CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUN 27 2016

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JORGE B. NAVARRA,
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES, HONGKONG and SHANGHAI BANKING CORPORATION,
Respondents.

G.R. No. 203750

Present:

VELASCO, JR., J., *Chairperson*
PERALTA,
PEREZ,
REYES, and
JARDELEZA,* *JJ.*

Promulgated:

June 6, 2016

x----------x

DECISION

PERALTA, *J.*:

Before the Court is a petition which Jorge B. Navarra filed questioning the Court of Appeals (*CA*) Resolution[1] dated July 18, 2012 in CA-G.R. CR No. 34954, which dismissed his petition due to lack of certification against forum shopping.

The pertinent factual antecedents of the case as disclosed by the records are as follows:

Petitioner Jorge Navarra is the Chief Finance Officer of Reynolds Philippines Corporation (*Reynolds*), which has been a long time client of private respondent Hongkong and Shanghai Banking Corporation (*HSBC*). On November 3, 1998, HSBC granted Reynolds a loan line of ₱82 Million and a foreign exchange line of ₱900,000.00. Thereafter, Reynolds executed several promissory notes in HSBC's favor. Subsequently, Reynolds,

---

* On leave.

[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Ramon R. Garcia, and Danton Q. Bueser; concurring; *rollo*, pp. 31-32.

through Navarra and its Vice-President for Corporate Affairs, George Molina, issued seven (7) Asia Trust checks amounting to ₱45.2 Million for the payment of its loan obligation.

On July 11, 2000, when HSBC presented the subject checks for payment, said checks were all dishonored and returned for being "Drawn Against Insufficient Funds." Thus, the bank sent Reynolds a notice of dishonor on July 21, 2000. Navarra received said notice but requested HSBC to reconsider its decision to declare the corporation in default. On September 8, 2000, HSBC sent another notice of dishonor with respect to another check in the amount of ₱3.7 Million, and demanded its payment as well as that of the six (6) other checks previously dishonored. Despite said demands, however, Reynolds refused to pay. Hence, HSBC filed Informations against Navarra and Molina for violation of *Batas Pambansa Bilang* 22 (*BP 22*) before the Makati Metropolitan Trial Court (*MeTC*).

Upon arraignment, Navarra and Molina pleaded not guilty to the charge. Trial on the merits then proceeded.

On April 27, 2010, the Makati MeTC, Branch 66 rendered a Decision finding both the accused guilty of the offense charged, with a dispositive portion that reads:

> **WHEREFORE**, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court finds accused **JORGE B. NAVARRA** and **GEORGE C. MOLINA GUILTY** of the offense of Violation of Batas Pambansa Blg. 22 on seven (7) counts under Criminal Case Nos. 312262 to 312268 and hereby sentences them to pay a **FINE** of ₱200,000.00 for each count or a total of P1.4 million with subsidiary imprisonment in case of insolvency.
>
> Accused **JORGE B. NAVARRA** and **GEORGE C. MOLINA** are further **ORDERED** to pay private complainant Hongkong Shanghai and Banking Corporation (HSBC) by way of civil indemnity the respective face amount of the seven (7) bounced subject checks or a TOTAL AMOUNT OF ₱45.2 millions with interest at 12% per annum from date of the filing of this complaint on February 16, 2001 until the amount is fully paid and costs of suit.
>
> **SO ORDERED.**[2]

Navarra then elevated the case to the Regional Trial Court (*RTC*). On June 8, 2011, the Makati RTC, Branch 57 affirmed the MeTC Decision, thus:

---

2 *Id.* at 149-159.

> WHEREFORE, premises considered, the decision of the Metropolitan Trial Court is hereby AFFIRMED in Toto.
>
> SO ORDERED.[3]

Thereafter, Navarra filed a petition for review before the CA which was docketed as CA-G.R. CR No. 34954. On July 18, 2012, the CA dismissed said petition for failure to attach a certification of non-forum shopping.[4] The CA likewise denied Navarra's subsequent motion for reconsideration.[5]

Hence, the instant petition.

Navarra raises the following issues to be resolved by the Court:

> I.
> WHETHER OR NOT THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED NAVARRA'S PETITION BASED SOLELY ON TECHNICALITIES.
>
> II.
> WHETHER OR NOT NAVARRA IS GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF BP 22.

The Court shall first tackle the procedural issue of the case. The CA dismissed Navarra's petition for failure to comply with the requirement of certification against forum shopping. It hinged its ruling on Section 5, Rule 7 of the Rules of Court which states:

> **Section 5.** *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading

---

3 *Id.* at 189-190.
4 *Id.* at 31-32.
5 *Id.* at 33-34.

> but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (n)

As a general rule, petitions that lack or have a defective certificate of non-forum shopping cannot be cured by its subsequent submission or correction, unless there is a reasonable need to relax the rules on the ground of substantial compliance or presence of special circumstances or compelling reasons.[6] The court has the discretion to dismiss or not to dismiss an appellant's appeal but said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the unique circumstances obtaining in each case. Technicalities, as much as possible, must be avoided. When technicality abandons its proper office as an aid to justice and instead becomes its great hindrance and chief enemy, it deserves scant consideration from courts. Litigations must be decided on their merits and not on sheer technicality, for rules of procedure are used to help secure, not override substantial justice. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause. Thus, dismissal of appeals purely on technical grounds is frowned upon since the policy of the courts is to encourage hearings of appeals on their merits and not to apply the rules of procedure in a very rigid, technical sense. It would be more prudent for the courts to forego a technical lapse and allow the review of the parties' case on appeal to attain the ends of justice rather than to dispose of the case on technicality and cause grave injustice to the parties, giving nothing but false impression of speedy disposal of cases.[7]

However, even if the Court is to rule on the merits of the case, the same will still have to decide against Navarra.

The cardinal issues involved in the present case are more legal than factual in nature, such that the Court can duly take cognizance of and pass upon the same. Also, nothing prevents the Court from settling even questions of fact if it deems that a review or reassessment is warranted in order to avoid further delay or worse, a miscarriage of justice. At any rate, the factual question as to whether the checks were issued merely as a condition for the restructuring of the obligation or for actual payment of the loan had already been settled by the trial courts and the CA. There is no cogent reason to deviate from the findings of said courts. Absent any proof

---

6 *Fernandez v. Villegas*, G.R. No. 200191, August 20, 2014.

7 *Martin Peñoso and Elizabeth Peñoso v. Macrosman Dona*, 549 Phil. 39, 46 (2007).

that the lower courts' findings are entirely devoid of any substantiation on record, the same must necessarily stand.[8]

There are two (2) ways of violating BP 22: (1) by making or drawing and issuing a check to apply on account or for value, knowing at the time of issue that the check is not sufficiently funded; and (2) by having sufficient funds in or credit with the drawee bank at the time of issue but failing to do so to cover the full amount of the check when presented to the drawee bank within a period of ninety (90) days.[9]

The elements of BP 22 under the first situation, pertinent to the present case, are:

> (1) The making, drawing and issuance of any check to apply for account or for value;
> (2) The knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
> (3) The subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[10]

Navarra maintains that the first element does not exist because the checks were not issued to apply for account or for value. He asserts that the loans which HSBC had extended were clean loans, meaning they were not secured by any kind of collateral. Thus, Reynolds had no other reason to issue the subject post-dated checks in favor of HSBC except as a condition for the possible restructuring of its loan. This flawed argument, however, has no factual basis, the trial courts having ruled that the checks were, in fact, in payment of the company's outstanding obligation, and not as a mere condition. Navarra also failed to substantiate his claim with any concrete agreement between Reynolds and HSBC that the issuance of the post-dated checks was indeed just a condition for the restructuring of the loan. Therefore, Navarra's uncorroborated claim is, at best, self-serving and thus, cannot be given weight. Neither is the argument supported by legal basis, for what BP 22 punishes is the mere issuance of a bouncing check and not the purpose for which it was issued nor the terms and conditions relating to its issuance. For to determine the reason for which checks are issued, or the terms and conditions for their issuance, will greatly erode the public's faith in the stability and commercial value of checks as currency substitutes, and bring about havoc in trade and in banking communities. The mere act of issuing a worthless check is *malum prohibitum*;[11] it is simply the commission of the act that the law prohibits, and not its character or effect,

---

8 *Luis S. Wong v. Court of Appeals and People of the Philippines*, 403 Phil. 830, 839 (2001).
9 *Id.*
10 *Id.*
11 *Id.*

that determines whether or not the provision has been violated. Malice or criminal intent is completely immaterial.[12]

When the first and third elements of the offense are present, as in this case, BP 22 creates a presumption *juris tantum* that the second element exists. Thus, the maker's knowledge is presumed from the dishonor of the check for insufficiency of funds. The clear import of the law is to establish a *prima facie* presumption of knowledge of such insufficiency of funds under the following conditions: (1) the presentment within ninety (90) days from date of the check, and (2) the dishonor of the check and failure of the maker to make arrangements for payment in full within five (5) banking days from notice. Here, after the checks were dishonored, HSBC duly notified Reynolds of such fact and demanded for the payment of the full amount of said checks, but the latter failed to pay.[13]

The fact that Navarra signed the subject checks in behalf of Reynolds cannot, in any way, exculpate him from liability, criminal or civil. Navarra insists that he cannot be held civilly liable since he is merely a corporate officer who signed checks for the corporation.

Unfortunately, the law clearly declares otherwise. Section 1 of BP 22 provides:

> **Section 1.** *Checks without sufficient funds.*
>
> x x x x
>
> 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.

BP 22 was enacted to address the rampant issuance of bouncing checks as payment for pre-existing obligations. The circulation of bouncing checks adversely affected confidence in trade and commerce. The State criminalized such practice because it was deemed injurious to public interests and was found to be pernicious and inimical to public welfare. It is an offense against public order and not an offense against property. It likewise covers all types of checks, and even checks that were issued as a form of deposit or guarantee were held to be within the ambit of BP 22.[14] For all intents and purposes, the law was devised to safeguard the interest of the banking system and the legitimate public checking account user.[15]

---

12 *Henry T. Go v. The Fifth Division, Sandiganbayan, et al.*, 558 Phil. 736, 744 (2007).
13 *Supra* note 8.
14 *Jaime U. Gosiaco v. Leticia Ching and Edwin Casta*, 603 Phil. 457,464 (2009).
15 *Magno v. CA*, G.R. No. 96132, June 26, 1992.

When a corporate officer issues a worthless check in the corporate name, he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who draws or issues a check on any bank with knowledge that the funds are not sufficient in such bank to meet the check upon presentment. Moreover, the corporate officer cannot shield himself from liability on the ground that it was a corporate act and not his personal act. The general rule is that a corporate officer who issues a bouncing corporate check can be held civilly liable when he is convicted. The criminal liability of the person who issued the bouncing checks in behalf of a corporation stands independent of the civil liability of the corporation itself, such civil liability arising from the Civil Code. But BP 22 itself fused this criminal liability with the corresponding civil liability of the corporation itself by allowing the complainant to recover such civil liability, not from the corporation, but from the person who signed the check in its behalf.[16]

Consequently, what remains to be significant are the facts that the accused had deliberately issued the checks in question to cover accounts and those same checks were dishonored upon presentment, regardless of the purpose for such issuance.[17] Furthermore, the legislative intent behind the enactment of BP 22, as may be gathered from the statement of the bill's sponsor when then Cabinet Bill No. 9 was introduced before the *Batasan Pambansa*, is to discourage the issuance of bouncing checks, to prevent checks from becoming "useless scraps of paper" and to restore respectability to checks, all without distinction as to the purpose of the issuance of the checks. Said legislative intent is made all the more certain when it is considered that while the original text of the bill had contained a proviso excluding from the law's coverage a check issued as a mere guarantee, the final version of the bill as approved and enacted deleted the aforementioned qualifying proviso deliberately to make the enforcement of the act more effective. It is, therefore, clear that the real intention of the framers of BP 22 is to make the mere act of issuing a worthless check *malum prohibitum* and thus punishable under such law.[18]

It is unfortunate that despite his insistent plea of innocence, the Court fails to find any error in Navarra's conviction by the trial courts for violation of the Bouncing Checks Law. While the Court commiserates with him, as he was only performing his official duties as the finance officer of the corporation he represents, it must interpret and give effect to the statute, as harsh as it may be, because that is the law. His best recourse now is to proceed after Reynolds, in whose behalf the dishonored checks were issued, to recover the amount of damages incurred.

---

16 *Supra* note 14.

17 *Alicia F. Ricaforte v. Leon L. Jurado*, 559 Phil. 97, 114 (2007).

18 *Que v. People*, 238 Phil. 155, 160 (1987).

WHEREFORE, premises considered, the Court **DENIES** the petition for lack of merit and **AFFIRMS** the Decision of the Metropolitan Trial Court of Makati, Branch 66 dated April 27, 2010, with **MODIFICATION** as to the interest which must be six percent (6%)[19] *per annum* of the amount awarded from the time of the finality of this Decision until its full satisfaction.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

On leave
FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

---

[19] Pursuant to the Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013; *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUN 22 2016