

## SECOND DIVISION

[ G.R. No. 122452, January 29, 2001 ]

**TAM WING TAK, PETITIONER, VS. HON. RAMON P. MAKASIAR  
(IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL  
TRIAL COURT OF MANILA, BRANCH 35) AND ZENON DE GUIA (IN  
HIS CAPACITY AS CHIEF STATE PROSECUTOR), RESPONDENTS.**

### D E C I S I O N

**QUISUMBING, J.:**

This is a petition for review on certiorari of the decision of the Regional Trial Court of Manila, Branch 35, dated September 14, 1995, which dismissed herein petitioner's special civil action for mandamus and sustained the Letter-Order of respondent Chief State Prosecutor. The latter dismissed petitioner's appeal from the resolution of the City Prosecutor of Quezon City, which, in turn, dismissed petitioner's complaint against Vic Ang Siong for violation of the Bouncing Checks Law or B.P. Blg. 22.

The factual background of this case is as follows:

On November 11, 1992, petitioner, in his capacity as director of Concord-World Properties, Inc., (Concord for brevity), a domestic corporation, filed an affidavit-complaint with the Quezon City Prosecutor's Office, charging Vic Ang Siong with violation of B.P. Blg. 22. Docketed by the prosecutor as I.S. No. 93-15886, the complaint alleged that a check for the amount of P83,550,000.00, issued by Vic Ang Siong in favor of Concord, was dishonored when presented for encashment.

Vic Ang Siong sought the dismissal of the case on two grounds: First, that petitioner had no authority to file the case on behalf of Concord, the payee of the dishonored check, since the firm's board of directors had not empowered him to act on its behalf. Second, he and Concord had already agreed to amicably settle the issue after he made a partial payment of P19,000,000.00 on the dishonored check.

On March 23, 1994, the City Prosecutor dismissed I.S. No. 93-15886 on the following grounds: (1) that petitioner lacked the requisite authority to initiate the criminal complaint for and on Concord's behalf; and (2) that Concord and Vic Ang Siong had already agreed upon the payment of the latter's balance on the dishonored check.

A copy of the City Prosecutor's resolution was sent by registered mail to petitioner in the address he indicated in his complaint-affidavit. Notwithstanding that petitioner was represented by counsel, the latter was not furnished a copy of the resolution.

On June 27, 1994, petitioner's counsel was able to secure a copy of the resolution dismissing I.S. No. 93-15886. Counting his 15-day appeal period from said date,

petitioner moved for reconsideration on July 7, 1994.

On October 21, 1994, the City Prosecutor denied petitioner's motion for reconsideration. Petitioner's counsel received a copy of the denial order on November 3, 1994.

On November 7, 1994, petitioner's lawyer filed a motion to extend the period to appeal by an additional 15 days counted from November 3, 1994 with the Chief State Prosecutor. He manifested that it would take time to communicate with petitioner who is a Hong Kong resident and enable the latter to verify the appeal as procedurally required.

On November 8, 1994, petitioner appealed the dismissal of his complaint by the City Prosecutor to the Chief State Prosecutor. The appeal was signed by petitioner's attorney only and was not verified by petitioner until November 23, 1994.

On December 8, 1994, the Chief State Prosecutor dismissed the appeal for having been filed out of time. Petitioner's lawyer received a copy of the letter-resolution dismissing the appeal on January 20, 1995.

On January 30, 1995, petitioner moved for reconsideration.

On March 9, 1995, respondent Chief State Prosecutor denied the motion for reconsideration.

Petitioner then filed Civil Case No. 95-74394 for mandamus with the Regional Trial Court of Quezon City to compel the Chief State Prosecutor to file or cause the filing of an information charging Vic Ang Siong with violation of B.P. Blg. 22.

On September 14, 1995, the trial court disposed of the action as follows:

WHEREFORE, for utter lack of merit, the petition for mandamus of petitioner is DENIED and DISMISSED.

SO ORDERED.<sup>[1]</sup>

Petitioner moved for reconsideration, but the trial court denied this motion in its order dated October 24, 1995.

Hence, the instant petition.

Before this Court, petitioner claims respondent judge committed grave errors of law in sustaining respondent Chief State Prosecutor whose action flagrantly contravenes: (1) the established rule on service of pleadings and orders upon parties represented by counsel; (b) the basic principle that except in private crimes, any competent person may initiate a criminal case; and (3) the B.P. Blg. 22 requirement that arrangement for full payment of a bounced check must be made by the drawer with the drawee within five (5) banking days from notification of the check's dishonor.<sup>[2]</sup>

We find pertinent for our resolution the following issues:

- (1) Was there valid service of the City Prosecutor's resolution upon petitioner?
- (2) Will mandamus lie to compel the City Prosecutor to file the necessary information in court?

In upholding respondent Chief State Prosecutor, the court *a quo* held:

It is a generally accepted principle in the service of orders, resolutions, processes and other papers to serve them on the party or his counsel, either in his office, if known, or else in the residence, also if known. As the party or his counsel is not expected to be present at all times in his office or residence, service is allowed to be made with a person in charge of the office, or with a person of sufficient discretion to receive the same in the residence.

In the case under consideration, it is not disputed that the controverted Resolution dismissing the complaint of the petitioner against Vic Ang Siong was served on the former by registered mail and was actually delivered by the postmaster on April 9, 1994 at said petitioner's given address in the record at No.5 Kayumanggi Street, West Triangle, Quezon City. The registered mail was in fact received by S. Ferraro. The service then was complete and the period for filing a motion for reconsideration or appeal began to toll from that date. It expired on April 24, 1994. Considering that his motion for reconsideration was filed only on July 7, 1994, the same was filed beyond the prescribed period, thereby precluding further appeal to the Office of the respondent.<sup>[3]</sup>

Petitioner, before us, submits that there is no such "generally accepted practice" which gives a tribunal the option of serving pleadings, orders, resolutions, and other papers to either the opposing party himself or his counsel. Petitioner insists that the fundamental rule in this jurisdiction is that if a party appears by counsel, then service can only be validly made upon counsel and service upon the party himself becomes invalid and without effect. Petitioner relies upon Rule 13, Section 2 of the Rules of Court<sup>[4]</sup> and our ruling in *J.M. Javier Logging Corp. v. Mardo*, 24 SCRA 776 (1968) to support his stand. In the *J.M. Javier* case, we held:

[W]here a party appears by attorney, notice to the former is not a notice in law, unless service upon the party himself is ordered by the court... <sup>[5]</sup>

The Solicitor General, for respondents, contends that the applicable rule on service in the present case is Section 2 of the Department of Justice (DOJ) Order No. 223, <sup>[6]</sup> which allows service to be made upon either party or his counsel. Respondents argue that while a preliminary investigation has been considered as partaking of the nature of a judicial proceeding,<sup>[7]</sup> nonetheless, it is not a court proceeding and hence, falls outside of the ambit of the Rules of Court.

We agree with petitioner that there is no "generally accepted practice" in the service of orders, resolutions, and processes, which allows service upon either the litigant or his lawyer. As a rule, notice or service made upon a party who is represented by counsel is a nullity.<sup>[8]</sup> However, said rule admits of exceptions, as when the court or tribunal orders service upon the party<sup>[9]</sup> or when the technical defect is waived.<sup>[10]</sup>