

## THIRD DIVISION

[ G.R. No. 129774, December 29, 1998 ]

**NARCISO A. TADEO, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**PARDO, J.:**

The case before the Court is an appeal *via certiorari* taken by petitioner from the decision of the Court of Appeals dismissing the petition for certiorari to annul the trial court's order denying his demurrer to evidence in eight (8) cases for violation of Batas Pambansa Bilang 22 filed against him before the Regional Trial Court, Branch 94, Quezon City.

Complainant Ms. Luz M. Sison was the owner of commercial apartments at 731 Edsa corner Ermin Garcia, Cubao, Quezon City.<sup>[1]</sup>

In 1985, petitioner's wife leased from complainant one unit of the apartment at a monthly consideration of P7,000.00, for a period of five years. After two years, she also leased the adjacent apartment at an additional monthly consideration of P4,000.00. However, in early 1988, petitioner's wife incurred rental arrears with complainant in the amount of P113,300.00. In order to settle the account, petitioner negotiated with complainant. He issued eight (8) postdated checks dated February 8, 1988 to August, 1988, payable to complainant covering the unpaid rental arrears of P113,300.00. All the checks bounced upon deposit with the drawee bank. After the last check was returned to complainant unpaid, with the notation "DAIF", meaning "drawn against insufficient funds" stamped thereon, on October 13, 1988, complainant's counsel wrote petitioner demanding that the unpaid checks be redeemed within three (3) days from receipt of the letter.<sup>[2]</sup>

On October 26, 1988, petitioner wrote complainant expressing willingness to discuss the matter with her counsel. However, he did not redeem the unpaid checks; indeed, he did not even mention any intention to pay complainant or to make arrangements for payment of the dishonored checks.<sup>[3]</sup>

On January 9, 1989, Assistant Prosecutor Jesus E. Bigornia, Jr. of Quezon City, filed with the Regional Trial Court, Quezon City, eight (8) Informations charging petitioner with violation of Batas Pambansa Bilang 22, which were consolidated before Branch 94.<sup>[4]</sup> Petitioner then moved to quash the informations on the ground that the court lacked jurisdiction over the subject cases.<sup>[5]</sup> On June 24, 1990, the trial court denied the motion.<sup>[6]</sup> After petitioner entered a plea of not guilty to the charges, on April 30, 1991, the trial court conducted a pre-trial at which the parties marked their respective documentary evidence. Thereafter, the trial court declared the pre-trial of the cases closed and terminated.<sup>[7]</sup>

On March 29, 1993, at the trial of the cases, the prosecution presented the testimony of complainant Luz Sison to prove the charges against petitioner. After her cross-examination, the prosecution rested its case, and formally offered the documentary exhibits marked at the pre-trial.<sup>[8]</sup>

On May 15, 1994, without prior leave of court, petitioner filed a demurrer to evidence on the ground that the prosecution failed to present sufficient evidence proving all the elements of the offense charged. The prosecution filed an opposition thereto. On November 27, 1994, the trial court declared that "there exists a *prima facie* case after the prosecution has presented its evidence and rested its case" and accordingly denied the demurrer to evidence for lack of merit.<sup>[9]</sup> On January 13, 1995, the trial court also denied petitioner's motion for reconsideration.<sup>[10]</sup>

On September 7, 1995, petitioner filed with the Court of Appeals a special civil action for certiorari seeking to annul the lower court's orders denying his demurrer to evidence.<sup>[11]</sup>

After due proceedings, on February 7, 1997, the Court of Appeals rendered decision dismissing the petition, for lack of merit.<sup>[12]</sup> The Court of Appeals ruled that certiorari does not lie to challenge the trial court's interlocutory order denying the accused's motion to dismiss. Appeal in due time is the proper remedy in order to have the findings of facts of the respondent judge reviewed by a superior court.

Hence, this petition.

We deny the petition. We agree with the Court of Appeals that certiorari does not lie to review a trial court's interlocutory order denying a motion to dismiss (or to acquit), which is equivalent to a demurrer to evidence, filed after the prosecution had presented its evidence and rested its case. An order denying a demurrer to evidence is interlocutory. It is not appealable. Neither can it be the subject of a petition for certiorari. From such denial, appeal in due time is the proper remedy, not certiorari, in the absence of grave abuse of discretion or excess of jurisdiction, or an oppressive exercise of judicial authority.<sup>[13]</sup>

However, petitioner submits that the trial court acted with grave abuse of discretion when the court held that there exists a *prima facie* case, disregarding the prosecution's failure to present as witness a representative of the drawee bank to testify on the dishonor of the questioned checks as an element of the offense charged. He insists that the testimony of the bank's representative is mandatory.<sup>[14]</sup>

We do not agree.

It is not required, much less indispensable, for the prosecution to present the drawee bank's representative as a witness to testify on the dishonor of the checks because of insufficiency of funds. The prosecution may present, as it did in this case, only complainant as a witness to prove all the elements of the offense charged.<sup>[15]</sup> She is a competent and qualified witness to testify that she deposited the checks to her account in a bank; that she subsequently received from the bank the checks returned unpaid with a notation "drawn against insufficient funds"