

## THIRD DIVISION

[ G.R. No. 154438, September 05, 2007 ]

**ALICIA F. RICAFORTE, PETITIONER, VS. LEON L. JURADO,  
RESPONDENT.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision<sup>[1]</sup> dated April 26, 2002 and the Resolution<sup>[2]</sup> dated July 29, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 66293.

On February 10, 1997, respondent filed a Complaint<sup>[3]</sup> for estafa and violation of *Batas Pambansa (B.P.) Blg. 22* against Alicia F. Ricaforte (petitioner) with the Quezon City Prosecutor's Office. He alleged that he operates and manages a rice mill in Bulacan; that sometime in June 1996, Ruby Aguilar (Aguilar) procured rice from him and in payment thereof gave him two Far East Bank and Trust Company (FEBTC) checks, to wit: FEBTC Check No. 08A096028P dated July 25, 1996 and Check No. 08A096029P dated August 25, 1996, in the amount of P431,555.00 each, which were both issued by petitioner and when presented for payment were dishonored.

In her Counter-Affidavit, petitioner denied the accusation. She alleged that Aguilar who had lost her Metrobank checkbook borrowed her checks to pay off Aguilar's obligations with Leon Jurado (respondent); that she willingly lent her checks to Aguilar on condition that these checks will be replaced with Aguilar's own checks once her new checkbook is issued to her by Metrobank; that Aguilar then used petitioner's checks to pay her rice procurement with respondent; that in accordance with the arrangement, Aguilar issued two replacement checks in favor of respondent in the amount of P431,555.00 each; that when Aguilar issued the replacement checks, petitioner demanded from respondent the return of her checks but respondent refused, thus she was constrained to request her bank to issue an order of stop payment. Aguilar executed an Affidavit corroborating petitioner's defense.

Respondent filed his Reply denying that petitioner's checks were merely accommodation checks. Petitioner filed her rejoinder as well as supplement to rejoinder.

In a Resolution<sup>[4]</sup> dated November 24, 1997, Assistant City Prosecutor Luis Zenon Q. Maceren dismissed the complaint for estafa and B.P. Blg. 22 for insufficiency of evidence. The prosecutor found that petitioner did not have any business transaction with respondent; that the subject checks were issued only to accommodate Aguilar; that these were delivered to respondent not as payment but as a guarantee and on condition that Aguilar will replace petitioner's checks with her

own, which Aguilar did prior to the maturity of petitioner's checks; that upon maturity of Aguilar's replacement checks and after respondent presented them for payment and were subsequently dishonored, it was then that petitioner's checks were also presented by respondent for encashment; that Aguilar's replacement checks are now subject of another litigation pending in the Metropolitan Trial Court of Quezon City; that the sequence of events showed that indeed petitioner's checks were not intended as payment to respondent because petitioner had no obligation to respondent; that the checks were not issued to account or for value; thus, there can be no finding of *prima facie* evidence of the charges against him relying on *Magno v. Court of Appeals*.<sup>[5]</sup>

Respondent's Motion for Reconsideration was denied in a Resolution<sup>[6]</sup> dated May 27, 1998. The prosecutor found that although the issuance of a worthless check is *malum prohibitum*, *B.P. Blg. 22* still requires that the checks should be issued with consideration, which element was lacking in this case; that even respondent admitted in his Complaint-Affidavit that petitioner had no transaction with him by alleging that Aguilar handed to him petitioner's two checks in payment of rice procurement representing these as Aguilar's collection checks and with assurance that they are good; that when Aguilar replaced petitioner's checks with her own, petitioner's checks had no more consideration since these were issued upon agreement that the real debtor, Aguilar, will also issue her own checks.

Respondent appealed the dismissal of his complaint to the Department of Justice.

The Secretary of Justice issued a Resolution<sup>[7]</sup> dated September 21, 2000 modifying the Resolution of the City Prosecutor and directing him to file an information against petitioner for violation of *B.P. Blg. 22*.

The Justice Secretary found that while the dismissal of estafa is correct, petitioner should be indicted for *B.P. Blg. 22*. In so ruling, the Secretary found that while petitioner has no business transactions with respondent and merely issued the checks as a guarantee for Aguilar's obligation to respondent, the fact remains that petitioner issued the subject checks and failed to pay respondent the amount due thereon or make arrangements for their full payment within five banking days after receiving a notice of dishonor; that the gravamen of the offense punished by *B.P. Blg. 22* is the act of making and issuing worthless checks or those dishonored upon their presentment for payment; that the thrust of the law is to prohibit the making of worthless checks and putting them in circulation; that to require the arrangement surrounding the issuance of the checks be first looked into and thereafter exempt such issuance from the punitive provisions of *B.P. Blg. 22* on the basis of that arrangement would frustrate the very purpose for which the law was enacted, i.e. to stop the proliferation of unfunded checks; that *B.P. Blg. 22* applies even when dishonored checks were issued merely in the form of deposit or guarantee.

The Justice Secretary denied petitioner's Motion for Reconsideration in a Resolution<sup>[8]</sup> dated May 30, 2001.

Petitioner filed with the CA a Petition for *Certiorari* under Rule 65 assailing the resolutions of the Secretary of Justice for having been issued with grave abuse of discretion.

On April 26, 2002, the CA issued its assailed Decision denying the petition for lack of

merit. The CA found no grave abuse of discretion committed by the Justice Secretary in his assailed Resolutions. It ruled that trial on the merits must ensue since it is on said occasion that petitioner is granted opportunity for a full and exhaustive presentation of her evidence and not during the preliminary investigation phase where the investigating officer acts upon probable cause and reasonable belief; that in the preliminary investigation phase, it is not yet clear whether petitioner could be considered as having actually committed the offense charged and sought to be punished, although petitioner is presumed innocent until proven guilty beyond reasonable doubt; that the crux of the matter rests upon the reasons for the drawing of the postdated checks by petitioner; *i.e.*, whether they were drawn or issued "to apply on account or for value" as required under *B.P. Blg. 22* which will only be determined during trial.

Petitioner's Motion for Reconsideration was denied in a Resolution dated July 29, 2002. The CA ruled that mere issuance of a bouncing check constitutes a probable cause for violation of *B.P. Blg. 22*; that whether or not the accused is guilty thereof is determined in the trial proper; that preliminary investigation is not a trial and is not intended to usurp the function of the trial court; that *Sales*, which is invoked by petitioner, is not applicable to the instant case, since the issue in that case was whether or not the Ombudsman followed the proper procedure in conducting a preliminary investigation and the corollary issue of whether or not petitioner was afforded an opportunity to be heard and to submit controverting evidence which are not the issues in this case.

Hence, herein petition on the following grounds:

#### I

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN NOT HOLDING THAT THE HONORABLE SECRETARY OF JUSTICE COMMITTED A GRAVE ABUSE OF DISCRETION IN ISSUING HIS MODIFIED RESOLUTION FINDING PROBABLE CAUSE AGAINST PETITIONER FOR VIOLATION OF B.P. BLG. 22, DESPITE THE FACT THAT THE HONORABLE SECRETARY HAS AGREED WITH THE FINDING OF THE QUEZON CITY PROSECUTION OFFICE DISMISSING THE CHARGE OF ESTAFA AGAINST PETITIONER.

#### II

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR IN NOT GIVING WEIGHT AND CREDENCE TO PETITIONER'S CLAIM THAT THE SUBJECT CHECKS WERE NOT ISSUED TO ACCOUNT OR FOR VALUE BUT SOLELY TO GUARANTEE RUBY AGUILAR'S CHECKS, ESPECIALLY CONSIDERING THAT IT IS UNDISPUTED THAT PETITIONER HAD NO BUSINESS DEALINGS WHATSOEVER WITH THE RESPONDENT REGARDING RICE PROCUREMENTS.

#### III

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR IN NOT HOLDING THAT THERE IS NO NEED TO GO TO TRIAL IN THE INSTANT CASE BECAUSE EVEN DURING THE

PRELIMINARY INVESTIGATION CONDUCTED BY THE QUEZON CITY PROSECUTION OFFICE, THE SAID PROSECUTION OFFICE HAD FOUND THAT NO PRIMA FACIE OR PROBABLE CAUSE EXISTS TO WARRANT THE FILING OF THE COMPLAINTS OF ESTAFA AND VIOLATION OF B.P. BLG. 22 AGAINST THE PETITIONER.

#### IV

THE AFFIRMANCE BY THE HONORABLE COURT OF APPEALS OF THE MODIFIED RESOLUTION OF THE HONORABLE SECRETARY OF JUSTICE DIRECTING THE FILING OF AN INFORMATION AGAINST PETITIONER FOR VIOLATION OF B.P. BLG. 22 OVERLOOKED THE FACT THAT RESPONDENT WOULD BE UNJUSTLY ENRICHED AT THE EXPENSE OF PETITIONER AND THE DEBTOR, MS RUBY AGUILAR, IN THE FORM OF IMPOSITION OF A FINE WHICH IS DOUBLE THE AMOUNT OF THE BOUNCED CHECKS.<sup>[9]</sup>

The main issue to be resolved is whether the CA erred in ruling that the Secretary of Justice did not commit grave abuse of discretion in finding that there is probable cause for the filing of information against petitioner for violation of *B.P. Blg. 22*.

Petitioner alleges that the CA should not have sustained the modified resolution of the Secretary of Justice because the Secretary misappreciated her defense, *i.e.*, that Aguilar lost her Metrobank checkbook and borrowed her check and that she issued the subject checks on the condition that the same will be replaced when Aguilar's new checkbook is issued, thus the subject checks are merely accommodation or guarantee checks; that it was Aguilar who tendered them to respondent in payment of her rice procurements from him; that the subject checks were not intended for encashment; that Aguilar subsequently issued her own checks dated July 20, 1996 and August 20, 1996, for P431,555.00 each as replacement for the subject checks; that such substitution was with respondent's knowledge, since the arrangement was brought to his attention through a letter dated July 19, 1996.

Petitioner insists that none of the elements of the offense of *B.P. Blg. 22* were present; the first element is absent, since the subject checks were not intended to apply on account or for value in favor of respondent, as petitioner had no business transaction on rice procurements with respondent; the second element is also absent because it is undisputed that at the time petitioner issued the checks, she had substantial deposits with FEBTC which can readily fund her checks upon presentment or maturity; that the reason for the dishonor was "stop payment," because she requested the bank to do so due to a valid reason, *i.e.*, her checks were already replaced by Aguilar's checks dated July 20, 1996 and August 20, 1996.

Petitioner cites *Tan v. People*,<sup>[10]</sup> in which the petitioner was acquitted of violation of *B.P. Blg. 22* because in ordering the stop payment of her check, there were sufficient funds in her account.

Petitioner claims that the CA overlooked the fact that the Secretary of Justice absolved her of estafa; thus, she should also be absolved of violation of *B.P. Blg. 22*, since both offenses arose from the same subject checks.

Petitioner contends that the CA misappreciated the importance of a preliminary investigation when it ruled that the trial on the merits must ensue, and it is on said occasion when petitioner is granted the opportunity for a full and exhaustive display

of her evidence; that it erred in ruling that it is only during trial that the presence or absence of the first element of *B.P. Blg. 22*, i.e., whether the subject checks were issued to apply to account or for value, can be determined; that preliminary investigation should be given due importance and the determination of whether the first element of *B.P. Blg. 22* is present should not be shifted to the trial court; that contrary to the CA's finding, *Sales* is applicable, a case in which it was ruled that at the preliminary investigation proper, the question whether or not an accused can be bound over for trial can already be determined; if it was determined at the preliminary investigation that an accused had not committed the crime charged, then it is useless to still hold a trial to determine the guilt of the accused, since it can already be determined at the preliminary investigation.

We are not persuaded.

In a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial.<sup>[11]</sup> Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.<sup>[12]</sup> A finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed by the suspect.<sup>[13]</sup> It does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits.<sup>[14]</sup> The complainant need not present at this stage proof beyond reasonable doubt. A preliminary investigation does not require a full and exhaustive presentation of the parties' evidence.<sup>[15]</sup> It is enough that in the absence of a clear showing of arbitrariness, credence is given to the finding and determination of probable cause by the Secretary of Justice in a preliminary investigation.<sup>[16]</sup>

Contrary to petitioner's claim, respondent sufficiently established the existence of probable cause for violation of *B.P. Blg. 22*. Section 1 of *B.P. Blg. 22* provides:

SECTION 1. *Checks without sufficient funds.* - Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.