

SECOND DIVISION

[G.R. No. 126594, September 05, 1997]

IMELDA MARCOS, PETITIONER, VS., THE HONORABLE COURT OF APPEALS; HONORABLE JUDGE GUILLERMO L. LOJA, SR., THE PRESIDING JUDGE OF BRANCH 26 OF THE RTC AT MANILA; AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

R E S O L U T I O N

REGALADO, J.:

In a petition for review on certiorari filed on November 5, 1996, petitioner Imelda R. Marcos prays this Court to set aside the decision of respondent Court of Appeals promulgated in CA-G.R. SP No. 35719 on May 23, 1996, as well as its resolution of September 27, 1996 denying her motion for the reconsideration of the judgment in said case.^[1]

Preliminary, her motion for extension of time to file this petition was denied for non-compliance with Revised Circular No. 1-88 and Circular No. 19-91 because the affidavit of service, although otherwise sufficient in form and substance, was not signed by the affiant, and the registry receipt proving service of a copy of said motion to the Solicitor General was not attached thereto. Hence, the petition subsequently filed by her was dismissed for having been filed out of time in this Court's resolution of November 27, 1996.^[2]

Petitioner then moved for reconsideration, explaining the cause for the procedural lapses and contending that, on the merits, the trial court had no jurisdiction over the offenses charged; that no offenses actually charged or that the facts alleged do not constitute the imputed offenses; and, consequently, that the court a quo gravely abused its discretion in denying the motion to quash.

Considering the number of criminal cases filed against petitioner, relief from which is sought in the petition at bar and the issues wherein may possibly be raised again in other cases of a similar nature, the Court resolved on February 24, 1997 to require the Solicitor General to comment thereon, in order that the adjudication of petitioner's complaints may not go off only on procedural points. In due time, such comment was filed, albeit in abbreviated form, the Solicitor General correctly pointing out that all the substantive issues now being raised before us had also been extensively argued in and resolved by respondent appellate court.

Indeed, an overall review of the allegations in the present petition reveals that the same are merely a rehash of those already submitted to respondent court and that this petition is apparently a reprise of the certiorari petition in CA-G.R. SP No. 35719 filed in the Court of Appeals.

For facility of presentation, therefore, we need merely to reproduce herein the

findings in the assailed decision of respondent appellate court, which are fully sustained by the records, excluding therefrom those cases pertaining to CA-G.R. SP No. 35928 (except when involved in the narration of the antecedents of this case) which was jointly resolved by it but from which no appeals or other recourse was taken by the petitioners therein.

We accordingly give credit to respondent court and adopt its recital of the antecedents of the instant petition, to wit:

In CA-G.R. SP No. 35719, petitioner Marcos assails the Order dated June 9, 1994 which denied her Motion to Quash the eight (8) informations filed against her in the consolidated Criminal Case Nos. 91-101732 to 91-101739 and the other fourteen (14) informations filed against her, Benedicto and Rivera in the consolidated Criminal Case Nos. 91-101879 to 91-101892, and Order dated August 30, 1994 which denied her Motion for Reconsideration.

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On October 21, 1983, pursuant to Monetary Board Resolution Nos. 1632 and 1718 dated September 30, 1983 and October 21, 1983, respectively, the Central Bank (CB) of the Philippines (now Bangko Sentral ng Pilipinas) issued Circular No. 960. The circular, which consolidated the various rules and regulations promulgated by the CB concerning foreign exchange non-trade transactions including those on gold and silver, prohibits in its Section 4 residents, firms, association, or corporations from maintaining foreign exchange accounts abroad without prior authorization from the CB or without being permitted by CB regulations; and requires in Section 10 thereof all residents who habitually earn or receive foreign exchange from invisibles locally or from abroad to submit reports of such earnings or receipts in prescribed form with the proper CB department and to register with the Foreign Exchange Department of the CB within 90 days from October 21, 1983. Violation of the provisions of the circular is punishable as a criminal offense under Section 34 of R.A. No.265, as amended (the Central Bank Act).

On December 20, 1991 or nearly six years after the 1986 EDSA Revolution which toppled the Marcos regime, Marcos was, for allegedly opening and maintaining foreign exchange accounts abroad on various dates from 1968 to 1991 without prior authorization from the CB or otherwise allowed by CB regulations, charged with violating Section 4 of CB Circular 960 before the RTC of Manila in eight (8) essentially identically worded informations docketed as Criminal Case Nos. 91-101732 to 101739, one of which reads as follows:

"That from 1968 to June 6, 1991, both dates inclusive, the above-named accused, in conspiracy with her late husband, then President Ferdinand E. Marcos, while both residing in Malacañang Palace in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court did, then and there wilfully, unlawfully and feloniously open and maintain foreign exchange accounts abroad, particularly in Swiss Bank Corporation (SBC) in Geneva, Switzerland, in the name of Maler

Establishment, later transformed into Maler Foundation, which was organized by their dummies, nominees, fronts, agents or duly appointed administrators among them Jean Louis Sunier who received instructions from the accused and her husband who signed with their alias 'JOHN LEWIS' in order to maintain two accounts, one of which is Account No. 98929 NY under Maler II with a balance of SF 16,195,258.00, without prior permission from the Central Bank of the Philippines, and such act of maintaining foreign account abroad was not permitted under Central Bank regulations."

(Rollo, CA-G.R. SP No.35719, pp. 45-46)

The wordings of the other seven (7) informations differed only in the dates of commission of the offense charged, the name/s of the dummy/dummies, the balance of the foreign exchange accounts maintained abroad and the name/s of the foreign bank/s where such accounts were maintained.

Likewise, for allegedly failing to submit a report of their foreign exchange earnings from abroad and/or to register with the Foreign Exchange Department of the CB within the period mandated by Section 10 of CB Circular No. 960, Marcos, Benedicto and Rivera were similarly indicted on December 27, 1991 for violation of Section 10, CB Circular No. 960 in relation to Section 34 of the Central Bank Act in five (5) informations filed with the RTC of Manila which were docketed as Criminal Case Nos. 91-101879 - 91-101883. On the same date, nine (9) more informations essentially charging the same offense were filed with the RTC of Manila, but this time only against Marcos and Benedicto, which were docketed as Criminal Case Nos. 91-101884 to 91-101892. One of the informations reads:

"That from September 21, 1983 up to December 26, 1985, both dates inclusive, and for sometime thereafter, all accused, conspiring and confederating with one another and with the late President Ferdinand E. Marcos, all residing and/or doing business in Manila, Philippines, within the jurisdiction of this Honorable Court, and assisted by their foreign agent or attorney-in-fact Stephen G. Cattai, did then and there wilfully, unlawfully and feloniously fail to submit reports in the prescribed form and/or register with the Foreign Exchange Department of the Central Bank within 90 days from October 21, 1983 as required of them being residents habitually/customarily earning, acquiring/receiving foreign exchange from whatever source or from invisibles locally or from abroad, despite the fact that they actually earned interests regularly for their investment of FIFTEEN MILLION (\$15-million) DOLLARS, U.S. Currency, in Philippine-issued dollar-denominated treasury notes with floating rates and in bearer form, in the name of Banque de Paris et des Pays-Bas (also known as Banque Paribas) in Geneva, Switzerland but which was transferred on May 17, 1984 to Lombard, Odier et Cie, a bank also in Geneva, for the account of COGES 00777 being managed by Mr. Stephane Cattai for the marcoses who also arranged the said investment of \$15-million through respondents Roberto S. Benedicto and Hector T. Rivera by using the Royal Traders Bank in Manila as the custodian of the said dollar-denominated treasury notes, which earned, acquired or received for the accused Imelda Romualdez Marcos and her late husband an interest of \$13,229.16 for delay (December 16-19, 1995) plus redemption of \$15-million which was remitted to Lombard, Odier et Cie through

Chicago International Banking Corporation in New York, United States of America, for the credit of said Account COGES 00777 of the Marcoses for further investment outside the Philippines without first complying with the reporting/registering requirements of the Central Bank”.

(Rollo, CA-G.R. SP No. 35928, pp. 45-46)

On January 3, 1992, eleven (11) more informations for alleged violation of the aforesaid Section 10, CB Circular 960 were filed against Marcos and Benedicto with the same court which were docketed as Criminal Case Nos. 92-101959 to 92-101969.

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All these thirty-three (33) cases were consolidated before Branch 26 of the RTC of Manila presided by herein public respondent Judge Loja, Sr.

Marcos was arraigned on February 12, 1992 while Benedicto and Rivera were arraigned on February 28, 1994.

During the pendency of these cases, CB Circular No. 1318 (Revised Manual of Rules and Regulations Governing Non-Trade Foreign Exchange Transactions) dated January 3, 1992 and CB Circular No. 1353 (Further Liberalizing Foreign Exchange Regulations) dated August 24, 1992 were issued by the CB. CB Circular No. 1318 repeals insofar as inconsistent therewith all existing provisions of CB Circular No. 960, among other circulars, while CB Circular No. 1353 repeals all the provisions of Chapter X of CB Circular No. 1318 only insofar as they are inconsistent therewith. Both circulars, however, contain a saving clause excepting from the circular pending criminal actions involving violations of CB Circular No. 960 and CB Circular No. 1318. (*Italics supplied*)

Invoking the abovementioned repeal as one of her grounds, Marcos filed a Motion to Quash on May 23, 1994 seeking the dismissal of the cases or the quashal of the informations filed against her in Criminal Case Nos. 91-101732 to 91-101739 and 91-101879 to 91-101892. Respondent People of the Philippines opposed the same on June 2, 1994. [3]

Petitioners Marcos' aforesaid motion was denied by the trial court in an order dated June 9, 1994 and her motion for reconsideration was likewise repudiated in an order of August 30, 1994. She then filed a petition for certiorari and prohibition with respondent Court of Appeals ascribing abuse of discretion on the part of respondent trial judge. What transpired there is best taken from the account thereof in the following portion of the impugned decision of respondent appellate court.

In CA-G.R. SP No. 35719, Marcos relied on two grounds in taking respondent court to task, to wit: (1) respondent court has no jurisdiction over the offenses charged; and (2) respondent court acted with grave abuse of discretion amounting to lack of jurisdiction in denying her Motion to Quash.

Anent the first ground, Marcos argues that respondent court has no jurisdiction over the cases as the informations clearly allege that the acts complained of were committed outside Philippine territory, and that her constitutional right to equal protection of the laws was violated, the saving clause contained in CB Circular No. 1318 which repealed CB Circular No. 960 being patently discriminatory as it was purportedly designed to preserve the criminal cases lodged against her and her co-accused.

As to the second ground, Marcos argues that the facts alleged in the informations, even if true, do not constitute offenses and that in any event the offenses charged have "disappeared" due to repeal.

Marcos asseverates that the saving clause (Section 111, Chapter X) of CB Circular No. 1318 is invalid since the Monetary Board has no authority to except therefrom pending criminal prosecutions, the power being purely legislative and is not expressly granted in its charter; that even assuming ad arguendo that the Monetary Board has the power, the same is still invalid for being an encroachment and an invalid delegation thereof, the power to declare what constitutes a crime and how it should be punished being vested solely and exclusively in the legislature; that even further assuming that there is no invalid delegation of power to incorporate the saving clause, it is still invalid for being ultra vires as it is not germane to the object and purpose of the Central Bank Act which is to stabilize the monetary system; and in any event, even if the power is unquestioned, the clause is still invalid for being violative of the equal protection of (t)he law clause of the constitution, it having been designed solely for the purpose of preserving the criminal cases against her and her co-accused.

As regards the assertion that the facts alleged in the informations do not constitute an offense, Marcos contends that since the allegations unequivocally state that foreign foundations or trust, not the Marcoses, opened and maintained the subject Swiss accounts and earned and received the interest therefrom, she has no duty to report any earnings and if at all, she was a mere beneficiary of the foreign foundations or trusts; and that the acts having been committed abroad, they are beyond the jurisdiction of respondent court.

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Petitioners do not dispute the validity of CB Circular No. 960, the law under which they are being prosecuted, and of CB Circular Nos. 1318 and 1353 which they allege repealed CB Circular No. 960, nor do they challenge the authority of the Monetary Board to issue them.

Petitioners likewise do not dispute that violation of Section 4 of CB Circular No. 960, as amended, which provides:

"SEC. 4. Foreign exchange retention abroad. No person shall promote, finance, enter into or participate in any foreign exchange transactions where the foreign exchange involved is paid, retained, delivered or transferred abroad while the