

## THIRD DIVISION

[ G.R. No. 183891, August 03, 2010 ]

**ROMARICO J. MENDOZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

For failure to remit the Social Security System (SSS) premium contributions of employees of the Summa Alta Tierra Industries, Inc. (SATII) of which he was president, Romarico J. Mendoza (petitioner) was convicted of violation of Section 22(a) and (d) *vis-à-vis* Section 28 of R.A. No. 8282 or the *Social Security Act* of 1997 by the Regional Trial Court of Iligan City, Branch 4. His conviction was affirmed by the Court of Appeals.<sup>[1]</sup>

The Information against petitioner<sup>[2]</sup> reads:

x x x x

That sometime during the month of August 1998 to July 1999, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, **the said accused, being then the proprietor** of Summa Alta Tierra Industries, Inc., duly registered employer with the Social Security System (SSS), did then and there willfully, unlawfully and feloniously fail and/or refuse to remit the SSS premium contributions in favor of its employees amounting to P421, 151.09 to the prejudice of his employees.

Contrary to and in violation of Sec. 22(a) and (d) in relation to Sec. 28 of Republic Act No. 8282, as amended (emphasis and underscoring supplied)

The monthly premium contributions of SATII employees to SSS which petitioner admittedly failed to remit covered the period August 1998 to July 1999<sup>[3]</sup> amounting to P421,151.09 inclusive of penalties.<sup>[4]</sup>

After petitioner was advised by the SSS to pay the above-said amount, he proposed to settle it over a period of 18 months<sup>[5]</sup> which proposal the SSS approved by Memorandum of September 12, 2000.<sup>[6]</sup>

Despite the grant of petitioner's request for several extensions of time to settle the delinquency in installments,<sup>[7]</sup> petitioner failed, hence, his indictment.

Petitioner sought to exculpate himself by explaining that during the questioned period, SATII shut down due to the general decline in the economy.<sup>[8]</sup>

Finding for the prosecution, the trial court, as reflected above, convicted petitioner, disposing as follows:

WHEREFORE, premises considered, the Court finds **Romarico J. Mendoza, guilty as charged beyond reasonable doubt**. Accordingly, he is **hereby meted the penalty of 6 years and 1 day to 8 years**.

The accused is further ordered to pay the Social Security System the unpaid premium contributions of his employees including the penalties in the sum of P421, 151.09.

SO ORDERED. <sup>[9]</sup> (emphasis supplied)

And as also reflected above, the Court of Appeals affirmed the trial court's decision, by Decision of July March 5, 2007,<sup>[10]</sup> it noting that the Social Security Act is a special law, hence, lack of criminal intent or good faith is not a defense in the commission of the proscribed act.

The appellate court brushed aside petitioner's claim that he is merely a conduit of SATII and, therefore, should not be held personally liable for its liabilities. It held that petitioner, as President, Chairman and Chief Executive Officer of SATII, is the managing head who is liable for the act or omission penalized under Section 28(f) of the *Social Security Act*.

Petitioner contended in his motion for reconsideration that Section 28(f) of the *Act* which reads:

(f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable for the penalties provided in this Act for the offense.

should be interpreted as follows:

If an association, the one liable is the managing head; if a partnership, the ones liable are the partners; and if a corporation, the ones liable are the directors. (underscoring supplied)

The appellate court denied petitioner's motion, hence, the present petition for review on certiorari.

Petitioner maintains, *inter alia*, that the managing head or president or general manager of a corporation is not among those specifically mentioned as liable in the above-quoted Section 28(f). And he calls attention to an alleged congenital infirmity

in the Information<sup>[11]</sup> in that he was charged as "proprietor" and not as director of SATII.

Further, petitioner claims that the lower courts erred in penalizing him with six years and one day to eight years of imprisonment considering the mitigating and alternative circumstances present, namely: his being merely vicariously liable; his good faith in failing to remit the contributions; his payment of the premium contributions of SATII out of his personal funds; and his being economically useful, given his academic credentials, he having graduated from a prime university in Manila and being a reputable businessman.

The petition lacks merit.

Remittance of contribution to the SSS under Section 22(a) of the *Social Security Act* is mandatory. *United Christian Missionary Society v. Social Security Commission*<sup>[12]</sup> explicitly explains:

No discretion or alternative is granted respondent Commission in the enforcement of the law's mandate that the **employer who fails to comply with his legal obligation to remit the premiums to the System within the prescribed period shall pay a penalty of three 3% per month. The prescribed penalty is evidently of a punitive character, provided by the legislature to assure that employers do not take lightly the State's exercise of the police power** in the implementation of the Republic's declared policy `to develop, establish gradually and perfect a social security system which shall be suitable to the needs of the people throughout the Philippines and (to) provide protection to employers against the hazards of disability, sickness, old age and death.'[Section 2, Social Security Act; *Roman Catholic Archbishop v. Social Security Commission*, 1 SCRA 10, January 20, 1961] **In this concept, good faith or bad faith is rendered irrelevant**, since the law makes no distinction between an employer who professes good reasons for delaying the remittance of premiums and another who deliberately disregards the legal duty imposed upon him to make such remittance. **From the moment the remittance of premiums due is delayed, the penalty immediately attaches to the delayed premium payments by force of law.** (emphasis and underscoring supplied)

Failure to comply with the law being *malum prohibitum*, intent to commit it or good faith is immaterial.<sup>[13]</sup>

The provision of the law being clear and unambiguous, petitioner's interpretation that a "proprietor," as he was designated in the Information, is not among those specifically mentioned under Sec. 28(f) as liable, does not lie. For the word connotes management, control and power over a business entity.<sup>[14]</sup> There is thus, as *Garcia v. Social Security Commission Legal and Collection* enjoins,<sup>[15]</sup>