

## **FIRST DIVISION**

**[ G.R. NO. 154128, February 08, 2007 ]**

**DR. AMANDA T. CRUZ, PETITIONER, VS. WILFREDO R. CRUZ,  
RESPONDENT.**

### **D E C I S I O N**

**SANDOVAL-GUTIERREZ, J.:**

For our resolution is the instant Petition for Review on Certiorari assailing the Decision<sup>[1]</sup> of the Court of Appeals promulgated on January 30, 2002 in CA-G.R. SP No. 57275.

The parties in the instant case are relatives. Wilfredo R. Cruz, respondent, is a nephew by affinity of Dr. Amanda T. Cruz, petitioner.

On June 5, 1996, respondent filed with the Office of the City Prosecutor, Quezon City a complaint for violation of Batas Pambansa (B.P.) Blg. 22 against petitioner, docketed as I.S. No. 96-10640. Respondent alleged that petitioner issued to him an undated check in the sum of P100,000.00. On December 29, 1995, he placed this date on the check and deposited the same, but it was dishonored by the drawee bank due to "account closed." On January 5, 1996, he sent the notice of dishonor to petitioner. Without his knowledge, petitioner, on January 16, 1996, deposited P100,000.00 in his savings account.

In her Counter-Affidavit with Motion to Dismiss, petitioner declared that in **1986**, she issued to respondent BPI Check No. 349866 as a guarantee for the loan of spouses Arturo and Malou Ventura obtained from him. Later, they informed her that they had paid the loan. However, she forgot to ask for the return of the check.

In 1987, she closed her account and opened a new one with the drawee bank.

For ten (10) years, she forgot having issued the check. She claimed that respondent filed the complaint against her because her husband, Atty. Francisco Galman Cruz, instituted criminal and civil complaints against Carlos Cruz, Jr., respondent's brother, involving a parcel of land.

On January 16, 1996, or only after eleven (11) days from January 5, 1996 when she learned that her check was dishonored, she deposited P100,000.00 in the account of respondent at the Westmont Bank, Sta. Mesa Branch.

On August 7, 1996, the Assistant City Prosecutor of Quezon City recommended the dismissal of respondent's complaint, thus:

Therefore, when complainant executed his affidavit in filing the case for B.P. 22 against respondent, payment for the check has already been satisfied. Therefore, under the circumstances, there is no offense to be charged.

The above recommendation was approved by the City Prosecutor.

Thereafter, respondent filed with the Department of Justice (DOJ) a petition for review contending that petitioner is still criminally liable although she had paid the amount of the check in full.

In a Resolution dated September 14, 1996, Chief State Prosecutor Jovencito R. Zuño dismissed respondent's petition, thus:

We find no sufficient basis to cause the indictment of the respondent. There is no violation of Batas Pambansa Bilang 22 in view of the full payment made by the respondent, a fact which the complainant expressly admitted. The payment of the check removes the same from the punitive provision of Batas Pambansa Bilang 22.

Respondent filed a motion for reconsideration but it was denied by former DOJ Secretary Serafin R. Cuevas in a Resolution dated January 20, 2000.

Respondent then filed with the Court of Appeals a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended.

In its Decision of January 30, 2002, the Court of Appeals granted respondent's petition and directed the Secretary of Justice to file the proper information against petitioner.

Petitioner filed a motion for reconsideration but in its Resolution [2] dated June 28, 2002, the Court of Appeals denied the same.

Hence, this recourse.

The issue for our resolution is whether the Court of Appeals erred in directing the Secretary of Justice to file an information for violation of B.P. Blg. 22 against petitioner.

The petition is meritorious.

*First*, there is no dispute that when respondent filed with the Office of the City Prosecutor of Quezon City his complaint against petitioner, a preliminary investigation was conducted. Section 1, Rule 112 of the 1985 Rules of Criminal Procedure, as amended, defines preliminary investigation as "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial."

Under Section 4 of the same Rule, the investigating prosecutor is vested with the duty of (a) preparing a resolution holding the respondent for trial and filing the corresponding information, or (b) **dismissing the case should he find that no probable cause exists against respondent.**

The investigating Assistant City Prosecutor found no probable cause to charge petitioner with violation of B.P. Blg. 22. Hence, she recommended the dismissal of the case. The City Prosecutor, the Chief State Prosecutor and the Secretary of