

SECOND DIVISION

[G.R. No. 138669, June 06, 2002]

**STEVE TAN AND MARCIANO TAN, PETITIONERS, VS. FABIAN
MENDEZ, JR., RESPONDENT.**

DECISION

QUISUMBING, J.:

Petitioners filed this petition for review on certiorari seeking to set aside the decision^[1] dated January 22, 1999 of the Court of Appeals, Thirteenth Division, in CA-G.R. CR. No. 20030, which affirmed the decision^[2] of the Regional Trial Court of Iriga City, Branch 37, convicting petitioners of violation of Batas Pambansa Blg. 22, otherwise known as the Bouncing Checks Law. They were sentenced to suffer the penalty of six months imprisonment and to indemnify private complainant the sum of P58,237.75 with legal interest from date of judicial demand. Also assailed in this petition is the Court of Appeals' resolution^[3] dated May 13, 1999 denying petitioners' Motion for Reconsideration.

The facts, as culled from records, are as follows:

Petitioners Steve Tan and Marciano Tan are the owners of Master Tours and Travel Corporation and operators of Philippine Lawin Bus Co., Inc., while respondent Fabian Mendez, Jr. is the owner of three gasoline stations in Iriga City, Ligao, Albay, and Sipocot, Camarines Sur. Petitioners opened a credit line for their buses' lubricants and fuel consumption with respondent. At the same time, the latter was also designated by petitioners as the booking and ticketing agent of Philippine Lawin Bus Co. in Iriga City.

Under such arrangement, petitioners' drivers purchased on credit fuel and various oil products for its buses through withdrawal slips issued by petitioners, with periodic payments to respondent through the issuance of checks. On the other hand, respondent remitted the proceeds of ticket sales to petitioners also through the issuance of checks. Sent together with respondent's remittance are the remittances of the ticket sales in the Baao Booking office, which is managed separately and independently by another agent, Elias Bacsain.

Accordingly, petitioners issued several checks to respondent as payment for oil and fuel products. One of these is FEBTC check no. 704227 dated June 4, 1991 in the amount of P58,237.75, as payment for gasoline and oil products procured during the period May 2 to 15, 1991. Said check was dishonored by the bank upon presentment for payment for being drawn against insufficient funds.

Respondent sent a demand letter dated June 21, 1991 to petitioners demanding that they make good the check or pay the amount thereof, to no avail. Hence, an

information for violation of B.P. 22 was filed against petitioners, upon the complaint of respondent, before the RTC of Iriga City, Branch 37, as follows:

That on or about the 4th day of June 1991, in Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused having purchased from Shellhouse Iriga, Iriga City, owned and managed by Atty. Fabian O. Mendez, Jr., fuel and other oil products in the amount of FIFTY EIGHT THOUSAND TWO HUNDRED THIRTY SEVEN and 75/100 (P58,237.75) PESOS, Philippine currency, and that in payment thereof, the said accused knowing fully well that they had no sufficient funds or credit with the drawee bank, conspiring and confederating with each other, did, then and there, willfully, unlawfully and feloniously, issue and make out Far East Bank and Trust Company-Binondo Check No. 704227, payable to the order of Shell house Iriga, dated June 4, 1991 in the amount of P58,237.75, and delivered to herein private complainant Atty. Fabian O. Mendez, Jr., in Iriga City and upon its presentment for payment to the drawee bank, the same was dishonored and refused payment for the reason "Drawn Against Insufficient Funds" and despite repeated demands, accused failed and refused and still fails and refuses to make the necessary deposit with said bank sufficient money to cover the said check or to pay the said Atty. Fabian O. Mendez, Jr., the value of the check in the amount of P58,237.75, to the latter's damage and prejudice in the aforesaid amount, plus other form of damages as may be proven in court.

CONTRARY TO LAW.^[4]

Petitioners pleaded not guilty during arraignment and trial ensued.

At the trial, the prosecution presented FABIAN MENDEZ, JR., the private complainant, and MULRY MENDEZ. They testified that FEBTC check no. 704227 and other checks in the amount of P235,387.33 were dishonored upon presentment for payment to the bank and that they called petitioners' attention regarding the matter. They sent a demand letter to petitioners asking them to make good the check or pay the value thereof, but petitioners did not heed the request. Instead, petitioners told respondent Fabian to wait a while. After respondent initiated this case, petitioners attempted to settle the same along with other cases pending in other courts in Iriga City. They asked for more time to settle their obligations because they were still waiting for a tax credit certificate in the amount of P517,998 to be issued by the Ministry of Finance, that they would use to settle the cases.^[5]

On the other hand, the defense presented petitioner MARCIANO TAN and ISIDRO TAN as witnesses. In his testimony, Marciano averred that he cannot be held liable for violation of B.P. 22 because the amount subject of the check had already been extinguished by offset or compensation against the collection from ticket sales from the booking offices. He presented a memorandum^[6] dated June 10, 1991 showing the return to respondent of various unencashed checks in the total amount of P66,839.25 representing remittance of ticket sales in the Iriga and Baao offices that were earlier sent by respondent. After the alleged offset, there remains a balance of P226,785.83.^[7] The memorandum^[8] states:

June 10, 1991

To Atty. Fabian Mendez:

We just would like to inform your good office that we are sending you back the following checks to be offset to our gasoline account:

Returned check June 07	P	
	58,237.75	
Of PLBC for gasoline	<u>235,387.33</u>	
		293,625.08
Your check:		
Sales May 29-31	P	
Iriga	17,373.00	
	June 1-5	28,057.55
Baao June 3-4	5,375.00	
	May 28-June2	<u>16,033.70</u>
		66,839.25
Balance to be paid for	P	
schedule		226,785.83

ESTEBAN TAN

On cross-examination, Marciano admitted to have drawn the subject check to pay private respondent's gasoline station and that it was not covered by sufficient funds at the time of its issuance due to uncollected receivables.^[9] Upon query by the court, he claimed that he did not talk to private complainant and could not tell if the latter agreed to offset the checks with the remittances.^[10]

ISIDRO TAN, petitioners' brother, corroborated Marciano's claim of offset. He also admitted speaking with Mulry Mendez regarding the proposed settlement of the case which, however, was not accepted by respondent.^[11]

On rebuttal, respondent disputed petitioners' claim of payment through offset or compensation. He claimed that the amount of the four unencashed checks totaling P66,839.25 could not have offset the amount of the dishonored checks since petitioners' total obligations at that time had already reached P906,000.^[12] Moreover, even if compensation took place, it should have been applied to an alleged earlier obligation of P235,387.33. Respondent also claimed that compensation did not take place as there was no application of payment made by the petitioners in their memorandum dated June 10, 1991.^[13]

After trial, the trial court convicted petitioners for violation of B.P. 22. The dispositive portion of its decision reads:

WHEREFORE, the Court finds both accused, as drawers of the check in question, guilty of the violation of Batas Pambansa Blg. 22, as principals thereof, without attendant mitigating or aggravating circumstance, and hereby sentences both accused to suffer the penalty of imprisonment of Six (6) Months, to indemnify the private complainant jointly and severally, the sum of P58,237.75 with legal interest from date of judicial

demand, and to pay the costs.

SO ORDERED.^[14]

On appeal, the Court of Appeals affirmed the conviction of petitioners, thus:

WHEREFORE, the assailed decision being in conformity with law and the evidence, the same is hereby AFFIRMED. Costs against appellants.

SO ORDERED.^[15]

Hence, this petition. Petitioners raise the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO CONSIDER THE FACT OF PAYMENT BY OFFSETTING PRIOR TO THE DEMAND LETTER SENT BY RESPONDENT DESPITE THE ABUNDANCE OF EVIDENCE PROVING THE SAME.

II

SINCE THE HONORABLE COURT OF APPEALS FOUND OFFSETTING CONTENTIOUS IT SHOULD HAVE ACQUITTED PETITIONERS ON THE GROUND OF REASONABLE DOUBT.

III

THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT ASSUMING THAT THERE WAS OFFSETTING THE PETITIONERS ARE NONETHELESS GUILTY BECAUSE PAYMENT DOES NOT ABATE THE CRIME OF VIOLATION OF B.P. 22.

Briefly, the following are the issues for our resolution:

1. Whether or not petitioners can be held liable for violation of B.P. 22 or the Bouncing Checks Law; and
2. Whether or not payment through compensation or offset can preclude prosecution for violation of B.P. 22.

The law enumerates the elements of B.P. Blg. 22 to be (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.^[16]

We find all the foregoing elements present in this case. Petitioner Marciano admitted that he drew the subject check as payment for the fuel and oil products of respondents. He knew at that time that there were no sufficient funds to cover the check because he had uncollected receivables.^[17] The check was thus dishonored