

PEDRO REBADULLA, ET AL., PETITIONERS, VS. HON. EMILIO BENITEZ, ETC., ET AL., RESPONDENTS.*G.R. No. L-15971. July 31, 1961*

Ponente: DE LEON, J.

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This is a petition for prohibition to enjoin the respondents Judge of the Court of First Instance of Samar and provincial sheriffs ex-officio of the same province from further proceeding with the sale on execution of petitioners' properties given as bail for the provisional release of the accused in Criminal Case No. 2909. We gave due course to the petition and upon the petitioners' filing of a bond of P300, the writ of preliminary injunction prayed for was issued by this Court.

It appears that in Criminal Case No. 2909 of the court below, petitioners filed bail bonds in the aggregate amount of P40,000 for the provisional liberty of the accused therein who were charged with the crime of robbery in band. The said accused having failed to appear at the trial set for August 22, 1958 as required by the court, the respondent Judge on that same day caused a warrant of arrest to be issued against them and ordered the forfeiture of their bonds, the bondsmen, herein petitioners, being given 30 days within which to produce the accused and to show cause why judgment should not be rendered against them for the amount of the said bonds. On March 20, 1959, the court, not being satisfied with the explanation given by the petitioners for the failure of the accused to appear before it when first required to do so, rendered judgment against them for the amount of their respective bonds, the said judgment to be "immediately executed."

A copy of the judgment was received by petitioners, thru their counsel, on April 11, 1959, and four days later, on April 14, 1959, they filed a motion to set it aside, alleging, among other things, that of the 19 bondsmen for the different accused, only 8 were notified to produce their principals before the court; that these 8 bondsmen have lawful reasons why no judgment should be rendered against their bonds, the accused having been arrested by order of the court during the 30-day period from forfeiture of the bonds; and that the judgment should not be executory at once because the law allows a period for appeal. Sometime in that, same month of April, 1959, petitioners also filed a notice of appeal stating therein that they were appealing to the Supreme Court. The lower court, however, denied said notice of appeal. It also denied the motion to set aside the judgment on the theory that since the order of August 22, 1958, confiscating the bonds has already become final and executory, the judgment on the bonds rendered on March 20, 1959 based on said order of confiscation must also be considered final and unappealable.

Upon petitioner's motion, however, praying that their appeal be allowed—which motion was not objected to by the provincial fiscal—the lower court reconsidered its previous order and finally gave due course to the appeal. That appeal is now docketed as G. R. No. L-15584 in this Court, where it is still pending.

In the meantime and despite the pendency of the appeal, Sotero Sabarre, one of the two respondent provincial sheriffs ex-officio, issued a "Notice of Public Auction Sale" of the properties given as bail by herein petitioners

pursuant to the writ of execution issued on March 31, 1959 by the lower court. It is to enjoin the respondents from further proceeding with the sale on execution of said properties that petitioners filed the present special civil action of prohibition, it being alleged that said respondents have acted in excess of their authority and jurisdiction.

Execution may issue in the discretion of the court before the expiration of the time to appeal upon good reasons to be stated in a special order. (Sec. 2, Rule 39.) After the appeal is perfected, or, after the record on appeal is approved, the trial court loses jurisdiction to issue execution. (*Vda. de Sy Quia vs. Concepcion and Palma*, 60 Phil., 186; *Uvero, et al. vs. Court of Appeals*, 95 Phil., 11.) In the instant case, it appears that the writ of execution was issued by the court below before the appeal was perfected, apparently because the judgment as stated therein "shall be immediately executed," and on the theory that the said judgment is final and unappealable. Considering that the lower court has reconsidered its stand and finally allowed petitioners' appeal which is now pending decision before this Court (G. R. No. L-15584), we think that—without need of passing now upon the validity of the writ of execution—the interest of justice would be better served if the sale on execution of petitioners' properties given as bail were simply to be held in abeyance until after the appeal filed by petitioners shall have been finally disposed of.

Wherefore, the petition for prohibition is granted, and the preliminary injunction heretofore issued made permanent subject to whatever may be the decision of this Court in G. R. No. L-15584. So ordered without costs.

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

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