

FIRST DIVISION

[G.R. No. 138869, August 21, 2001]

**DAVID SO, PETITIONER, VS. COURT OF APPEALS AND PEOPLE
OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

PUNO, J.:

This is an appeal by *certiorari* from a decision rendered by the Court of Appeals dated January 22, 1999^[1] which dismissed the petition for *certiorari* with prayer for preliminary injunction and temporary restraining order filed by petitioner David So, and its Resolution dated May 21, 1999 denying the Motion for Reconsideration.^[2]

The facts are stated in the opinion of the Court of Appeals:

"The undisputed antecedent facts show that the petitioner was the accused in Criminal Cases Nos. 8345 and 8346 pending in the Regional Trial Court, Branch 146, Makati City for violation of BP 22 on the basis of PCB Check 393662 dated January 6, 1983 in the amount of P6,000.00 and PCB Check No. 393663 dated January 10, 1983 in the amount of P28,600.00 which he issued to Faustino Puzon and which were both dishonored by the drawee bank for the reason "Account Closed".

However, at the time of the issuance of the aforesaid checks, Circular No. 4 dated December 15, 1981 of the then Ministry of Justice was in effect. The circular provides:

'2.3.4. Where issuance of bouncing check is neither estafa nor violation of B.P. Blg. 22.

Where the check is issued as part of an arrangement to guarantee or secure payment of an obligation, whether pre-existing or not, the drawer is not criminally liable for either estafa or violation of B.P. Blg. 22 x x x.'

This circular was subsequently reversed by Ministry Circular No. 12 dated August 8, 1984 which reads:

"Henceforth, conforming with the rule that an administrative agency having interpreting authority may reverse its administrative interpretation of a statute, but that its new interpretation applies only prospectively x x x, in all cases involving violation of Batas Pambansa Blg. 22 where the check in question is issued after this date, the claim that the check is issued as a guarantee or part of an arrangement to secure an obligation or to facilitate collection will no longer be considered

as valid defense."

In a decision dated May 19, 1987, the trial court convicted him of the offense charged. He appealed his conviction before this Court which, in a decision dated November 12, 1990 the conviction was affirmed. Forthwith, he appealed to the Supreme Court and the same was denied due course.

On April 1, 1988, after the Supreme Court decision had become final and executory, the trial court issued a warrant of arrest against the petitioner in order to execute the judgment of conviction in Criminal Cases Nos. 8345 and 8346.

On August 4, 1998, petitioner filed with the trial court an "Urgent Motion for Declaration of Nullity of Judgment" x x x invoking the doctrine laid down in the case of *People vs. Co (should be Co vs. Court of Appeals)* [227 SCRA 444] whereby the Supreme Court rendered that:

"It would seem, then, that the weight of authority is decidedly in favor of the proposition that the Court's decision of September 21, 1987 in *Que vs. People*, 154 SCRA 160 (1987) - i.e., that a check issued merely to guarantee the performance of an obligation is nevertheless covered by B.P. 22 - should not be given retrospective effect to the prejudice of the petitioner and other persons similarly situated, who relied on the official opinion of the Minister of Justice that such a check did not fall within the scope of B.P. 22."

Petitioner claims that the facts of the said case are similar to his case, that is, he issued the subject checks to guarantee or secure the performance of his obligation with the complainant. He thereby prayed for the declaration of nullity of the decision of the trial court.

In an Order dated September 11, 1998 x x x the trial court denied the Motion. He then filed a Motion for Reconsideration which, in an Order dated October 9, 1998 x x x was also denied by the trial court. x x x"^[3]

Petitioner David So filed with the Court of Appeals a Petition for *Certiorari* with prayer for Preliminary Injunction and Temporary Restraining Order seeking to enjoin the execution of the judgment of the trial court. The Court of Appeals issued on December 8, 1998 a temporary restraining order enjoining the trial court from implementing the warrant of arrest. On January 22, 1999, respondent appellate court rendered a decision dismissing the petition for *certiorari* after finding that the case of *Co vs. Court of Appeals* did not apply to petitioner's case where the trial court ruled that the checks were issued in exchange for cash. Hence this petition.

The issue of whether the ruling in *Co vs. Court of Appeals* applies hinges primarily on the question of whether the checks issued by petitioner were guarantee checks or not.

We find no merit in the petition.