

FIRST DIVISION

[G.R. NO. 164337, June 27, 2006]

VICENTE S. CENZON, PETITIONER, VS. HON. SALVADOR ABAD SANTOS AS ACTING PRESIDING JUDGE, RTC OF MAKATI CITY, BRANCH 143, HON. ASSISTANT CITY PROSECUTOR ANDRES MARCOS IN HIS CAPACITY AS PUBLIC PROSECUTOR OF THE CITY PROSECUTOR'S OFFICE OF MAKATI CITY AND MARGARITA C. SIA, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* with prayer for Temporary Restraining Order and/or Preliminary Mandatory Injunction, assailing the 26 February 2004 Decision^[1] and the 30 June 2004 Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 72570, which affirmed the 15 February 2002^[3] and 17 June 2002^[4] Orders of the Regional Trial Court (RTC), Branch 143, Makati City, in Criminal Case No. 01-2709-10, allowing the amendment of the informations therein from NO BAIL RECOMMENDED to BAIL SET AT P60,000.00.

The facts, as culled from the evidence on record, follow:

Petitioner Vicente S. Cenzon is a member of the Board of Directors of Honig Sugar Trading Corp. (Honig). On the other hand, private respondent Margarita C. Sia is the president of South Pacific Sugar Corp. (South Pacific).

On 23 February 2000, petitioner Cenzon filed with the Makati City Prosecution Office, four complaint-affidavits^[5] against private respondent Sia for violation of Batas Pambansa Blg. 22 and Estafa under Article 315, par. 2(d) of the Revised Penal Code, alleging that the checks issued by South Pacific, through private respondent Sia, were dishonored upon due presentment for having been the subject of a "stop payment order" (SPO), and for having been "drawn against insufficient funds" (DAIF). Despite demands made upon private respondent Sia and South Pacific to pay the amounts represented by the face value of the subject checks, the same remained unheeded.

The particulars of the subject checks are, to wit:

CHECK NO.	DATE	AMOUNT
HRR 0005306682	31 January 1999	P15,840,000.00
HRR 0005306773	24 May 1999	P42,625,000.00
HRR 0005306775	24 May 1999	P 9,180,000.00
HRR 0005306774	24 May 1999	P91,776,970.00

On 31 August 2000, the Makati City Prosecution Office issued a Resolution^[6] recommending the dismissal of the complaint for Estafa, and the filing of informations for four counts of violation of Batas Pambansa Blg. 22, and further recommending bail of P30,000.00 for each count.

On appeal by petitioner Cenzone to the Department of Justice (DOJ), Resolution^[7] dated 31 August 2001 was issued, reversing and setting aside the Resolution dated 31 August 2000, and directing the Makati City Prosecution Office to file two informations for Estafa under Article 315, par. 2(d)^[8] of the Revised Penal Code, as amended by Presidential Decree No. 818,^[9] against private respondent Sia. In accordance therewith, Makati City Prosecutor Edgardo Hiram filed on 10 December 2001 with the RTC, two informations^[10] against private respondent Sia for violations of Article 315, par. 2(d) of the Revised Penal Code, as amended by Presidential Decree No. 818. The two informations involved Check No. HRR 0005306682 and Check No. HRR 0005306774, which covered the amounts of P15,840,000.00 and P91,776,970.00, respectively. The City Prosecutor recommended NO BAIL. The cases were docketed as Criminal Case Nos. 01-2709 and 2710, and subsequently consolidated as Criminal Case No. 01-2709-2710.

On 11 December 2001, the RTC issued an Order^[11] directing the issuance of a warrant of arrest against private respondent Sia. On 29 January 2002, the RTC suspended the proceedings *a quo* for the reason that private respondent Sia had a pending Motion for Reconsideration with the DOJ Secretary, questioning the latter's finding of probable cause. Subsequently, in the hearing of 15 February 2002, the public prosecutor moved for the amendment of the informations from NO BAIL RECOMMENDED to BAIL SET AT P60,000.00 for each count of Estafa. The amendment was sought on the strength of DOJ Department Circular No. 74, issued on 6 November 2001, which specified the amount of bail to be recommended, in cases of Estafa under Article 315, par. 2(d), as amended by Presidential Decree No. 818. The RTC granted the public prosecutor's Motion, as contained in the assailed Order^[12] of 15 February 2002.

Private prosecutor's Motion for Reconsideration of the 15 February 2002 Order was denied by the RTC, in the Order^[13] dated 17 June 2002. Aggrieved, petitioner Cenzone filed with the Court of Appeals, a Petition for *Certiorari*, imputing to the RTC, grave abuse of discretion amounting to lack or excess of jurisdiction in authorizing the amendment of the informations to allow private respondent Sia to post bail.

In the assailed Decision of 26 February 2004, the Court of Appeals affirmed the RTC, ratiocinating that the offense by which private respondent Sia is charged is not punishable by *reclusion perpetua*, and as such, she is entitled to bail. The appellate court, relying on the pronouncements in *People v. Hernando*^[14] and *People v. Panganiban*,^[15] ratiocinated in the following manner:

Based on the foregoing, it is clear that all persons are entitled to bail, as a matter of right, provided that one is not charged with an offense punishable by death, *reclusion perpetua*, or life imprisonment. In the case at bench, We agree with the private respondent, and concurred in by no less than the Solicitor General, that the offense by which she is

being charged is not punishable by *reclusion perpetua* and so she is entitled to bail. Thus, the respondent judge is not guilty of grave abuse of discretion in allowing the amendment of the informations to allow accused-respondent Sia to post bail.

This was clearly illustrated in the leading case of *People vs. Hernando* and reiterated in *People vs. Panganiban*, where it was clarified that *reclusion perpetua* is not the prescribed penalty for the offense as used in PD No. 818, to wit:

"xxx xxx xxx

"Hence, if the amount of the fraud exceeds twenty-two thousand pesos, the penalty of *reclusion temporal* is imposed in its maximum period, adding one year for each additional ten thousand (P10,000.00) pesos but the total penalty shall not exceed thirty (30) years, which shall be termed *reclusion perpetua*. As used herein, *RECLUSION PERPETUA* IS NOT THE PRESCRIBED PENALTY FOR THE OFFENSE. It merely describes the penalty actually imposed on account of the amount of the fraud involved, which exceeds twenty two thousand (P22,000.00) pesos." (Emphasis Ours.)

Precisely, this is the reason why DOJ Circular No. 74 came into effect, to guide all prosecutors in recommending the amount of bail to be fixed. Public Prosecutor Marcos thus correctly moved for the amendment of the informations, and the respondent judge judiciously allowed it to conform with the DOJ circular brought about by the new jurisprudence on the matter. Clearly, the ruling in *People vs. Reyes* cited by the petitioner is deemed superseded.

Moreover, as cited by the petitioner himself, courts are advised that they must not only be aware but should consider the Bail Bond Guide due to its significance in the administration of criminal justice. Settled also is the rule that, while not controlling, official opinions of the justice secretary are persuasive.^[16]

In the same vein, petitioner Cenzon's Motion for Reconsideration thereon was denied by the appellate court for lack of merit, in the Resolution dated 30 June 2004.

Elevating the matter before this Court *via* the instant Petition for Review, petitioner Cenzon submits the following grounds for its allowance, *viz*:

I

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE ESTABLISHED CONSTITUTIONAL MANDATE THAT "NO DOCTRINE OR PRINCIPLE OF LAW LAID DOWN BY THE COURT IN A DECISION RENDERED *EN BANC* OR IN DIVISION MAY BE MODIFIED OR REVERSED EXCEPT BY THE COURT SITTING *EN BANC*."

II

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND JURISPRUDENCE BY SOLELY RELYING ON THE CASES OF *PEOPLE V. HERNANDO* AND *PEOPLE V. PANGANIBAN* WHICH INVOLVE FACTS DIFFERENT FROM THE PRESENT CASE.^[17]

Petitioner Cenzon endeavors to build his case by invoking *People v. Reyes*,^[18] and the 2000 Bail Bond Guide of the DOJ. According to petitioner Cenzon, the 2000 Bail Bond Guide of the DOJ recommends NO BAIL for Estafa under Article 315, par. 2(d) of the Revised Penal Code, as amended by Presidential Decree No. 818, if the amount of the fraud is P32,000.00 or over. It is petitioner Cenzon's theory that NO BAIL is recommended in such cases, because the penalty prescribed therein is *reclusion perpetua*.^[19] Petitioner Cenzon posits that the 2000 Bail Bond Guide of the DOJ was made pursuant to Section 13,^[20] Article III of the 1987 Constitution, which provides that crimes punishable by *reclusion perpetua* to death, when evidence of guilt is strong, are not bailable.

Further, petitioner Cenzon asseverates that in *Reyes*, the Court *En Banc* declared that Presidential Decree No. 818, which took effect as early as 1975, provided for the penalty of *reclusion perpetua* where bouncing checks of the requisite amount are involved.^[21] Proceeding therefrom, it is petitioner Cenzon's contention that, in the assailed Decision of 26 February 2004, the Court of Appeals erroneously relied on DOJ Department Circular No. 74,^[22] which disregards the rule that Estafa under Article 315, par. 2(d) of the Revised Penal Code, as amended by Presidential Decree No. 818, where the amount of the fraud is P32,000.00 or above is non-bailable.

Finally, petitioner Cenzon maintains that the ruling in *Reyes* which was rendered *En Banc* cannot be declared superseded by the subsequent cases of *Hernando* and *Panganiban*, as the latter cases were rendered by divisions of this Court. Citing Section 4(3),^[23] Article VIII of the Constitution, petitioner Cenzon argues that *Hernando* and *Panganiban* cannot overturn *Reyes* because no doctrine or principle of law laid down by the Court in a decision rendered *En Banc* or in division may be modified or reversed except by the Court sitting *En Banc*.

The issue presented for our consideration is, whether private respondent Sia, who is charged with Estafa under Article 315, par. 2(d)^[24] of the Revised Penal Code, as amended by Presidential Decree No. 818, for having issued bouncing checks in the amounts of P91,776,970.00 and P15,840,000.00, may be granted bail, as a matter of right, in accordance with DOJ Department Circular No. 74, dated 6 November 2001.

At the outset, attention must be called to Section 4, Rule 114 of the Revised Rules of Criminal Procedure, which provides:

SEC. 4. *Bail, a matter of right; exception.* – All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b)

before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment.

Thus, it must be asked, is private respondent Sia charged with an offense punishable by *reclusion perpetua*?

The issue that confronts us is not novel. Perforce, in *Panganiban*, we settled that the term, *reclusion perpetua*, as utilized in Presidential Decree No. 818, merely *describes* the penalty imposed on account of the amount of the fraud involved. The unequivocal import in Presidential Decree No. 818^[25] is that, if the amount of the fraud exceeds twenty-two thousand pesos (P22,000.00), the penalty of *reclusion temporal* is imposed in its maximum period, adding one year for each additional ten thousand (P10,000.00) pesos, but the total penalty shall not exceed thirty (30) years, which shall be termed *reclusion perpetua*. Taking our legal bearings from the *Panganiban* case, we stress that the use of the term *reclusion perpetua* in Presidential Decree No. 818 is merely to *describe* the penalty imposed, but not the *prescribed* penalty thereof.

To reiterate, we quote hereunder, our pronouncement in *Panganiban*:

Finally, some clarifications on the imposable penalty. The trial court convicted accused-appellant to *reclusion perpetua*, following the amendment to Article 315, par. 2(d) of the Revised Penal Code by Presidential Decree No. 818, which increased the penalty for estafa committed by means of bouncing checks.

Presidential Decree No. 818 provides:

SECTION 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by:

1st. The penalty of *reclusion temporal* if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos but the total penalty which may be imposed shall in no case exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed *reclusion perpetua*;

x x x x

As used in Presidential Decree No. 818, *reclusion perpetua* is not the prescribed penalty for the offense, but merely describes the penalty actually imposed on account of the amount of the fraud involved, which exceeds P22,000.00.^[26] (Underscoring supplied.)

The Court, in *Hernando* was just as succinct in pronouncing that the term *reclusion perpetua* as used in Presidential Decree No. 818, merely describes the penalty actually imposed on account of the amount of the fraud involved, which exceeds