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MISAEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division
OCT 10 2019

G.R. No. 217787 - SOCORRO F. ONGKINGCO AND MARIE PAZ B. ONGKINGCO v. KAZUHIRO SUGIYAMA AND PEOPLE OF THE PHILIPPINES.

Promulgated:
September 18, 2019

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DISSENTING OPINION

REYES, A., JR., *J.*:

It is a settled rule that "issues raised for the first time on appeal will not be entertained because to do so would be anathema to the rudiments of fairness and due process."[1] In the interest of justice, however, the Court may consider and resolve issues not raised before the trial court if it is necessary for the complete adjudication of the rights and obligations of the parties.[2]

The *ponencia* holds that the petitioners are barred by *laches* from questioning the lack of authority of Prosecutor II Edgardo G. Hirang (Prosecutor II Hirang) to sign the Informations against the petitioners. Also, the *ponencia* espouses that the lack of written authority or approval to file the Informations is a waivable ground for a motion to quash the Information.

I disagree.

The Informations are defective for having been filed without prior approval

To begin with, Section 4, Rule 112 of the 2000 Revised Rules on Criminal Procedure states that a prior written authority or approval is required to file a complaint or information before the courts, to wit:

> Section 4. *Resolution of investigating prosecutor and its review.* - If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is

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[1] *Punongbayan-Visitacion v. People,* G.R. No. 194214, January 10, 2018, 850 SCRA 222, 233.

[2] *Rep. of the Phils. through its Trustee, the Privatization and Management Office v. Philippine International Corp.*, 807 Phil. 604, 611 (2017).

reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy. (Emphasis supplied)

x x x x

Consequently, a complaint or information which is filed before a court without the prior written authority or approval of any of the aforementioned officers may be quashed in accordance with Section 3(d), Rule 117 of the same Rules, *viz.*:

Section 3. *Grounds.* The accused may move to quash the complaint or information on any of the following grounds:

x x x x

(d) That the officer who filed the information had no authority to do so; (Emphasis supplied)

x x x x

In the case at bar, the Informations filed against the petitioners were signed and certified by Prosecutor II Hirang, with the statement that these were filed with the approval of the 1st Assistant City Prosecutor (ACP). However, the petitioners did not move to quash the Informations before the trial court.

Section 9, Rule 117 of the Rules of Court provides that the failure of the accused to claim any ground of a motion to quash before he pleads to the complaint or information shall be taken as waiver of all objections which are grounds for a motion to quash, except when: (a) that the facts charged do not constitute an offense; (b) that the court trying the case has no jurisdiction over the offense charged; (c) that the criminal action or liability has been extinguished; and (d) that the accused has been previously convicted or

acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. Noticeably, the lack of authority of the officer who filed the information is not one of the exceptions expressly provided under this section.

In *People v. Judge Garfin*,[3] the Court addressed the very same issue of "whether the lack of prior written approval of the city, provincial or chief state prosecutor in the filing of an information is a defect in the information that is waived if not raised as an objection before arraignment."[4] In that case, the accused had already pleaded not guilty to the charge of violation of the Social Security Act of 1997. Subsequently, the accused filed a motion to dismiss on the ground that the Information was filed by a State Prosecutor without the prior written authority or approval of the city prosecutor as required under Section 4, Rule 112 of the Rules of Court. The Court declared that if the filing officer lacks authority to file the information, the "infirmity in the information constitutes a jurisdictional defect that cannot be cured."[5] Thus, the Court upheld the dismissal of the case for lack of jurisdiction without prejudice to the filing of a new information by an authorized officer.

The preceding pronouncement is consistent with *Cudia v. CA* (*Cudia*),[6] where the issue was whether the plea to an information without asserting the lack of authority of the city prosecutor is deemed as a waiver to object thereto. The accused in that case was arrested in Mabalacat, Pampanga, for illegal possession of firearms and ammunition, after which he was brought to Angeles City where he was detained. The City Prosecutor then filed an Information in the RTC of Angeles City. The Court invalidated the Information filed by the City Prosecutor as he had no authority to file an information outside his territorial jurisdiction. The Court ruled that it is the Provincial Prosecutor, not the City Prosecutor, who should prepare Informations for offenses committed within Pampanga but outside of Angeles City. The accused's plea to an information may be a waiver of all formal objections to the said information but "questions relating to want of jurisdiction may be raised at any stage of the proceeding."[7] The defect in the Information is not curable, not by the accused's silence, acquiescence, or even by express consent. The Court explained:

> An information, when required to be filed by a public prosecuting officer, cannot be filed by another. **It must be exhibited or presented by the prosecuting attorney or someone authorized by law. If not, the court does not acquire jurisdiction.**

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[3] 470 Phil. 211 (2004).

[4] Id. at 228.

[5] Id. at 236.

[6] 348 Phil. 190 (1998).

[7] Id. at 200.

> Petitioner, however, insists that his failure to assert the lack of authority of the City Prosecutor in filing the information in question is deemed a waiver thereof. As correctly pointed out by the Court of Appeals, petitioner's plea to an information before he filed a motion to quash may be a waiver of all objections to it insofar as formal objections to the pleadings are concerned. But by clear implication, if not by express provision of the Rules of Court, and by a long line of uniform decisions, questions relating to want of jurisdiction may be raised at any stage of the proceeding. **It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused (herein petitioner) and the subject matter of the accusation**. In consonance with this view, **an infirmity in the information, such as lack of authority of the officer signing it, cannot be cured by silence, acquiescence, or even by express consent.**[8] (Citations omitted and emphases ours)

Also, contrary to the *ponencia*, there is no proof that the City Prosecutor authorized the 1st ACP to sign the Resolution dated August 7, 2002 on his behalf. In fact, in *Maximo, et al. v. Villapando* (*Maximo*),[9] the Information that was filed by an Assistant City Prosecutor bore a certification that the filing of the same had the prior approval of the City Prosecutor. Still, the Court held that a mere certification that the Information was filed with approval is not enough; there must be a demonstration that prior written delegation or authority was indeed given by the City Prosecutor to the Assistant City Prosecutor to approve the filing of the information.

Here, not only was the supposed written approval not presented; the prior approval purportedly came from the 1st ACP, who had no authority to file an Information on his own. If in *Maximo*, the Court had already rejected the certification signed by an Assistant City Prosecutor with the unsubstantiated approval of the City Prosecutor, there is then all the more reason to disregard the certification of Prosecutor II Hirang with the alleged approval of the 1st ACP.

Furthermore, while the present case differs from *Garfin*, *Cudia*, and *Maximo* in that the petitioners did not file a motion to quash the Informations before the trial court, it must be noted that the *ponencia* ignores that the Court consistently held in these cases that this kind of defect in the information is incurable by silence, acquiescence or express consent.

Receipt of Notice of Dishonor was not proven

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[8] Id. at 200-201.

[9] 809 Phil. 843 (2017).

To be liable for violation of *Batas Pambansa* (B.P.) Blg. 22, the following essential elements must be present:

> (1) The making, drawing, and issuance of any check to apply for account or for value;
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> (2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
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> (3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment.[10]

In the present case, the controversy lies on the second element, which among all elements, is the hardest to prove, given that it entails a state of mind. Section 2 of B.P. Blg. 22 created a *prima facie* presumption of such knowledge, as follows:

> SEC. 2. *Evidence of knowledge of insufficient funds*. The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

For this presumption to arise, it must be proven that the issuer had received a written notice of dishonor and failed to pay the amount of the check or arrange for its payment within five days from receipt thereof.[11] Without the requisite notice of dishonor, the issuer cannot be presumed to have knowledge of the insufficiency of funds so as to take measures to preempt criminal action.[12]

Evidence for the prosecution shows that the demand letter was served to petitioner Socorro Ongkingco's (Socorro) secretary after the latter allegedly secured permission from Socorro. However, said secretary was not presented to testify on whether she was able to personally give the demand letter to Socorro, who denied receipt thereof. This is insufficient compliance with the required notice of dishonor because it is incumbent upon the prosecution to prove that the issuer of the check actually received the notice of dishonor. The

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10 *Alburo v. People*, 792 Phil. 876, 890 (2016).

11 *Tan v. Philippine Commercial International Bank*, 575 Phil. 485, 495 (2008).

12 *Lim Lao v. Court of Appeals*, 340 Phil. 679, 702 (1997).

factual milieu of this case is not dissimilar from *Chua v. People*,[13] which is instructive on this matter:

> The Court finds that the second element was not sufficiently established. **Yao testified that the personal secretary of petitioner received the demand letter, yet, said personal secretary was never presented to testify whether she in fact handed the demand letter to petitioner who, from the onset, denies having received such letter. It must be borne in mind that it is not enough for the prosecution to prove that a notice of dishonor was sent to the accused.** The prosecution must also prove *actual receipt* of said notice, because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the accused.[14] (Emphasis supplied; italics in the original)

According to the *ponencia*, the factual circumstances in this case differ from that in *Chua* because Socorro permitted her secretary to acknowledge receipt of the demand letter. However, a review of the records would show that the prosecution never showed any proof of such permission or authorization. Again, in *Chua*, it was also the personal secretary of the accused who received the notice of dishonor, but that secretary, similarly to this case, was never presented to testify whether such demand letter was indeed handed to the accused. It is baffling how the similar circumstances in *Chua* and the present case would lead to conflicting conclusions.

As for the petitioner Marie Paz Ongkingco, there is neither allegation nor proof that a notice of dishonor was served to her. Thus, I submit that the prosecution failed to prove all the elements of violation of B.P. Blg. 22 beyond reasonable doubt with regard to both petitioners, warranting their acquittal of the offense charged. In connection with this, the petitioners also cannot be held civilly liable for the value of the dishonored checks.

As a general rule, "[w]hen a corporate officer issues a worthless check in the corporate name, he may be held personally liable for violating a penal statute."[15] This is in accordance with Section 1 of B.P. Blg. 22, which states:

> **Section 1.** *Checks without sufficient funds.*
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> x x x x
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> Where the check is drawn by a corporation, company or entity, the person or persons, who actually signed the check in behalf of such drawer shall be liable under this Act.

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[13] G.R. No. 195248, November 22, 2017, 846 SCRA 74.

[14] Id. at 87-88.

[15] *Navarra v. People, et al.*, 786 Phil. 439, 449 (2016).

However, in *Gosiaco v. Ching, et al.*,[16] the Court discharged a corporate officer of any civil liability arising from the B.P. Blg. 22 case against her, on account of her acquittal in the criminal charge. In *Pilipinas Shell Petroleum Corp. v. Duque, et al.*,[17] the Court held that "a corporate officer who issues a bouncing corporate check can only be held civilly liable when he is convicted."[18] It follows that once acquitted of the offense of violating B.P. Blg. 22, a corporate officer is discharged from any civil liability arising from the issuance of the worthless check in the name of the corporation he represents. The Court further declared that, "this is without regard as to whether his acquittal was based on reasonable doubt or that there was a pronouncement by the trial court that the act or omission from which the civil liability might arise did not exist."[19]

In this case, it is clear that the petitioners signed the checks as the corporate officers and authorized signatories of New Rhia Car Services, Inc. (New Rhia). There is neither allegation nor proof that they bound themselves solidarily liable with the obligations of New Rhia. Following the rulings of the Court on the extinguishment of civil liability of corporate officers who are acquitted from the charge of violating B.P. Blg. 22, the petitioners cannot be held liable for the value of the checks issued in payment for New Rhia's obligation.

On a last note, I am not impervious to the length of time and effort, not to mention the distress and the costs, borne by the private complainant in filing this suit against the petitioners. However, it is my considered view that both the defect in the Informations and the failure of the prosecution to prove the receipt by the petitioners of the requisite written notice of dishonor are too crucial to be brushed aside as these constitute sufficient grounds for the petitioners' acquittal. This is without prejudice to the right of the private complainant to pursue a civil action against New Rhia for the amount of the dishonored checks.

ACCORDINGLY, I vote to **GRANT** the Petition.

ANDRES B. REYES, JR.
Associate Justice

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[16] 603 Phil. 457 (2009).
[17] 805 Phil. 954 (2017).
[18] Id. at 961.
[19] Id. at 962.