

PEDRO PACIS, IN HIS CAPACITY AS ACTING COLLECTOR OF CUSTOMS, PORT OF MANILA, THE FLAG OFFICER-IN-COMMAND AND THE BASE COMMANDER OF CAVITE NAVAL BASE, PHILIPPINE NAVY, PETITIONER...

G.R. No. L-22526. November 29, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The success of the law enforcement agencies in curbing smuggling depends to some extent upon the cooperation of the other branches of the Government. Remove such cooperation and the campaign against smuggling is doomed, as concretely demonstrated in this case.

On December 26, 1963 Coast Guard Cutter 115 of the Philippine Navy pursued a fishing boat bearing the name of m/b "Bukang Liwayway" off Ternate, Cavite. During the chase the fishing boat fired upon the navy cutter thus wounding two Philippine Navy sailors. Said fishing boat was boarded and found loaded with untaxed foreign made cigarettes, to wit:

455

cases Union cigarettes

1,385

cartons Union cigarettes

3,197

packs Union cigarettes

88

cases Chesterfield cigarettes

498

cases Chesterfield cigarettes

87

cases Salem cigarettes

799

cartons Salem cigarettes

50

cartons Winston cigarettes

The cigarettes and the fishing boat were confiscated and turned over to the Flag Officer in command of the Philippine naval base at Cavite City. On December 27, 1963 the cigarettes were delivered to the custody of the Bureau of Customs.

On January 13, 1964 Pedro Pads, acting Collector of Customs of Manila, commenced seizure and forfeiture proceedings pursuant to Title VI of the Tariff and Customs Code (Republic Act No. 1937) by issuing a warrant of seizure and detention against the cigarettes and M/B "Bukang Liwayway", docketed as Manila Seizure Identification Nos. 8009 and 8009-A. On the same day, Eusebio Marges, the alleged owner of m/b "Bukang Liwayway", filed Civil Case No. TM-114 in the Court of First Instance at Trece Martires City for replevin against the Flag Officer of the Philippine Navy and others, alleging that said fishing boat was stolen on December 15, 1963 while moored at Caflacao Bay, Cavite City; and that notice of loss was reported on December 16, 1963 to the Philippine Constabulary, Cavite City Police and the Collector of Customs of Manila.

On January 14, 1964, before defendants filed their answer but after Marges posted a surety bond in the amount of P40,000.00, His Honor, Judge Alberto V. Averja, Issued a writ of replevin commanding the provincial sheriff of Cavite at Trece Martires City to take immediate possession of the M/B "Bukang Liwayway", retain the same in his custody and keep it and/or dispose of it according to law. On the following day the provincial sheriff served the writ upon the commanding officer of the Philippine naval base at Cavite City. The latter, however, refused to surrender custody over the vessel. On January 16, 1964, acting upon the sheriff's manifestation, the court ordered the arrest of the naval base commander for contempt of court. On the same day said base commander filed an urgent motion to lift writ of replevin and order of arrest. On January 20, 1964 the Republic of the Philippines, through the Bureau of Customs, filed a motion for intervention. Then on January 27, 1964 the Republic and defendant base commander filed a motion to dismiss the complaint and to lift the writ of replevin on the grounds that the Court of First Instance has no jurisdiction over the object in litigation (M/B "Bukang Liwayway"), the same being the subject of seizure proceedings in the Bureau of Customs; that the action for replevin was premature inasmuch as administrative remedies have not been exhausted; that a criminal action for smuggling was being prepared against Marges under which case M/B "Bukang Liwayway" would be liable for forfeiture, as an instrument of the crime; and that the surety bond of P40,000.00 was insufficient. The Court denied the motion to lift writ of replevin on February 17, 1964 but ordered Marges to post an additional surety bond of P60,000.00.

Marges posted the additional surety bond of P60,000.00 and on February 20, 1964 defendant Flag Officer of the Philippine Navy delivered the M/B "Bukang Liwayway" to Provincial Sheriff Proceso P. Silangcruz without the previous knowledge and consent of the Collector of Customs of Manila.

Acting on the belief that the provincial sheriff was about to deliver m/b "Bukang Liwayway" to its owner, the Collector of Customs of Manila and the Commander of the Philippine naval base at Cavite City filed with this Court on February 29, 1964 the instant petition for certiorari with preliminary injunction.

Not known however to the Customs and Philippine Navy authorities, Provincial Sheriff Proceso P. Silangcruz had delivered the M/B "Bukang Liwayway" on February 25, 1964 to Eusebio Marges. On March 2, 1964, "after the filing of the petition for certiorari in this Court, petitioners received an order dated February 21, 1964 of the lower court denying their motion to dismiss and to lift writ of replevin.

On March 4, 1964 We required the respondents, Honorable Alberto V. Averia, Judge of the Court of First Instance of Cavite, Proceso P. Silangcruz, Provincial Sheriff of Cavite, and Eusebio Marges, to answer the petition for certiorari, and at the same time granted, without bond, preliminary prohibitory mandatory injunction, enjoining the respondents Judge and Sheriff together with their agents from enforcing the writ of replevin of

January 14, 1964 and order dated February 17, 1964; prohibiting them further from delivering the M/B "Bukang Liwayway" to Eusebio Marges; and commanding them to deliver said vessel to petitioners. Respondent Sheriff however manifested on March 17, 1964 that he had already delivered the vessel in question to its owner on February 25, 1964 after petitioners failed to object to the sufficiency of the surety bond filed by Eusebio Marges and after they failed to file a counterbond needed for the retention of the vessel.

On April 22, 1964 this Court issued another preliminary writ: writ of preliminary mandatory injunction, commanding the Provincial Sheriff of Cavite to take possession again of M/B "Bukang Liwayway" and to keep the same under his custody until further orders from this Court. Respondent Sheriff received copy of the writ of preliminary mandatory injunction on April 28, 1964. For more than one month said sheriff did not make a return of the writ. Not until the Solicitor General moved on June 3, 1964 to require respondent Sheriff to report to this Court whether or not he has complied with the aforesaid writ and, if so, to order him to allow petitioners and their agents to inspect the vessel in question but, if not, to require him to show cause why he may not be declared in contempt of court. When asked to comment on the Solicitor's motion, respondent Sheriff on June 11, 1964 returned the writ unsatisfied, stating that said writ was served upon Eusebio Marges, owner of M/B "Bukang Liwayway" on April 30, 1964 who informed him in writing that the vessel in question was on a fishing expedition; that Marges promised to surrender the same upon its return; and that despite diligent efforts said vessel could not be located.

On July 22, 1964 this Court required respondent Sheriff to show cause why he should not be dealt with for contempt of court. Said Sheriff submitted his explanation on August 11, 1964 restating the allegations in his return filed with this Court on June 11, 1964. The Solicitor General filed his comment thereon September 2, 1964 recommending that respondent Sheriff be declared in contempt of court.

On the basis of respondent Sheriff's explanation and the comment of the Solicitor General this Court once more required said Sheriff to show cause within ten days why he should not be dealt with in contempt of court. In compliance, he manifested on September 25, 1964 the following: (1) On August 15, 1964 he caused to be served on, and delivered to, Eusebio Marges his letter dated August 13, 1964 which reads:

"This is in connection with the Writ of Preliminary Mandatory Injunction issued by the Hon. Supreme Court in G.R. No. L-22526, entitled 'Pedro Pacis, et al. vs. Hon. Alberto V. Averia, et al.', requiring the undersigned Provincial Sheriff to take possession of the motor boat, 'M/B BUKANG LIWAYWAY', which writ was served upon you on April 30, 1964.

"Please inform the undersigned whether the said motor boat which you alleged had been on fishing expedition has already arrived inasmuch as more than three (3) months have since elapsed since the writ was served upon you, and in the event that the motor boat is still in the fishing expedition, you are hereby required to contact forthwith the crew members thereof and direct them to proceed home immediately, in order that the writ issued by the Hon. Supreme Court may be complied with."

(2) Eusebio Marges replied by letter dated August 24, 1964, to wit:

"I would like to inform you that the M/B BUKANG LIWAYWAY was due to arrive last week, but up to the present I have not heard of its whereabouts. I am afraid that the said boat might be lost due to several typhoons.

"Assistance of the Philippine Constabulary Commander of Cavite was asked to locate the whereabouts of said motor boat, as per copy of the letter hereto attached.

"Please be rest assured that I will not hesitate to surrender the said boat to you as soon as it is located."

Marges' letter to the Provincial Commander of Cavite states:

"My fishing boat, M/B BUKANG LIWAYWAY was due to arrive from Palawan last Thursday morning, August 6, 1964, but up to the present, it has not arrived at our place at Rosario, Cavite.

"I am afraid that due to the storm 'Senyang', my said boat might have been caught by said storm on its way home, so please help us locate my boat for the safety of the eight (8) crew-members on board the boat.

"I have sent similar request to the Provincial Commanders of Mindoro, Batangas and Bataan asking their help in locating my boat as well as my crew members. Please inform me of any development."

(3) On September 1, 1964 respondent Sheriff sent the following communication to the Provincial Commander of the Philippine Constabulary in Cavite:

"I am in receipt of a letter of Mr. Eusebio Marges dated August 24, 1964, regarding the motor boat 'M/b BUKANG LIWAYWAY', copy of which is hereto attached.

"Please inform the undersigned as to what action or step your command has taken on the request of Mr. Marges."

to which the Provincial Commander made the following reply:

"Respectfully returned to Mr. Proceso P. Silangcruz, Provincial Sheriff of Cavite, Trece Martires City, the herein attached true copy of the original communication with the information that all shoreline troops detailed to look for the M/B 'Bukang Liwayway' failed to locate the same.

"No definite information has as yet been obtained as to the whereabouts of the boat, hence, this Command is still in the process of looking for it.

"Rest assured that whatever progress made of the search will be sent to the Office."

(4) Again respondent Sheriff addressed a letter dated September 15, 1964 to the Cavite Provincial Commander in the following tenor:

"Relative your 1st Indorsement dated September 4, 1964, assuring this office that further information will be furnished regarding the motor boat M/B 'Bukang Liwayway', please inform the undersigned of whatever progress your command has made on the subject matter in view of the Writ of Preliminary Injunction issued by the Honorable Court. "Anticipating your reply at the earliest possible time."

(5) On September 11 and 16, 1964 respondent Sheriff telegraphed the PC Provincial Commanders of Batangas, Palawan, Mindoro and Bataan requesting their help to locate the M/B "Bukang Liwayway" but he has not received any answer thereto.

Treating the motion of the Solicitor General dated June 3, 1964 as a written charge for contempt against Provincial Sheriff Proceso P. Silangcruz and the latter's comment thereto as his answer, this Court set the contempt incident for hearing on September 21, 1966. Only the counsel for Provincial Sheriff Proceso P. Silangcruz appeared.

Up to now respondent Provincial Sheriff has not taken custody of the motor boat in question.

The issues are:

- Whether or not petitioners could elevate the case at bar to this Court on a petition for certiorari.
- Whether or not the owner of M/b "Bukang Liwayway" could recover possession of the same by way of a civil case with replevin; and
- Whether or not Provincial Sheriff Proceso P. Silangcruz may be adjudged in contempt of the Supreme Court for

failure to comply with the writ of preliminary mandatory injunction issued in this case on April 22, 1964.

The first issue is on the availability of the remedy of certiorari with preliminary injunction. It is pressed that the order of the lower court dated February 17, 1964 denying the motion to dismiss and to lift the writ of replevin is an interlocutory order, hence not appealable.

It should be remembered that the case before Us is not an appeal. It is a special civil action of certiorari under Section 1 of Rule 65 of the Rules of Court to annul the aforesaid order for having been rendered without or in excess of the lower court's Jurisdiction. The points of inquiry therefore should be on whether or not the respondent court acted without or in excess of its jurisdiction and whether or not there is an appeal or any plain, speedy and adequate remedy in the ordinary course of law.

The pertinent provision of the Rules of Court reads:[1]

"SECTION 1. Petition for certiorari. - When any tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that Judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer."

In a certiorari proceeding under the above-quoted rule, the court is confined to questions of jurisdiction.[2] The reason is that the function of the writ of certiorari is to keep an inferior court within its jurisdiction.[3] It is available for such purpose and not to correct errors of procedure or mistakes in the judge's findings or conclusion.[4] Precisely, in this case, petitioners are assailing the Jurisdiction of the Court of First Instance of Cavite to issue the order of February 17, 1964.

The parties have not put in controversy the non-availability of appeal or any plain, speedy and adequate remedy in the ordinary course of law. Appeal is not open to them for we have already set at naught the ruling that denial of a motion to dismiss a complaint does not entitle a party whose motion is denied to forthwith appeal therefrom.[5] Respondents have pointed out however that petitioners failed to allege such fact in their petition for certiorari. Aside from the fact that the absence of appeal and similar ordinary remedies is patent from the petition's allegations, the defect, if any, has been cured by the allegation in paragraph 17 of the supplemental petition expressly stating the same.

Certiorari was therefore properly brought.

We now come to the propriety of the filing of Civil Case No. TM-114 in the Court of First Instance of Cavite for the purpose of recovering possession of M/B "Bukang Liwayway" which was then held in detention by the Philippine Navy in the Cavite naval base for the Bureau of Customs which instituted seizure and forfeiture proceedings (Seizure Identification Nos. 8009 & 8009-A) against it.

At issue is the jurisdiction of the Court of First Instance of Cavite to entertain Civil Case No. TM-114, and the existence of therein plaintiff's cause of action.

Petitioners would contend that the jurisdiction of the Bureau of Customs to conduct seizure and forfeiture proceedings of vessels for violation of the Tariff and Customs Code is exclusive of the Courts of First Instance. They would further maintain that the issuance of a writ of replevin, as what actually transpired in this case, will prevent the Bureau of Customs from further proceeding with the seizure and forfeiture for allegedly under Section 2531 of the Tariff and Customs Code, forfeiture could be effected only when and while the thing subject to forfeiture is in the custody of the Bureau of Customs.

The Tariff and Customs Code, in Section 2530 thereof, lists the kinds of property subject to forfeiture. At the same time, in Part 2 of Title VI thereon, it provides for the procedure in seizure and forfeiture cases and vests in the Collector of Customs the authority to hear and decide said cases.[6] The Collector's decision is appealable to the Commissioner of Customs[7] whose decision is in turn appealable to the Court of Tax Appeals.[8] An aggrieved party may appeal from a judgment of the Court of Tax Appeals directly to this Court.[9] On the other hand, Section 44(c) of the Judiciary Act of 1948[10] lodges in the Court of First Instance original jurisdiction in all cases in which the value of the property in controversy amounts to more than ten thousand pesos. This original jurisdiction of the Court of First Instance, when exercised in an action for recovery of personal property which is a subject of a forfeiture proceeding in the Bureau of Customs, tends to encroach upon, and to render futile, the jurisdiction of the Collector of Customs in seizure and forfeiture proceedings. This is precisely what took place in this case. The seizure and forfeiture proceedings against the M/B "Bukang Liwayway" before the Collector of Customs of Manila, was stifled by the issuance of a writ of replevin by the Court of First Instance of Cavite.

Should Section 44(c) of the Judiciary Act of 1948 give way to the provisions of the Tariff and Customs Code, or vice versa? In Our opinion, in this particular case, the Court of First Instance should yield to the jurisdiction of the Collector of Customs. The jurisdiction of the Collector of Customs is provided for in Republic Act 1937 which took effect on July 1, 1957, much later than the Judiciary Act of 1948. It is axiomatic that a later law prevails over a prior statute.[11] Moreover, on grounds of public policy, it is more reasonable to conclude that the legislators intended to divest the Court of First Instance of the prerogative to replevin a property which is a subject of a seizure and forfeiture proceedings for violation of the Tariff and Customs Code. Otherwise, actions for forfeiture of property for violation of Customs laws could easily be undermined by the simple device of replevin.

Furthermore, Section 2303 of the Tariff and Customs Code requires the Collector of Customs to give to the owner of the property sought to be forfeited written notice of the seizure and to give him the opportunity to be heard in his defense. This provision clearly indicates the intention of the law to confine in the Bureau of Customs the determination of all questions affecting the disposal of property proceeded against in a seizure and forfeiture case. The judicial recourse of the property owner is not in the Court of First Instance but in the Court of Tax Appeals, and only after exhausting administrative remedies in the Bureau of Customs.

We come to the last question whether or not respondent Provincial Sheriff Proceso P. Silangcruz is in contempt of this Court for failure to comply with the writ of preliminary mandatory injunction issued by this Court on April 22, 1964.

The writ of preliminary mandatory injunction was received by respondent Provincial Sheriff Proceso P. Silangcruz on April 28, 1964. Thenceforth, nothing was heard of the writ nor from said Sheriff. Only after June 3, 1964 when the Solicitor General filed a motion charging him of contempt of court for non-compliance with the writ did Provincial Sheriff Proceso P. Silangcruz oblige himself to make a return of the writ, informing Us that he could not enforce the same because the subject vessel was out on a fishing expedition. For this undue delay in making a return on the writ, respondent Sheriff offered no explanation.

Such conduct of Sheriff Silangcruz is a far cry from his behavior on January 16, 1964 when he made not merely a return of the writ of replevin but a manifestation before the Court of First Instance of Cavite ONE DAY after he served the same advising said court of the refusal of the Philippine Navy Commander to obey, it and praying for the arrest of said Commander for contempt of court. It is also a great contrast from his excellent efficiency in delivering the subject vessel to its owner notwithstanding the absence of an express order from the court and one day earlier than the time provided for in the Rules of Court. On those two occasions he was in the process of obtaining possession for the vessel's owner. Incidentally, and of course We fully comprehend the situation, the writ issued by this Court would deprive the alleged boat owner of possession over the boat, thus putting to naught

respondent Sheriff's previous efforts.

The more than one month's time when the writ of preliminary mandatory injunction stayed frozen in the hands of Sheriff Silangcruz made it possible for interested parties to whisk the boat in question from the reach of the law. The boat has allegedly disappeared and the respondent Sheriff together with the alleged boat owner conveniently put the blame for its alleged disappearance on typhoon Senyang. They insinuate that M/B "Bukang Liwayway" was sunk or wrecked on its way from Palawan to Cavite by said typhoon. Probably, Sheriff Silangcruz and boat owner Marges were misinformed about typhoon Senyang. The official reports of the Weather Bureau,[12] considered as within judicial notice, do not indicate that said typhoon affected Palawan and Cavite. On August 5, 1964 said typhoon was in the Pacific Ocean, 680 miles East of Manila. On August 6, 1964 it was 670 miles East Southeast of Casiguran, Quezon. On August 7, typhoon Senyang hit Southern Luzon causing heavy rains to fall in the Manila-Cavite area but it turned North to Cagayan Province and the Batanes.' Then it blew towards the China Sea, Hongkong and the Gulf of Tongkin. Very prominent, however, is the report of Col. Segundo L. Gazmin, II PC Zone Commander about one fishing boat (from Cavite) missing carrying 20 crew members. The M/B "Bukang Liwayway" had only eight crew members on board. Undoubtedly, the missing boat could not have been the M/B "Bukang Liwayway".

One more thing. It has caught our notice, especially because the Solicitor General called our attention, that respondent Sheriff has practically taken the cudgels for boat owner Eusebio Marges in this proceeding for certiorari. In his answers to the petition for certiorari and to the supplemental petition, he went beyond justifying his official acts and proceeded to espouse the cause of the boat owner thereby giving the impression that his interest in the case and in the subject matter of this litigation is more than just the interest of a public official complying with his duties as such.

On the foregoing premises, We are constrained to conclude that respondent Sheriff's failure to enforce the writ and his failure to make a return thereof for quite a time had in effect prevented this Court from taking possession over M/B "Bukang Liwayway", thus directly interfering, impeding or obstructing the processes of this Court. The respondent Sheriff's non-performance has resulted in the frustration of the mandates of this Court and the setback of the administration of justice. This Court can not tolerate evasion of its commands, by any omission, negligence, artifice or contrivance of any kind, nor would it countenance any disregard of its authority. For it is essential to the effective administration of justice that the processes of the courts be obeyed. And upon no one does this obligation of obedience rest with more binding force than a judicial officer such as respondent Sheriff.[13] We therefore find and declare Provincial Sheriff Proceso P. Silangcruz guilty of contempt of the Supreme Court punishable under Section 6 of Rule 71 of the Rules of Court.

WHEREFORE, the petition for certiorari is granted. The writ of replevin issued on January 14, 1964 and the order issued on February 17, 1964 by the Court of First Instance of Cavite are hereby declared null and void. The mandatory injunction of April 22, 1964 to deliver the boat m/b "Bukang Liwayway" is hereby reiterated. Respondent Sheriff of Cavite, Proceso P. Silangcruz, is hereby declared in contempt of the Supreme Court, and considering all attendant circumstances, sentenced to imprisonment of six months and to pay a fine of P1,000.00. No pronouncement as to costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] Rule 65.

[2] Tuason v. Concepcion, 54, Phil. 408.

[3] Brillo v. Buklatan, 87 Phil. 519.

[4] Regala v. Court of First Instance of Bulacan, 77 Phil. 684; Ong Sit v. Piccio, 78 Phil. 785; Icutamin v. Hernandez, 81 Phil. 161; Verhomal v. Tan, 88 Phil. 389; Association of Beverages Employees v. Figueras, 91 Phil. 450; Matute v. Macadaeg, 99 Phil. 340.

[5] 93 Phil. 613, 616.

[6] Section 2312, R.A. 1937.

[7] Section 2313, R.A. 1937.

[8] Section 2402, R.A. 1937; Sections 7 and 11, R.A. 1125.

[9] Section 18, R.A. 1125; Rule 44, Rules of Court.

[10] As amended by R.A. 3828.

[11] Herman v. Radio Corporation of the Philippines, 50 Phil. 490; Pampanga Sugar Mills v. Trinidad, 279 U.S. 211, 73 L. ed. 665.

[12] Published in the Manila Times of August 5, 6, 7 and 8, 1964 which are of public knowledge.

[13] In re Noyes, 121 F 209, 225.

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