

THIRD DIVISION

[G.R. No. 198270, December 09, 2015]

**ARMILYN MORILLO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND RICHARD NATIVIDAD, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision^[1] dated January 18, 2011 and Resolution^[2] dated August 9, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 32723 which reversed and set aside the Decision^[3] dated February 23, 2009 and Order^[4] dated July 13, 2009, of the Regional Trial Court (RTC) in Criminal Case Nos. 08-1876-77, which, in turn, affirmed the Joint Decision^[5] dated September 3, 2008 of the Metropolitan Trial Court (MeTC) in Criminal Case Nos. 337902-03.

The antecedent facts are as follows:

Sometime in July 2003, respondent Richard Natividad, Milo Malong and Bing Nanquil, introducing themselves as contractors doing business in Pampanga City under the name and style of RB Custodio Construction, purchased construction materials for their project inside the Subic Freeport Zone from petitioner Armilyn Morillo, owner of Amasea General Merchandize and Construction Supplies. The parties agreed that twenty percent (20%) of the purchases shall be paid within seven (7) days after the first delivery and the remaining eighty percent (80%) to be paid within thirty-five (35) days after the last delivery, all of which shall be via post-dated checks.^[6]

Pursuant to the agreement, petitioner delivered construction materials amounting to a total of P500,054.00 at the construction site where respondent and his partners were undertaking their project. After the last delivery, respondent paid P20,000.00 in cash and issued two (2) post-dated checks, drawn from Metrobank, Pampanga branch, in the amounts of P393,000.00 and P87,054.00. Upon maturity, petitioner attempted to deposit the checks in her savings account at Equitable PCI Bank, San Lorenzo, Makati City. They were, however, dishonored by the drawee bank. Immediately thereafter, petitioner communicated the dishonor to respondent and his partners and demanded for payment. Again, respondent issued two (2) post-dated Metrobank checks and assured petitioner that they will be honored upon maturity. Upon deposit in her savings account at Equitable PCI Bank, Makati Branch, the checks were once again dishonored for the reason that the account from which they were drawn was already a closed account. Consequently, petitioner made several demands from respondent and his partners, but to no avail, prompting her to file a complaint with the City Prosecution Office, Makati City.^[7] Thus, on August 12, 2004,

two (2) Informations were filed against respondent and Milo Malong, the accusatory portions of which read:

Criminal Case No. 337902

That on or about the 20th day of October 2003, or prior thereto, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously make out, draw and issue to AMASEA GENERAL MERCHANDIZE AND CONSTRUCTION SUPPLIES herein represented by ARMILYN MORILLO to apply on account or for value the check described below:

Check : 2960203217
No.
Drawn : Metrobank
Against
In the :
amount Php434,430.00
Postdated: October 20,
/ Dated 2003
Payable : AMASEA GENERAL MERCHANDIZE AND
to CONSTRUCTION SUPPLIES

said accused well knowing that at the time of issue thereof, said accused did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment which check when presented for payment within ninety (90) days from the date thereof, was subsequently dishonored by the drawee bank for the reason "Account Closed" and despite receipt of notice of such dishonor, the said accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

CONTRARY TO LAW.

Criminal Case No. 337903

That on or about the 20th day of October 2003, or prior thereto, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously make out, draw and issue to AMASEA GENERAL MERCHANDIZE AND CONSTRUCTION SUPPLIES herein represented by ARMILYN MORILLO to apply on account or for value the check described below:

Check :
No. 2960203218
Drawn : Metrobank
Against
In the :
amount Php13,032.00
Postdated: October 20,

/ Dated 2003
Payable : AMASEA GENERAL MERCHANDIZE AND
to CONSTRUCTION SUPPLIES

said accused well knowing that at the time of issue thereof, said accused did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment which check when presented for payment within ninety (90) days from the date thereof, was subsequently dishonored by the drawee bank for the reason "Account Closed" and despite receipt of notice of such dishonor, the said accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

CONTRARY TO LAW.^[8]

On September 15, 2004, the Assistant City Prosecutor issued a Resolution recommending that respondent and his partners be charged in court with the crime of Estafa under Article 315, paragraph 2(d) of the Revised Penal Code as well as for Violation of Batas Pambansa No. 22 (*BP 22*), which was later docketed as Criminal Case Nos. 337902-03.

On September 3, 2008, the MeTC rendered its Joint Decision, finding that the prosecution had proven all the elements of violation of BP 22 as against respondent, the dispositive portion of which reads:

WHEREFORE, judgment is rendered in Criminal Cases Nos. 337902-03 finding the accused, RICHARD NATIVIDAD, GUILTY beyond reasonable doubt of the offense of Violation of Batas Pambansa Blg. 22 and is sentenced to pay a fine equivalent to Two Hundred Thousand Pesos (Php200,000.00), for Check No. 2960203217 and Thirteen Thousand Thirty-Two Pesos for Check No. 2960203218 or a total penalty of Two Hundred Thousand Thirteen Thousand Thirty Two Pesos (Php213,032.00), with subsidiary imprisonment in case of insolvency. However, accused MILO MALONG, is ACQUITTED on the ground of reasonable doubt. Both accused Malong and Natividad are ordered to jointly pay the private complainant the total sum of Four Hundred Forty-Seven Thousand Four Hundred Sixty-Two Pesos (Php447,462.00) which are the face value of the two (2) checks issued, subject of these cases, with interest at twelve percent (12%) per annum and three percent (3%) penalty per month as stipulated in the invoices, reckoned from the date of receipt of the demand on February 28, 2004, until the amount is fully paid, plus the costs of suit.

All other claims are DISMISSED for lack of evidence.

SO ORDERED.^[9]

Respondent appealed the decision of the MeTC to the RTC arguing that the MeTC of Makati City had no jurisdiction over the case. He asserted that since the subject checks were issued, drawn, and delivered to petitioner in Subic, the venue of the action was improperly laid for none of the elements of the offense actually transpired in Makati City. Respondent also pointed out that during the retaking of

petitioner's testimony on March 14, 2008, the records of the case did not show that the public prosecutor manifested his presence in court and that he delegated the prosecution of the case to the private prosecutor. Thus, since there was no appearance for the public prosecutor, nor was there a proper delegation of authority, the proceedings should be declared null and void.^[10]

On February 23, 2009, the RTC affirmed the MeTC ruling in the following wise:

Since accused Natividad failed to raise before the court [*a quo*] the issue of authority of the private prosecutor to present witness Morillo in the absence of the public prosecutor during the March 14, 2008 proceeding, and only did so after obtaining an adverse judgment, it would be an injustice if all the proceedings had in the case would be set aside.

The second issue raised on appeal also holds no ground. A violation of BP 22 is a continuing or transitory offense, which is oft-repeated in our jurisprudence. Under this doctrine, jurisdiction may be had in several places where one of the acts material to the crime occurred.

Accused Natividad postulates that since the checks were presented and dishonored in Makati City, which is not the place where it was issued and delivered, the court [*a quo*] lacks jurisdiction. This argument is, at best, specious. The fact remains that the bank where it was presented for payment is in Makati City. These checks passed through this bank for clearance, confirmation, and or validation processes. Moreover, the eventual dishonour indeed took place or was completed at the end of the collecting bank in Makati City, where the private complainant maintains her account over which the court [*a quo*] has jurisdiction.

WHEREFORE, finding no merit on accused-appellant Natividad's appeal, the same is hereby dismissed. Accordingly, the appealed decision of the court [*a quo*] is hereby AFFIRMED in full.

SO ORDERED.^[11]

On appeal, however, the Court of Appeals, in its January 18, 2011 Decision, reversed the lower courts' rulings and dismissed the case without prejudice to its refiling in the proper venue, the pertinent portions of said Decision state:

In this case, records will reveal that the first element of the offense happened in Pampanga. It was indisputably established that the subject checks were issued to private complainant at petitioner's office in Pampanga. Said checks were drawn from petitioner's account in Metrobank, Pampanga branch.

The second element of the offense or the knowledge of dishonor of the checks by the maker also transpired in Pampanga. After private complainant was informed of the dishonor of the checks, she immediately proceeded to petitioner's office in Pampanga, personally informed him and his companions of the dishonor of the checks and tendered a

demand letter for the payment of the construction materials.

Finally, the third element or dishonor of the checks by the drawee bank also happened in Pampanga. Upon maturity of the subject checks, private complainant deposited the same in her savings account at Equitable PCI Bank, Makati Branch. Subsequently, she was informed by the latter bank that the subject checks were dishonored by the drawee bank, Metrobank, Pampanga branch.

Clearly, all the essential elements of the offense happened in Pampanga. Consequently, the case can only be filed in said place. Unfortunately, private complainant filed the case in Makati City, under the erroneous assumption that since she deposited the subject checks in Equitable PCI Bank, Makati City, and was informed of lite dishonor of the checks by the same bank, the case may be filed in Makati City. However, as correctly argued by the OSG, the act of depositing the check is not an essential element of BP 22. Likewise, the fact that private complainant was informed of the dishonor of the checks at her bank in Makati City did not vest the MeTC, Makati City with jurisdiction to take cognizance of the case. To reiterate, a transitory crime can only be tiled in any of the places where its constitutive elements actually transpired. And, knowledge of the payee of the dishonor of the checks is not an element of BP 22. The law speaks only of the subsequent dishonor of the checks by the drawee bank and the knowledge of the fact of dishonor by the maker. Consequently, none of the elements of the offense can be considered to have transpired in Makati City. Thus, the venue of the instant case was improperly laid.^[12]

Aggrieved, petitioner filed the instant action invoking the following argument:

I.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE METROPOLITAN TRIAL COURT OF MAKATI CITY DID NOT HAVE JURISDICTION OVER THE CASE DESPITE A CLEAR SHOWING THAT THE OFFENSE WAS COMMITTED WITHIN THE JURISDICTION OF SAID COURT.

^[13]

Petitioner maintains that the MeTC of Makati City, the place where the dishonored checks were deposited, had jurisdiction over the instant case. In support of her contention, petitioner cites the ruling in *Nieva, Jr. v. Court of Appeals*,^[14] wherein it was held that since the check drawn in violation of BP 22 was deposited and presented for encashment with the Angeles City Branch of the Bank of the Philippine Islands, the RTC of Pampanga clearly had jurisdiction over the crime of which accused therein was charged.^[15] Thus, petitioner asserts that the appellate court erred in ruling that the Makati MeTC did not have jurisdiction to try the instant case. That none of the essential elements of the crime of violation of BP 22 occurred in the City of Makati is belied by the *Nieva* doctrine recognizing the jurisdiction of the court of the place where the check was deposited and/or presented for encashment.