

**RAMON RAMOS, JR., PETITIONER, VS. HON. MANUEL R. PAMARAN,
PRESIDING JUDGE, CIRCUIT CRIMINAL COURT OF MANILA, PEOPLE
OF THE PHILIPPINES AND JOSE GAMBOA, RESPONDENTS.**

G.R. No. L-38271. October 28, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

Ramon Ramos, Jr. filed these special civil actions of certiorari and prohibition against the Circuit Criminal Court of Manila, the People of the Philippines and the City Fiscal of Manila in order to set aside Judge Manuel R. Pamaran's order dated December 21, 1973, denying Ramos' motion to quash the information for smuggling in Criminal Case No. CCC-VI-1386, People of the Philippines vs. Fortunato P. Encinas and Ramon G. Ramos, Jr.

That motion was based on the grounds that the charge against Ramos of unlawful importation of fertilizer had already prescribed, that the information charges two offenses and that the facts alleged do not constitute an offense.

The information against Ramos and Encinas, which cites section 3601 of the Tariff and Customs Code on unlawful importation as the penal provision involved, reads as follows:

"That in, about, and during the period comprised between July 29, 1966 and September 12, 1966, both dates inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, and with the evident intent to defraud the government of the Republic of the Philippines of the legitimate duties accruing to it from merchandise imported into this country, did then and there willfully, unlawfully and knowingly fraudulently import or bring into the Philippines, or assist in so doing contrary to law, the following merchandise, to wit: 2,500 metric tons of Ammonium Sulphate contained in 55,000 bags with an estimated value of more than P150,000.00, Philippine currency, which were found to have no import entry as required by customs laws, rules and regulations, and which were unloaded, transported, and released to the said accused without the same having been properly declared, and that the duties and taxes due thereon have not been paid to the proper authorities."

After studying the arguments in Ramos' memorandum, the City Fiscal's comment and the Solicitor General's answer and reply, we are of the opinion that no grave abuse of discretion, amounting to lack of jurisdiction, was committed by Judge Pamaran in denying Ramos' motion to quash.

Generally, neither certiorari nor prohibition lies against an order denying a motion to quash. If the court has jurisdiction to take cognizance of the criminal case and to decide the motion to quash, appeal in due time is the obvious and only remedy. Section 1, Rule 117 of the Rules of Court provides that if the motion to quash is denied, the accused "shall immediately plead". That means that the trial should go on. (*Cabrera de Chuatoco vs. Aragon*, L-20316, January 30, 1968, 22 SCRA 346, 351; *Mill vs. Hon. Nicasio Yatco*, 101 Phil. 599, 606; *Arches vs. Justice of the Peace of Panay*, 83 Phil 970; *Arcaya vs. Teleron*, L-37446, May 31, 1974, 57 SCRA 363).

1. Ramos contends that the charge of fraudulent importation or smuggling set out in the information "is in

essence" an indictment for nonpayment of customs duties and internal revenue taxes due on the ammonium sulphate or fertilizer. He argues that the prescriptive period for a violation of any provision of the Tax Code is five years (Sec. 354).

With respect to the violation of the Tariff and Customs Code, he avers that, as that law does not provide any prescriptive period for the violation of its provisions, the applicable statute of limitations is article 1149 of the Civil Code which provides that all other actions whose periods are not fixed in the Civil Code must be brought within five years from the time the right of action accrues. Hence, he concludes that the offense of fraudulent importation, which was allegedly committed in 1966, had already prescribed when the information was filed on December 14, 1972.

Ramos' contentions are manifestly unwarranted and untenable. The charge against him is based on the following provisions of the Tariff and Customs Code, Republic Act No. 1937, which apply to cases where the unlawfully imported merchandise, as in this case, is valued at more than P150,000:

"SEC. 3601. Unlawful Importation, - Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with:

xxx xxx xxx

"4. A fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value, to be determined in the manner prescribed under the Tariff and Customs Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos.

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"When, upon trial for a violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section." (As amended by Republic Act No. 4712 effective June 18, 1966).

The Tariff and Customs Code is a special law which does not provide when the offenses committed thereunder would prescribe. That deficiency is supplied by Act No. 3326, as amended by Act No. 3763, whose pertinent provisions read as follows:

"SECTION 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules:

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(d) after twelve years for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years: . . .

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"SEC. 3. For the purposes of this Act, special acts shall be acts defining and penalizing violations of the law not included in the Penal Code."

Under Section 1 (d), twelve years constitute the prescriptive period for the offense imputed to Ramos and Encinas which is penalized with imprisonment for eight (8) years and one (1) day to twelve ((12) years under the afore-quoted section 3601[4] of the Tariff and Customs Code, expressly cited in the information.

The reference in the information to the nonpayment of customs duties and taxes is incidental to the gravamen of the offense which is smuggling or unlawful importation. The amount of duties and taxes would be taken into consideration in ascertaining the imposable penalty. Quite far-fetched and wide off the mark is the averment of Ramos that the offense of unlawful importation is equivalent to the offense of non-payment of duties and taxes.

Article 1149 of the Civil Code has no application to this case. The prescription of actions in the Civil Code contemplates civil actions and not criminal actions.

2. Ramos contends that the information should be quashed because it is duplicitous. His view is that it charges the two distinct offenses of nonpayment of customs duties and nonpayment of taxes. That view is erroneous. Both the heading and opening paragraph of the information explicitly indicate that the offense charged is that penalized in section 3601 of the Tariff and Customs Code which indubitably refers to the crime of "unlawful importation" or smuggling, not to nonpayment of duties or taxes. (See *People vs. Guiao*, 105 Phil. 68; Cf. *People vs. Ang Hok Hin*, 57 Phil. 567).

It is further alleged in the information that the imported fertilizer had no import entry. That averment implies that the importation was contrary to sections 1201 and 1301 of the Tariff and Customs Code because the fertilizer was not entered through a customhouse of a port of entry.

3. Petitioner's last contention is that facts alleged do not constitute an offense because fertilizer is not a prohibited item and that it is exempt from duties and taxes. That contention is not meritorious.

Ramos, in invoking the ground that the facts charged do not constitute an offense, made a hypothetical admission of the allegations of the information. As already pointed out, the indictment clearly alleges the crime of unlawful importation defined and penalized in section 3601 of the Tariff and Customs Code. Whether the prosecution would be able to prove that charge during trial is another question.

The foregoing discussion is not intended to prejudge the merits of the criminal case. Nothing said herein should foreclose the right of the parties to prove during the trial their respective contentions or theories. Possibly, the trial might bring out facets of the case which have not been threshed out in this incident and which may give a different complexion to the case.

The point adjudicated herein is that considering the pleadings, it does not appear that the lower court, which unquestionably has jurisdiction over the case, gravely abused its discretion in denying petitioner Ramos' motion to quash.

WHEREFORE, the petition for certiorari and prohibition is dismissed with costs against the petitioner.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio and Fernandez, JJ., concur.

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