Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JOHN DENNIS G. CHUA,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES and CRISTINA YAO,
Respondents.

G.R. No. 195248

Present:

VELASCO, JR., *J., Chairperson*,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

November 22, 2017

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DECISION

MARTIRES, *J.*:

This is a petition for review on certiorari assailing the Orders,[1] dated 15 June 2010 and 28 December 2010 of the Regional Trial Court, Branch 160, Pasig City *(RTC)*, in SCA No. 3338, which affirmed the Decision,[2] dated 15 April 2009, of the Metropolitan Trial Court, Branch 58, San Juan City *(MeTC)*, in Criminal Case No. 80165-68 finding petitioner John Dennis G. Chua *(petitioner)* guilty of four (4) counts of violation of Batas Pambansa Bilang 22 *(B.P. Blg. 22)*.

THE FACTS

Respondent Cristina Yao *(Yao)* alleged that she became acquainted with petitioner through the latter's mother. Sometime in the year 2000, petitioner's mother mentioned that her son would be reviving their sugar mill business in Bacolod City and asked whether Yao could lend them money. Yao acceded and loaned petitioner ₱1 million on 3 January 2001; ₱1 million on 7 January 2001; and ₱1.5 million on 16 February 2001. She also lent petitioner an additional ₱2.5 million in June 2001. As payment,

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[1] *Rollo*, pp. 21-23. Penned by Judge Myrna V. Lim-Verano.
[2] Id. at 24-35. Penned by Judge Marianito C. Santos.

petitioner issued four (4) checks in these amounts but which were dishonored for having been drawn against a closed account. Upon dishonor of the checks, Yao personally delivered her demand letter to the office of the petitioner which was received by his secretary.[3]

Petitioner was thus charged with four (4) counts of violation of B.P. Blg. 22. The cases were raffled to Branch 58, then presided by Judge Elvira DC Castro *(Judge Castro)*. On 16 September 2004, petitioner pleaded "not guilty." After mediation and pre-trial conference, trial ensued before Pairing Judge Marianito C. Santos *(Judge Santos)* as Judge Castro was promoted to the RTC of Quezon City.[4] On 25 July 2007, Judge Philip Labastida *(Judge Labastida)* was appointed Presiding Judge of Branch 58 and took over trial proceedings.[5] Since petitioner failed to present evidence, the cases were submitted for decision and promulgation of judgment was set on 30 September 2008.[6] Sometime in December 2008, Judge Labastida died.[7] On 20 February 2009, Judge Mary George T. Cajandab-Caldona *(Judge Caldona)* was designated Acting Presiding Judge of Branch 58[8] and she assumed office on 1 April 2009.[9]

The MeTC Ruling

In a decision, dated 15 April 2009, signed by Judge Santos as the pairing judge, the MeTC found petitioner guilty beyond reasonable doubt of four (4) counts of violation of B.P. Blg. 22, and sentenced him to pay a fine of ₱200,000.00 for each count.

The MeTC ruled that the prosecution was able to establish that the checks issued by petitioner were payments for a loan; and that upon dishonor of the checks, demand was made upon petitioner through his personal secretary. The *fallo* reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
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> 1. FINDING the accused JOHN DENNIS CHUA GUILTY beyond reasonable doubt [of] having violated the crime of Batas Pambansa Blg. 22 for which he is hereby sentenced to pay a FINE of TWO HUNDRED THOUSAND PESOS (₱200,000.00) for each count, with subsidiary imprisonment not to exceed SIX (6) MONTHS for each count in case of insolvency;

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3 Id. at 27-30.
4 Id. at 27.
5 Id. at 21.
6 Id. at 31.
7 Id. at 21.
8 Id. at 38.
9 Id. at 37.

> 2. HOLDING the accused civilly liable to the extent of the value of the four (4) subject checks or in the total amount of ₱6,082,000.00 with twelve (12%) interest per annum reckoned from date of extrajudicial demand which was made on April 2002 until the whole obligation shall have been fully paid and satisfied;
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> 3. ORDERING the accused to pay the costs of suit.
>
> SO ORDERED.[10]

Aggrieved, petitioner filed a petition for certiorari with the RTC assailing Judge Santos' authority to render the decision.

The RTC Ruling

In an Order, dated 15 June 2010, the RTC affirmed the conviction of petitioner. It held that the expanded authority of pairing courts under Supreme Court Circular No. 19-98, dated 18 February 1998, clearly gave Judge Santos authority to resolve the criminal cases which were submitted for decision when he was still the pairing judge. The RTC added that Judge Santos was in a better position to resolve and decide the cases because these were heard and submitted for decision prior to the appointment of Judge Caldona as acting presiding judge on 20 February 2009 and her assumption to office on 1 April 2009. It observed that the promulgation of judgment was delayed merely because a motion for reconsideration was filed which was later denied. The RTC disposed the case thus:

> WHEREFORE, the petition for certiorari is hereby DENIED for lack of merit.
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> SO ORDERED.[11]

Unconvinced, petitioner moved for reconsideration, but the same was denied by the RTC in an Order, dated 28 December 2010.

Hence, this petition.

ISSUES

I.

WHETHER OR NOT A DECISION PROMULGATED AND EXECUTED BY A PAIRING JUDGE, DESPITE THE APPOINTMENT OF A PERMANENT JUDGE TO A COURT, IS VALID;

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[10] Id. at 34-35.

[11] Id. at 22.

II.

WHETHER OR NOT A DECISION ADMITTING THE PROSECUTION'S FAILURE TO PROVE ALL THE ELEMENTS OF A CRIME, BUT STILL CONVICTING AN ACCUSED IN A CRIMINAL CASE IS AN ACT TANTAMOUNT TO GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION;

III.

WHETHER OR NOT A PETITION FOR CERTIORARI UNDER RULE 65 OF THE REVISED RULES OF COURT IS THE PROPER REMEDY FOR ACTS DONE BY A PRESIDING JUDGE SHOWING GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION.[12]

Petitioner argues that pursuant to Circular No. 19-98, decisions rendered by pairing judges are valid only when the same are promulgated at the time when no presiding judge has been appointed, thus, the authority of pairing judges automatically ceases upon the appointment and assumption to duty of the new presiding judge; that Judge Caldona assumed office on 1 April 2009; that on 15 April 2009, when the assailed decision was promulgated, only Judge Caldona had the authority to promulgate a decision on the case; and that the prosecution failed to prove that a notice of dishonor was properly served upon petitioner.

In its comment,[13] respondent People of the Philippines, through the Office of the Solicitor General *(OSG),* avers that the cases were submitted for decision as early as 30 September 2008 and that Judge Caldona had not presided in a single hearing; that in view of these circumstances, Judge Caldona was not familiar enough with the facts of the case to enable her to competently render a decision; that Judge Caldona did not raise any opposition to the promulgation of the 15 April 2009 decision; that Circular No. 5-98 provides that "cases submitted for decision and those that passed the trial stage, i.e., where all the parties have finished presenting their evidence before such Acting/Assisting Judge at the time of the assumption of the Presiding Judge or the designated Acting Presiding Judge shall be decided by the former", that from the time of the untimely demise of Judge Labastida, Judge Santos was tasked to take over the cases as the designated pairing judge of Branch 58; and that Judge Santos was clothed with authority to promulgate the assailed 15 April 2009 decision.

In his reply,[14] petitioner counters that Circular No. 5-98 is not applicable to the case as Circular No. 19-98 provides that "the judge of the paired court shall take cognizance of all the cases thereat as acting judge

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12 Id. at 7.
13 Id. at 68-82.
14 Id. at 88-94.

therein until the appointment and assumption to duty of the regular judge or the designation of an acting presiding judge", that the authority of Judge Santos was derived as a pairing judge, not as acting or assisting judge, of Branch 58; and that his authority automatically ceased on 20 February 2009, when Judge Caldona was designated as Acting Presiding Judge of Branch 58.

THE COURT'S RULING

Appeal, not certiorari, is the proper remedy to question the MeTC decision.

At the outset, petitioner availed of the wrong remedy when he sought to assail the MeTC decision. *First*, it has been consistently held that where appeal is available to the aggrieved party, the special civil action of certiorari will not be entertained — remedies of appeal and certiorari are mutually exclusive, not alternative or successive. The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to certiorari because one of the requirements for the latter remedy is the unavailability of appeal.[15]

Second, even if a petition for certiorari is the correct remedy, petitioner failed to comply with the requirement of a prior motion for reconsideration. As a general rule, a motion for reconsideration is a prerequisite for the availment of a petition for certiorari under Rule 65.[16] The filing of a motion for reconsideration before resort to certiorari will lie is intended to afford the public respondent an opportunity to correct any actual or fancied error attributed to it by way of reexamination of the legal and factual aspects of the case.[17]

Third, petitioner was not able to establish his allegation of grave abuse of discretion on the part of the MeTC. Where a petition for certiorari under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.[18] In *Yu v. Judge Reyes-Carpio,*[19] the Court explained:

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15 *Cuevas v. Macatangay,* G.R. No. 208506, 22 February 2017.
16 *Romy's Freight Service v. Castro*, 523 Phil. 540, 545 (2006).
17 *Villena v. Rupisan*, 549 Phil. 146, 158 (2007).
18 *Abedes v. CA*, 562 Phil. 262, 276 (2007).
19 667 Phil. 474 (2011).

> The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross x x x.[20]

As will be discussed, there was no hint of whimsicality, nor of gross and patent abuse of discretion as would amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law on the part of Judge Santos.[21] He was clothed with authority to decide the criminal cases filed against petitioner.

In addition, considering that petitioner filed with the RTC a petition for certiorari which is an original action, the proper remedy after denial thereof is to appeal to the Court of Appeals *(CA)* by way of notice of appeal.[22] Hence, when petitioner filed a petition for review before this Court, not only did he disregard the time-honored principle of hierarchy of courts, he also availed of the wrong remedy for the second time.

Notwithstanding the foregoing procedural lapses committed by petitioner, in the interest of prompt dispensation of justice and to prevent further prolonging the proceedings in this case, the Court resolves to give due course to his petition and rule on the merits thereof.

Judge Santos had authority to render the assailed decision even after the assumption to office of the designated presiding judge of Branch 58.

Petitioner cites Circular No. 19-98 to support his contention that Judge Santos no longer had the authority to render the assailed decision at the time of its promulgation on 15 April 2009. The circular reads:

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20 Id. at 481-482.

21 *Baltazar v. People*, 582 Phil. 275, 291 (2008).

22 *BF Citiland Corporation v. Otake*, 640 Phil. 261, 270 (2010).

> In the interest of efficient administration of justice, the authority of the pairing judge under Circular No. 7 dated September 23, 1974 (Pairing System for Multiple Sala Stations) to act on incidental or interlocutory matters and those urgent matters requiring immediate action on cases pertaining to the paired court shall henceforth be expanded to include all other matters. Thus, whenever a vacancy occurs by reason of resignation, dismissal, suspension, retirement, death, or prolonged absence of the presiding judge in a multi-sala station, ***the judge of the paired court shall take cognizance of all the cases thereat as acting judge therein until the appointment and assumption to duty of the regular judge or the designation of an acting presiding judge*** or the return of the regular incumbent judge, or until further orders from this Court. (emphasis supplied)

On the other hand, the OSG avers that Judge Santos was in due exercise of his authority as provided by Circular No. 5-98, *viz:*

> 1. Unless otherwise ordered by the Court, an Acting/Assisting Judge shall cease to continue hearing cases in the court where he is detailed and shall return to his official station upon the assumption of the appointed Presiding Judge or the newly designated Acting Presiding Judge thereat. Cases left by the former shall be tried and decided by the appointed Presiding Judge or the designated Acting Presiding Judge.
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> 2. ***However, cases submitted for decision and those that passed the trial stage, i.e. where all the parties have finished presenting their evidence before such Acting/Assisting Judge at the time of the assumption of the Presiding Judge or the designated Acting Presiding Judge shall be decided by the former.*** This authority shall include resolutions of motions for reconsideration and motions for new trial thereafter filed. But if a new trial is granted, the Presiding Judge thereafter appointed or designated shall preside over the new trial until it is terminated and shall decide the same.
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> 3. If the Acting/Assisting Judge is appointed to another branch but in the same station, cases heard by him shall be transferred to the branch where he is appointed and he shall continue to try them. He shall be credited for these cases by exempting him from receiving an equal number during the raffle of newly filed cases. x x x (emphasis supplied)

Both circulars are applicable in the case at bar in that Circular No. 5-98 complements Circular No. 19-98. Undoubtedly, the judge of the paired court serves as acting judge only until the appointment and assumption to duty of the regular judge or the designation of an acting presiding judge. Clearly, the acting judge may no longer promulgate decisions when the regular judge has already assumed the position. Circular No. 5-98, however, provides an exception, i.e., the acting judge, despite the assumption to duty

of the regular judge or the designation of an acting presiding judge, shall decide cases which are already submitted for decision at the time of the latter's assumption or designation.

In this case, Judge Santos, as judge of the paired court, presided over the trial of the cases which commenced with the presentation of the prosecution's first witness on 7 June 2006.[23] On 25 July 2007, Judge Labastida was appointed Presiding Judge of Branch 58 and he took over the trial of the cases.[24] The promulgation of judgment was tentatively set on 30 September 2008.[25] Unfortunately, sometime in December 2008, Judge Labastida died.[26] Hence, it was incumbent upon Judge Santos to serve as acting judge of Branch 58 as a result of Judge Labastida's untimely death. When Judge Caldona assumed the position of Acting Presiding Judge on 1 April 2009,[27] the cases already passed the trial stage as they were in fact submitted for decision. Further, it is worthy to note that Judge Santos presided over a significant portion of the proceedings as compared to Judge Caldona who assumed office long after the cases were submitted for decision. Finally, the use of the word "shall" in Circular No. 5-98 makes it mandatory for Judge Santos to decide the criminal cases against petitioner. Clearly, Judge Santos had the authority to render the assailed decision on 15 April 2009 notwithstanding Judge Caldona's assumption to office.

Failure to prove petitioner's receipt of notice of dishonor warrants his acquittal.

To be liable for violation of 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; (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 the 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.[28]

Here, the existence of the second element is in dispute. In *Yu Oh v. CA*,[29] the Court explained that since the second element involves a state of mind which is difficult to establish, Section 2 of B.P. Blg. 22 created a *prima facie* presumption of such knowledge, as follows:

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23 *Rollo*, p. 27
24 Id. at 21.
25 Id. at 31.
26 Id. at 21.
27 Id. at 36.
28 *Alferez v. People*, 656 Phil. 116, 122 (2011).
29 451 Phil. 380 (2003).

> 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.
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> Based on this section, the presumption that the issuer had knowledge of the insufficiency of funds is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangement for its payment. ***The presumption or prima facie evidence as provided in this section cannot arise, if such notice of non-payment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.***
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> x x x x
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> Indeed, this requirement [on proof of receipt of notice of dishonor] cannot be taken lightly because Section 2 provides for an opportunity for the drawer to effect full payment of the amount appearing on the check, within five banking days from notice of dishonor. The absence of said notice therefore deprives an accused of an opportunity to preclude criminal prosecution. In other words, procedural due process demands that a notice of dishonor be actually served on petitioner.[30] (emphasis supplied and citations omitted)

The Court finds that the second element was not sufficiently established. Yao testified that the personal secretary of petitioner received the demand letter,[31] 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.[32]

In this case, there is no way to ascertain when the five-day period under Section 22 of B.P. Blg. 22 would start and end since there is no showing when petitioner actually received the demand letter. The MeTC, in its decision, merely said that such requirement was fully complied with

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30 Id. at 392-393 and 395.

31 *Rollo*, p. 29.

32 *San Mateo v. People*, 705 Phil. 630, 638-639 (2013).

without any sufficient discussion. Indeed, it is not impossible that petitioner's secretary had truly handed him the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt.[33] The absence of a notice of dishonor necessarily deprives the accused an opportunity to preclude a criminal prosecution.[34] As there is insufficient proof that petitioner received the notice of dishonor, the presumption that he had knowledge of insufficiency of funds cannot arise.[35]

Nonetheless, petitioner's acquittal for failure of the prosecution to prove all elements of the offense beyond reasonable doubt does not extinguish his civil liability for the dishonored checks. The extinction of the penal action does not carry with it the extinction of the civil action where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted.[36]

WHEREFORE, the petition is **GRANTED.** The 15 June 2010 and 28 December 2010 Orders of the Regional Trial Court in SCA No. 3338 are **REVERSED** and **SET ASIDE**. Petitioner John Dennis G. Chua is **ACQUITTED** of the crime of violation of Batas Pambansa Bilang 22 on four (4) counts on the ground that his guilt was not established beyond reasonable doubt. He is, nonetheless, ordered to pay complainant Cristina Yao the face value of the subject checks in the aggregate amount of ₱6,082,000.00, plus legal interest of 12% per annum from the time the said sum became due and demandable until 30 June 2013, and 6% per annum from 1 July 2013 until fully paid.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

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33 *Moster v. People*, 569 Phil. 616, 627 (2008).
34 *Ambito v. People*, 598 Phil. 546, 570 (2009).
35 *Suarez v. People*, 578 Phil. 228, 237 (2008).
36 *Daluraya v. Oliva*, 749 Phil. 531, 537 (2014).

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
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

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.

MARIA LOURDES P. A. SERENO
Chief Justice