

## TAHIMIK RAMIREZ, PETITIONER VS. HON. NICASIO YATCO, ET AL., RESPONDENTS.

*G.R. No. L-19263. October 31, 1963*

Ponente: BAUTISTA ANGELO, J.

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### BAUTISTA ANGELO, J.:

As a result of the disappearance of an Oldsmobile car which apparently belonged to Bulkley, Dunton Paper (Far East) Co., Inc., an information for qualified theft was filed against Edgardo Reyes, et al. before the Court of First Instance of Quezon City (Criminal Case No. Q- 4084).

As an aftermath, said car was seized from Tahimik Ramirez who allegedly bought it in good faith from Bachrach Motor Company by virtue of a search warrant issued by the Municipal Court of Manila, presided over by Judge Roman Cansino, Jr., to Major Alfredo N. Ocampo of the Special Operations Division of the Department of National Defense.

In the meantime, Bulkley, Dunton Paper (Far East) Co., Inc., filed in the criminal case a petition praying that since it is the owner of the stolen car and the case has already been decided resulting in the conviction of the accused even if the latter has appealed to the Court of Appeals an order be issued directing that the car be restituted to it as owner pursuant to Article 105 of the Revised Penal Code.

Ramirez filed a written opposition claiming to be the purchaser for value of the car under Article 559 of the Civil Code and as such entitled to its possession aside from the fact that the remedy sought for by petitioner is not the proper one for it can secure proper relief by filing a separate civil action before the proper court wherein its ownership may be litigated.

The court a quo, after due hearing, and after the ocular inspection it had made of the car in question to determine if it is the same one seized by virtue of the search warrant issued by Judge Cansino, Jr. of the municipal court, on November 25, 1961, issued an order ordering the restitution of the car to petitioner Bulkley, Dunton Paper (Far East) Co., Inc.

In view of the apparent hostility of the court a quo towards Ramirez who during the hearing of the incident was prevented from expressing his views in open court, Ramirez did not deem it necessary to file a motion for reconsideration. Instead, he interposed the present petition, with preliminary mandatory injunction.

On December 14, 1961, this Court gave due course to the petition, giving respondent 10 days from notice within which to answer. It also granted the writ prayed for upon petitioner's filing a bond in the amount of P5,000.00. In issuing the writ, this Court stated: "until further orders from the Supreme Court, you are hereby commanded to restore or return the motor vehicle in question to petitioner Tahimik Ramirez or to the Hon. Ramon Cansino, Jr., Judge of the Municipal Court of Manila."

On December 19, 1961, in compliance with said directive Bulkley, Dunton Paper (Far East) Co., Inc. chose to deliver the stolen car to the municipal court, the same to be kept there until further order from this Court. But on

December 26, 1961, Judge Cansino, Jr., presiding said court directed that the car be delivered to Ramirez subject to the order of this Court for the reason that it does not have the necessary facilities for its safekeeping, aside from the fact that such disposition is authorized by the very order issued by this Court.

In view of this order, Bulkley, Dunton Paper (Far East, Co., Inc., filed before this Court a motion praying that the car be returned to the Municipal Court of Manila, or be placed under the custody of Major Alfredo N. Ocampo who originally seized it under the warrant, in order that it may not be used or taken advantage of by Ramirez pending determination of this case. But this Court deferred action on the motion until after this case shall have been decided on the merits.

The order of respondent court issued on November 25, 1961 which is now disputed by petitioner reads as follows:

"Upon due consideration of the motion for restitution filed by the complainant Bulkley, Dunton Paper (Far East) Co. Inc., dated November 13, 1961, and it appearing upon ocular inspection this morning that the car seized by Major Alfredo Ocampo by virtue of the search warrant issued by the Hon. 'Roman Cansino Jr. of the Municipal Court of the City of Manila, is the same car as that which is the object of the crime in the above-entitled case, and it appearing further that the motion is in accordance with the provisions of Art. 105 of the Revised Penal Code;

'AS PRAYED FOR in the motion, Major Alfredo N. Ocampo; Department of National Defense, Office of the Secretary, Special Operations Group, Camp Murphy, Quezon City, is hereby ordered to restore the motor vehicle described as follows:

'One (1) Oldsmobile Model 1957, 4-door Sedan, Motor No. V-200479, Serial No. 578M 27696, with plate No. H-8108, Manila Series of 1961.' to the complainant Bulkley, Dunton Paper (Far East) Co. Inc., or its duly authorized representative upon proper receipt therefor. "

SO ORDERED.

"Dictated in open Court at Quezon, this 25th day of November, 1961.

(Sgd.) NICASIO YATCO  
Judge

It would appear that the court a quo deemed it proper to order the restitution of the stolen car to the offended party which was shown to be Bulkley, Dunton Paper (Far East) Co., Inc., under Article 105 of the Revised Penal Code in view of the fact that the criminal case has already been decided resulting in the conviction of the accused. Said article provides that the restitution of the thing itself shall be made by the court whenever possible, even though it be found in the possession of a third person who has acquired it by lawful means, saying only to the latter the action he may have against the proper person who may be liable to him. The only exception is when the thing has been acquired by a third person in a manner which bars action for its recovery. Here there is no claim that Ramirez falls within the exception.

The court a quo has done precisely what it is provided for in said Article 105 for after deciding the criminal case convicting the accused and after satisfying itself that the offended party is the respondent company it ordered its restitution subject only to the requirements of said article. The fact that at the time the order was issued the car was under the custody of the Municipal Court of Manila is of no moment considering that the car is the very subject of the case that was then being ventilated. If the car was placed under the custody of the Municipal Court of Manila it was merely as an incident of the search warrant issued by it in order that its possession may be retrieved and placed under the control of the authorities. But this does not deprive the court a quo of its jurisdiction over the car.

We are, therefore, of the opinion that the Court a quo did not commit any abuse of discretion in issuing the order in question. As a corollary, the writ issued by this Court should be set aside without prejudice on the part of petitioner to assert his right of ownership in an appropriate action.

Wherefore, petition is denied. The writ issued by this Court is dissolved. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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