

**THE DIRECTOR OF PRISONS, THE PROVINCIAL GOVERNOR, AS
EX-OFFICIO PROVINCIAL WARDEN, THE DEPUTY PROVINCIAL
WARDEN, THE PROVINCIAL COMMANDER, PC, OF NEGROS
OCCIDENTAL, PETITIONERS, ...**

G.R. No. L-9043. July 30, 1955

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a special proceeding of certiorari against an order of preliminary injunction issued by respondent Judge, Honorable Eduardo D. Enriquez, seeking to annul his order of September 9, 1954, commanding the Director of Prisons, the Provincial Commander, Philippine Constabulary, at Bacolod City, and all officers and persons acting under them, the Provincial Governor, as ex-officio Warden, and his Deputy, to desist from transferring respondent Rafael Lacson to the new Bilibid Prisons in Muntinlupa, Rizal, and for a writ of prohibition against respondent Judge Jose Teodoro, Sr. to prevent him from exercising jurisdiction over the person of his co-respondent Rafael Lacson and from taking further action in Case No. 3157 of the Court of First Instance of Negros Occidental.

On August 21, 1954, respondent Rafael Lacson was convicted and sentenced to death by judgment of the Court of First Instance of Negros Occidental in Criminal Case of 3220 of said court, together with other 21 co-accused. On August 24, 1954, respondent Lacson was confined in the Provincial Hospital of Negros Occidental under guard by the Philippine Constabulary by order of the court. On September 9, 1954, Lacson instituted a special civil action of certiorari in the said Court of First Instance (No. 3157, Court of First Instance of Negros Occidental) against the Director of Prisons, the Provincial Commander of the Philippine Constabulary at Bacolod City, and all persons acting under them, the Provincial Governor and the Provincial Warden, alleging that his transfer from the hospital to the new Bilibid Prisons at Muntinlupa, Rizal for incarceration, would cause excitement and shock and aggravate his already worsening condition, supporting this allegation with certificates of two physicians, and petitioning that he be retained under guard in the Provincial Hospital for 30 days more, and that in the meantime a writ of preliminary injunction issue against respondents. In accordance with this petition, Judge Eduardo D. Enriquez issued the writ of preliminary injunction, which is now the subject of certiorari. On September 2, 1954, he had filed with this Court a petition for certiorari with preliminary injunction, asking that he be permitted to post a bond while the murder case is pending appeal, which petition was denied by this Tribunal in G. R. No. L-4140. The respondents in said Case No. 3157 submitted their respective answers to the amended petition. All of the respondents allege having no information or belief with respect to the allegation in the petition that the transfer of Lacson to the Insular Penitentiary would endanger his life. The Governor of, Negros Occidental further alleged that Lacson has no cause of action because he (Governor) is not exercising judicial functions *ajid*, therefore, neither the action of certiorari nor prohibition lies, nor that of mandamus for the reason that Lacson has not been excluded from the enjoyment of a right or office to which he is entitled. The Director of Prisons alleged that Lacson is a national prisoner subject to confinement in the Insular Penitentiary that the actions of certiorari, prohibition and mandamus do not lie against him; and that the Insular Penitentiary at Muntinlupa offer the same if

not better facilities than those of the Provincial Hospital of Negros Occidental. The Provincial Commander asked to be excluded as a party respondent for the reason that he has no obligation or authority to act in the determination of the issue in the case, i.e., whether Lacson is fit to be transferred to the new Bilibid Prisons, or not.

After the issues were joined, the Provincial Fiscal presented an urgent motion to lift the preliminary injunction and for a reconsideration of the order granting the writ of preliminary injunction for the reason that more than 30 days have elapsed since the original injunction had been granted and for the further reason that the court has no jurisdiction to issue the said injunction. Opposition to this motion was filed by the attorney of Lacson and, in view thereof, the court ordered a committee of physicians with the Director of the Provincial Hospital as chairman, the District Health Officer and the private physician of the petitioner, as members, to conduct a physical examination of Lacson and to report their findings to the court. These physicians rendered a report on March 2, 1955, which in words is as follows:

"Pursuant to the order of the Honorable Court, Second Branch dated February 19, 1955, we the undersigned Chief of the Occidental Negros Provincial Hospital, the Provincial Health Officer for the Province of Occidental Negros, and Dr. Pablo O. Torre, private physician of the petitioner, after having jointly examined said Rafael Lacson, 57 years old, married and presently confined in the Occidental Negros Provincial Hospital, physically and made a clinical observation from February 20, to and including March 1, 1955, certify the following:

"1. Rafael Lacson is suffering from Cholelithiasis and Duodenal Ulcer as corroborated by X-ray pictures of the abdominal taken August 9, 1954 and January 15, 1955. He has had several attacks of epigastric pains after the second X-ray.

"2. Recurrent severe attacks of Angina Pectoris.

"3. Mental or emotional strains as transportation of patient to Manila may provoke or precipitate severe attacks of Angina Pectoris which may produce shock and thereby endanger his life.

"In lieu of the above, it is our opinion that Rafael Lacson should remain yet confined in the Occidental Negros Provincial Hospital for further observation until he is safely emotionally adjusted to the present condition of life." (Annex O-1)

On the basis of this report, the Honorable Jose Teodoro, Sr, denied the motion to lift the preliminary injunction. This order of the court is, dated March 7, 1955, and on April 20, 1955, the present petition for certiorari and prohibition was filed with this Court.

The respondents in this case argue that as the sentence imposed upon respondent Lacson has not yet become final and since his transfer from the provincial jail to Muntinlupa can not be affected without, imminent danger to his life, the Court of First Instance had power and authority to prevent the "oppressive, vindictive and abusive acts of army officers who were attempting to transfer Lacson from the Provincial Hospital to the Insular Penitentiary in utter disregard of his delicate and precarious state of health," and that while the jurisdiction of the Supreme Court over Criminal Case No. 3220 was acquired after 15 days from the promulgation of the sentence of conviction, this appellate jurisdiction does not exclude other courts from taking cognizance of the action for prohibition and preliminary injunction under the circumstances set forth above.

The question presented for our resolution is: Did the Court of First Instance that convicted respondent Lacson have the power and authority to issue the writ of preliminary injunction, prohibiting the transfer of said Lacson from the provincial hospital of Occidental Negros to the Insular Penitentiary at Muntinlupa, Rizal? While there is no express provision on this point, it is contrary to the generally accepted principles of procedure for said court

to be invested with said power or authority. A necessary regard for orderly procedure demands that once a case, whether civil or criminal, has been appealed from a trial court to an appellate court and the appeal therefrom perfected, the court a quo loses jurisdiction over the case, both over the record and over the subject of the case. Thus in civil cases the rule is that after the appeal has been perfected from a judgment of the Court of First Instance, the trial court loses jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal (Rule 41, Sec. 9). The jurisdiction of the court over the matters involved in the case is lost by the perfected appeal, save in those cases which the rules expressly except therefrom.

While no express provision similar to Section 9 of Rule 41 of the Rules of Court is contained in the Rules on Criminal Procedure, the same general principle should obtain in criminal cases. As a matter of principle, when an appeal has been (perfected from a judgment in a criminal case, the court from which the appeal is made loses jurisdiction over the case, and this (case) means both the record and the person of the accused-appellant. In the same manner that after the judgment has become final, the trial court loses jurisdiction to amend the same, so also upon the perfection of the appeal which brings about the finality of the judgment or order of the court, the sentencing court must also lose jurisdiction or power to do anything or any matter in relation to the person of the accused-appellant.

"* * * We are holding simply that, under the power invested in the superior courts of this state to issue writs of habeas corpus, they are not given the authority to invade the jurisdiction of an appellate court, and to oust said appellate court of its jurisdiction in a criminal action pending before it on appeal by discharging on habeas corpus the appellant in in said action on any ground appearing in the face of the record on appeal, and which is raised or could be raised on said appeal." (France vs. Superior Court, 255 P. 815, 819)

A denial of the above principle and the grant of concurrent jurisdiction in both the court a quo and the appellate court, as contented by respondents, is likely to cause confusion and is absolutely inconsistent with the principle of orderly procedure.

Consistent with the above principles, after the expiration of the period of 15 days within which the appeal could be had from the judgment of the Court of First Instance of Occidental Negros in Criminal Case No. 3220, entitled People of the Philippines vs. Rafael Lacson, et al., the said Court of First Instance lost jurisdiction over the case and had no more power or authority either over the record or of the subject of the case, namely, the accused-appellants.

As the judgment of conviction against Lacson was promulgated on August 21, 1954, and the said judgment became final on September 5, 1954, the trial court had no power or authority to grant the injunction or prohibition affecting the person of Lacson. Since September 5, 1954, the criminal case (No. 3220) has been pending before us and this jurisdiction may not be interfered with by the trial court.

One other point remains to be considered, and this is the fact that attorneys for respondent Lacson ingeniously avoided the, absence of jurisdiction of the trial court by presenting an independent action of injunction and prohibition against the petitioner Director of Prisons herein and against the Provincial Governor, the Provincial Commander of the Constabulary and others. Under the cloak of an independent suit, Lacson's attorneys sought to avoid the insurmountable obstacle of lack of jurisdiction on the part of the trial court to consider their petition to delay the transfer of the person of the accused-appellant Lacson, now respondent herein. What cannot be done directly, cannot be done indirectly. The Court of First Instance of Negros Occidental had no power or jurisdiction over the persons of the accused-appellants in Criminal Case No. 3220; the jurisdiction over the said persons of the accused-appellants could not be authorized by the filing of the special civil actions of injunction and prohibition in the same court.

After this case was submitted and after this Court had denied the petition for bail filed by respondent Lacson in the original case (No. 3220, Court of First Instance of Negros Occidental or G. R. No. L-8188 of this Court), the Solicitor General filed a motion praying that the presentation of the petition for bail was an implied recognition of the absence of jurisdiction on the part of the Court of First Instance of Negros Occidental over the person of the herein respondent Rafael Lacson. This motion was opposed. We do not think that the presentation of the petition for bail by respondent Lacson was an express admission on his part that the Court of First Instance of Negros Occidental had no power or jurisdiction to issue the writ of preliminary injunction against the Director of Prisons, et al. In view of this, we have found it necessary to decide this case on its merits.

The orders of the lower court complained of in the above-entitled case are hereby adjudged null and void, with costs against respondent Rafael Lacson.

Bengzon, Acting C.J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, and Reyes, J.B.L., JJ., concur.

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