

**CITIZENS’ SURETY AND INSURANCE CO., INC., PETITIONER,
VS. HON. JUDGE ALFREDO B. CONCEPCION, PRESIDING JUDGE OF
THE COURT OF FIRST INSTANCE OF CA-VITE, BRANCH IV, SITUATED
AT TAG...**

G.R. No. L-43233. January 23, 1978

Ponente: ANTONIO, J.

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ANTONIO, J.:

This special civil action for certiorari with preliminary injunction seeks to annul respondent Judge's Order, dated February 9, 1976, denying petitioner's motion to quash Writ of Execution issued pursuant to a judgment of confiscation of bail bond dated November 28, 1975, and disallowing its appeal from said judgment of confiscation.

The Citizens' Surety and Insurance Co., Inc., petitioner herein, is the bondsman of accused Rodolfo Torres in Criminal Case No. TG-275-75 of the Court of First Instance of Cavite, Branch IV, presided by respondent Judge Alfredo B. Concepcion. On October 18, 1975, petitioner received an Order, dated October 13, 1975, of respondent Judge, to wit:

"For failure of the accused to appear for his arraignment despite due notice to his bonds man, let a warrant for his arrest be issued, and the bail bond filed by him is hereby ordered forfeited.

"The Citizens' Surety and Insurance Co., Inc. is given a period of thirty (30) days from notice to produce the person of the accused Rodolfo Torres and to show cause why judgment should not be rendered against the bond." [1]

On November 3, 1975, the accused Rodolfo Torres, with the conformity of petitioner as his bondsman, filed an "Urgent Motion to Set Aside Order of Arrest and Confiscation of Bail Bond of Accused", stating as follows:

"1. That on October 13, 1975 this Honorable Court issued an ORDER for the arrest of the accused and confiscation of his bail bond for his failure to appear in Court for arraignment;

"2. That the 'Notice of Arraignment' was served to one of the guarantors of the accused in Manila only on October 11, 1975 or two days before the scheduled arraignment, and accused at the time was in Tigbauan, Iloilo recuperating from the physical injuries inflicted by a Quezon City police officer who was then under the influence of liquor;

"3. That accused arrived from Tigbauan, Iloilo on October 14, 1975 or day after the scheduled arraignment and he is now ready for arraignment on any scheduled date most convenient to this Honorable Court;

"4. That the bonding company of the accused is agreeable to the use of the same bail bond and have signified its conformity."[2]

In an Order dated November 5, 1975, copy of which was received by the petitioner on November 13, 1975, respondent Judge denied said urgent motion, stating:

"Finding the motion filed by the accused to set aside order of arrest and forfeiture of bond, dated October 27, 1975, not to be in accordance with the requirements prescribed by Sec. 15, Rule 114 of the Rules of Court, and considering that the surety was duly notified of the scheduled arraignment on October 8, 1975 (not on October 11, 1975 as falsely asserted in defendant's motion), and considering that the scheduled arraignment of the accused set on August 27, September 12 and September 30, 1975 had to be cancelled just because the accused could not be located at his given residential address, thereby unduly delaying the speedy determination of this case, the same is hereby DENIED."[3]

On November 25, 1975, petitioner, with the conformity of the accused, filed a motion for reconsideration of the foregoing Order, the pertinent portion of which reads:

"2. While it is true that the arraignment of the accused was scheduled last August 27, September 12, and September 30 and October 13, Bondsman was notified only for October 13 arraignment, which notice it received last October 8, 1975;

"3. Immediately upon receipt of the notice of the Court, Bondsman tried to look for the Accused and served notice of the arraignment to one of his guarantors last October 11, 1975;

"4. Bondsman admits having received the notice of the Honorable Court last October 8, 1975 but it gave notice of the scheduled arraignment to one of the guarantors of the Accused only October 11, 1975 as it could not find the Accused, who later on found out to be in Iloilo;

"5. As embodied in Accused's Affidavit of Merit, hereto attached as Annex 'A' and made part of this motion, Accused has no intention to delay the prompt administration of justice and in fact is willing to surrender to this Honorable Court anytime when required to do so;

"6. Bondsman is still willing to continue and is agreeable for the use of the same bail bond for the provisional liberty of the Accused;

"7. Since it was decided by our Court that it is not absolutely the interest of the government to confiscate bail bonds in order that it may raise its revenue, but to have the body of the Accused surrendered so that the latter may be held to answer for the crime charged, Bondsman respectfully prays that its bond posted for the

provisional liberty of the Accused be not confiscated since accused is willing to surrender to this Honorable Court anytime.

"WHEREFORE, * * * it is * * * prayed that the Order * * * dated November 5, 1975, be reconsidered and set aside."[4]

In an Order, dated November 28, 1975, copy of which was received by the petitioner on December 16, 1975, respondent Judge denied the motion for reconsideration, stating as follows:

"By its order of October 13, 1975, a copy of which was served upon it on October 18, 1975, the Citizens' Surety and Insurance Co., Inc. was given a period of thirty (30) days from notice to produce the person of Rodolfo Torres and to show cause why judgment should not be rendered against the bond in view of the failure of the accused to appear for arraignment on said date.

"It appearing that said surety has failed and neglected to produce the person of the accused Rodolfo Torres within the period prescribed in said Order, as he has not been surrendered up to the present, the Court finds the motion for reconsideration filed by said surety only on November 25, 1975 to have been unseasonably filed.

"WHEREFORE, the motion for reconsideration filed by the Citizens' Surety and Insurance Co., Inc., dated November 24, 1975 is DENIED, and judgment is hereby entered against the personal bail bond, designated as JCR (2)-1219, issued by it in the amount of P10,000.00. The Deputy Clerk of Court is directed to issue the corresponding writ of execution against the Citizens' Surety and Insurance Co., Inc., for the amount of P10,000.00."[5]

Judgment against the bond having been entered, the corresponding Writ of Execution was issued as directed and a copy thereof was served upon the petitioner also on December 16, 1975. On December 29, 1975, petitioner filed a motion to quash the Writ of Execution on the ground that the issuance of said writ was premature as the period to appeal the Order dated November 28, 1975 had not yet lapsed. Petitioner contended that the motion for reconsideration which was denied by the court for having been unseasonably filed, was filed within the thirty-day period because the running of the thirty-day period was suspended by the filing on November 3, 1975 by the accused's counsel, with the conformity of the petitioner, of an urgent motion to lift order of arrest and confiscation of bail bond. Petitioner explained, thus:

"The thirty-day period started to run from October 19, 1975 and the running of said period was suspended on November 3, 1975 when the motion to lift order of arrest and confiscation of bail bond was filed. From October 19, 1975 to November 3, 1975, only 16 days have elapsed and therefore, there was still fourteen (14) days left on the 30-day period. The thirty-day period started to run again from November 13, 1975 upon receipt by bondsman movant of a copy of this court's order dated November 5, 1975 denying the motion to lift order of arrest and confiscation of bail bond. From November 13, 1975, up to the date of filing of bondsman's motion for reconsideration on November 25, 1975, only 12 days have elapsed. The total number of days that have elapsed when the motion for reconsideration was filed is only twenty eight (28) days (16 days from October 18, 1975 to November 3, 1975 and 12 days from November 13, 1975 to November 25, 1975). The inter-vening period from November 3, 1975 (date of filing of motion to lift order of arrest, etc.) up to November 13, 1975 (date of receipt of order of denial), a total of 10 days should be excluded in counting the 30-day period. Hence,

this Court erred in declaring that the bondsman's motion for reconsideration filed on November 25, 1975 was unseasonably filed and the issuance of the writ of execution is premature."[6]

Meanwhile, or on January 8, 1976, while the motion to quash the Writ of Execution was still pending resolution by the court, petitioner filed a Notice of Appeal from the Order of November 28, 1975, an Appeal Bond in the amount of P120.00, and a Record on Appeal.

On February 9, 1976, respondent Judge resolved petitioner's motion to quash Writ of Execution and issued an Order, a copy of which was received by the petitioner on March 3, 1976, the dispositive portions of which read:

"Considering that the Order of November 28, 1975 is a judgment of confiscation which gives an ultimate determination of the liability of the bondsman so that it is final in nature and, therefore, execution may at once issue, the motion to quash writ of execution is hereby DENIED.

"Considering that the time allowed for perfecting an appeal is only fifteen (15) days from notice of the order directing the execution of the judgment of confiscation (People vs. Loreda, 50 Phil. 209; People vs. Go. 57 O.G. 1391; People vs. Cordero, 9 SCRA 691, 695), and it appearing that the bondsman filed its Notice of Appeal, Appeal Bond and Record on Appeal only on January 8, 1976, that is twenty-three (23) days after it was notified of the judgment of confiscation; and considering that under Sec. 15, Rule 114 of the Rules of Court, if the bondsman fails, within a period of thirty (30) days after notice, to: (a) produce the body of their principal or give the reason for its non-production; and (b) explain satisfactorily why the accused did not appear before the court when first required so to do, a judgment shall be rendered against the bondsman, (Villangca vs. Ariola, 53 SCRA 139), and it appearing that despite its representations that the 'accused is willing to surrender to this Honorable Court anytime', the bondsman has not produced the body of said accused up to the present, the intended appeal taken by the bondsman from the Order of November 28, 1975 is hereby DISALLOWED.

"ACCORDINGLY, let an Alias Writ of Execution be issued against the Citizens' Surety and Insurance Co., Inc. for the amount of P10,000.00. Chief Deputy Sheriff Virgilio I. Mangubat of Cavite is hereby authorized and directed to enforce said execution at any place outside the province of Cavite."[7]

The foregoing Order is the one sought to be annulled by this petition as heretofore stated. And in assailing said order, the petitioner contends that it was issued in excess of the trial court's jurisdiction or with grave abuse of discretion and that there is no appeal therefrom, nor any plain, speedy and adequate remedy in the ordinary course of law except this petition.

In support of its position, petitioner argues, as follows:

"There is no question that the time allowed for perfecting an appeal from an order directing the execution of the judgment of confiscation of bond is fifteen (15) days from notice thereof * * *. The only issue, therefore, is whether petitioner's intended appeal was filed beyond the said reglementary period.

"* * * There is no dispute that the Order of November 28, 1975 * * * which is the judgment of confiscation was received by herein petitioner on December 16, 1975. The counting of the 15-day period will, therefore, start from December 16, 1975. The petitioner filed the notice of appeal, record on appeal and appeal bond on

January 8, 1976. From December 16, 1975 to January 8, 1976, a period of twenty-three (23) days have elapsed. However, herein petitioner filed on December 29, 1975 a Motion to Quash the Writ of Execution and while the said motion to quash writ of execution was still pending resolution, petitioner filed on January 8, 1976 the notice of appeal, appeal bond and record on appeal. The filing of the motion to quash writ of execution suspended the running of the 15-day reglementary period to appeal. * * * The period of time starting from December 29, 1975 when the motion to quash writ of execution was filed up to the date of filing of the notice of appeal on January 8, 1976 (ten [10] days) should be deducted in computing the 15-day period. * * * The respondent Honorable Judge therefore, erred in not deducting the 10-day period covered from the time petitioner filed motion to quash writ of execution up to the time of filing the notice of appeal (motion to quash writ of execution was still pending resolution when notice of appeal was filed) from the twenty three (23) days period. Had the necessary deduction been made for the 10-day period, the number of days that have elapsed is only thirteen (13) days. Legally, therefore, the intended appeal was filed within the 15-day reglementary period and the order of respondent Honorable Judge disapproving said appeal is contrary to law and in excess of his jurisdiction and with grave abuse of discretion;"[8]

1. Contrary to petitioners' contention, the Order giving the petitioner a period of thirty (30) days within which to produce the person of the accused before the court and to explain why he failed to appear when previously required to do so, was not suspended by the "Urgent Motion to Set Aside Order of Arrest and Confiscation of Bail Bond of Accused" filed by the accused, nor by the "Motion for Reconsideration" filed by the petitioner. In substance, the motion to set aside order of arrest, etc. is an explanation as to why the accused failed to appear before the court for his arraignment on October 13, 1975. The statements therein, namely, that the notice of arraignment was served to one of the guarantors of the accused in Manila only on October 11, 1975, or two (2) days before the scheduled arraignment; that the accused at that time was in Tigbauan, Iloilo, recuperating from the physical injuries inflicted upon him by a Quezon City police officer; that the accused arrived from Tigbauan, Iloilo, on October 14, 1975, or a day after the scheduled arraignment; and that he was ready for arraignment on any scheduled date most convenient for the court, cannot be considered other than as an explanation by the accused why he failed to appear before the court when required to do so. It must be noted, however, that the bondsman of an accused person who has thus defaulted is required to show that at the time the default occurred, the principal was prevented by some sufficient cause not imputable to his own negligence from complying with his duty. The aforesaid explanations do not satisfactorily explain the neglect of the accused.

But even assuming for the nonce that the aforesaid explanation is satisfactory, the lower court did not commit grave abuse of discretion, nor did it exceed its jurisdiction in denying the motion because the person of the accused was not produced before the court, nor any reason given for his non-production. As correctly ruled by the court a quo, Section 15, Rule 114, Rules of Court, specifically requires that the bondsmen must produce the body of their principal or give the reason for its non-production.

"1. The specific provision of the Rules of Court is quite explicit. It reads thus: 'When the appearance of the defendant is required by the court, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty (30) days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bond. Within the said period of thirty (30) days, the bondsmen (a) must produce the body of their principal or give the reason for its non-production; and (b) must explain satisfactorily why the defendant did not appear before the court when first required so to do. Failing in these two requisites, a judgment shall be rendered against the bondsmen.' This is one of those cases where hardly any room is left for interpretation. All that a judicial body can do is to apply it as worded. That is what the lower court did. What is more, authoritative doctrines from *United States v. Carmen*, (13 Phil. 1455), a 1909 decision, the present provision being a restatement of Section 76 of the former Code of Criminal Procedure, to *People v.*

Franklin, (L-21507, June 7, 1971, 30 SCRA 363); decided in 1971 have been notable for their consistency." [9]

2. Inasmuch as the thirty-day period given to the petitioner by the court in its Order of October 13, 1975 was not suspended by the accused's motion to set aside order of arrest and confiscation of bail bond, said period expired on November 17, 1975 without the petitioner having complied with the order to produce the person of the accused Rodolfo Torres and to show cause why judgment should not be rendered against the bond. As such, the court, in its Order of November 28, 1975, did not err in entering judgment against the bail bond and in directing the issuance of the corresponding Writ of Execution for the full amount thereof. The lower court also committed no error in denying in the same Order petitioner's motion for reconsideration of the court's Order of November 5, 1975 because the motion for reconsideration, which was in substance and effect an amplification of the accused's explanation afore-mentioned, was filed out of time, that is, eight (8) days after the thirty-day period given to the petitioner to explain had expired.

3. The petitioner received both the copy of the Order of November 28, 1975 and the corresponding Writ of Execution on December 16, 1975. Instead of appealing from the Order of November 28, 1975 which, as earlier stated, entered judgment of confiscation of the bond and directed the issuance of the corresponding Writ of Execution, the petitioner filed, on December 29, 1975, a motion to quash the Writ of Execution on the ground that the issuance thereof was premature, contending that the motion for reconsideration filed on November 25, 1975, and which was denied on November 28, 1975, was filed within the thirty-day period to produce the person of the accused and to submit an explanation. It was only on January 8, 1976 that petitioner filed a Notice of Appeal, Appeal Bond, and Record on Appeal. We hold that the appeal was filed out of time, that is, beyond the fifteen-day period within which to perfect an appeal, counting from petitioner's receipt of the notice of the Order of November 28, 1975, which is the Order directing the execution of the judgment of forfeiture of the bond, and from which the appeal should be made.[10] The last day to appeal in this case was January 2, 1976, the fifteenth day, December 31, 1975 being a holiday and the succeeding day, January 1, 1976, also a holiday. The filing of the appeal on January 8, 1976, therefore, was late by six (6) days. It follows that the lower court did not err in disallowing petitioner's appeal.

It may be mentioned in connection with the foregoing that, contrary to petitioner's contention, the motion to quash the Writ of Execution did not have the effect of suspending the fifteen-day period to appeal because the Writ of Execution is a separate and distinct process from the order of judgment of confiscation of bond. As already adverted to above, it is from the order or judgment of confiscation of bond that appeal should be made, not from the Writ of Execution. Any incident relative to the Writ of Execution, therefore, cannot affect the fifteen-day period to appeal.

WHEREFORE, premises considered, this petition for certiorari with preliminary injunction is hereby DISMISSED, and the restraining order issued by this Court on April 2, 1976, is ordered lifted. No pronouncement as to costs.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

Santos, J., on leave.

[1] Annex "A", Petition, p. 11, Rollo.

[2] Annex "B" Ibid., p. 12, Rollo.

[3] Annex "C", Ibid., p. 14, Rollo.

[4] Annex "D", Ibid., pp. 15-16, Rollo.

[5] Annex "E", Ibid., p. 18, Rollo.

[6] Annex "G", Ibid., p. 22, Rollo.

[7] Annex "K", Ibid., pp. 35-36, Rollo.

[8] Rollo, pp. 7-8.

[9] Vallangca v. Ariola, 53 SCRA 139, 143-144.

[10] People v. Cordero, 9 SCRA 691 (1963); People v. Go, 106 Phil. 409 (1959); and People v. Loreda, 50 Phil. 209 (1927).

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