

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE JOSE P. VELUZ, JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS ORIENTAL, AND MARIA BACUT, RESPONDENTS.

G.R. No. L-7851. April 15, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

This is a petition for certiorari to annul the order of the respondent judge, Honorable Jose P. Veluz, quashing the writ of execution and the sheriff's sale in Criminal Case No. 1044 of the court of first instance of Misamis Oriental.

The records show that, prosecuted for illegal possession of opium, Maria Bacut was sentenced to suffer three months of *arresto mayor* and to pay a fine of P1,000 with subsidiary imprisonment in case of insolvency. She entered jail on April 2, 1951 and was released on July 13, 1951 after having served the principal penalty plus subsidiary imprisonment for the fine (with good conduct allowance).

On November 5, 1951, pursuant to an alias writ of execution on account of the fine, the Sheriff levied upon, and sold at public auction, a piece of land declared for taxation in the name of Maria Bacut. The highest bidder turned out to be the Republic of the Philippines; and on that date the corresponding certificate of conveyance was duly notarized.

However, on April 16, 1952 Maria Bacut filed a motion wherein, asserting full service of her subsidiary imprisonment and her consequent release from liability for the fine, she prayed for annulment of the proceedings in connection with the execution. She alleged, furthermore, that the property no longer belonged to her, inasmuch as she had sold it to Erlinda Bacor in January 1951.

The motion was opposed by the prosecution; but on December 23, 1953 the respondent judge granted it, ordering the annulment of all proceedings in the execution and sale of the property, on the ground that they were not authorized by law—Maria Bacut having actually served the subsidiary imprisonment.

After failing in a motion to reconsider, the prosecution submitted the instant petition, contending that the respondent judge had no jurisdiction to annul the proceedings, for the following reasons:

- Maria Bacut could not lawfully serve subsidiary imprisonment, because she had property;
- Maria Bacut could not properly file the motion on behalf of the interested party, Erlinda Bacor;
- Anyway, the motion was untimely, having been submitted after the lapse of the period prescribed in sec. 15 Rule 89.

The first reason is based on the supposition that on April 1951, when Bacut entered jail, she had this particular piece of property. However, the supposition proved to be unfounded, because a few months before she had disposed of it in favor of Erlinda Bacor.

The second reason is also untenable, because Maria Bacut had an interest in the annulment of the proceedings, considering her possible liability for eviction if the property she had conveyed to Erlinda should finally be taken away from the latter's possession.

Again, the third ground of the petition is unmeritorious, because section 15, Rule 39, applies to a third party—not to Maria Bacut who was the accused herself.

It must be observed in this connection that by express provision of the Revised Penal Code service of subsidiary imprisonment for the fine relieves the convict "from pecuniary liability as to the fine" (Art. 39 Rev. Penal Code). There might be something to petitioner's contention that "a convict who is not insolvent could not evade the fine by serving the subsidiary imprisonment"; but the point need not be discussed now, because the record does not show that Maria Bacut was not insolvent when she underwent subsidiary imprisonment.

In connection with petitioner's contention that the court had no jurisdiction to act on Maria Bacut's motion, the governing principles are:

"The court issuing the execution retains a certain amount of control thereover even after the writ leaves its hands, but such control is limited and regulated by fairly definite rules of law and is not unrestricted. The court may quash the writ of execution when it appears: (a) that it has been improvidently issued, or (b) that it is defective in substance, or (c) that it has been issued against the wrong party, or (d) that the judgment debt has been paid, or (e) that the writ has been issued without authority; etc." (Quoting *Dimayuga vs. Raymundo*, 42 Off. Gaz., (No. 9), p. 2121.) (Moran Comments on the Rules of Court, 1952 Ed. Vol. I p. 811-812)

And if there is any further doubt about the authority of the Court to consider Maria Bacut's motion of April 16, attention may be directed to section 43, Rule 39 which reads as follows:

"Sec. 43. When admission of satisfaction, or entry of satisfaction without admission, ordered.—Whenever a judgment is satisfied in fact, otherwise than upon an execution, the judgment creditor or Ins attorney must execute and acknowledge, or indorse, an admission of the satisfaction as provided in the last preceding section, and after notice and upon motion the court may order either the judgment creditor or attorney so to do, or may order the entry of satisfaction to be made without it."

The aforesaid motion, falls within the scope of this section besides asking for annulment of the proceedings it prayed for a declaration that the accused was "relieved from the fine of P1,000 having paid the same by subsidiary imprisonment".

Wherefore, no excess of jurisdiction or abuse of discretion having been shown, the petition for certiorari is hereby denied. So ordered.

Pablo, Acting C. J., Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.

Petition denied.

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