

THIRTEENTH DIVISION

[CA-G.R. CR No. 34571, January 05, 2015]

**MEHDI SARLAK PETITIONER, VS. PEOPLE OF THE PHILIPPINES
AND GALLERIA FLOOR CENTER, RESPONDENTS.**

DECISION

SADANG, J.:

This a petition for review under Rule 42 of the Rules of Court seeking to annul and/or set aside the Decision^[1] dated June 1, 2011 and Order dated October 27, 2011 of the Regional Trial Court (RTC) of Pasig City, Branch 161 in Crim. Case No. 144448-PSG affirming the Decision dated October 18, 2010, of the Metropolitan Trial Court (MTC) of Pasig City, Branch 70 in Criminal Case No. 69339 finding accused-petitioner Mehdi Sarlak guilty beyond reasonable doubt of violation of Batas Pambansa Blg. 22 (BP 22).

Accused-petitioner Mehdi Sarlak (hereafter, petitioner) was charged before the MTC for violation of BP 22. The Information reads:

Crim. Case No. 69339

On or about or prior to June 2, 2002 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, did then and there willfully, unlawfully and feloniously make or draw and issue to Galleria Floor Center, Inc., represented by Teresita N. Maherolnaghsh to apply on account, the check described below:

Check No.	:	A0000457606
Drawn Against	:	China Bank
In the amount	:	P148,000.00
of		
Dated/Postdated	:	June 2, 2002
Payable to	:	Galleria Floor Center Inc.

said accused well knowing that at the time of issue, he 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, accused failed to pay said payee the face amount of said check or make arrangement for full payment within five (5) banking days after receiving notice.

Contrary to law.^[2]

Petitioner pleaded not guilty during the arraignment and the case was set for mediation but no settlement was reached by the parties. Thus, preliminary conference and trial on the merits ensued.

The facts are not disputed.

On February 13, 2002, petitioner issued China Bank Cebu SM City Branch Check No. A0000457606 postdated June 2, 2002 in the amount of P148,000.00, payable to Galleria Floor Center, Inc. (GFCI, for brevity), as payment of twenty-eight (28) pieces of machine made carpets valued at P148,000.00 which were delivered and shipped to petitioner on said date under Delivery Receipts Nos. 8245 and 8246, excluding a one-piece hand made Kashmir silk 10 x 14 feet with stock no. 538 (Dr. no. 8245) and one piece hand made Persian gum silk 2 ½ x 4 feet with stock no. 422 (Dr. no. 8246) which are included in the 122 pieces of hand made carpets delivered on consignment basis. Delivery Receipt Nos. 8245 and 8246, both dated February 13, 2002, were issued to "Floor Center SM City, Inc." (FCSM) but the checks were payable to GFCI because FCSM is an affiliate of GFCI.

On due date, GFCI deposited the check but it was dishonored by the drawee bank for the reason "Account Closed." GFCI sent a demand letter, dated July 20, 2002, by registered mail and it was received by petitioner on July 30, 2002. Petitioner, through his lawyer, Atty. Tautho, sent a reply letter dated August 9, 2002 requesting that he be allowed to replace the said check with three equal monthly installment checks including the monthly legal interest that GFCI would impose. GFCI did not answer petitioner's offer and the latter failed to pay or make good the check. Thus, GFCI filed the criminal case for violation of BP 22.

In his defense, petitioner argued that he did not commit the crime charged because he informed GFCI long before the due date of the check that he was closing his account with China Bank SM Cebu Branch and requested that he be allowed to replace the check but GFCI no longer communicated with him. He claimed that he was willing to pay the face value of the check, however, GFCI was not willing to accept the payment due to the alleged non-payment of another unrelated account. Despite the notice given, GFCI deposited the check which was dishonored because petitioner had closed his account.

On October 18, 2010, the MTC rendered a decision,^[3] the *fallo* of which reads:

WHEREFORE, premises considered, judgment is hereby rendered, finding accused MEHDI SARLAK, GUILTY beyond reasonable doubt of the crime of Violation of B.P. No. 22, in Criminal Case No. 69339 and hereby sentences him to pay a FINE of ONE HUNDRED FORTY EIGHT THOUSAND PESOS (Php148,000.00) with subsidiary imprisonment in case of insolvency. Moreover, the accused is hereby ordered to indemnify the private complainant the sum of ONE HUNDRED FORTY EIGHT (P148,000.00) representing the face value of the check under consideration.

SO ORDERED.

Petitioner appealed the Decision of the MTC to the RTC.

On June 1, 2011, the RTC rendered a Decision^[4] affirming the Decision of the MTC. The *fallo* reads:

WHEREFORE, in light of the foregoing and finding no reversible error in the decision appealed, the same is hereby affirmed.

SO ORDERED.

Petitioner's motion for reconsideration was denied in the Order^[5] dated October 27, 2011.

Hence, this petition raising the following issues:

1. THE RTC-PASIG CITY, BR. 161 ERRED WHEN IT STATED THAT SARLAK DID NOT ATTACH ANY EVIDENCE TO HIS MEMORANDUM TO PROVE THAT HE MAKE ARRANGEMENTS FOR FULL PAYMENT OF THE FACE VALUE OF THE CHECK WITHIN FIVE (5) DAYS FROM THE NOTICE OF DISHONOR;
2. THE RTC-PASIG CITY, BR. 161 ERRED WHEN IT DENIED THE MEMORANDUM OF APPEAL AND THE MOTION FOR RECONSIDERATION ON THE GROUND THAT THE ARRANGEMENTS FOR FULL PAYMENT OF THE FACE VALUE OF THE CHECK WITHIN FIVE (5) DAYS FROM THE NOTICE OF DISHONOR IS NOT A VALID GROUND FOR ACQUITTAL.

RULING

Petitioner claims that the RTC erred in finding that his act of making arrangements for payment is not a ground for acquittal. He argues that by arranging to pay the bounced check, he was relieved of criminal liability under BP 22. On the other hand, the Office of the Solicitor General (OSG) contends that the RTC was correct in its finding and that all the elements of the crime were established.

The petition is bereft of merit.

The crime charged is defined and penalized by Section 1 of BP 22 which reads:

Section 1. *Checks without sufficient funds.* - Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period