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THIRD DIVISION

[G.R. No. 217787. September 18, 2019]

SOCORRO F. ONGKINGCO and MARIE PAZ B. ONGKINGCO, *petitioners, vs.* **KAZUHIRO SUGIYAMA and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; PETITIONERS ARE BARRED BY LACHES FROM RAISING THE ISSUE OF LACK OF WRITTEN AUTHORITY OR APPROVAL OF THE OFFICER TO FILE THE INFORMATION. — In stark contrast to *Garfin, Cudia* and *Maximo*, petitioners failed to raise the lack of written authority or approval of the city prosecutor before the MeTC, the RTC, and the CA without any justifiable reason. No motion to dismiss or motion to quash was filed by petitioners. From the filing of the Informations in 2002, petitioners were silent on why they raised the said issue for the first time before the Court in 2015 via a petition for review on *certiorari*. Defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, *laches* is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. *Laches* can be imputed against petitioners, because a considerable length of time had elapsed before they raised the said procedural issue, and reasonable diligence should have prompted them to file a motion to dismiss or to quash the Information before the trial court. For the first time after almost 13 years after the filing of the Informations against them, petitioners are now before the Court decrying that the prosecutor who filed the Informations against them had no authority to do so.

2. ID.; ID.; ID.; THE DEFECT IN THE INFORMATIONS DUE TO LACK OF WRITTEN AUTHORITY OR APPROVAL OF THE OFFICER WHO FILED THE INFORMATION CAN BE CURED BEFORE THE ARRAIGNMENT OF THE

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ACCUSED BY A SIMPLE MOTION OF THE PROSECUTION TO AMEND THE INFORMATION, THE AMENDMENT AT THIS STAGE OF THE PROCEEDINGS BEING A MATTER OF RIGHT ON THE PART OF THE PROSECUTION, OR FOR THE COURT TO DIRECT THE AMENDMENT THEREOF TO SHOW THE SIGNATURE OR APPROVAL OF THE CITY PROSECUTOR IN FILING THE INFORMATION. — It is also not amiss to state that had petitioners questioned the authority of Prosecutor II Hirang before the trial court, the defect in the Informations could have been cured before the arraignment of the accused by a simple motion of the prosecution to amend the Information; the amendment at this stage of the proceedings being a matter of right on the part of the prosecution, or for the court to direct the amendment thereof to show the signature or approval of the city prosecutor in filing the Information. Moreover, Section 4, Rule 117 of the Revised Rules of Criminal Procedure mandates that if the motion to quash is based on the alleged defect of the complaint or Information which can be cured by an amendment, the court shall order that an amendment be made. Either of these two could have been done to address the issue of lack of written authority or approval of the officer who filed the Information.

3. ID.; ID.; ID.; A PRIOR WRITTEN AUTHORITY OR APPROVAL OF THE PROVINCIAL OR CITY PROSECUTOR OR CHIEF STATE PROSECUTOR OR THE OMBUDSMAN, OR HIS OR HER DEPUTY, IS REQUIRED BEFORE A PUBLIC PROSECUTOR CAN FILE AN INFORMATION; AN INFORMATION FILED BY AN OFFICER WHO HAS NO AUTHORITY TO DO SO WILL PREVENT THE COURT FROM ACQUIRING JURISDICTION OVER THE CASE. — It is significant to note that under the substantive law, a public prosecutor has the authority to file an Information, but before he or she can do so, a prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman, or his or her deputy, is required by a procedural rule, *i.e.*, Section 4, Rule 112 of the Revised Rules of Criminal Procedure. It also bears emphasis that under Section 9, Rule 117 of the same Rule, the ground that the officer who filed the information had no authority to do so, which prevents the court from acquiring

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jurisdiction over the case — referred to in *Garfin* and *Cudia* — pertains to lack of jurisdiction over the offense, which is a non-waivable ground. The three other non-waivable grounds for a motion to quash the information are: (1) the facts charged do not constitute an offense; (2) the criminal action or liability has been extinguished; and (3) 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.

4. ID.; ID.; ID.; WHERE THE INFORMATION IS FILED BY A PUBLIC PROSECUTOR WITHOUT THE APPROVAL OF THE CITY PROSECUTOR, BUT THE RESOLUTION FOR FILING OF THE INFORMATION BEARS THE APPROVAL OF THE CITY PROSECUTOR, OR HIS OR HER DULY AUTHORIZED DEPUTY, AND SUCH LACK OF APPROVAL IS TIMELY OBJECTED TO BEFORE ARRAIGNMENT, THE COURT MAY REQUIRE THE PUBLIC PROSECUTOR TO HAVE THE SIGNATURE OF THE CITY PROSECUTOR AFFIXED IN THE INFORMATION TO AVOID UNDUE DELAY; HOWEVER, IF THE OBJECTION IS RAISED AFTER ARRAIGNMENT, AT ANY STAGE OF THE PROCEEDING OR EVEN ON APPEAL, THE SAME SHOULD NO LONGER BE A GROUND TO DECLARE THE INFORMATION AS INVALID, BECAUSE IT IS NO LONGER A QUESTION OF JURISDICTION OVER THE CASE. — [I]n instances where the information is filed by an authorized officer, like a public prosecutor, without the approval of the city prosecutor appearing in the information, but the resolution for filing of the information bears the approval of the city prosecutor, or his or her duly authorized deputy, and such lack of approval is timely objected to before arraignment, the court may require the public prosecutor to have the signature of the city prosecutor affixed in the information to avoid undue delay. However, if the objection is raised after arraignment, at any stage of the proceeding or even on appeal, the same should no longer be a ground to declare the information as invalid, because it is no longer a question of jurisdiction over the case. After all, the resolution of the investigating prosecutor attached to the information carries with it the recommendation to file the information and the approval to file the information by the prosecutor, or his or her duly authorized deputy.

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5. ID.; ID.; ID.; IF THE INFORMATION IS FILED BY THE PUBLIC PROSECUTOR WITHOUT THE CITY PROSECUTOR'S OR HIS OR HER DEPUTY'S APPROVAL BOTH IN THE INFORMATION AND THE RESOLUTION FOR THE FILING THEREOF, THEN THE COURT SHOULD REQUIRE THE PUBLIC PROSECUTOR TO SEEK THE APPROVAL OF THE CITY PROSECUTOR BEFORE ARRAIGNMENT; OTHERWISE, THE CASE MAY BE DISMISSED ON THE GROUND OF LACK OF AUTHORITY TO FILE THE INFORMATION; HOWEVER, IF THE INFORMATION IS FILED BY AN UNAUTHORIZED OFFICIAL, THE INFORMATION IS INVALID FROM THE VERY BEGINNING, AND THE COURT SHOULD *MOTU PROPRIO* DISMISS THE CASE EVEN WITHOUT ANY MOTION TO DISMISS, AS SUCH INFORMATION CANNOT CONFER UPON THE COURT JURISDICTION OVER THE CASE. — If the information is filed by the public prosecutor without the city prosecutor's or his or her deputy's approval both in the information and, the resolution for the filing thereof, then the court should require the public prosecutor to seek the approval of the city prosecutor before arraignment; otherwise, the case may be dismissed on the ground of lack of authority to file the information under Section 3(d), Rule 117. This ground may be raised at any stage of the proceedings, which may cause the dismissal of the case. If, however, the information is filed by an unauthorized official—not a public prosecutor, like a private complainant, or even public officers who are not authorized by law or rule to file the information—then the information is invalid from the very beginning, and the court should *motu proprio* dismiss the case even without any motion to dismiss, because such kind of information cannot confer upon the court jurisdiction over the case. In this particular case, there is proof in the records that Prosecutor II Hirang filed the Informations with prior authority from the 1st Assistant City Prosecutor.

6. ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS; PRESENT. — [T]he CA committed reversible error in affirming the conviction of petitioner Marie Paz of violation of four (4) counts of B.P. 22, because the prosecution failed to prove that she received a notice of dishonor. As a rule, only questions of law may be raised in a petition for review

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on *certiorari* under Rule 45 of the Rules of Court. As an exception, questions of fact may be raised if any of the following is present: (1) When there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admission of the parties; (7) **when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion;** (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) **when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record**. Here, the seventh and tenth exceptions are present.

7. CRIMINAL LAW; BOUNCING CHECKS LAW (BATAS PAMBANSA BILANG 22); VIOLATION OF B.P. 22, ESSENTIAL ELEMENTS THEREOF. — To sustain a conviction of violation of B.P. 22, the prosecution must prove beyond reasonable doubt three (3) essential elements, namely: 1. The accused makes, draws or issues any check to apply to account or for value; 2. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, drawee bank for payment of the check in full upon its presentment; and 3. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit; or it would have been dishonored for the same reason had not the drawer, without any valid reasons, ordered the bank to stop payment. The presence of the first and third elements is undisputed. However, while the prosecution established the second element, *i.e.*, receipt of the notice of dishonor, with respect to petitioner Socorro, it failed to do so in the case of petitioner Marie Paz.

8. ID.; ID.; THE MERE ACT OF ISSUING A WORTHLESS CHECK IS PUNISHABLE, REGARDLESS OF THE PURPOSE FOR SUCH ISSUANCE, FOR WHAT IS SIGNIFICANT IS THAT THE ACCUSED HAD DELIBERATELY ISSUED THE CHECKS TO COVER ACCOUNTS AND THOSE SAME CHECKS WERE

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DISHONORED UPON PRESENTMENT. — It is of no moment that the subject checks were issued as a guarantee and upon the insistence of private complainant Sugiyama. What is significant is 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. The legislative intent behind the enactment of B.P. 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 B.P. 22 is to make the mere act of issuing a worthless check *malum prohibitum* and, thus, punishable under such law.

9. ID.; ID.; ID.; FOR THE PRESUMPTION OF KNOWLEDGE OF INSUFFICIENT FUNDS TO ARISE, THE PROSECUTION MUST PROVE THAT THE ISSUER HAD RECEIVED A NOTICE OF DISHONOR AND THAT WITHIN FIVE (5) DAYS FROM RECEIPT THEREOF, HE FAILED TO PAY THE AMOUNT OF THE CHECK OR TO MAKE ARRANGEMENTS FOR ITS PAYMENT. — Inasmuch as the second element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of B.P. 22 creates a *prima facie* presumption of such knowledge x x x. For this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee. In other words, the presumption is brought into existence only after it is proved that the issuer had received a

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notice of dishonor and that within five (5) days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. The presumption or *prima facie* evidence, as provided in this Section, cannot arise if such notice of nonpayment 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.

10. ID.; ID.; REQUISITE NOTICE OF DISHONOR, SATISFIED; THE DEFENSE OF DENIAL SHOULD BE SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, AND THE ACCUSED CANNOT SOLELY RELY ON HER NEGATIVE AND SELF-SERVING NEGATIONS, FOR SUCH DEFENSE CARRIES NO WEIGHT IN LAW AND HAS NO GREATER EVIDENTIARY VALUE THAN THE TESTIMONY OF CREDIBLE WITNESSES WHO TESTIFY ON AFFIRMATIVE MATTERS. — The prosecution was able to establish beyond reasonable doubt the presence of the second element with respect to petitioner Socorro, who received the notice of dishonor through her secretary. x x x. The testimony of La Serna shows that it was the secretary of petitioner Socorro who acknowledged receipt of the demand letter dated March 5, 2002, with the permission of Socorro, who was just in another room of her office. Suffice it to state that when the secretary of Socorro left for a while, came back shortly, and acknowledged receipt of the same demand letter, the requisite receipt of the notice of dishonor was satisfied. Against the affirmative testimony of La Serna, Socorro merely denied knowledge and receipt of the demand letter dated March 5, 2002. It is well settled that the defense of denial is inherently weak and unreliable by virtue of its being an excuse too easy and too convenient for the guilty to make. Denial should be substantiated by clear and convincing evidence, and the accused cannot solely rely on her negative and self-serving negations, for such defense carries no weight in law and has no greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.

11. ID.; ID.; FAILURE OF THE PROSECUTION TO PROVE THAT THE PERSON WHO ISSUED THE CHECK WAS GIVEN THE REQUISITE NOTICE OF DISHONOR IS A GROUND FOR ACQUITTAL, AS THE GIVING OF THE

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WRITTEN NOTICE OF DISHONOR DOES NOT ONLY SUPPLY PROOF FOR THE ELEMENT ARISING FROM THE PRESUMPTION OF KNOWLEDGE THE LAW PUTS UP, BUT ALSO AFFORDS THE OFFENDER DUE PROCESS. — [M]arie Paz cannot be faulted for failing to refute with evidence the allegation against her, because Sugiyama and La Serna hardly testified as to the service of a notice of dishonor upon her. La Serna never mentioned that Marie Paz was, likewise, served with a notice of dishonor. There is also no proof that Socorro's secretary was duly authorized to receive the demand letter on behalf of Marie Paz. When service of notice is an issue, the person alleging that notice was served must prove the fact of service, and the burden of proving notice rests upon the party asserting its existence. Failure of the prosecution to prove that the person who issued the check was given the requisite notice of dishonor is a clear ground for acquittal. It bears emphasis that the giving of the written notice of dishonor does not only supply proof for the element arising from the presumption of knowledge the law puts up, but also affords the offender due process. The law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid. Thus, the absence of a notice of dishonor is a deprivation of petitioner's statutory right.

12. ID.; ID.; A CORPORATE OFFICER WHO ISSUES A BOUNCING CORPORATE CHECK CAN ONLY BE HELD CIVILLY LIABLE WHEN HE OR SHE IS CONVICTED; ONCE ACQUITTED OF THE OFFENSE OF VIOLATING B.P. 22, A CORPORATE OFFICER IS DISCHARGED OF ANY CIVIL LIABILITY ARISING FROM THE ISSUANCE OF THE WORTHLESS CHECK IN THE NAME OF THE CORPORATION HE OR SHE REPRESENTS, 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. — As a general rule, when a corporate officer issues a worthless check in the corporate's name, he or she may be held personally liable for violating a penal statute, *i.e.*, Section 1 of B.P. 22.

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However, a corporate officer who issues a bouncing corporate check can only be held civilly liable when he or she is convicted. Conversely, once acquitted of the offense of violating B.P. 22, a corporate officer is discharged of any civil liability arising from the issuance of the worthless check in the name of the corporation he or she represents. 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. Here, petitioner Socorro should be held civilly liable for the amounts covered by the dishonored checks, in light of her conviction of the four (4) charges for violation of B.P. 22 and because she made herself personally liable for the fixed monthly director's dividends in the amount of ₱90,675.00 and the ₱525,000.00 loan with interest, based on the Contract Agreement dated April 6, 2011, the Addendum to Contract Agreement dated February 4, 2003, and the Memorandum of Agreement dated October 2001, which were all formally offered by the prosecution, and admitted in evidence by the trial court. To be sure, petitioner Marie Paz was never shown to have been part of or privy to any of the said agreements; thus, she cannot be held civilly liable for the dishonored checks.

13. COMMERCIAL LAW; CORPORATIONS; THE STOCKHOLDERS AND OFFICERS ARE NOT PERSONALLY LIABLE FOR THE OBLIGATIONS OF THE CORPORATION EXCEPT WHEN THE VEIL OF CORPORATE FICTION IS BEING USED AS A CLOAK OR COVER FOR FRAUD OR ILLEGALITY, OR TO WORK INJUSTICE. — Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice. Here, petitioner Socorro bound herself personally liable for the monthly director's dividends in the fixed amount of ₱90,675.00 for a period of five (5) years and for the ₱500,000.00 loan, for which she issued the subject four (4) dishonored checks. She then admitted having incurred serious delay in the payment of the said fixed monthly dividends and loan, and further agreed to adopt a new payment schedule of payment therefor, but to no avail.

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14. ID.; ID.; ID.; A CORPORATE OFFICER CANNOT HIDE BEHIND THE SEPARATE AND DISTINCT CORPORATE PERSONALITY OF THE CORPORATION JUST TO EVADE AN UNAUTHORIZED CORPORATE OBLIGATION WHICH SHE HERSELF BOUND TO PERSONALLY UNDERTAKE. — Granted that Socorro is authorized to sign checks as corporate officer and authorized signatory of New Rhia Car Services, Inc., there is still no evidence on record that she was duly authorized, through a Board Resolution or Secretary's Certificate, to guarantee a corporate director thereof [Sugiyama] fixed monthly dividends for 5 years, to enter into a loan, and to adopt a new schedule of payment with the same director, all in behalf of the corporation. It would be the height of injustice for the Court to allow Socorro to hide behind the separate and distinct corporate personality of New Rhia Car Services, Inc., just to evade the corporate obligation which she herself bound to personally undertake. It is not amiss to stress that the power to declare dividends under Section 43 of the Corporation Code of the Philippines lies in the hands of the board of directors of a stock corporation, and can be declared only out of its unrestricted retained earnings. Assuming *arguendo* that Socorro was authorized by the Board to fix the monthly dividends of Sugiyama as a corporate director, it appears that she committed an *ultra vires* act because dividends can be declared only out of unrestricted retained earnings of a corporation, which earnings cannot obviously be fixed and pre-determined 5 years in advance.

15. CRIMINAL LAW; BOUNCING CHECKS LAW (BATAS PAMBANSA BILANG 22); VIOLATION OF B.P. 22, PROPER IMPOSABLE PENALTY. — [S]ince Socorro was convicted of four (4) charges of violation of B.P. 22, she must be held liable for the face value of the subject four (4) dishonored checks which is ₱797,025.00, more so because she personally bound herself liable for what appears to be unauthorized corporate obligations. Moreover, the legal interest rate awarded by the MeTC, which was affirmed by both the RTC and the CA, must be modified pursuant to *Nacar v. Gallery Frames*, as follows: 12% *per annum* from the filing of the complaint on April 11, 2002 until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this Decision, the legal interest rate is 6% *per annum*; and (3) from finality of this Decision

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until fully paid, the legal interest rate is 6% *per annum*. As to the penalty, the Court finds no reason to disturb the fines (with subsidiary imprisonment in case of insolvency) imposed by the MeTC and affirmed by both the RTC and the CA, for being in accord with Section 1 of B.P. 22, which provides for the penalty of "imprisonment of not less than thirty (30) 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."

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

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; A COMPLAINT OR INFORMATION WHICH IS FILED BEFORE A COURT WITHOUT THE PRIOR WRITTEN AUTHORITY OR APPROVAL OF PROVINCIAL OR CITY PROSECUTOR OR CHIEF STATE PROSECUTOR OR THE OMBUDSMAN OR HIS DEPUTY MAY BE QUASHED. —** [S]ection 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*. – x x x. **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.** 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 **(d) That the officer who filed the information had no authority to do so**; x x x

2. **ID.; ID.; ID.; 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**

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TO IT; EXCEPTIONS; IF THE FILING OFFICER LACKS AUTHORITY, THE INFIRMITY IN THE INFORMATION CONSTITUTES A JURISDICTIONAL DEFECT THAT CANNOT BE CURED. — 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*, 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." x x x. 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." 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.

3. **CRIMINAL LAW; THE BOUNCING CHECKS LAW (BATAS PAMBANSA BLG. 22); VIOLATION OF B.P. BLG. 22, ESSENTIAL ELEMENTS THEREOF. —** 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; (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

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presentment; and (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.

4. ID.; ID.; ID.; FOR THE *PRIMA FACIE* PRESUMPTION OF KNOWLEDGE OF INSUFFICIENCY OF FUNDS OR CREDIT 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. — 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 x x x. 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. 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.

5. ID.; ID.; ID.; ID.; IT IS NOT ENOUGH FOR THE PROSECUTION TO PROVE THAT A NOTICE OF DISHONOR WAS SENT TO THE ACCUSED, BUT IT MUST ALSO PROVE THAT THE ACCUSED ACTUALLY RECEIVED THE NOTICE OF DISHONOR. — 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 factual milieu of this case is not dissimilar from *Chua v. People*, 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,**

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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.

6. ID.; ID.; A CORPORATE OFFICER CANNOT BE HELD CIVILLY LIABLE FOR THE VALUE OF THE DISHONORED CHECKS ONCE ACQUITTED OF THE OFFENSE OF VIOLATING B.P. BLG. 22, WITHOUT REGARD AS TO WHETHER THE 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. — As for the petitioner Marie Paz Ongkingco, there is neither allegation nor proof that a notice of dishonor was served to her. Thus, x x x 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." This is in accordance with Section 1 of B.P. Blg. 22 x x x. However, in *Gosiaco v. Ching, et al.*, 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.*, the Court held that "a corporate officer who issues a bouncing corporate check can only be held civilly liable when he is convicted." 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." In this case, it is clear that the petitioners signed the checks as

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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.

APPEARANCES OF COUNSEL

Marcelino B. Lomoya for petititoners.
Abrenica Ardiente Abrenica & Partners for private respondent.
Office of the Solicitor General for public respondent.

D E C I S I O N

PERALTA, *J.*:

Petitioners Socorro F. Ongkingco and Marie Paz B. Ongkingco filed a petition for review on *certiorari*, assailing the Decision[1] of the Court of Appeals (*CA*), dated October 24, 2014 in CA-G.R. CR No. 35356, which affirmed *in toto* the Order[2] of the Regional Trial Court (*RTC*). The RTC affirmed *in toto* the Decision[3] of the Metropolitan Trial Court (*MeTC*) which found petitioners guilty of four (4) counts of violation of *Batas Pambansa Bilang* 22 in Criminal Cases Nos. 318339 to 318342. The MeTC ordered petitioners to pay a fine of ₱100,000.00 each for Criminal Case Nos. 318339 to 318341, and ₱200,000.00

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[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Elihu A. Ybañez and Carmelita S. Manahan, concurring; *rollo*, pp. 27-35.

[2] Penned by RTC of Makati City, Branch 59, Presiding Judge Winlove M. Dumayas; *id.* at 66-69.

[3] Penned by MeTC of Makati City, Branch 66, Presiding Judge Josefino A. Subia; *id.* at 39-50.

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for Criminal Case No. 318342, and to jointly and severally pay complainant Kazuhiro Sugiyama the face amount of the 4 dishonored checks in the total amount of ₱797,025.00, with interest at 12% *per annum* from the filing of the complaint on April 11, 2002 until the amount is fully paid, and cost of suits.

The facts are as follows:

On April 6, 2001, respondent Kasuhiro[4] Sugiyama entered into a "Contract Agreement"[5] with New Rhia Car Services, Inc. where petitioner Socorro is the President and Chairperson of the Board of Directors, and petitioner Marie Paz B. Ongkingco is a Board Director. Under the Agreement, Sugiyama would receive a monthly dividend of ₱90,675.00 for five years in exchange for his investment of ₱2,200,000.00 in New Rhia Car Services, Inc. To cover Sugiyama's monthly dividends, petitioners issued six (6) checks. The first three (3) checks, dated September 10, 2011, October 10, 2001 and November 10, 2001, were good checks, but the remaining 3 checks bounced for having been draw against insufficient funds.

In a Memorandum of Agreement[6] dated October 2001, Socorro, President and General Manager of New Rhia Car Service, Inc., obtained a loan from Sugiyama, a Director of the same company, amounting to ₱500,000.00 with a five percent (5%) interest for a period of one (1) month. As a guarantee and payment for the said obligation, Socorro issued an Allied Bank Check with No. 0000127109 dated November 30, 2001, amounting to ₱525,000.00. When the check was presented for payment, it was dishonored for having been drawn against insufficient funds, just like the 3 other checks initially issued by petitioners. A formal demand letter dated March 5, 2002 was delivered to Socorro's office, but no payment was made. Thus, Sugiyama filed a complaint against petitioners for four (4) counts of violation of *Batas Pambansa Bilang (B.P.) 22.*

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[4] Also spelled in the records as "Kazuhiro."

[5] Records, pp. 16-17.

[6] *Id.* at 340.

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Save for the check numbers, check dates and amounts, the accusatory portions of the four (4) separate Informations docketed as Criminal Case No. 318339,[7] 318340,[8] 318341[9] and 318342,[10] similarly read as follows:

That on or about the 10th day of December 2001 or prior thereto, in the City of Makati Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the officers and authorized signatories of New Rhia Car Services, [Inc.] did then and there willfully, unlawfully and feloniously make out, draw and issue to Kasuhiro Sugiyama, to apply on account or for value the check described below:

Check No. : 0000122834

Drawn Against: Allied Bank

In the Amount of: [₱]90,675.00

Dated/Postdated: December 10, 2001

Payable to: Kasuhiro Sugiyama

[S]aid accused well knowing that at the time of the issue thereof, said account 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 "Draw Against Insufficient Funds" and despite receipt of notice of such dishonor, the accused failed to pay the payee the amount of the said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

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[7] *Id.* at 5: Check No. 0000122834 dated December 10, 2001 in the amount of ₱90,675.00.

[8] *Id.* at 2: Check No. 0000122835 dated January 10, 2002 in the amount of ₱90,675.00.

[9] *Id.* at 3: Check No. 0000122836 dated February 10, 2002 in the amount of ₱90,675.00.

[10] *Id.* at 4: Check No 0000127109 dated November 30, 2001 in the amount of ₱525,000.00.

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CONTRARY TO LAW.
Makati, 7 August 2002.

[Signed]
EDGARDO G. HIRANG
Prosecutor II

I hereby certify that a preliminary investigation has been conducted in this case; that there is reasonable ground to believe that a crime has been committed and that the accused are probably guilty thereof; that the accused were given a chance to be informed of the complaint and of the evidence submitted against them; that they were given an opportunity to submit controverting evidence; and that this Information is filed with the approval of the 1st Assistant City Prosecutor having been first obtained.

[Signed]
EDGARDO G. HIRANG
Prosecutor II

Both petitioners pleaded not guilty to the four (4) charges. On February 4, 2003, Socorro and Sugiyama executed an "Addendum to Contract Agreement,"[11] agreeing on a new schedule of payment with interests, but the obligation remain unpaid.

On May 20, 2011, the MeTC rendered a Decision[12] finding petitioners guilty of four (4) counts of violation of B.P. 22, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court renders judgment finding accused Socorro F. Ongkingco and Marie Paz B. Ongkingco GUILTY of the offense of Violation of B.P. 22 on four (4) counts and hereby sentences them to pay the respective FINE of:

1. ₱100.000.00 for Criminal Case No. 318339;
2. ₱100.000.00 for Criminal Case No. 318340;

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[11] *Rollo*, pp. 241-245.

[12] *Supra* note 3.

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3. ₱100.000.00 for Criminal Case No. 318341; and

4. ₱200.000.00 for Criminal Case No. 318342

with subsidiary imprisonment in case of insolvency.

Further, both accused are jointly and severally ORDERED to PAY complainant Kazuhiro Sugiyama the respective face amount of the four (4) dishonored checks under Criminal Case Nos. 318339 to 318341 or a total amount of ₱797,025.00 with interest of 12.0% per annum from the filing of the complaint on April 11, 2002 until the amount is fully paid and cost of suits.

SO ORDERED.[13]

The MeTC ruled that the first and third elements of violation of B.P. 22 are present, namely: the making, drawing and issuance of any check to apply on account or for value, and the subsequent dishonor by the drawee bank for insufficiency of funds or credit. The MeTC found that the subject 4 checks were issued by the accused Socorro and Marie Paz as guarantee payment for the principal loan of ₱525,000.00 and its interest obtained from Sugiyama. The MeTC noted that the accused admitted the issuance of the said checks to Sugiyama in consideration of the loan to New Rhia Car Services, Inc.; thus, the subject checks were issued on account or for value. The MeTC added that when the 4 checks were presented for payment on their respective due dates, they were dishonored by the drawee bank for the reason "Drawn Against Insufficient Funds (DAIF)" as shown on the dorsal portion of the said checks.

As regards the second element which requires that the prosecution must prove the knowledge of the maker, drawer or issuer that at the time of the issue, he or she does not have sufficient funds in, or credit with, the drawee bank for the payment of such check in full upon presentment, the MeTC held:

Prosecution, in the case at bar, had presented witness [Marilou) La Serna [a staff of Sugiyama's private counsel/private prosecutor] who testified that the demand letter dated March 5, 2002 demanding for the payment of the dishonored checks was received by the secretary of accused Socorro as shown by the handwritten signature on the

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[13] *Id.* at 49.

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face of the said letter. Said letter was personally delivered to the office of accused Socorro at Amorsolo Mansion, Adelantado Street, Legaspi Village, Makati City. While witness La Serna did not met (sic) personally Socorro at the office, the secretary acknowledged the receipt of the latter upon asking permission from accused Socorro who was inside the room (**TSN dated March 09, 2010, page 7**). Accused Marie Paz, on the other hand, failed to refute the same absent any controverting evidence on her part. Prosecution, thus, was able to prove the receipt of the demand letter/notice of dishonor. Despite receipt of the same, both accused failed to pay the face amount of the dishonored checks or to make arrangement for the full settlement of the same.[14]

The MeTC further ruled that the prosecution was able to prove by preponderance of evidence the civil liability of both Socorro and Marie Paz, thus:

x x x Accused Socorro did not deny the issuance of the subject checks in which she is one of the signatories in favor of the complainant Sugiyama. **(TSN dated September 06, 2010, page 16)**. Accused Marie, for her part, failed to controvert the same. This was supported by the subject checks together with the Contract of Agreement marked as (**Exhibit "B to B-1"**) and Addendum to Contract Agreement marked as (**Exhibit "C to C-4"**). However, upon presentment with the drawee bank for payment on their respective due dates, it was dishonored for the reason "DAIF." Despite verbal demands by complainant Sugiyama and receipt of the written demand letter made by its counsel, accused still failed to pay or make arrangement for the full settlement of the face value of the dishonored checks. Both accused should be held civilly answerable for the face amount of the subject four (4) dishonored checks under Criminal Case Nos. 318339 to 318342 covering a total amount of ₱797,025.00.[15]

Aggrieved, petitioners appealed to the RTC, which affirmed *in toto* the judgment of the MeTC in an Order[16] dated June 28, 2012.

Dissatisfied, petitioners filed a petition for review before the Court of Appeals.

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[14] *Id.* at 47-48. (Emphasis supplied)

[15] *Id.* at 48-49. (Emphasis in the original)

[16] *Id.* at 69.

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On October 24, 2014, the CA rendered a Decision denying the petition for review, the *fallo* of which states:

> WHEREFORE, the Petition is hereby DENIED. The Order dated 28 June 2012 of the Regional Trial Court of Makati City, Branch 59, in Criminal Case Nos. 11-2287 & 11-2290 is AFFIRMED.
>
> SO ORDERED.[17]

The CA ruled that petitioners' stance that they cannot be made liable for the value of the dishonored checks as the same were issued without any consideration begs the question. As aptly held by the MeTC and affirmed by the RTC, the subject checks were issued to guarantee the payment or return of the money which Sugiyama gave to petitioners as loan and the corresponding interest. The CA added that jurisprudence abounds that upon issuance of a check, in the absence of evidence to the contrary, it is presumed that the same was issued for a valuable consideration which may consist either in some right, interest, profit or benefit accruing to the party who makes the contract, or some forbearance, detriment, loss or some responsibility, to act, or labor, or service given, suffered or undertaken by the other side.

In rejecting petitioners' theory that they could not be held criminally liable as they merely drew and signed the corporate check as officers of the corporation, the CA pointed out that under paragraph 2, Section 1 of B.P. 22, where the check is drawn by a corporation, company or entity, the person/s who actually signed the check in behalf of such drawer shall be liable. This is because, generally, only natural persons may commit a crime, and a criminal case can only be filed against the officers of a corporation and not against the corporation itself, which can only act through its officers.

The CA also ruled that the prosecution was able to adduce evidence that petitioners issued the subject dishonored checks. The CA pointed out that all petitioner Marie had to offer by

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[17] *Id.* at 35.

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way of defense was her mere denial that she was not a signatory thereto, and that she neither testified nor participated in the trial. The CA added that she could not invoke her lack of involvement in the negotiation for the transaction as a defense, as B.P. 22 punishes the mere issuance of a bouncing check, and not the purpose for which the check was issued or in consideration of the terms and conditions relating to its issuance.

With the CA's denial of their motion for reconsideration, petitioners filed a petition for review on *certiorari*, raising the following grounds: (1) the prosecution failed to prove beyond reasonable doubt that Socorro received the notice of dishonor; (2) the prosecution failed to prove that Marie Paz is a signatory to the checks involved in the case; and (3) the "Addendum to Contract Agreement" executed by the parties obliterated the obligation arising from the dishonored checks. Petitioners also raise for the first time that the four (4) Informations filed before the MeTC, Makati City, do not bear the approval of the city prosecutor.

The petition is partly meritorious.

The dissent seeks to grant the petition, reverse and set aside the Decision of the CA, and acquit petitioners on the grounds (1) that the Informations are defective for having been filed without prior approval of the city prosecutor; and (2) that receipt of the notice of dishonor was not proven. The dissent adds that this is without prejudice to the right of private complainant Sugiyama to pursue an independent civil action against New Rhia Car Services, Inc. for the amount of the dishonored checks.

The dissent found that there is no proof in the records that Prosecutor II Edgardo G. Hirang filed the Informations with prior authority from the 1st Assistant City Prosecutor. Assuming that Prosecutor II Hirang was indeed authorized to do so, the Informations would still be defective because an Assistant City Prosecutor is not one of the authorized officers enumerated in Section 4, Rule 112 of the Revised Rules of Criminal Procedure, which reads:

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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**.[18]

In support of his view, the dissent cites the following cases:

1. *People v. Judge Garfin*,[19] where the Court held that where the Information was filed by an unauthorized officer, the infirmity therein constitutes a jurisdictional defect that cannot be cured;

2. *Cudia v. CA*,[20] where the Court ruled that: (a) when the law requires an Information to be filed by a specified public officer, the same cannot be filed by another; if not, the court does not acquire jurisdiction over the accused and over the subject matter; and (b) the defense of lack of jurisdiction may be raised at any stage of the proceeding; and

3. *Maximo, et al. v. Villapando, Jr.*,[21] where the Court ruled that mere certification in the Information that it was filed with approval of the city prosecutor is not enough; there must be a demonstration that prior written delegation or authority was indeed given by the city prosecutor to the assistant prosecutor to approve the filing of the Information.

The Court holds that the foregoing cases are not applicable. For one, as aptly pointed out by the Office of the Solicitor General, petitioners are barred by estoppel by *laches* for their unjustified delay in raising the issue of lack of prior written authority or approval to file the Informations. For another, the supposed lack of written authority or approval to file the Informations is a waivable ground for a motion to quash information.

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[18] Emphasis added.

[19] 470 Phil. 211, 236 (2004).

[20] 348 Phil. 190, 200 (1998).

[21] 809 Phil. 843, 867 (2017).

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In *Garfin*, the Information for violation of the provisions of Republic Act No. 8282, or the "Social Security Law," was filed by a State Prosecutor with prior authority and approval of the Regional State Prosecutor. The Court ruled, however, that nowhere in Presidential Decree (*P.D.*) No. 1275[22] is the regional state prosecutor granted the power to appoint a special prosecutor armed with the authority to file an Information without prior written authority or approval of the city or provincial prosecutor or chief state prosecutor. No directive was issued by the Secretary of Justice to the Regional State Prosecutor to investigate and/or prosecute Social Security System (SSS) cases filed within his territorial jurisdiction, pursuant to Section 15 of P.D. No. 1275 which governs the appointment of special prosecutors. The Court held that, in the absence of a directive from the Secretary of Justice designating the State Prosecutor as Special Prosecutor for SSS cases or a prior written approval of the Information by the provincial or city prosecutor, the Information filed before the trial court was filed by an officer without authority to file the same. As the infirmity in the Information constitutes a jurisdictional defect that cannot be cured, the judge did not err in dismissing the case for lack of jurisdiction.

In *Cudia*, the City Prosecutor of Angeles City filed a motion to dismiss/withdraw the Information, stating that through inadvertence and oversight, the Investigating Panel was misled into hastily filing the Information, despite the fact that the accused was apprehended for illegal possession of unlicensed firearm and ammunition within the jurisdiction of the Provincial Prosecutor of Pampanga. Despite the opposition of the accused, the trial court granted the motion to dismiss. The Court invalidated the Information filed by the city prosecutor because he had no territorial jurisdiction over the place where the said offense was committed, which is within the jurisdiction of the Provincial Prosecutor. The Court held that an Information, when

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[22] "*Reorganizing the Prosecution Staff of the Department of Justice and the Offices of the Provincial and City Fiscals, Regionalizing the Prosecution Service, and Creating the National Prosecution Service*" dated April 11, 1978.

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required by law to be filed by a public prosecuting officer, cannot be filed by another, otherwise, the court does not acquire jurisdiction. The Court also stressed that questions relating to lack of jurisdiction may be raised at any stage of the proceeding, and that 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.

In *Maximo*, an Information for perjury was filed against the accused before the MeTC of Makati City. A motion to quash Information was filed, alleging that the person who filed the Information had no authority to do so, because the Resolution finding probable cause did not bear the approval of the city prosecutor. It was contended that the Information bears a certification that the filing of the same had the prior authority or approval of the city prosecutor, and that there is a presumption of regularity that prior written authority or approval was obtained in the filing of the Information, despite the non-presentation of the Office Order, which was the alleged basis of the authority. Stressing that there must be a demonstration that prior written delegation or authority was given by the city prosecutor to the assistant city prosecutor to approve the filing of the Information, the Court affirmed the findings of the CA that: (1) the copy of the Office Order, allegedly authorizing the assistant city prosecutor to sign in behalf of the city prosecutor, was not found in the record; (2) said Office Order is not a matter of judicial notice, and a copy thereof must be presented in order for the court to have knowledge of its contents; and (3) in the absence thereof, there was no valid delegation of authority by the city prosecutor to its assistant city prosecutor.

In *Garfin* and *Maximo*, a motion to dismiss and motion to quash, respectively, were filed by the accused on the ground that the Information was filed without prior written authority or approval of the city prosecutor. Meanwhile, in *Cudia*, a motion to dismiss or withdraw Information was also filed by the city prosecutor himself for lack of territorial jurisdiction over the offense.

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In stark contrast to *Garfin, Cudia* and *Maximo,* petitioners failed to raise the lack of written authority or approval of the city prosecutor before the MeTC, the RTC, and the CA without any justifiable reason. No motion to dismiss or motion to quash was filed by petitioners. From the filing of the Informations in 2002, petitioners were silent on why they raised the said issue for the first time before the Court in 2015 *via* a petition for review on *certiorari*.

Defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, *laches* is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[23] *Laches* can be imputed against petitioners, because a considerable length of time had elapsed before they raised the said procedural issue, and reasonable diligence should have prompted them to file a motion to dismiss or to quash the Information before the trial court. For the first time after almost 13 years after the filing of the Informations against them, petitioners are now before the Court decrying that the prosecutor who filed the Informations against them had no authority to do so.

It is also not amiss to state that had petitioners questioned the authority of Prosecutor II Hirang before the trial court, the defect in the Informations could have been cured before the arraignment of the accused by a simple motion of the prosecution to amend the Information; the amendment at this stage of the proceedings being a matter of right on the part of the prosecution, or for the court to direct the amendment thereof to show the signature or approval of the city prosecutor in filing the Information.[24] Moreover, Section 4, Rule 117 of the Revised Rules of Criminal Procedure mandates that if the motion to quash is based on the alleged defect of the complaint or Information which can be cured by an amendment, the court

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[23] *Jandoc-Gatdula v. Dimalanta,* 528 Phil. 839, 854 (2006).

[24] *Maximo, et al. v. Villapando, Jr., supra* note 21, at 880-881.

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shall order that an amendment be made. Either of these two could have been done to address the issue of lack of written authority or approval of the officer who filed the Information.

It is significant to note that under the substantive law,[25] a public prosecutor has the authority to file an Information, but before he or she can do so, a prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman, or his or her deputy, is required by a procedural rule, *i.e.*, Section 4, Rule 112 of the Revised Rules of Criminal Procedure. It also bears emphasis that under Section 9, Rule 117 of the same Rule, the ground that the officer who filed the information had no authority to do so, which prevents the court from acquiring jurisdiction over the case — referred to in *Garfin* and *Cudia* — pertains to lack of jurisdiction over the offense, which is a non-waivable ground. The three other non-waivable

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[25] P.D. No. 1275, Section 11. *Provincial Fiscals and City Fiscals; Duties and Functions*. The provincial fiscal or the city fiscal shall:

x x x x x x x x x

(b) Investigate and/or cause to be investigated all charges of crimes, misdemeanors and violations of all penal laws and ordinances within their respective jurisdictions and **have the necessary information or complaint prepared or made against the persons accused.** In the conduct of such investigations he or his assistants shall receive the sworn statements or take oral evidence of witnesses summoned by subpoena for the purpose. (Emphasis and underscoring supplied.)

Republic Act No. 10071 (Prosecution Service Act of 2010), Section 9. *Powers and Functions of the Provincial Prosecutor or City Prosecutor*.— The provincial prosecutor shall:

x x x x x x x x x

(b) Investigate and/or cause to be investigated all charges of crimes, misdemeanors and violations of penal laws and ordinances within their respective jurisdictions, and **have the necessary information or complaint prepared or made and filed against the persons accused.** In the conduct of such investigations[,] he or she or any of his/her assistants shall receive the statements under oath or take oral evidence of witnesses, and for this purpose may by subpoena summon witnesses to appear and testify under oath before him/her, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to any trial court[.] (Emphasis and underscoring supplied)

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grounds for a motion to quash the information are: (1) the facts charged do not constitute an offense; (2) the criminal action or liability has been extinguished; and (3) 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.

To recall, the Information in *Garfin* was sought to be dismissed, as it was filed by a special prosecutor with the prior authority and approval of the regional state prosecutor, who was not authorized by the Secretary of Justice to act as special counsel in SSS cases. On the other hand, the Information in *Cudia* was sought to be dismissed or withdrawn, as it was inadvertently filed by the city prosecutor who had no territorial jurisdiction over the place where the offense of illegal possession of firearm was committed. In contrast to *Garfin* and *Cudia* where the officers had no authority under the law to file the Information, the Information for perjury in *Maximo* was filed by the assistant city prosecutor with a certification that it was done so with prior authority or approval of the city prosecutor, but the written authority or delegation given by the city prosecutor to the former, to approve the filing of the information, was not found on record, as pointed out in a motion to quash.

As held in *Villa v. Ibañez*,[26] jurisdiction over the subject matter is conferred by law, while jurisdiction over the case is invested by the act of the plaintiff and attaches upon the filing of the complaint or information. Hence, while a court may have jurisdiction over the subject matter, like a violation of the Social Security Law, it does not acquire jurisdiction over the case itself until its jurisdiction is invoked with the filing of the Information.

Accordingly, in instances where the information is filed by an authorized officer, like a public prosecutor, without the approval of the city prosecutor appearing in the information, but the resolution for filing of the information bears the approval

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[26] 88 Phil. 402 (1951).

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of the city prosecutor, or his or her duly authorized deputy, and such lack of approval is timely objected to before arraignment, the court may require the public prosecutor to have the signature of the city prosecutor affixed in the information to avoid undue delay. However, if the objection is raised after arraignment, at any stage of the proceeding or even on appeal, the same should no longer be a ground to declare the information as invalid, because it is no longer a question of jurisdiction over the case. After all, the resolution of the investigating prosecutor attached to the information carries with it the recommendation to file the information and the approval to file the information by the prosecutor, or his or her duly authorized deputy.

If the information is filed by the public prosecutor without the city prosecutor's or his or her deputy's approval both in the information and, the resolution for the filing thereof, then the court should require the public prosecutor to seek the approval of the city prosecutor before arraignment; otherwise, the case may be dismissed on the ground of lack of authority to file the information under Section 3(d), Rule 117. This ground may be raised at any stage of the proceedings, which may cause the dismissal of the case.

If, however, the information is filed by an unauthorized official—not a public prosecutor, like a private complainant, or even public officers who are not authorized by law or rule to file the information—then the information is invalid from the very beginning, and the court should *motu proprio* dismiss the case even without any motion to dismiss, because such kind of information cannot confer upon the court jurisdiction over the case.

In this particular case, there is proof in the records that Prosecutor II Hirang filed the Informations with prior authority from the 1st Assistant City Prosecutor. The records—which include those of the preliminary investigation accompanying the informations filed before the court, as required under Rule 112—dearly show that 1st Assistant City Prosecutor (*ACP*) Jaime A. Adoc, signing in behalf of the City Prosecutor, approved the

filing of four (4) counts of violation of B.P. 22, after it was recommended for approval by the Investigating Prosecutor.

The dispositive portion of the Resolution dated August 7, 2002 of the City Prosecution Office of Makati City says it all:

> WHEREFORE, premises considered, **it is respectfully recommended that respondents be indicted with four (4) counts of violation of Batas Pambansa Bilang 22** and **that the attached Information for that purpose be approved for filing in court.**
>
> Bail Recommended: ₱7,000.00 for each check for each accused.
>
> Makati City, August 7, 2002.
>
> [Signed]
> EDGARDO G. HIRANG
> Prosecutor II
>
> RECOMMENDING APPROVAL:
> [Signed]
> Review Prosecutor
>
> **APPROVED:**
>
> **FOR THE CITY PROSECUTOR**
>
> [Signed]
> JAIME A. ADOC
> 1st Assistant City Prosecutor[27]

Contrary to the dissent that the prior approval came from the 1st Assistant Prosecutor, who had no authority to file an Information on his own, the afore-quoted dispositive clearly indicates that ACP Adoc approved the filing of the case "FOR THE CITY PROSECUTOR" and not on his own. It would be too late at this stage to task the prosecution, and it would amount to denial of due process, to presume that ACP Adoc had no authority to approve the filing of the subject Informations. Had petitioners questioned ACP Adoc's authority or lack of approval by the city prosecutor before the MeTC, and not just for the first time before the Court, the prosecution could have easily presented such authority to approve the filing of the Information.

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[27] Records, p. 10. (Emphasis added)

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At any rate, the CA committed reversible error in affirming the conviction of petitioner Marie Paz of violation of four (4) counts of B.P. 22, because the prosecution failed to prove that she received a notice of dishonor. As a rule, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. As an exception, questions of fact may be raised if any of the following is present: (1) When there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admission of the parties; (7) **when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion;** (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) **when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record**.[28] Here, the seventh and tenth exceptions are present.

To sustain a conviction of violation of B.P. 22, the prosecution must prove beyond reasonable doubt three (3) essential elements, namely:

1. The accused makes, draws or issues any check to apply to account or for value;
2. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, drawee bank for payment of the check in full upon its presentment; and
3. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit; or it would have been dishonored for the same reason had not the

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[28] *Alburo v. People*, 792 Phil. 876, 889 (2016).

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drawer, without any valid reasons, ordered the bank to stop payment.

The presence of the first and third elements is undisputed. However, while the prosecution established the second element, *i.e.*, receipt of the notice of dishonor, with respect to petitioner Socorro, it failed to do so in the case of petitioner Marie Paz.

The prosecution identified and formally offered in evidence, and petitioners admitted[29] to have issued the four (4) subject Allied Bank checks as guaranty checks, to wit: Check No. 0000122834 dated December 10, 2011 in the amount of ₱90,675.00 as Exhibits "D" to "D-2"; Check No. 0000122835 dated January 10, 2002 in the amount of ₱90,675.00 as Exhibits "E" to "E-2"; Check No. 0000122836 dated February 10, 2002 in the amount of ₱90,675.00 as Exhibits "F" to "F-2"; and Check No 0000127109 dated November 30, 2001 in the amount of ₱525,000.00 as Exhibits "H" to "H-2". When presented for payment, all said checks were dishonored for having been drawn against insufficient funds. The MeTC admitted in evidence the prosecution's said Exhibits with their sub-markings.[30]

It is of no moment that the subject checks were issued as a guarantee and upon the insistence of private complainant Sugiyama. What is significant is 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.[31] The legislative intent behind the enactment of B.P. 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

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[29] Records, pp. 345-346.

[30] *Id.* at 351.

[31] *Ricaforte v. Jurado*, 559 Phil. 97, 114 (2007).

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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 B.P. 22 is to make the mere act of issuing a worthless check *malum prohibitum* and, thus, punishable under such law.[32]

Inasmuch as the second element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of B.P. 22 creates a *prima facie* presumption of such knowledge, thus:

> 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, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee.[33] In other words, the presumption is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five (5) days from receipt

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[32] *Que v. People*, 238 Phil. 155, 160 (1987).

[33] *Alburo v. People, supra* note 28, at 891.

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thereof, he failed to pay the amount of the check or to make arrangements for its payment.[34] The presumption or *prima facie* evidence, as provided in this Section, cannot arise if such notice of nonpayment 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.[35]

The prosecution was able to establish beyond reasonable doubt the presence of the second element with respect to petitioner Socorro, who received the notice of dishonor through her secretary. Prosecution witness Marilou La Serna, a legal staff of Sugiyama's private counsel, testified that the letter dated March 5, 2002 demanding payment of the dishonored checks was received by the secretary of petitioner Socorro, as shown by the handwritten signature on the face of the said letter.[36] La Serna clarified on direct examination that (1) it was petitioner Socorro's secretary who acknowledged receipt of the said demand letter with the permission of Socorro, who was in another room of her office; and (2) that there were several calls in the office of Socorro, as well as a time when she went to the law office of Sugiyama's counsel, to inform that she acknowledged receipt of that demand letter:

[Private prosecutor Atty. Abrenica]
Q. How did you come to know the accused Socorro F. Ongkingco, Ms. Witness?
A. When I served a copy of the demand letter sometime in March 2002, a certain secretary who received my letter and informed me that I have to wait for a while because she will go to the room of Ms. Socorro Ongkingco.

Q. You mentioned earlier that you served a demand letter to Ms. Socorro Ongkingco, I'm showing to you a demand letter previously marked as Exhibit "J", what is the relationship of this letter to the demand letter that you mentioned?

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[34] *Id.*

[35] *Id.*

[36] Records, pp. 343-344; Marked as Exhibits "J", "J-1", "J-2", and "J-3".

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A: This is the demand letter I served to Ms. Socorro Ongkingco.

Q: Now Ms. Witness, do you remember where is the office of this Ms. Socorro Ongkingco?
A: The office of Ms. Socorro Ongkingco was just a few meters away from our formerly (sic) office and it was located in Amorsolo Mansion along Adelentado Street.

Q: Where is this Adelentado Street?
A: It's just a few meters away from our formerly (sic) office in Palanca Street.

Q: Now Ms. Witness, you mentioned that you personally served a copy of the demand letter to the accused, can you go over this demand letter and show to the Honorable Court the proof of the receipt of this demand letter?

A: It was signed by her secretary.

ATTY. ABRENICA:

Your Honor, can I request for sub-markings, this signature, date and the name of the office staff of Ms. Socorro Ongkingco who received the demand letter as Exhibit "J-1", your Honor.

Q: Now, Ms. Witness, do you know if Ms. Socorro Ongkingco was able to read this demand letter?
A: Yes, Ma'am because when I first served the demand letter, the secretary who received that demand letter informed me that she will go to the room of Ms. Ongkingco and after a few minutes, she came back and Ms. Socorro Ongkingco replied that the secretary has to signed (sic) the receipt of the demand letter.

Q: Now Ms. Witness, other than the statement of the secretary of Ms. Ongkingco, how else did you know that Ms. Socorro Ongkingco actually received the demand letter?
A: There were a (sic) several calls in the office of Ms. Socorro Ongkingco and there was also a time when she went to the office to informed (sic) that she acknowledged receipt of that demand letter.

Q: Where was that office where Ms. Socorro Ongkingco went?
A: Colonade Building along C. Palanca Street.

Q: Whose office is this?
A: That is the law office of Atty. Abrenica.

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Q: Did Ms. Socorro Ongkingco actually go to that office?
A: Yes, Ma'am.

Q: How did you know that she was there at the law office?
A: She was there because I met her for the first time [in] the law office to see our client Mr. Kasuhiro Sugiyama but unfortunately, during that time Mr. Kasuhiro Sugiyama is out of the country, she was not able to meet Mr. Kasuhiro Sugiyama and she met Atty. Percy Abrenica and I was the one who assist (sic) her.

x x x x x x x x x.[37]

On cross-examination and re-direct examination, La Serna confirmed that the demand letter was acknowledged receipt by the secretary with the permission of Socorro herself:

CROSS EXAMINATION BY THE
DEFENSE COUNSEL ATTY. ACHAS

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Q: Is this the demand letter Exhibit "J" served by you to Ms. Ongkingco?
A: Yes, Sir.

Q: Where is the signature of Ms. Socorro Ongkingco?
A: Actually Sir, this is the signature of the secretary.

Q: It was acknowledged only by the secretary?
A: Yes, Sir.

Q: Not personally by Mrs. Ongkingco?
A: Yes, Sir.

Q: Actually, during that time when you go to the office of Ms. Ongkingco, the service letter, she did not acknowledge the receipt of this letter?
A: She was not the one who acknowledged the letter.

COURT:
Q: Question from the Court, you have not met personally the accused at the time when you personally served the demand letter?
A: I have not met Your Honor, but then I was informed by the

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[37] TSN, March 9, 2010, pp. 6-8; records, pp. 260-262. (Emphasis added)

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secretary that she's going to leave me for a while to go to the room of Ms. Ongkingco if she's going to sign the demand letter.[38]

x x x x x x x x x

RE-DIRECT EXAMINATION

Q: Ms. Witness, why was the secretary who was (sic) the one who received and signed the receipt of this demand letter?

A: **It was the secretary who signed the receipt as per instruction of Ms. Socorro Ongkingco although I haven't met her when I served the demand but the secretary told me that she will just leave me for a while to ask the permission of Ms. Socorro Ongkingco**.[39]

The testimony of La Serna shows that it was the secretary of petitioner Socorro who acknowledged receipt of the demand letter dated March 5, 2002, with the permission of Socorro, who was just in another room of her office. Suffice it to state that when the secretary of Socorro left for a while, came back shortly, and acknowledged receipt of the same demand letter, the requisite receipt of the notice of dishonor was satisfied.

Against the affirmative testimony of La Serna, Socorro merely denied knowledge and receipt of the demand letter dated March 5, 2002. It is well settled that the defense of denial is inherently weak and unreliable by virtue of its being an excuse too easy and too convenient for the guilty to make. Denial should be substantiated by clear and convincing evidence, and the accused cannot solely rely on her negative and self-serving negations, for such defense carries no weight in law and has no greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.

Socorro could have easily presented, but failed to proffer the testimony of her secretary to dispute the testimony of La Serna. Socorro neither denied that she permitted her secretary to receive the demand letter, nor explained why her secretary

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[38] *Id.* at 10-11; *id.* at 263-264.

[39] *Id.* at 11; *id.* at 264. (Emphasis added)

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acknowledged receipt of the said letter while she was in the other room of her office. Socorro also failed to dispute La Serna's claim that there were several calls in the office of Socorro, as well as a time when she went to the law office of Sugiyama's counsel, to inform that she acknowledged receipt of that demand letter. Socorro did not, likewise, ascribe ill-motive on the part of La Serna to testify falsely against her.

In *Chua v. People*,[40] the Court found that the element of knowledge of insufficiency of funds was not established, for failure to prove the petitioner's receipt of a notice of dishonor. In that case, the private respondent testified that the personal secretary of the petitioner received the demand letter, but said 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. The Court noted that it is not enough for the prosecution to prove that a notice of dishonor was sent to the accused, and that the prosecution must prove *actual receipt* of said notice, because the fact of service provided for in the law is reckoned from the receipt of such notice of dishonor by the accused. The factual circumstances in *Chua* differ from this case, because petitioner Socorro was shown to have permitted her secretary to acknowledge receipt of the demand letter while she was in another room of her office. Socorro also failed to dispute La Serna's claim that she went to the law office of Sugiyama's counsel to inform that she acknowledged receipt of that demand letter.

Meanwhile, Marie Paz cannot be faulted for failing to refute with evidence the allegation against her, because Sugiyama and La Serna hardly testified as to the service of a notice of dishonor upon her. La Serna never mentioned that Marie Paz was, likewise, served with a notice of dishonor. There is also no proof that Socorro's secretary was duly authorized to receive the demand letter on behalf of Marie Paz.

When service of notice is an issue, the person alleging that notice was served must prove the fact of service, and the

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

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burden of proving notice rests upon the party asserting its existence.[41] Failure of the prosecution to prove that the person who issued the check was given the requisite notice of dishonor is a clear ground for acquittal. It bears emphasis that the giving of the written notice of dishonor does not only supply proof for the element arising from the presumption of knowledge the law puts up, but also affords the offender due process.[42] The law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid.[43] Thus, the absence of a notice of dishonor is a deprivation of petitioner's statutory right.[44]

After reviewing the records and applying the foregoing principles to this case, the Court rules that the prosecution has proven beyond reasonable doubt that petitioner Socorro received a notice of dishonor of the four (4) subject checks, but failed to do so in the case of petitioner Marie Paz. Perforce, petitioner Socorro should be convicted of the four (4) charges for violation of B.P. 22, but petitioner Marie Paz should be acquitted of the said charges.

As a general rule, when a corporate officer issues a worthless check in the corporate's name, he or she may be held personally liable for violating a penal statute,[45] *i.e.*, Section 1 of B.P. 22.[46]

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[41] *Alburo v. People, supra* note 28, at 892.

[42] *Resterio v. People*, 695 Phil. 693,705 (2012), citing *Dico v. Court of Appeals*, 492 Phil. 534, 547-548 (2005).

[43] *Id.*

[44] *Alburo v. People, supra* note 28, at 893.

[45] *Chua v. People, supra* note 40.

[46] Section 1. *Checks without sufficient funds.*

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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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However, a corporate officer who issues a bouncing corporate check can only be held civilly liable when he or she is convicted.[47] Conversely, once acquitted of the offense of violating B.P. 22, a corporate officer is discharged of any civil liability arising from the issuance of the worthless check in the name of the corporation he or she represents.[48] 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.[49]

Here, petitioner Socorro should be held civilly liable for the amounts covered by the dishonored checks, in light of her conviction of the four (4) charges for violation of B.P. 22 and because she made herself personally liable for the fixed monthly director's dividends in the amount of ₱90,675.00 and the ₱525,000.00 loan with interest, based on the Contract Agreement dated April 6, 2011, the Addendum to Contract Agreement dated February 4, 2003, and the Memorandum of Agreement dated October 2001, which were all formally offered by the prosecution,[50] and admitted in evidence by the trial court.[51] To be sure, petitioner Marie Paz was never shown to have been part of or privy to any of the said agreements; thus, she cannot be held civilly liable for the dishonored checks.

In the Contract of Agreement[52] dated April 6, 2001, Socorro, President and Chairman of the Board of New Rhia Car Services, Inc., undertook and bound herself as obligor, among other matters, to pay Sugiyama, as obligee, Ninety Thousand Six Hundred Seventy-Five Pesos (₱90,675.00) as monthly director's dividends

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[47] *Pilipinas Shell Petroleum Corporation v. Duque, et al.*, 805 Phil. 954, 961 (2017).

[48] *Id.* at 962.

[49] *Id.*

[50] Records, pp. 345-346.

[51] *Id.* at 351.

[52] Exhibits "B" and "B-1", *id.* at 330-331.

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for a period of five (5) years, in consideration of his purchase of stock at New Rhia Car Services, Inc. amounting to Two Million and Two Hundred Thousand Pesos (₱2,200,000.00). To recall, the first three (3) Allied Bank checks, dated September 10, 2011, October 10, 2001 and November 10, 2001, were good checks, but the remaining checks bounced for having been draw against insufficient funds, *i.e.*, Check No. 0000122834 dated December 10, 2011 in the amount of ₱90,675.00; Check No. 0000122835 dated January 10, 2002 in the amount of ₱90,675.00; and Check No. 0000122836 dated February 10, 2002 in the amount of ₱90,675.00.

In the Memorandum of Agreement[53] dated October 2001, Socorro, President and General Manager of New Rhia Car Services, Inc., obtained from Sugiyama, a Director of New Rhia Car Services, Inc., a loan amounting to Five Hundred Thousand Pesos (₱500,000.00), with five percent (5%) interest rate for one (1) month. As guarantee and payment for the said obligation, Socorro issued Allied Bank Check No. 0000127109 dated November 30, 2001, amounting to ₱525,000.00.

In the Addendum to Contract Agreement[54] dated February 4, 2003, Socorro admitted having incurred serious delay in the payment of the agreed monthly director's dividend stated in the Contract of Agreement dated April 6, 2001, and agreed to adopt a new payment schedule of the monthly director's dividend, including penalty interest, as well as the ₱500,000.00 loan covered by the Memorandum of Agreement dated October 2001.

Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice.[55] Here, petitioner Socorro bound herself personally liable for the monthly director's dividends in the fixed amount of ₱90,675.00 for a period of

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[53] Exhibit "G", *id.* at 340.

[54] Exhibits "C" and "C-1", *id.* at 332-333.

[55] *Bautista v. Auto Plus Traders, Inc., et al.*, 583 Phil. 218, 225 (2008).

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five (5) years and for the ₱500,000.00 loan, for which she issued the subject four (4) dishonored checks. She then admitted having incurred serious delay in the payment of the said fixed monthly dividends and loan, and further agreed to adopt a new payment schedule of payment therefor, but to no avail.

Granted that Socorro is authorized to sign checks as corporate officer and authorized signatory of New Rhia Car Services, Inc., there is still no evidence on record that she was duly authorized, through a Board Resolution or Secretary's Certificate, to guarantee a corporate director thereof [Sugiyama] fixed monthly dividends for 5 years, to enter into a loan, and to adopt a new schedule of payment with the same director, all in behalf of the corporation. It would be the height of injustice for the Court to allow Socorro to hide behind the separate and distinct corporate personality of New Rhia Car Services, Inc., just to evade the corporate obligation which she herself bound to personally undertake.

It is not amiss to stress that the power to declare dividends under Section 43 of the Corporation Code of the Philippines lies in the hands of the board of directors of a stock corporation, and can be declared only out of its unrestricted retained earnings. Assuming *arguendo* that Socorro was authorized by the Board to fix the monthly dividends of Sugiyama as a corporate director, it appears that she committed an *ultra vires* act because dividends can be declared only out of unrestricted retained earnings of a corporation, which earnings cannot obviously be fixed and pre-determined 5 years in advance.

In fine, since Socorro was convicted of four (4) charges of violation of B.P. 22, she must be held liable for the face value of the subject four (4) dishonored checks which is ₱797,025.00, more so because she personally bound herself liable for what appears to be unauthorized corporate obligations. Moreover, the legal interest rate awarded by the MeTC, which was affirmed by both the RTC and the CA, must be modified pursuant to *Nacar v. Gallery Frames*,[56] as follows: 12% *per annum* from

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[56] 716 Phil. 267, 282-283 (2013).

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the filing of the complaint on April 11, 2002 until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this Decision, the legal interest rate is 6% *per annum*; and (3) from finality of this Decision until fully paid, the legal interest rate is 6% *per annum*.

As to the penalty, the Court finds no reason to disturb the fines (with subsidiary imprisonment in case of insolvency) imposed by the MeTC[57] and affirmed by both the RTC and the CA, for being in accord with Section 1 of B.P. 22, which provides for the penalty of "imprisonment of not less than thirty (30) 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."

WHEREFORE, the petition for review on *certiorari* is **PARTLY GRANTED**. The Decision dated October 24, 2014 and the Resolution dated March 19, 2015 of the Court of Appeals in CA-G.R. CR No. 35356 are A**FFIRMED with MODIFICATION**: the conviction of petitioner Socorro F. Ongkingco for four (4) counts of violation of *Batas Pambansa Bilang 22*, is **AFFIRMED** and she is **ORDERED** to **PAY** private complainant Kazuhiro Sugiyama the face value of the four (4) dishonored checks in the amount of ₱797,025.00 with the following legal interest rates: twelve percent (12%) *per annum* from the filing of the complaint on April 11, 2002 until June 30,

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[57] WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court renders judgment finding accused Socorro F. Ongkingco and Marie Paz B. Ongkingco GUILTY of the offense of Violation of B.P. 22 on four (4) counts and hereby sentences them to pay the respective FINE of:

1. ₱100,000.00 for Criminal Case No. 318339;
2. ₱100,000.00 for Criminal Case No. 318340;
3. ₱100,000.00 for Criminal Case No. 318341; and
4. ₱200,000.00 for Criminal Case No. 318342

with subsidiary imprisonment in case of insolvency.

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2013, and six percent (6%) *per annum* from July 1, 2013 until finality of this Decision; and from finality of this Decision until fully paid, the legal interest rate is six percent (6%) *per annum*, plus costs of suit. Petitioner Marie Paz B. Ongkingco is **ACQUITTED** of the said charges for lack of proof that she received a notice of dishonor.

SO ORDERED.

Leonen and *Inting, JJ.*, concur.

Reyes, A. Jr., J., dissents, see dissenting opinion.

Hernando, J., on leave.

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.

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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).

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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 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 x 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 x x x x x

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

x x x x x 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

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[3] 470 Phil. 211 (2004).

[4] *Id.* at 228.

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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.**
>
> 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

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[5] *Id.* at 236.

[6] 348 Phil. 190 (1998).

[7] *Id.* at 200.

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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

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[8] *Id.* at 200-201.

[9] 809 Phil. 843 (2017).

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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

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;
>
> (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
>
> (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

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

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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 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

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

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

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

[14] *Id.* at 87-88.

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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.*

x x x x x 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.

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

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

[16] 603 Phil. 457 (2009).

[17] 805 Phil. 954 (2017).

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.

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[18] *Id.* at 961.

[19] *Id.* at 962.