

THIRD DIVISION

[G.R. No. 116566, April 14, 1999]

DOMINGO DICO, JR., PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NO. 120149.

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D E C I S I O N

PURISIMA, J.:

Before the court is a tug of war of sort between the petitioner, Domingo Dico, Jr., the drawer of the dishonored checks sued upon, and complainant Margie Lim Chao, the payee thereof.

Dissatisfied with the decision of the Court of Appeals in CA-G.R. CV Nos. 11759 and 13149, which affirmed the judgments of Branches 14 and 16 of the Regional Trial Court of Cebu, convicting him of violations of *Batas Pambansa Blg. 22* ten (10) counts, accused Domingo Dico, Jr. found his way to this court via these two petitions for review under Rule 45 of the Revised Rules of Court, which have been consolidated.

Is petitioner liable for the violations of *Batas Pambansa Blg. 22* charged? Such is the crucial issue at bar.

The complainant, Margie Lim Chao, initiated the filing of six (6) cases, with five (5) counts each, of violations of BP 22 against the petitioner, Domingo Dico, Jr., for issuing more than twenty four (24) checks which were all dishonored upon presentment for payment on due dates. Of the six cases, two (2) cases involving five (5) dishonored checks each, reached this Court through the two petitions under scrutiny. (*Rollo*, p. 245)

The antecedent facts leading to the filing of the present petitions are as follows:

According to the complainant, Margie Lim Chao, on several occasions in 1986, she supplied accused Domingo Dico, Jr. (Dico), who owns Paulo Bake Shop, bakery materials such as flour, sugar, salt, cooking oil and yeast; that every time she would deliver the said baking materials to his bakeshop, Dico would issue postdated checks in her favor as payment for such ingredients; that altogether, Dico issued to her more than twenty four (24) checks, among which are five (5) checks involved in the complaint for violations of BP 22 which she filed against Dico before Branch 16 of the Regional Trial Court of Cebu. The details of said checks are as follows:

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BANK	CHECK NO	DATE	AMOUNT
PCIB	05509	February 3, 1987	P7,000.00
PCIB	05513	February 13, 1987	8,134.00
PCIB	05524	March 2, 1987	5,940.00
PCIB	05525	March 2, 1987	5,000.00
PCIB	07285	March 22, 1987	5,080.00

Complainant further stated that before the checks matured, Dico asked her to defer the depositing or encashment of the said checks for about five (5) months because he had no money; that she granted his request but so as not to make the checks stale, they agreed to change as, in fact, they changed the dates of all the checks to a new common date, August 3, 1987, after which Dico affixed his signature beside the new date of each check; that when she deposited such checks about a month after their maturity, all the five checks bounced for the reason "Account Closed"; and so she filed a complaint against Dico because the latter refused to redeem subject checks, despite demand. (*Rollo*, G.R. No. 116566, pp. 50-51)

As his defense, Dico theorized that sometime after the issuance of the checks in question, he and the complainant engaged in a joint business venture to supply and sell automotive parts to the National Irrigation Administration in Zamboanga del Sur. As industrial partners, he secured clients for the partnership, being a native of that place, while the complainant provided the credit facilities for NIA, knowing a number of automotive dealers willing to extend credit up to one hundred twenty (120) days. They divided their profits equally.

Petitioner also alleged that under their agreement, his share in the profits from their NIA transactions would be set-off against his obligations to the complainant for the flour he purchased, which were originally covered by checks; that because of such arrangement, the checks he previously issued were not anymore deposited on their due dates; that for security purposes only, complainant changed the original dates of the checks to a common date of August 3, 1987; that in compliance with the request of complainant, he signed the said checks near the dates thereof, to show his good faith in faithfully remitting his collections from NIA Zamboanga del Sur; that on September 4, 1987, the complainant deposited all the five checks on their new due date but the same bounced because he was not aware that they would be deposited or encashed in view of his agreement with complainant that he would set-off his obligations with her. (*Rollo*, G.R. No. 116566, *Rollo*, pp. 17-22)

On April 4, 1991, Branch 14 of the Regional Trial Court of Cebu came out with its verdict against the petitioner, disposing as follows:

"WHEREFORE, judgment is hereby rendered finding the accused Domingo Dico, Jr. guilty beyond reasonable doubt of five counts of violation of Batas Pambansa Blg. 22 in Criminal Cases Nos. CBU-15112, 151113, 15114, 15115 and 15116. He is accordingly sentenced to suffer imprisonment of four (4) months in each case, or twenty (20) months in the five cases.

The costs of these proceedings shall be taxed against the accused.

SO ORDERED." (G.R. No. 116566, *Rollo*, p. 107)

On December 29, 1993, the Court of Appeals affirmed the said decision. Petitioner's motion for reconsideration was later denied.

On April 20, 1995, the Court of Appeals also affirmed the decision of Branch 16 of the Cebu Regional Trial Court, finding the herein petitioner, Domingo Dico, Jr., guilty of five (5) violations of BP 22, for issuing five (5) more unfunded checks in payment of baking ingredients he procured, and sentencing thus:

"WHEREFORE, judgment is hereby rendered finding defendant Domingo Dico guilty beyond reasonable doubt of violation of BP Blg. 22 on 5 counts, for which he is sentenced as follows:

In Criminal Case No. CBU-14791 - 60 days imprisonment;

In Criminal Case No. CBU-14792 - 60 days imprisonment;

In Criminal Case No. CBU-14793 - 60 days imprisonment;

In Criminal Case No. CBU-14794 - 60 days imprisonment;

In Criminal Case No. CBU-14795 - 60 days imprisonment;

No civil liability is awarded in this case inasmuch as complainant has filed a civil action for the amounts of the checks in question.

SO ORDERED." (G.R. No. 120149, *Rollo*, pp. 42-43)

Undaunted, the petitioner is before this court for the reversal of the aforesaid judgments convicting him. Invoking the ruling in *Magno vs. CA* (210 SCRA 471 [1992]), petitioner maintains that he cannot be convicted for violation of B.P. 22 because several factors militate against a strict application of the *mala prohibita* doctrine, viz : (1) the checks were not issued "to apply on account or for value" but as mere warranty deposits to guarantee his obligation in the new partnership; (2) that the profits of the business of the partnership have more than paid his (petitioner's) account for the baking materials he bought, for the payment of which subject checks were issued.

As the drawer of the dishonored checks complained of, although intended merely as a guarantee deposit, the petitioner is liable under B.P. Blg 22.

A check issued as an evidence of debt, though not intended for encashment, has the same effect like any other check. It is within the contemplation of B.P. 22, which is explicit that "any person who makes or draws and issues *any check* to apply for an account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank x x x which check is subsequently dishonored x x x shall be punished by imprisonment x x x" (*Cruz vs. CA*, 233 SCRA 307 [1994])

When a check is presented for payment, the drawee bank normally honors the same whether issued in payment of an obligation or just as a guaranty of an obligation.

What is penalized by law is the issuance of a bouncing check. The mere act of