

THE PHILIPPINE MERCHANT MARINE ACADEMY, ROGELIO C. MORALES AND EMILIO S. PRIETO, JR., PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, HON. ARSENIO B. ALCANTARA, AS PRESIDING JU...

G.R. No. L-38212. February 27, 1976

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

Victor Balce and Romeo Tibayan, Jr., fourth year students at the Philippine Merchant Marine Academy (PMMA), a government institution created under Republic Act 3680, main petitioner in this case now before Us, formed, allegedly contrary to a previous order issued by the Academy, a student organization known as the Council of Cadet-Seamen. PMMA President Rogelio C. Morales[1] a co-petitioner, learned of the formation of this organization in a letter signed by 14 cadets including Balce and Tibayan, purportedly couched in discourteous language, charging the Academy of mismanagement. Thereupon, Morales created an investigating committee headed by Emilio S. Prieto, Jr., Acting Executive Officer of PMMA, another co-petitioner, to look into the matter. An investigation was conducted and respondents Balce and Tibayan, along with seven other students, were found guilty of "violation of the rules and regulations of the Academy, involving fraud, insubordination and willful disregard of superior order or decision." As a consequence, the PMMA President dismissed them.[2]

Subsequently, on February 12, 1971, respondents Victor Balce and Romeo Tibayan, Jr., the latter assisted by his mother, Remedios Blancaflor Tecson Tibayan, filed with the Court of First Instance of Rizal an action for mandamus, injunction and damages, docketed as Civil Case No. 597-M (14388), against herein petitioners Philippine Merchant Marine Academy (PMMA), Rogelio C. Morales, and Emilio S. Prieto, Jr., to compel the latter to reinstate them as students of good standing at the PMMA and to enjoin them from curtailing and suppressing private respondents' exercise of their constitutional rights. Private respondents also sought payment of moral damages and attorney's fees. (pp. 12-13, rollo)

On July 31, 1972, the Court of First Instance rendered a decision ordering petitioners to reinstate private respondents Balce and Tibayan as students of good standing at the PMMA and to pay P1,000.00 as attorney's fees. Copy of the decision was received by petitioners on August 21, 1972. (pp. 16, 36, id.)

On September 18, 1972, petitioners filed a motion for reconsideration which was, however, denied in the lower court's order of September 30, 1972. (id)

Upon receipt of said order on October 10, 1972, petitioners filed on the same day a notice of appeal from the decision, but moved thrice on October 11 and 24, and November 7, 1972, for extension of time within which to submit their record on appeal. The motions were not acted upon by the Court owing to the retirement at that time of Judge Vivencio Ruiz, Presiding Judge of Branch XV. On November 18, 1972, petitioners filed their record on appeal. (pp. 16-17, 36, id.)

On December 18, 1972, Hon. Arsenio B. Alcantara who had assumed the office of Presiding Judge of Branch XV, issued an order disapproving petitioners' record on appeal and dismissing the appeal on the ground that the record on appeal was not seasonably filed. On January 24, 1973, petitioners filed a motion for reconsideration. The same was denied in an order dated March 30, 1973, a copy of which was received by petitioners on April 6, 1973. On August 21, 1973, private respondents filed a motion for execution of judgment (p. 36, id.). No indication appears on record whether or not the motion has been acted upon.

On October 4, 1973, petitioners filed with the Court of Appeals a petition for certiorari, mandamus and preli-minary injunction pursuant to Sec. 15, Rule 41 of the Rules of Court, which provides as follows:

"Sec. 15. Mandamus.- When erroneously a motion to dismiss an appeal is granted or a record on appeal is disallowed by the trial court, a proper petition for mandamus may be filed in the appellate court." (Italics supplied)

This special civil action which prayed for the issuance of an order directing the trial court to give due course to petitioners' appeal in Civil Case No. 597-M (14388), was dismissed by the Court of Appeals in a resolution dated October 17, 1973. (p. 19, id.) Petitioners filed a motion for reconsideration but the same was likewise denied by the appellate court in its resolution of January 28, 1974. (p. 20, id.)

Hence, this petition for certiorari and mandamus with writ of preliminary injunction to set aside the aforesaid resolutions.[3]

All that we have to resolve is whether or not grave abuse of discretion was committed by the trial court in dismissing petitioners' appeal from its aforementioned decision.

1. Dismissing petitioners' action for mandamus, the Court of Appeals ruled that it was filed out of time. Respondent appellate court declared that the trial court's order of March 30, 1973 denying herein petitioners' motion for reconsideration of the order disapproving the record on appeal and dismissing the appeal, became final on May 6, 1973, i.e., 30 days after its receipt by petitioners on April 6, 1973, p. 36, rollo) Noting that the petition was filed two days short of a full five-month period after the order became final (or six months after its receipt by petitioners) and only when private respondents had filed with the trial court a motion for execution, respondent court said that it was too late now to pass upon the trial court's dismissal of the appeal.

Under the circumstances of the instant case, We are constrained to disagree with respondent appellate court.

Section 15, Rule 41 of the Rules of Court which provides for the remedy of mandamus in case a record on appeal is disallowed or the appeal dismissed does not specify the period within which the petition for mandamus may be filed.

In *Centenera vs. Yatco*, 106 Phil. 1064, where the petition for mandamus was filed four months from the denial of petitioners' motion to reconsider the disapproval of the appeal, and after the lower court had already issued a writ of execution, this Court in granting the relief prayed for held in the words of Mr. Justice J.B.L. Reyes:

"* * * Section 15, Rule 41 of the Rules of Court does not specify the period for the filing of mandamus proceedings against an order disapproving an appeal, which implies that the period for filing is variable as the ends of justice may demand. Indeed, the constant policy of the courts is not to deny the writ if the result would be to deprive a party of his substantial right and leave him without remedy (14 C.J.S. 190)." (Italics supplied)

The *Centenera* ruling was reaffirmed in *Province of Misamis Occidental vs. Catolico*, L-24397, June 29, 1968, 23 SCRA 1295, where the petition for mandamus was filed after four months and twenty-one days from the denial of the appeal.

In the light of the above doctrine and the rationale behind it, and the particular circumstances attendant to this case, viz: (1) that the decision of the trial court sought to be appealed was allegedly rendered without the benefit of a trial on the merits; (2) that, to be explained later, the filing of a record on appeal was unnecessary in the instant case; and (3) that the nature of the issues involved in the litigation are important enough to warrant due consideration of the appellate tribunal, We are disposed to over-look the delay of six months in the initiation of this mandamus proceedings.

2. Respondent Court of Appeals holds, however, that even if the petition were filed on time, it is nonetheless without jurisdiction to entertain the petition.

Respondent Court reasoned out that Civil Case No. 597-M (14388) was decided by the Court of First Instance of Rizal against herein petitioners without the benefit of a trial on the merits and that an appeal from the lower court's order would necessarily raise only questions of law, thus bringing the appealed case under the exclusive jurisdiction of the Supreme Court. (p. 40, rollo) It concluded that since petitioners could not appeal thereto but only to the Supreme Court owing to the absence of disputed factual issues, its interference by way of issuance of writ of certiorari or mandamus cannot be considered to be in aid of its appellate jurisdiction and hence, unwarranted. (pp. 40-41, id.)

This contention is devoid of merit.

Section 30 of the Judiciary Act of 1948, as amended, defines the jurisdiction of the Court of Appeals to issue writs of certiorari or mandamus, to wit:

"Sec. 30. Original jurisdiction of the Court of Appeals.- The Court of Appeals shall have original jurisdiction to issue writs of mandamus, prohibition, injunction, certiorari, habeas corpus, and all other auxiliary writs and process in aid of its appellate jurisdiction." (Italics supplied)

Likewise, Section 4, Rule 65 of the Rules of Court provides as follows:

"Sec. 4. Where petition filed. - The petition (for certiorari, prohibition, and mandamus) may be filed in the Supreme Court, or if it relates to the acts or omissions of an inferior court, or of a corporation, board, officer or person, in a Court of First Instance having jurisdiction thereof. It may also be filed in the Court of Appeals if it is in aid of its appellate jurisdiction." (Italics supplied)

Expounding on the meaning of the phrase "in aid of its appellate jurisdiction" found in Section 30 of the Judiciary Act, as amended, and Section 4, Rule 65 of the Rules of Court quoted above, this Court in *Breslin vs. Luzon Stevedoring Co.*, 84 Phil. 618, citing *Roldan vs. Villaroman*, 69 Phil. 12, stated:

"* * * the basis of the original jurisdiction of the Court of Appeals should not be the appeal which may be interposed * * * but the right to appeal.

* * * * *

"The argument or reason in support of the resolution of the Court of Appeals that if the petitioners herein had sought a review, by appeal or writ of error, of the order of the lower court dismissing the plaintiff's complaint (because the order denying the admission of the amended complaint is not appealable), the case would have fallen under the exclusive appellate jurisdiction of the Supreme Court, has no bearing on the question whether or not the writ of certiorari prayed for herein is sought in aid of the appellate jurisdiction of the Court of Appeals; because the determining factor for the solution of that question is as above stated, whether the Court of Appeals has appellate jurisdiction to review the final decision of the Court of First Instance on the merits of the petitioners' action * * * in view of the nature of the action alleged in the complaint.

* * * * *

"Of course the Court of Appeals is right when it states that 'If the petitioners herein had sought a review of these orders by appeal or writ of error, the case would have fallen under the exclusive appellate jurisdiction of the Supreme Court, only question of law being involved therein.' But it does not follow, as the Court of Appeals concludes, that 'the writ or certiorari prayed for herein is not sought in aid of the appellate jurisdiction of this court (Court of Appeals), which it does not have under the facts in the present case.'" (pp. 622-624, id.)

The original jurisdiction of the Court of Appeals to issue writs of certiorari or mandamus in aid of its appellate jurisdiction is not dependent upon the kind of questions, as being of fact or of law, raised or to be raised on appeal. Such jurisdiction is not even determined by the contingency of whether or not an appeal will be taken. (Roldan vs. Villaroman, supra.)

The test here is whether or not the Court of Appeals has jurisdiction to review the decision of the Court of First Instance on the merits of private respondents' action in view of its nature. That the Court of Appeals has appellate jurisdiction of the action between the parties is obvious. Section 29 of the Judiciary Act, as amended, provides that "(t)he Court of Appeals shall have exclusive appellate jurisdiction over all cases, actions, and proceedings, not enume-rated in section seventeen of this Act properly brought to it * * *." [4] Private respondents' action for mandamus, injunction and damages filed with the lower court against herein petitioners is not among the exclusions enumerated in the law. Hence, lack of jurisdiction of this petition for certiorari and mandamus is no valid ground for denying it.

3. Respondent Court finally holds that even on the merits, petitioners' action must fail. Why? Because it is a fact that petitioners' record on appeal was filed out of time and it is well settled in this jurisdiction that certiorari and mandamus will not lie as a substitute for an appeal. (p. 36, rollo)

Note however that the suit filed by private respondents with the Court of First Instance was one for certiorari and mandamus. In actions of this nature, all that is required to perfect an appeal is to file a notice of appeal. A record on appeal is not necessary inasmuch as pursuant to Sec. 17, Rule 41, Rules of Court, the original record of the case is to be transmitted to the appellate court in lieu of the record on appeal. [5]

Aside from the fact that there was no need of filing a record on appeal, there was likewise no necessity of filing an appeal bond as the appeal was being taken by a government institution duly represented by the Solicitor General. [6]

For purposes of petitioners herein, therefore, they perfected their appeal when they filed the notice of appeal with the trial court and served copy thereof on the adverse party on October 10, 1972, which was well within the thirty days from receipt of the judgment after discounting the period pending the resolution of their motion for reconsideration. [7] The appeal having been perfected pursuant to the Rules, the trial court consequently lost jurisdiction over the case (Syquia vs. Concepcion, 60 Phil. 186; Santiago vs. Valenzuela, 78 Phil. 397; Uvero vs. Court of Appeals, 95 Phil. 11; LVM Trans. Co. vs. Fernandez, 103 Phil. 1171; People vs. Aranda, 57 O.G. 3303; Commissioner of Immigration vs. Romero, L-19782, Jan. 31, 1964, 10 SCRA 216), except to give due course to the appeal and to issue such orders as may be necessary for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal. (Sec. 9, Rule 41, Rules of Court)

Respondent Court of Appeals castigates petitioners, however, for submitting themselves to the jurisdiction of the trial court when they asked for extensions of time within which to file their record on appeal and filed in fact a record on appeal, and subsequently turning about and claiming that there was no necessity of filing a record on appeal, which inconsistent postures tended to trifle with the courts. (p. 37, rollo)

We do not blame respondent Court for censuring petitioners on the action taken especially if We consider that their counsel should indeed have been cognizant right from the start of the procedural law on the matter.

Nevertheless, a mistake of petitioners, nay, even their ignorance of the Rules would not alter the fact that Sec. 17, Rule 41 of the Rules of Court expressly provides that a record on appeal is not required in appeals in certiorari and mandamus proceedings. And for Us to sustain the dismissal of the appeal of petitioners for lack or a late filing of a record on appeal would be to place a premium on technicality and to allow "the shadow to prevail over the substance."

In fact, the trial court aware of the Rules should have *motu proprio* declared that the late filing of a record on appeal was inconsequential as such record on appeal was unnecessary. Unfortunately, instead of disregarding the record on appeal, the trial court utilized its alleged late filing as a valid reason for disallowing petitioners' recourse to the appellate court.

Although the right to appeal is merely statutory,[8] it is, nevertheless, an essential part of our judicial system, and courts are enjoined to facilitate its being given due course.[9]

Wherefore, the questioned Resolutions of respondent Court of Appeals are set aside, and the Presiding Judge of the Court of First Instance of Rizal, Branch XV, is directed to give due course to petitioners' appeal in Civil Case No. 597-M (14388). Without pronouncement as to costs. So ordered.

Teehankee, Makasiar, Esguerra, and Concepcion, Jr., JJ., concur.

[1] The petition also refers to Rogelio C. Morales as PMMA Superintendent. (p. 11, rollo)

[2] The suspended cadets, with the exception of respondent Victor Balce and Romeo Tibayan, Jr. were later reinstated upon making a public apology to the Crew of Cadet Seamen and their instructors as directed in Special Order No. 103 series or 1971, of the Chairman of PMMA Board. They also apologized to the Superintendent.

Private respondents submitted a written apology but the same was not accepted by the PMMA President as it was not in the form required by the Special Order. (p. 15, id.)

[3] In a Resolution of this Court dated June 19, 1974, the petition designated as one for review, was considered as a special civil action. (see p. 69, id.)

[4] Section 17. Jurisdiction of the Supreme Court.-

* * * * *

The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm on appeal, as the law or rules of court may provide, final judgments and decrees of inferior courts as herein provided, in -

(1) All criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices or accessories, or whether they have been tried jointly or separately;

(2) All cases involving petitions for naturalization or denaturalization; and

(3) All decisions of the Auditor General, if the appellant is a private person or entity.

The Supreme Court shall further have exclusive jurisdiction to review, revise, reverse, modify or affirm on certiorari as the law or rules of court may provide, final judgment and decrees of inferior courts as herein provided, in -

(1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question;

(2) All cases involving the legality of any tax, impost, assessment or toll, or any penalty imposed in relation thereto;

(3) All cases in which the jurisdiction of any inferior court is in issue;

(4) All other cases in which only errors or questions of law are involved: Provided, however, That if, in addition to constitutional, tax or jurisdictional questions, the cases mentioned in the three next preceding paragraphs also involve questions of fact or mixed questions of fact and law, the aggrieved party shall appeal to the Court of Appeals; and the final judgment or decision of the latter may be reviewed, revised, reversed, modified or affirmed by the Supreme Court on writ of certiorari; and

(5) Final awards, judgments, decisions or orders of the Commission on Elections, Court of Tax Appeals, Court of Industrial Relations, the Public Service Commission, and the Workmen's Compensation Commission. (RA Nos. 2613 & 5440)

[5] Sec. 17. Appeal in certiorari, prohibition, mandamus, quo warranto, and employers' liability cases.- In appeals in certiorari, prohibition, mandamus, quo warranto, workmen's compensation, and employers' liability cases, the original record of the case shall be transmitted to the appellate court in lieu of the record on appeal. The clerk of the trial court shall observe the provisions of section 11 of this rule as far as practicable. (Italics supplied)

[6] Commissioner of Immigration vs. Romero, L-19782, January 31, 1964, 10 SCRA 216; Embroidery and Apparel Control and Inspection Board vs. Cloribel, L-20024, June 30, 1967, 20 SCRA 517.

[7] " * * while under the former Rules a period of only 15 days was allowed for appealing from decisions in actions for certiorari, prohibition, mandamus, quo warranto, and employers' liability cases, in contrast to the period of 30 days provided for appeals in ordinary action, no such distinction appears in the present rules. Instead, a uniform period of 30 days is now allowed for appeals in all actions." (Angel Enciso vs. Remo, L-23670, September 30, 1969, 29 SCRA 80; italics supplied; see also City of Cebu vs. Mendoza, L-26321, Feb. 25, 1975, 62 SCRA 440)

The period of 30 days within which all appeal may be taken in ordinary actions, as provided in Section 3, Rule 41 of the Rules of Court, is applicable to actions for certiorari and mandamus, among others. Section 1 of Rule 62 provides:

"Section 1. Preceding rules applicable in special civil actions.- The provisions of the preceding rules (Section 3, Rule 41 is one of them) shall apply in special actions for interpleader, declaratory relief and similar remedies, certiorari, prohibition, mandamus, quo warranto, eminent domain, foreclosure of mortgage, partition, forcible entry and detainer, and contempt, which are not inconsistent with or may serve to supplement the provisions of the rules relating to such special civil actions." (Italics supplied)

Section 3 of Rule 41 is not inconsistent with the provisions of Section 17, Rule 41 which relates to appeals in certiorari and mandamus, among other cases, and which is silent as to the period within which such appeals may be made.

[8] Bello vs. Fernando, L-16970, Jan. 30, 1962, 4 SCRA 135; Marinduque Mining and Industrial Corp. vs. Enriquez, L-26485, June 7, 1971, 39 SCRA 369; Workmen's Insurance Co., Inc. vs. Augusto, L-31060, July 29, 1971, 40 SCRA 123; Rodriguez vs. Director of Prisons, L-35386, Sept. 28, 1972, 47 SCRA 153; Velasco vs. Court of Appeals, L-31018, June 29, 1973, 51 SCRA 439.

[9] Republic of the Philippines vs. Gomez, L-17852, May 31, 1962, 5 SCRA 368.

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