



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 14 February 2022 which reads as follows:

“**G.R. No. 256761** (*Alberto Uy v. People of the Philippines*). – This is a Petition for *Certiorari*¹ under Rule 65 of the Rules of Court assailing the Resolutions² dated July 30, 2020 and May 26, 2021 of the Court of Appeals (CA) in CA-G.R. CR No. 43969. The CA Resolution dated July 30, 2020 dismissed the Petition for Review³ filed by petitioner Alberto Uy (petitioner) and affirmed the Decision⁴ dated February 28, 2019 of Branch 17, Regional Trial Court (RTC) of Manila in Case No. 483327-28-CR. Meanwhile, the CA Resolution dated May 26, 2021 denied petitioner’s Motion for Reconsideration⁵ dated August 24, 2020.

The Facts

The case stemmed from two Informations for violation of *Batas Pambansa Blg. (BP) 22* filed against petitioner before Branch 2, Metropolitan Trial Court (MeTC) of Manila.⁶

Records reveal that on January 8, 2014, petitioner borrowed ₱200,000.00 from private complainant John L. Tan (Tan). As security for the loan, petitioner issued RCBC Check No. 0000374512 for ₱200,000.00. Thereafter, on January 18, 2014, petitioner again borrowed ₱300,000.00 from Tan. Petitioner then issued RCBC Check No. 0000374513 for ₱300,000.00. However, when Tan presented the two checks to the bank for payment, both were dishonored for the reason

¹ *Rollo*, pp. 3-20.

² *Id.* at 78-82 and 92-94; penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Ramon M. Bato, Jr., and Florencio M. Mamauag, Jr., concurring.

³ *Id.* at 70-76.

⁴ *Id.* at 49-54; penned by Presiding Judge Felicitas O. Laron-Cacanindin.

⁵ *Id.* at 83-89.

⁶ *Id.* at 21.

“account closed.”⁷

Tan testified that his counsel’s messenger, Edeson Jumawid (Jumawid), tried to serve the demand letter to petitioner twice. However, petitioner refused to receive it. Consequently, Tan and his counsel sent the demand letter by private courier.⁸

Jumawid likewise testified that he went to the address of petitioner to serve the demand letter, but was informed that petitioner no longer resided therein.⁹ Jumawid emphasized that he saw petitioner, but the latter ignored him and went away upon noticing him.¹⁰ On his second try, Jumawid returned to the same address, and that time, the demand letter was received by a certain Cloue Napire (Napire) who introduced herself as the househelp of petitioner. Jumawid further asseverated that the demand letter was sent through a private courier too.¹¹

During trial, petitioner admitted that he obtained loans from Tan and that he issued two checks as security for the respective loans. However, petitioner denied having received any demand letter from Tan to make good the dishonored checks.¹² Still, he admitted that he closed his bank account even before the subject checks became due and demandable. Petitioner likewise admitted that he never left his residence as indicated in the demand letters.¹³

The MeTC Ruling

In its Decision¹⁴ dated October 18, 2017, the MeTC acquitted petitioner of the offense of violation of BP 22 for failure of the prosecution to prove that petitioner received the written demand letter from Tan. However, the MeTC ordered petitioner to indemnify Tan the amount of ₱500,000.00, representing the face value of the two checks plus six percent (6%) interest *per annum* from the filing of the Informations until fully paid.¹⁵

⁷ *Id.* at 28-29.

⁸ *Id.* at 22.

⁹ *Id.* at 22-23.

¹⁰ *Id.* at 50.

¹¹ *Id.* at 23.

¹² *Id.*

¹³ *Id.* at 50.

¹⁴ *Id.* at 21-26; penned by Ma. Maureen T. Concepcion-Dy.

¹⁵ *Id.* at 25-26.

Tan then filed a Petition for *Certiorari*¹⁶ under Rule 65 of the Rules of Court before the RTC.

The RTC Ruling

In its Decision¹⁷ dated February 28, 2019, the RTC granted Tan's petition and found that the MeTC gravely abused its discretion in acquitting the petitioner. The RTC ruled that the prosecution was able to prove that the Notice of Dishonor was served to petitioner. The RTC gave credence to the testimony of Jumawid who firmly stated that in the first two instances of personal service, petitioner refused to receive the written demand letter prompting Jumawid to send a demand letter *via* a private courier; that on his second try, Jumawid was able to send the written demand letter to petitioner through Napire, petitioner's househelp. According to the RTC, the pieces of evidence clearly established that the Notice of Dishonor was duly served as required by law.¹⁸

Undaunted, petitioner filed a Petition for Review¹⁹ under Rule 42 of the Rules of Court before the CA.

The CA Ruling

In the assailed Resolution²⁰ dated July 30, 2020, the CA dismissed petitioner's appeal and affirmed the RTC Decision.²¹

The CA ruled that petitioner resorted to a wrong mode of appeal. It found that the proper mode of appeal should have been an ordinary appeal under Section 2(a),²² Rule 41 of the Rules of Court considering that the RTC rendered its Decision in the exercise of its *original* jurisdiction. Moreover, the CA emphasized that petitioner should have

¹⁶ *Id.* at 27-39.

¹⁷ *Id.* at 49-54.

¹⁸ *Id.* at 52-53.

¹⁹ *Id.* at 70-76.

²⁰ *Id.* at 78-82.

²¹ *Id.* at 82.

²² Section 2. Modes of appeal. ---

(a) Ordinary appeal. --- *The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where law on these Rules so require. In such cases, the record on appeal shall be filed and served in like manner. (Italics supplied.)*

filed a notice of appeal before the RTC within a period of 15 days from notice of the Decision of the RTC in accordance with Section 3,²³ Rule 41 of the Rules of Court.

In the assailed Resolution²⁴ dated May 26, 2021, the CA denied petitioner's Motion for Reconsideration.²⁵

Aggrieved, petitioner filed the instant Petition for *Certiorari* under Rule 65 of the Rules of Court.

Issue

The sole issue is whether the CA erred in dismissing petitioner's appeal on the ground that petitioner used a wrong mode of appeal.

Our Ruling

At the outset, it is worth emphasizing that the petition before the Court is attended with the following infirmities:

First, petitioner failed to attach a verified statement of material dates of his receipt of the assailed Resolutions. Thus, there is no way to determine whether the petition was filed within the reglementary period of 60 days from the notice of denial of the motion for reconsideration as provided under Section 4,²⁶ Rule 65 of the Rules of Court.

Second, the verification lacks attestation that the allegations in the petition are true and correct based on petitioner's personal knowledge or based on authentic document.

²³ Section 3. Period of ordinary appeal. — *The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from.* Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. (Italics supplied.)

x x x x.

²⁴ *Id.* at 92-94.

²⁵ *Id.* at 93.

²⁶ Section 4. When and where petition filed. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. *In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.* (Italics supplied.)

x x x x.

Third, per the Judicial Records Office, no CD/verified declaration was submitted as of July 14, 2021; and per verification from the E-filing system, no soft copy of the pleading was transmitted via email as of November 23, 2021.

In any case, the instant petition should be dismissed on the ground that the CA committed no grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner's appeal.

Under Rule 65 of the Rules of Court, the writ of *certiorari* is available where any tribunal, board or officer exercising judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. Grave abuse of discretion is defined as "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law."²⁷

In *Yu v. Reyes-Carpio*,²⁸ the Court defined *grave abuse of discretion* in this wise:

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."²⁹ (Citations omitted.)

A careful review of the instant case reveals that the CA did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner's appeal.

The CA correctly dismissed the appeal on the ground that petitioner availed himself of the wrong remedy of appeal under Rule 42 of the Rules of Court. Its ruling that petitioner should have filed an ordinary appeal under Rule 41 of the Rules of Court instead of Rule 42

²⁷ *People v. Sergio*, G.R. No. 240053, October 9, 2019, citing *Rodriguez v. Presiding Judge of the Regional Trial Court of Manila, Branch 17*, 518 Phil. 455, 462 (2006).

²⁸ 667 Phil. 474 (2011).

²⁹ *Id.* at 481-482.

is in order.

Section 2, Rule 41 of the Rules of Court provides:

Section 2. *Modes of appeal.* —

(a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where law on these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.* — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with the Rule 45.

In this case, the RTC rendered its Decision dated February 28, 2019 in the exercise of its *original* jurisdiction. To emphasize, Tan filed a petition for *certiorari* under Rule 65 of the Rules of Court before the RTC and argued that the MeTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in acquitting the petitioner on the ground that the notice of dishonor was not properly served upon the latter.³⁰ Evidently, the RTC issued the Decision dated February 28, 2019 not in the exercise of its appellate jurisdiction but of its *original* jurisdiction. Thus, the CA correctly ruled that petitioner should have filed an ordinary appeal under Rule 41 instead of Rule 42 of the Rules of Court.

Considering that petitioner resorted to a wrong mode of appeal before the CA, the RTC Decision which found grave abuse of discretion on the part of MeTC, has long become final and executory.

It need not be stated that when a judgment is final and executory, it becomes immutable and unalterable. In fact, jurisprudence elucidates that not even the Supreme Court can annul or modify an already final

³⁰ *Id.* at 31-37.

decision. It may no longer be modified in any respect, except to correct clerical errors or to make *nunc pro tunc* entries, or when it is a void judgment. Reasons of public policy, judicial orderliness, economy, judicial time and the interests of litigants, as well as the peace and order of society, all require that stability be accorded the solemn and final judgments of the courts or tribunals of competent jurisdiction.³¹

None of the exceptions to the principle of immutability of judgment are applicable in the instant case. Hence, the Court has no reason to annul or modify the final and executory Decision of the RTC which found petitioner guilty beyond reasonable doubt of the offense of violation of BP 22.

Even assuming that the RTC Decision is not yet final and executory, still the Court upholds petitioner's conviction of violation of BP 22. BP 22, otherwise known as the Bouncing Checks Law, penalizes the following acts as regards issuance of checks:

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 of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

x x x x.

Section 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

³¹ *In Re: Miñas*, A.C. No. 12536, November 17, 2020 citing *Vargas v. Cajucom*, 761 Phil. 43, 54 (2015); *Nuñal v. CA*, 293 Phil. 28, 35 (1993); *Lee Bun Ting v. Aligaen*, 167 Phil. 164, 178 (1977).

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.

To be liable for violation of BP 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.³²

In the case, there is no question as to the existence of the first and third elements, *i.e.*, the making and issuance of the two checks by the petitioner, and the subsequent dishonor of the checks by the drawee bank. The issue that is being contested by the petitioner pertains to the second element.

Petitioner plainly denied having received any notice of dishonor from Tan. Thus, according to him, he had no knowledge that the checks were dishonored by the drawee bank.³³

However, after a careful scrutiny of the factual evidence of this case, the Court finds that the second element of violation of BP 22 was established by the prosecution.

Jumawid, the mailer of the demand letters/notices of dishonor, testified that he went to the address of the petitioner to serve the demand letter but was informed that petitioner no longer resided therein. At that instance, Jumawid personally saw petitioner, but the latter immediately went away and ignored him. On the second try, Jumawid returned to the address of petitioner, and that time, the demand letter was received by Napire who introduced herself as the househelp of the petitioner. Moreover, Jumawid testified that the demand letter was also sent through a private courier.³⁴ Jumawid's testimonies remain undisputed by petitioner.

³² *Chua v. People*, 821 Phil. 271, 283 (2017), citing *Alferes v. People*, 656 Phil. 116, 122 (2011).

³³ *Rollo*, p. 50.

³⁴ *Id.*

Additionally, during trial, petitioner admitted that he never left his residence as indicated in the demand letters.³⁵ In other words, the demand letters were duly delivered to petitioner's residence, and he was aware of the fact that there were demand letters sent by Tan. However, petitioner refused to acknowledge them and maliciously evaded Jumawid to escape from any liability.

Furthermore, what is damning to the defense is petitioner's admission during trial that he, without any valid reason, closed his bank account even before the subject checks became due and demandable.³⁶ In other words, petitioner did not only fail to keep sufficient funds or maintain a credit to cover the full amount of the subject checks, but also intentionally closed the account prior to their presentment for payment without any justification. This is a clear violation under Section 1 of BP 22.

Evidently, the prosecution sufficiently established that petitioner knew that the checks had bounced because the latter closed the account even before the due date of the subject checks.

Also, the principle on double jeopardy does not apply because the prosecution was able to prove, *via* a petition for *certiorari* under Rule 65 of the Rules of Court, that the MeTC committed grave abuse of discretion in acquitting the petitioner despite the testimony of Jumawid and the open admission of petitioner, *viz.*: 1) that he never left his residence during those dates when the demand letters were mailed; and 2) that he closed the account even before the due date of the subject checks.³⁷ It is well-settled that a judgment of acquittal may be assailed by the People through a petition for *certiorari* without putting the accused in double jeopardy if it is established that the court *a quo* acted without jurisdiction or with grave abuse of discretion amounting to excess or lack of jurisdiction.³⁸

Finally, the final and executory Decision of the RTC which found grave abuse of discretion on the part of the MeTC can be considered as a reversal of the Decision of the MeTC. Simply stated, the RTC convicted the petitioner of violation of BP 22. However, the Court notes that the RTC did not provide a penalty for petitioner's conviction. Thus, the

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *People v. Arcega*, G.R. No. 237489, August 27, 2020.

Court is constrained to impose the proper penalty for the offense committed by petitioner.

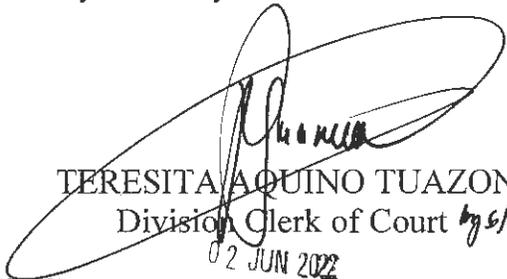
Under Section 1 of BP 22, the penalty to be imposed is imprisonment of not less than thirty (30) days but not more than one (1) year and/or a fine of not less than but not more than double the amount of the check. However, in no case shall the fine exceed Two Hundred Thousand Pesos (₱200,000.00). The imposition of the fine or the imprisonment or both is discretionary upon the court.

Considering that petitioner maliciously evaded the payment of the loan by refusing to receive the demand letters and that he intentionally closed the account even before the due date of the subject checks, the Court sentences petitioner to a fine of Two Hundred Thousand Pesos (₱200,000.00) in accordance with the Court's Administrative Circular Nos. 12-2000 and 13-2001 and the Decision in *Vaca v. CA*.³⁹ The Court further orders petitioner to pay the face value of the subject checks in the amount of ₱500,000.00 plus interest at the rate of six percent (6%) *per annum* from the filing of the Informations until fully paid,⁴⁰ with subsidiary imprisonment in case of insolvency pursuant to Article 39 of the Revised Penal Code. The Court remands the case to the MeTC for the execution of this Resolution.

WHEREFORE, the petition is **DISMISSED**. The Resolutions dated July 30, 2020, and May 26, 2021 of the Court of Appeals in CA-G.R. CR No. 43969 are **AFFIRMED**. Petitioner Alberto Uy is hereby sentenced to pay a fine of Two Hundred Thousand Pesos (₱200,000.00). He is likewise ordered to pay the face value of the subject checks in the amount of ₱500,000.00, with interest at the rate of six percent (6%) *per annum* from the filing of the Informations until fully paid. The case is **REMANDED** to Branch 2, Metropolitan Trial Court of Manila for the execution of this Resolution.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *by s/h*

02 JUN 2022

³⁹ 359 Phil. 187 (1998).

⁴⁰ See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

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(Case No. R-MNL-17-06195-CR)

HON. PRESIDING JUDGE (reg)
Metropolitan Trial Court, Branch 2
Manila
(Crim. Case Nos. 483327-28-CR)

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