

**COLLECTOR OF CUSTOMS FOR THE PORT OF MANILA,
COMMISSIONER OF CUSTOMS AND HON. SECRETARY OF FINANCE,
PETITIONERS, VS. COURT OF APPEALS, COURT OF FIRST INSTANCE
OF MANILA, BRANCH ...**

G.R. No. L-36527. February 29, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.

This is a Petition for certiorari under Rule 45 of the Rules of Court. It seeks a review of a Decision of a Special Division of the Court of Appeals in CA-G.R. No. 01347 promulgated on January 23, 1973.[1]

The record of the case discloses that private respondent Jesus G. De Jesus is a businessman engaged in the business of tobacco importation. Sometime in the late 1960s, he arranged for the importation of a sizeable amount of tobacco from Richmond, Virginia, U.S.A. When the tobacco arrived at the Port of Manila, some difficulties arose. The customs authorities refused to process the importation on the grounds that a law had been violated and that some other required documents were not presented by the private respondent.

The private respondent made several attempts to obtain the release of the tobacco to no avail. This prompted him to seek relief from the then Court of First Instance of Manila. He filed a Petition for injunction, prohibition and mandamus. The respondents named in the suit were the Collector of Customs for the Port of Manila, the Commissioner of Customs and the Secretary of Finance.[2] The case was docketed as Civil Case No. 83572 and assigned to Branch XIII thereof. The private respondent asked the trial court to order the release of the said importation.

On July 10, 1971, the private respondent submitted a Supplemental Petition. On July 29, 1971, the Office of the Solicitor General, representing the Collector of Customs, the Commissioner of Customs and the Secretary of Finance, submitted an Answer to both Petitions. The trial court conducted a hearing on the case.

On May 15, 1972, the trial court rendered a Decision in favor of the private respondent.[3] The Solicitor General alleges that it received a copy of the said Decision only on May 25, 1972.[4] On June 23, 1972, the Solicitor General filed a Notice of Appeal with the trial court. On June 26, 1972, the private respondent sought the issuance of a writ of execution pending appeal.

In its Order dated July 11, 1972, the trial court held that the Solicitor General was served a copy of the Decision dated May 15, 1972 on May 23, 1972 and not on May 25, 1972 as so alleged. The trial court concluded that the said Decision had already become final and executory when the Notice of Appeal was filed.[5] Thus, the Appeal was disallowed.

The Solicitor General sought a reconsideration of the said Decision. In its Order dated August 10, 1972, the trial court denied the Motion for Reconsideration. On August 19, 1972, the trial court issued a writ of mandamus ordering thereby the release of the imported tobacco to the custody of the private respondent. The trial court in

effect issued a writ of execution of its judgment.

On September 15, 1972, the Solicitor General elevated the case to the Court of Appeals on a Petition for certiorari, prohibition and mandamus with a prayer for the issuance of a writ of preliminary injunction.[6] The case was docketed as CA-G.R. No. 01347 and assigned to a Special Division of the appellate court composed of five members.

The thrust of the said Petition is that the Solicitor General received his copy of the Decision of the trial court on May 25, 1972 and as such, the Notice of Appeal filed with the trial court on June 23, 1972 was filed well within the 30-day reglementary period provided for under the then existing Rules. The Solicitor General maintained that an Appeal to the Court of Appeals had already been perfected and that, accordingly, the trial court had lost its jurisdiction over the case, i.e., it no longer has the requisite jurisdiction to issue the writ of mandamus ordering the release of the imported tobacco to the custody of the private respondent, a virtual writ of execution of the judgment of the trial court.

In sum, the Solicitor General asked the appellate court to allow the Appeal and to enjoin the trial court from enforcing the writ of mandamus it had issued earlier.

As prayed for, the appellate court issued a restraining order enjoining the trial court from enforcing the writ of mandamus.[7] Thereafter, the private respondent submitted his Answer to the said Petition.

In its Decision promulgated on January 23, 1973, the Court of Appeals ruled in favor of the private respondent.[8] After examining the record of the case, the appellate court held that the Solicitor General received his copy of the Decision of the trial court on May 23, 1972 and that, accordingly, the Notice on Appeal was filed beyond the reglementary period provided for under the Rules and that as such, the questioned Decision had already become final and executory. The Court of Appeals sustained the findings of the trial court, lifted the restraining order it had issued earlier, and dismissed the Petition for lack of merit.

The Solicitor General asked for a reconsideration of the Decision of the appellate court but it did not prosper. Hence, the case was brought to this Court by way of the instant Petition, with the Solicitor General representing the herein petitioners — the Collector of Customs, the Commissioner of Customs, and the Secretary of Finance.

The instant Petition is anchored on the argument that the Solicitor General received his copy of the Decision of the trial court on May 25, 1972 and not on May 23, 1972 as held by the Court of Appeals. For his part, the private respondent submitted a Brief through which he sought a denial of the instant Petition on the ground that the arguments raised by the herein petitioners are factual in character and thus beyond the scope of a Petition for certiorari under Rule 45.

The parties submitted their respective subsequent pleadings after which the case was deemed submitted for decision.

We have gone through the arguments of both parties and We are convinced that the instant Petition is devoid of merit.

This Court has ruled that only questions of law may be raised in a Petition for certiorari under Rule 45.[9] The Supreme Court does not re-examine the facts of the case in a Petition for certiorari under Rule 45, except for unusual reasons which would justify otherwise.[10]

The arguments raised by the Solicitor General in the instant Petition assail a finding of fact made by the Court of Appeals — that the Solicitor General received his copy of the Decision of the trial court on May 23, 1972. The Solicitor General impresses upon this Court that the true date is May 25, 1972 contrary to the finding of fact made

by the appellate court. Under these circumstances, the arguments in the instant Petition are unavailing inasmuch as this Court is bound by the findings of fact made by the Court of Appeals, absent any good reason to hold otherwise. Barring, therefore, a showing that the findings complained of are totally devoid of support in the record, or that they are so glaringly erroneous as to constitute a serious abuse of discretion, such findings must stand, for this Court is not expected or required to examine and contrast the oral and documentary evidence submitted by the parties.[11] The Solicitor General has not satisfactorily demonstrated the existence of any of these aforementioned grounds in order to warrant a review of the case.

The review sought by the petitioners is not even justified under any of the grounds provided in Section 4, Rule 45 which would allow such review, to wit —

"(a) When the Court of Appeals has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court;

"(b) When the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision."

On the basis of these observations, the inevitable conclusion is that the herein petitioners failed to perfect an Appeal of their case to the Court of Appeals. The perfection of an Appeal or the filing of a Petition for Review within the reglementary period fixed by the Rules is mandatory and jurisdictional and the failure to do so renders the questioned Decision final and executory and it becomes the ministerial duty of the court concerned to order execution of judgment.[12]

WHEREFORE, in view of the foregoing, the instant Petition is hereby DENIED for lack of merit. We make no pronouncement as to costs.

SO ORDERED.

Teehankee (C.J.), Narvasa, Cruz, and Griño-Aquino, JJ., concur.

[1] At the time of the promulgation of the said Decision, the Special Division of the Court of Appeals was composed of Justices Magno S. Gatmaitan, Edilberto Soriano, Cecilia Muñoz-Palma, Juan O. Reyes and Guillermo S. Santos, Justice Soriano wrote the Decision.

[2] Pages 75 to 86, Rollo.

[3] Pages 145 to 163, Rollo.

[4] Page 6, Petition; page 22, Rollo.

[5] In 1972, Section 3. Rule 41 of the Rules of Court provided for a 30-day period within which an Appeal may be taken to the Court of Appeals. Under Section 39 of Batas Pambansa Blg. 129, the reglementary period has been reduced to 15 days, except in habeas corpus cases, special proceedings and in all other cases where multiple appeals are allowed under the Rules of Court.

[6] Page 46 to 62, Rollo.

[7] Page 178, Rollo.

[8] Pages 179 to 196, Rollo. The vote of the court was 3 to 2, with Justices Muñoz-Palma and Reyes dissenting.

[9] *Hernandez v. Court of Appeals*, 149 SCRA 67 (1987).

[10] Teruñez v. Intermediate Appellate Court, 134 SCRA 414 (1985).

[11] Santa Ana, Jr. v. Hernandez, 18 SCRA 973, 978-979 (1966).

[12] Agricultural and Industrial Marketing, Inc. vs. Court of Appeals, 118 SCRA 49 (1982).

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