

## TWENTIETH DIVISION

**[ CA- G.R. CR NO. 02288, November 14, 2014 ]**

**JUANITA NEGRE, PETITIONER-APPELLANT, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT-APPELLEE.**

### D E C I S I O N

**QUIJANO-PADILLA, J.:**

This is a petition for review<sup>[1]</sup> under Rule 42 of the Rules of Court seeking the reversal of the Decision<sup>[2]</sup> dated April 30, 2013 of the Regional Trial Court (RTC), Branch 58, Cebu City in Criminal Cases Nos. CBU-96571, CBU-96572, and CBU-96573, which affirmed in toto the Decision<sup>[3]</sup> of the Municipal Trial Court in Cities (MTCC) finding the Juanita Negre ("petitioner Negre") guilty of three counts of violation of Batas Pambansa Blg. 22 (BP 22), otherwise known as the Bouncing Checks Law.

Private complainant, Rafael Marigomen, Jr. ("Rafael") is in the business of lending money and rediscounting of checks. One of his clients was Cresencia M. Lumayag ("Cresencia"). Rafael's transactions with Cresencia involving rediscounting of checks had gone well until he received from the latter the following Bank of Cebu checks ("subject checks"):

Check Number	Amount	Date of Check
1707300	P59,000.00	- July 25, 2003
1711599	P41,500.00	- August 8, 2003
1711600	P38,000.00	- August 10, 2003
<i>Total</i>	<i>P138,500.00</i>	

Cresencia informed Rafael the subject checks were issued by petitioner Negre for value.

However, upon deposit of the subject checks after they matured, Rafael was surprised that the checks were dishonored for the reason of "Account Closed". Hence, Rafael contacted Cresencia and petitioner Negre to inform them of the fact of dishonor. He demanded from them for replacement of the checks, but the two refused.

Rafael, thus, sent notices of dishonor to Cresencia and petitioner Negre. When the notice was handed to petitioner Negre, she refused to receive the same.

Because his demands were unheeded, Rafael was left without recourse but to file a complaint against petitioner Negre.

Three Informations<sup>[4]</sup> were filed against petitioner Negre. Except for the check numbers, dates and amounts of the checks issued by petitioner Negre, each Information uniformly charged as follows:

“That in July 2003, and for sometime prior or subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, knowing at the time of issue of the check and that he/she did not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, with deliberate intent, with intent of gain and of causing damage, did then and there issue, make or draw The Bank of Cebu Check bearing No. \_\_\_\_\_\* dated \_\_\_\_\_\*\* in the amount of P\_\_\_\_\_\*\*\* payable to Rafael G. Marigomen, Jr. which check was issued on account or for value, but when said check was presented to the drawee bank for encashment, the same was dishonored for [the] reason of “Account Closed”, and despite notice of dishonor and demands said accused failed and refused and up to the present still fails and refuses to redeem said check, to the damage and prejudice of said Rafael G. Marigomen, jr. in the amount aforestated.

CONTRARY TO LAW.”<sup>[5]</sup>

During trial, petitioner Negre admitted that she issued the subject checks but not in favor of Cresencia nor of Rafael. She claimed that she issued these checks for payment of her obligation to one Perpetua Causin for medicines she bought from the latter as stocks in her pharmacy. She narrated that these checks were stolen after she left the same on top of the table inside Perpetua Causin's office. She likewise claimed that she did not know Rafael nor Cresencia and never had transactions with them. She also denied receiving any notice of dishonor. She also presented Perpetua Causin to testify on the circumstances how the subject checks were stolen.<sup>[6]</sup>

Finding that all the elements of the crime charged were proven beyond reasonable doubt, the MTCC convicted petitioner Negre of three counts of violation of BP 22 and found her civilly liable to private complainant Rafael for the total face value of the subject checks. In its March 21, 2012 Decision<sup>[7]</sup>, the MTCC disposed:

“WHEREFORE, this Court finds JUANITA NEGRE GUILTY beyond reasonable doubt for the offense of violation of Batas Pambansa Blg. 22, and hereby imposes a penalty of imprisonment of thirty (30) days of arresto menor for each count in Criminal Cases No. 129410-R, 129411-R and 129412-R.

Juanita Negre is likewise ordered to pay Rafael Marigomen the total face value of the three (3) Bank of Cebu Checks No. 1707300, 1711599 and 1711600 in the amount of ONE HUNDRED THIRTY EIGHT THOUSAND FIVE HUNDRED PESOS (Php138,500.00), Philippine Currency, as her civil liability, with one percent (1%) interest per month reckoned from filing the Information in Court on October 28, 2004, until obligation is fully paid.”<sup>[8]</sup>

Petitioner challenged this adverse Decision through an appeal with the RTC. She questioned the finding of her guilt considering (a) that she never issued the subject

checks to Cresencia nor Rafael for value; (b) that she closed her account because the subjects were reportedly stolen; (c) that she never received a notice of dishonor; and, (d) that, assuming she is guilty, she should have been penalized with fine only and not with imprisonment. Aside from these, she also raised the error of MTCC in reinstating the cases against her after previously issuing an order of dismissal for lack of probable cause.<sup>[9]</sup>

The RTC found no merit on petitioner Negre's appeal and affirmed in toto the MTCC Decision. Its April 30, 2013 Decision<sup>[10]</sup> reads:

"IN FINE, this court finds no reversible error committed by the court a quo.

ACCORDINGLY, the decision appealed from is hereby affirmed in toto.

SO ORDERED."<sup>[11]</sup>

Her Motion for Reconsideration<sup>[12]</sup> having been denied in the January 7, 2014 Order<sup>[13]</sup> of the RTC, petitioner Negre filed this petition for review assigning to the RTC which exercised its appellate jurisdiction the following errors:

I. "THE REGIONAL TRIAL COURT SERIOUSLY ERRED IN FINDING THAT THE TRIAL COURT COMMITTED NO REVERSIBLE ERROR IN HOLDING THE ACCUSED GUILTY OF THE CRIME CHARGED AND IN AFFIRMING ITS DECISION IN TOTO.

II. THE REGIONAL TRIAL COURT COMMITTED A SERIOUS ERROR IN DENYING OUTRIGHTLY THE MOTION FOR RECONSIDERATION FILED BY THE ACCUSED.

III. THE REGIONAL TRIAL COURT GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S DECISION IMPOSING THE ACCUSED A PENALTY OF IMPRISONMENT ASSUMING WITHOUT ADMITTING THAT THE ACCUSED IS GUILTY OF THE CRIME CHARGED AGAINST HER."<sup>[14]</sup>

Petitioner Negre's discussion in support of her assignment of errors echoes substantially the same arguments and issues she raised before the trial courts.

We affirm petitioner Negre's conviction.

Foremost, We tackle petitioner Negre's argument that the MTCC erred in reinstating the cases against her even after the same was previously dismissed. She argues that this issue, though raised in her appeal was not addressed by the RTC. This argument fails to impress.

We quote with approval the discussion of the RTC in its Decision, to wit:

"The court notes that the reason for the initial dismissal of these cases was that the affidavit of the offended party's credit and collection manager, Wilson Bawiga, was not attached to the record. However, as correctly pointed out by the prosecution in its motion for reconsideration, the non-attachment of the affidavit of Mr. Bawiga is material only during

the trial on the merits but is not essential for the determination of probable cause.”<sup>[15]</sup>

Indeed, the proceedings before the MTCC when it reinstated the cases only involve the determination of probable cause. The affidavit of the witness Wilson Bawiga is evidentiary in nature in order for the prosecution to support the crime charged. Its non-attachment will not prevent the finding of probable cause.

Probable cause, for purposes of filing a criminal information, has been defined as “such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial.”<sup>[16]</sup> “The term does not mean “actual or positive cause” nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.”<sup>[17]</sup>

Now on the substantive merits.

Liability for violation of B.P. 22 attaches when the prosecution establishes proof beyond reasonable doubt of the existence of the following elements:

1. The accused makes, draws or issues any check to apply to account or for value;
2. The accused knows at the time of the issuance that he or she 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 check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or it would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.<sup>[18]</sup>

To prove the first and third elements of the crime, Section 3 of BP 22 provides that the introduction in evidence of the unpaid or dishonored check, having the drawee’s refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid shall be *prima facie* evidence of the making or issuing of the said checks and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped or attached thereto by the drawee on such dishonored checks.<sup>[19]</sup>

Meanwhile, in proving the second element, Section 2 of the law provides that:

SEC. 2. Evidence of knowledge of insufficient funds.—The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of