

FIRST DIVISION

[G.R. No. 139006, November 27, 2000]

**REMIGIO S. ONG, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND COURT OF APPEALS (EIGHTH DIVISION),
RESPONDENTS.**

R E S O L U T I O N

KAPUNAN, J.:

At bar is a petition for certiorari under Rule 45 of the 1997 Rules of Civil Procedure, filed by petitioner Remigio S. Ong seeking to reverse and set aside the Decision, dated March 19, 1999; and, Resolution, dated June 3, 1999, of the Honorable Court of Appeals in CA-G.R. No. 18421 entitled "People of the Philippines vs. Remigio S. Ong."

The antecedent facts, as found by the trial court are quoted hereunder, as follows:

That private complainant Marcial de Jesus and accused Remigio Ong are both businessmen who came to know each other since 1988 as supplier(s) of some companies. Marcial de Jesus owns the Sevrin Integrated Resources located at 3184 E. Rivera St., Pasay City, and accused Remigio Ong, the Master Metal Craft with business address at 562 Tomas Mapua St., Sta. Cruz, Manila. Remigio Ong, in fact at one time retained the services of Marcial de Jesus as adviser on technical and financial matters and as President of Erocool Industries, a company controlled by the former.

That on December 17, 1992, Remigio Ong approached Marcial de Jesus in his place of work in Pasay City and requested to be accommodated a loan of P130,000.00 which he needed to pay the 13th month pay of his employees at the Master Metal Craft. Complainant De Jesus obliged by issuing Ong Producers Bank check No. 489427 (Exh. "A") payable to Ong's Master Metal Craft. In order to insure the repayment, complainant required Mr. Ong to issue a post-dated check for the same amount to become due on January 16, 1993. Mr. Ong therefore issued FEBTC Check No. 381937, dated January 16, 1993 (Exh. "B"). Exh. "A-4" show(s) that Remigio Ong negotiated the Producers Bank Check issued to him by De Jesus on the same day, December 17, 1992, although this is at variance with Exh. "F-6" (FEBTC statement of account of Remigio Ong) which show(s) that the check was deposited in Ong's account only on May 26, 1993 and debited for the said amount of P130,000.00. At any rate, whatever the date the loan check was encashed by Remigio Ong, what is certain was that the check was encashed for value and debited to Ong's account as shown by Exh. "F-6."

In the meanwhile, Ong's FEBTC check (Exh. "B") dated January 16, 1993 was deposited by Marcial De Jesus in his account at Producers Bank on May 26, 1993 (same date Remigio Ong deposited De Jesus' check) which was promptly returned the following day by FEBTC for reason that it was drawn against insufficient funds (DAIF), meaning, the check was dishonored by FEBTC for lack of sufficient funds (Exh. "B" and "C" - check No. 381937 and Return advise, respectively). That thereafter, De Jesus verbally notified Remigio Ong of his bounced check several times but unacted (sic) until made a written formal demand (Exh. "D") on September 10, 1993. For failure of Ong to make arrangement for the payment or replacement of the bounced check, De Jesus filed this case.

[1]

After trial on the merits, the court *a quo* rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE, the Court finds the accused, Remigio Ong y Salinas, guilty beyond reasonable doubt for Violation of Section 1, Batas Pambansa Blg. 22, otherwise known as the Bouncing Check Law, and sentences him to suffer a straight penalty of six (6) months and one (1) day of imprisonment, to pay a fine of P150,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs. The accused is likewise ordered to pay civil indemnity in the amount of P130,000.00.

SO ORDERED.[2]

On appeal, petitioner alleged that the subject check was not issued "on account or for value;" and, that a mere photocopy of the demand letter is not admissible in evidence. The Court of Appeals, however, dismissed the appeal for lack of merit and affirmed the trial court's decision, dated May 5, 1995, *in toto*. [3]

Hence, the instant petition for certiorari wherein petitioner makes the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT CONVICTING PETITIONER OF THE CHARGE OF VIOLATION OF BATAS PAMBANSA BLG. 22 WHEN THE QUESTIONED FEBTC CHECK WAS ONLY A CONTINGENT PAYMENT OF PETITIONER'S COMPANY LOAN WHICH WAS NOT BEEN (sic) PROVEN TO HAVE BEEN EXTENDED AND ACTUALLY USED, THUS, THE SAID CHECK WAS NOT ISSUED "TO APPLY ON ACCOUNT OR FOR VALUE" WITHIN THE CONTEMPLATION OF THE LAW.

II

THE HONORABLE COURT OF APPEALS LIKEWISE SERIOUSLY ERRED IN AFFIRMING THE LOWER COURT'S DECISION CONVICTING PETITIONER ON THE BASIS OF MERE XEROX DEMAND LETER (sic) CONTRARY TO SECTION 4, RULE 130, REVISED RULES OF COURT AND PROOF OF SUCH

DEMAND IS JURISDICTIONAL REQUIREMENT IN BATAS PAMBANSA BLD.

(sic) 22.[4]

In gist, petitioner contends that the Court of Appeals affirmed the judgment of conviction of the lower court despite the lack of evidence of receipt of the proceeds of the loan obligation from complainant Company. In other words, there was no evidence that the Producers Bank check issued by private complainant in his favor was ever encashed by him. Therefore, he alleges, the subject check cannot be considered drawn and issued "to apply on account or for value." Furthermore, according to petitioner, the Court of Appeals erroneously affirmed the conviction in complete disregard of the basic and mandatory practice of companies in executing vouchers and/or invoice as proof of receipt of the loan obligation which is clearly lacking and absent in the case at bar. Hence, he reiterates, that the bounced check was not drawn and issued to apply on account or for value.[5]

Petitioner further asseverates that the Court of Appeals erred in affirming the trial court's decision on the basis of a mere photocopy of the demand letter and without proof of loss of the original as required by law. He contends that proof of demand is jurisdictional.[6]

Petitioner's contentions are devoid of merit.

The trial court as well as the Court of Appeals have found that the prosecution clearly established the existence of the loan and the subsequent encashment of the Producers Bank check. It has also been established that petitioner issued the subject FEBTC check, and that said check was subsequently dishonored for being drawn against insufficient funds. These facts irretrievably bring petitioner within the purview of Section 1 of B.P. Blg. 22.

On petitioner's contention that the check was not drawn on account or for value, the law and jurisprudence is clear on this matter. In the case of *Cruz vs. Court of Appeals*,[7] this Court had occasion to rule that:

What the law punishes is the issuance of a bouncing check, not the purpose for which it was issued nor the terms and conditions relating to its issuance. The mere act of issuing a worthless check is *malum prohibitum*.

The gravamen of the offense punished by B.P. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation.[8]

Petitioner's argument that the subject check was issued without consideration is inconsequential. The law invariably declares the mere act of issuing a worthless check as *malum prohibitum*. We quote with approval the appellate court's findings on this matter:

In actions based upon a negotiable instrument, **it is unnecessary to aver or prove consideration, for consideration is imported and**