that "The effects of a worthless check transcend the private interests of the parties directly involved in the transaction and touch the interests of the community at large." Yet, we too recognized the wrong done to the private party defrauded when we stated therein that "The mischief it creates is not only a wrong to the payee or the holder, but also an injury to the public."

Civil liability to the offended private party cannot thus be denied. The payee of the check is entitled to receive the payment of money for which the worthless check was issued. Having been caused the damage, she is entitled to recompense.

Surely, it could not have been the intendment of the framers of Batas Pambansa Blg. 22 to leave the offended private party defrauded and empty-handed by excluding the civil liability of the offender, giving her only the remedy, which in many cases results in a Pyrrhic victory, of having to file a separate civil suit. To do so, may leave the offended party unable to recover even the face value of the check due her, thereby unjustly enriching the errant drawer at the expense of the payee. The protection which the law seeks to provide would, therefore, be brought to naught.

The petitioner's intervention in the prosecution of Criminal Cases 40909 to 40913 is justified not only for the protection of her interests but also in the interest of the speedy and inexpensive administration of justice mandated by the Constitution (Section 16, Article III, Bill of Rights, Constitution of 1987). A separate civil action for the purpose would only prove to be costly, burdensome, and time-consuming for both parties and further delay the final disposition of the case. This multiplicity of suits must be avoided. Where petitioner's rights may be fully adjudicated in the proceedings before the trial court, resort to a separate action to recover civil liability is clearly unwarranted.

WHEREFORE, the petition is hereby GRANTED. The respondent court is ordered to permit the intervention of a private prosecutor in behalf of petitioner Charmina B. Banal, in the prosecution of the civil aspect of Criminal Cases Nos. 40909 to 40913. The temporary restraining order issued by this court on July 15, 1987 is lifted and the case is remanded to the court a quo for further proceedings. This decision is immediately executory.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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