

MUSTANG LUMBER, INC., PETITIONER, VS. HON. COURT OF APPEALS, HON. FULGENCIO S. FACTORAN, JR., SECRETARY, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), AND ATTY. VINCEN...

G.R. No. 104988. June 18, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The first and third cases, G.R. No. 104988 and G.R. No. 123784, were originally assigned to the Second and Third Divisions of the Court, respectively. They were subsequently consolidated with the second, a case of the Court en banc.

Petitioner, a domestic corporation with principal office at Nos. 1350-1352 Juan Luna Street, Tondo, Manila, and with a lumberyard at Fortune Street, Fortune Village, Paseo de Blas, Valenzuela, Metro Manila, was duly registered as a lumber dealer with the Bureau of Forest Development (BFD) under Certificate of Registration No. NRD-4-092590-0469. Its permit as such was to expire on 25 September 1990.

Respondent Secretary Fulgencio S. Factoran, Jr., and respondent Atty. Vincent A. Robles were, during all the time material to these cases, the Secretary of the Department of Environment and Natural Resources (DENR) and the Chief of the Special Actions and Investigation Division (SAID) of the DENR, respectively.

The material operative facts are as follows:

On 1 April 1990, acting on an information that a huge stockpile of narra flitches, shorts, and slabs were seen inside the lumberyard of the petitioner in Valenzuela, Metro Manila, the SAID organized a team of foresters and policemen and sent it to conduct surveillance at the said lumberyard. In the course thereof, the team members saw coming out from the lumberyard the petitioner's truck, with Plate No. CCK-322, loaded with lauan and almaciga lumber of assorted sizes and dimensions. Since the driver could not produce the required invoices and transport documents, the team seized the truck together with its cargo and impounded them at the DENR compound at Visayas Avenue, Quezon City.[1] The team was not able to gain entry into the premises because of the refusal of the owner.[2]

On 3 April 1990, the team was able to secure a search warrant from Executive Judge Adriano R. Osorio of the Regional Trial Court (RTC) of Valenzuela, Metro Manila. By virtue thereof, the team seized on that date from the petitioners lumberyard four truckloads of narra shorts, trimmings, and slabs; a negligible number of narra lumber; and approximately 200,000 board feet of lumber and shorts of various species including almaciga and supa.[3]

On 4 April 1990, the team returned to the premises of the petitioner's lumberyard in Valenzuela and placed under administrative seizure the remaining stockpile of almaciga, supa, and lauan lumber with a total volume of 311,000 board feet because the petitioner failed to produce upon demand the corresponding certificate of lumber origin, auxiliary invoices, tally sheets, and delivery receipts from the source of the invoices covering the lumber to prove

the legitimacy of their source and origin.[4]

Parenthetically, it may be stated that under an administrative seizure the owner retains the physical possession of the seized articles. Only an inventory of the articles is taken and signed by the owner or his representative. The owner is prohibited from disposing them until further orders.[5]

On 10 April 1990, counsel for the petitioner sent a letter to Robles requesting an extension of fifteen days from 14 April 1990 to produce the required documents covering the seized articles because some of them, particularly the certificate of lumber origin, were allegedly in the Province of Quirino. Robles denied the motion on the ground that the documents being required from the petitioner must accompany the lumber or forest products placed under seizure.[6]

On 11 April 1990, Robles submitted his memorandum-report recommending to Secretary Factoran the following:

1. Suspension and subsequent cancellation of the lumber Dealer's Permit of Mustang Lumber, Inc. for operating an unregistered lumberyard and resaw mill and possession of Almaciga Lumber (a banned specie) without the required documents;
2. Confiscation of the lumber seized at the Mustang Lumberyard including the truck with Plate No. CCK-322 and the lumber loaded herein [sic] now at the DENR compound in the event its owner fails to submit documents showing legitimacy of the source of said lumber within ten days from date of seizure;
3. Filing of criminal charges against Mr. Ri Chuy Po, owner of Mustang Lumber Inc. and Mr. Ruiz, or if the circumstances warrant for illegal possession of narra and almaciga lumber and shorts if and when recommendation no. 2 pushes through;
4. Confiscation of Trucks with Plate No. CCS-639 and CDV-458 as well as the lumber loaded therein for transport lumber using "recycled" documents.[7]

On 23 April 1990, Secretary Factoran issued an order suspending immediately the petitioner's lumber-dealer's permit No. NRD-4-092590-0469 and directing the petitioner to explain in writing within fifteen days why its lumber-dealer's permit should not be cancelled.

On the same date, counsel for the petitioner sent another letter to Robles informing the latter that the petitioner had already secured the required documents and was ready to submit them. None, however, was submitted.[8]

On 3 May 1990, Secretary Factoran issued another order wherein, after reciting the events which took place on 1 April and 3 April 1990, he ordered "CONFISCATED in favor of the government to be disposed of in accordance with law" the approximately 311,000 board feet of lauan, supa, and almaciga lumber, shorts, and sticks found inside the petitioner's lumberyard.[9]

On 11 July 1990, the petitioner filed with the RTC of Manila a petition for certiorari and prohibition with a prayer for a restraining order or preliminary injunction against Secretary Fulgencio S. Factoran, Jr., and Atty. Vincent A. Robles. The case (hereinafter, the FIRST CIVIL CASE) was docketed as Civil Case No. 90-53648 and assigned to Branch 35 of the said court. The petitioner questioned therein (a) the seizure on 1 April 1990, without any search and seizure order issued by a judge, of its truck with Plate No. CCK-322 and its cargo of assorted lumber consisting of apitong, tanguile, and lauan of different sizes and dimensions with a total value of P38,000.00; and (b) the orders of Secretary Factoran of 23 April 1990 for lack of prior notice and hearing and of 3 May 1990 for violation of Section 2, Article III of the Constitution.

On 17 September 1990, in response to reports that violations of P.D. No. 705 (The Revised Forestry Code of the Philippines), as amended, were committed and acting upon instruction of Robles and under Special Order No.

897, series of 1990, a team of DENR agents went to the business premises of the petitioner located at No. 1352 Juan Luna Street, Tondo, Manila. The team caught the petitioner operating as a lumber dealer although its lumber-dealer's permit had already been suspended on 23 April 1990. Since the gate of the petitioner's lumberyard was open, the team went inside and saw an owner-type jeep with a trailer loaded with lumber. Upon investigation, the team was informed that the lumber loaded on the trailer was to be delivered to the petitioner's customer. It also came upon the sales invoice covering the transaction. The members of the team then introduced themselves to the caretaker, one Ms. Chua, who turned out to be the wife of the petitioner's president and general manager, Mr. Ri Chuy Po, who was then out of town. The team's photographer was able to take photographs of the stockpiles of lumber including newly cut ones, fresh dust around sawing or cutting machineries and equipment, and the transport vehicles loaded with lumber. The team thereupon effected a constructive seizure of approximately 20,000 board feet of lauan lumber in assorted sizes stockpiled in the premises by issuing a receipt therefor.[10]

As a consequence of this 17 September 1990 incident, the petitioner filed with the RTC of Manila a petition for certiorari and prohibition. The case (hereinafter, the SECOND CIVIL CASE) was docketed as Civil Case No. 90-54610 and assigned to Branch 24 of the said court.

In the meantime, Robles filed with the Department of Justice (DOJ) a complaint against the petitioner's president and general manager, Ri Chuy Po, for violation of Section 68 of P.D. No. 705, as amended by E.O. No. 277. After appropriate preliminary investigation, the investigating prosecutor, Claro Arellano, handed down a resolution[11] whose dispositive portion reads:

WHEREFORE, premises considered, it is hereby recommended that an information be filed against respondent Ri Chuy Po for illegal possession of approximately 200,000 bd. ft. of lumber consisting of almaciga and supa and for illegal shipment of almaciga and lauan in violation of Sec. 68 of PD 705 as amended by E.O. 277, series of 1987.

It is further recommended that the 30,000 bd. ft. of narra shorts, trimmings and slabs covered by legal documents be released to the rightful owner, Malupa.[12]

This resolution was approved by Undersecretary of Justice Silvestre H. Bello, III, who served as Chairman of the Task Force on Illegal Logging.[13]

On the basis of that resolution, an information was filed on 5 June 1991 by the DOJ with Branch 172 of the RTC of Valenzuela, charging Ri Chuy Po with the violation of Section 68 of P.D. No. 705, as amended, which was docketed as Criminal Case No. 324-V-91 (hereinafter, the CRIMINAL CASE). The accusatory portion of the information reads as follows:

That on or about the 3rd day of April 1990, or prior to or subsequent thereto, within the premises and vicinity of Mustang Lumber, Inc. in Fortune Village, Valenzuela, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, feloniously and unlawfully, have in his possession truckloads of almaciga and lauan and approximately 200,000 bd. ft. of lumber and shorts of various species including almaciga and supa, without the legal documents as required under existing forest laws and regulations.[14]

On 7 June 1991, Branch 35 of the RTC of Manila rendered its decision[15] in the FIRST CIVIL CASE, the dispositive portion of which reads:

WHEREFORE, judgment in this case is rendered as follows:

1. The Order of Respondent Secretary of the DENR, the Honorable Fulgencio S. Factoran, Jr., dated 3 May 1990 ordering the confiscation in favor of the Government the approximately 311,000 board feet of lauan, supa, and almaciga lumber, shorts and sticks, found inside and seized from the lumberyard of the petitioner at

Fortune Drive, Fortune Village, Paseo de Blas, Valenzuela, Metro Manila, on April 4, 1990 (Exhibit 10), is hereby set aside and vacated, and instead the respondents are required to report and bring to the Hon. Adriano Osorio, Executive Judge, Regional Trial Court, NCJR, Valenzuela, Metro Manila, the said 311,000 board feet of Lauan, supa and almaciga Lumber, shorts and sticks, to be dealt with as directed by law;

2. The respondents are required to initiate and prosecute the appropriate action before the proper court regarding the lauan and almaciga lumber of assorted sizes and dimensions loaded in petitioner's truck bearing Plate No. CCK-322 which were seized on April 1, 1990;

3. The Writ of Preliminary Injunction issued by the Court on August 2, 1990 shall be rendered *functus officio* upon compliance by the respondents with paragraphs 1 and 2 of this judgment;

4. Action on the prayer of the petitioner that the lauan, supa and almaciga lumber, shorts and sticks mentioned above in paragraphs 1 and 2 of this judgment be returned to said petitioner, is withheld in this case until after the proper court has taken cognizance and determined how those lumber, shorts and sticks should be disposed of; and

5. The petitioner is ordered to pay the costs.

SO ORDERED.

In resolving the said case, the trial court held that the warrantless search and seizure on 1 April 1990 of the petitioner's truck, which was moving out from the petitioner's lumberyard in Valenzuela, Metro Manila, loaded with large volumes of lumber without covering document showing the legitimacy of its source or origin did not offend the constitutional mandate that search and seizure must be supported by a valid warrant. The situation fell under one of the settled and accepted exceptions where warrantless search and seizure is justified, viz., a search of a moving vehicle.[16] As to the seizure of a large volume of almaciga, supa, and lauan lumber and shorts effected on 4 April 1990, the trial court ruled that the said seizure was a continuation of that made the previous day and was still pursuant to or by virtue of the search warrant issued by Executive Judge Osorio whose validity the petitioner did not even question.[17] And, although the search warrant did not specifically mention almaciga, supa, and lauan lumber and shorts, their seizure was valid because it is settled that the executing officer is not required to ignore contrabands observed during the conduct of the search.[18]

The trial court, however, set aside Secretary Factoran's order of 3 May 1990 ordering the confiscation of the seized articles in favor of the Government for the reason that since the articles were seized pursuant to the search warrant issued by Executive Judge Osorio they should have been returned to him in compliance with the directive in the warrant.

As to the propriety of the 23 April 1990 order of Secretary Factoran, the trial court ruled that the same had been rendered moot and academic by the expiration of the petitioner's lumber-dealer's permit on 25 September 1990, a fact the petitioner admitted in its memorandum.

The petitioner forthwith appealed from the decision in the FIRST CIVIL CASE to the Court of Appeals, which docketed the appeal as CA-G.R. SP No. 25510.

On 7 July 1991, accused Ri Chuy Po filed in the CRIMINAL CASE a Motion to Quash and/or to Suspend Proceedings based on the following grounds: (a) the information does not charge an offense, for possession of lumber, as opposed to timber, is not penalized in Section 68 of P.D. No. 705, as amended, and even granting *arguendo* that lumber falls within the purview of the said section, the same may not be used in evidence against him for they were taken by virtue of an illegal seizure; and (b) Civil Case No. 90-53648 of Branch 35 of the RTC of Manila, the FIRST CIVIL CASE, then pending before the Court of Appeals, which involves the legality of the

seizure, raises a prejudicial question.[19]

The prosecution opposed the motion alleging that lumber is included in Section 68 of P.D. No. 705, as amended, and possession thereof without the required legal documents is penalized therein. It referred to Section 3.2 of DENR Administrative Order No. 19, series of 1989, for the definitions of timber and lumber, and then argued that exclusion of lumber from Section 68 would defeat the very purpose of the law, i.e., to minimize, if not halt, illegal logging that has resulted in the rapid denudation of our forest resources.[20]

In her order of 16 August 1991 in the CRIMINAL CASE,[21] respondent Judge Teresita Dizon-Capulong granted the motion to quash and dismissed the case on the ground that "possession of lumber without the legal documents required by forest laws and regulations is not a crime." [22]

Its motion for reconsideration having been denied in the order of 18 October 1991,[23] the People filed a petition for certiorari with this Court in G.R. No. 106424, wherein it contends that the respondent Judge acted with grave abuse of discretion in granting the motion to quash and in dismissing the case.

On 29 November 1991, the Court of Appeals rendered a decision[24] in CA-G.R. SP No. 25510 dismissing for lack of merit the petitioner's appeal from the decision in the FIRST CIVIL CASE and affirming the trial court's rulings on the issues raised. As to the claim that the truck was not carrying contraband articles since there is no law punishing the possession of lumber, and that lumber is not timber whose possession without the required legal documents is unlawful under P.D. No. 705, as amended, the Court of Appeals held:

This undue emphasis on lumber or the commercial nature of the forest product involved has always been foisted by those who claim to be engaged in the legitimate business of lumber dealership. But what is important to consider is that when appellant was required to present the valid documents showing its acquisition and lawful possession of the lumber in question, it failed to present any despite the period of extension granted to it.[25]

The petitioner's motion to reconsider the said decision was denied by the Court of Appeals in its resolution of 3 March 1992.[26] Hence, the petitioner came to this Court by way of a petition for review on certiorari in G.R. No. 104988, which was filed on 2 May 1992.[27]

On 24 September 1992, Branch 24 of the RTC of Manila handed down a decision in the SECOND CIVIL CASE dismissing the petition for certiorari and prohibition because (a) the petitioner did not exhaust administrative remedies; (b) when the seizure was made on 17 September 1990 the petitioner could not lawfully sell lumber, as its license was still under suspension; (c) the seizure was valid under Section 68-A of P.D. No. 705, as amended; and (d) the seizure was justified as a warrantless search and seizure under Section 80 of P.D. No. 705, as amended.

The petitioner appealed from the decision to the Court of Appeals, which docketed the appeal as CA-G.R. SP No. 33778.

In its decision[28] of 31 July 1995, the Court of Appeals dismissed the petitioner's appeal in CA-G.R. SP No. 33778 for lack of merit and sustained the grounds relied upon by the trial court in dismissing the SECOND CIVIL CASE. Relying on the definition of "lumber" by Webster, viz., "timber or logs, especially after being prepared for the market," and by the Random House Dictionary of the English Language, viz., "wood, esp. when suitable or adapted for various building purposes," the respondent Court held that since wood is included in the definition of forest product in Section 3(q) of P.D. No. 705, as amended, lumber is necessarily included in Section 68 under the term forest product.

The Court of Appeals further emphasized that a forest officer or employee can seize the forest product involved in

a violation of Section 68 of P.D. No. 705 pursuant to Section 80 thereof, as amended by P.D. No. 1775, which provides in part as follows:

SEC. 80. Arrest, Institution of Criminal Actions.--A forest officer or employee of the Bureau or any personnel of the Philippine Constabulary/Integrated National Police shall arrest even without warrant any person who has committed or is committing in his presence any of the offenses defined in this chapter. He shall also seize and confiscate, in favor of the Government, the tools and equipment used in committing the offense, or the forest products cut, gathered or taken by the offender in the process of committing the offense.

Among the offenses punished in the chapter referred to in said Section 80 are the cutting, gathering, collection, or removal of timber or other forest products or possession of timber or other forest products without the required legal documents.

Its motion to reconsider the decision having been denied by the Court of Appeals in the resolution of 6 February 1996, the petitioner filed with this Court on 27 February 1996 a petition for review on certiorari in G.R. No. 123784.

We shall now resolve these three cases starting with G.R. 106424 with which the other two were consolidated.

G.R. No. 106424

The petitioner had moved to quash the information in Criminal Case No. 324-V-91 on the ground that it does not charge an offense. Respondent Judge Dizon-Capulong granted the motion reasoning that the subject matter of the information in the CRIMINAL CASE is LUMBER, which is neither "timber" nor "other forest product" under Section 68 of P.D. No. 705, as amended, and hence, possession thereof without the required legal documents is not prohibited and penalized under the said section.

Under paragraph (a), Section 3, Rule 117 of the Rules of Court, an information may be quashed on the ground that the facts alleged therein do not constitute an offense. It has been said that "the test for the correctness of this ground is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, constitute the elements of the offense,[29] and matters aliunde will not be considered." Anent the sufficiency of the information, Section 6, Rule 110 of the Rules of Court requires, inter alia, that the information state the acts or omissions complained of as constituting the offense.

Respondent Ri Chuy Po is charged with the violation of Section 68 of P.D. No. 705, as amended by E.O. No. 277, which provides:

SEC. 68. Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License.-- Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

Punished then in this section are (1) the cutting, gathering, collection, or removal of timber or other forest products from the places therein mentioned without any authority; and (b) possession of timber or other forest

products without the legal documents as required under existing forest laws and regulations.

Indeed, the word lumber does not appear in Section 68. But conceding ex gratia that this omission amounts to an exclusion of lumber from the section's coverage, do the facts averred in the information in the CRIMINAL CASE validly charge a violation of the said section?

A cursory reading of the information readily leads us to an infallible conclusion that lumber is not solely its subject matter. It is evident therefrom that what are alleged to be in the possession of the private respondent, without the required legal documents, are truckloads of

- (1) almaciga and lauan; and
- (2) approximately 200,000 bd. ft. of lumber and shorts of various species including almaciga and supa.

The "almaciga and lauan" specifically mentioned in no. (1) are not described as lumber." They cannot refer to the "lumber" in no. (2) because they are separated by the words "approximately 200,000 bd. ft." with the conjunction "and," and not with the preposition "of." They must then be raw forest products or, more specifically, timbers under Section 3(q) of P.D. No. 705, as amended, which reads:

SEC. 3. Definitions.--

xxx xxx xxx

(q) Forest product means timber, pulpwood, firewood, bark, tree top, resin, gum, wood, oil, honey, beeswax, nipa, rattan, or other forest growth such as grass, shrub, and flowering plant, the associated water, fish, game, scenic, historical, recreational and geological resources in forest lands.

It follows then that lumber is only one of the items covered by the information. The public and the private respondents obviously miscomprehended the averments in the information. Accordingly, even if lumber is not included in Section 68, the other items therein as noted above fall within the ambit of the said section, and as to them, the information validly charges an offense.

Our respected brother, Mr. Justice Jose C. Vitug, suggests in his dissenting opinion that this Court go beyond the four corners of the information for enlightenment as to whether the information exclusively refers to lumber. With the aid of the pleadings and the annexes thereto, he arrives at the conclusion that "only lumber has been envisioned in the indictment."

The majority is unable to subscribe to his view. First, his proposition violates the rule that only the facts alleged in the information vis-a-vis the law violated must be considered in determining whether an information charges an offense.

Second, the pleadings and annexes he resorted to are insufficient to justify his conclusion. On the contrary, the Joint Affidavit of Melencio Jalova, Jr., and Araman Belleng, which is one of the annexes he referred to,[30] cannot lead one to infer that what the team seized was all lumber. Paragraph 8 thereof expressly states:

8. That when inside the compound, the team found approximately four (4) truckloads of narra shorts, trimmings and slabs and a negligible amount of narra lumber, and approximately 200,000 bd. ft. of lumber and shorts of various species including almaciga and supa which are classified as prohibited wood species. (Italics supplied)

In the same vein, the dispositive portion of the resolution[31] of the investigating prosecutor, which served as the basis for the filing of the information, does not limit itself to lumber; thus:

WHEREFORE, premises considered, it is hereby recommended that an information be filed against respondent

Ri Chuy Po for illegal possession of 200,000 bd. ft. of lumber consisting of almaciga and supa and for illegal shipment of almaciga and lauan in violation of Sec. 63 of PD 705 as amended by E.O. 277, series of 1987. (Italics supplied)

The foregoing disquisitions should not, in any manner, be construed as an affirmation of the respondent Judge's conclusion that lumber is excluded from the coverage of Section 68 of P.D. No. 705, as amended, and thus possession thereof without the required legal documents is not a crime. On the contrary, this Court rules that such possession is penalized in the said section because lumber is included in the term timber.

The Revised Forestry Code contains no definition of either timber or lumber. While the former is included in forest products as defined in paragraph (q) of Section 3, the latter is found in paragraph (aa) of the same section in the definition of "Processing plant;" which reads:

(aa) Processing plant is any mechanical set-up, machine or combination of machine used for the processing of logs and other forest raw materials into lumber, veneer, plywood, wallboard, block-board, paper board, pulp, paper or other finished wood products.

This simply means that lumber is a processed log or processed forest raw material. Clearly, the Code uses the term lumber in its ordinary or common usage. In the 1993 copyright edition of Webster's Third New International Dictionary, lumber is defined, inter alia, as "timber or logs after being prepared for the market." [32] Simply put, lumber is a processed log or timber.

It is settled that in the absence of legislative intent to the contrary, words and phrases used in a statute should be given their plain, ordinary, and common usage meaning. [33] And insofar as possession of timber without the required legal documents is concerned, Section 68 of P.D. No. 705, as amended, makes no distinction between raw or processed timber. Neither should we. *Ubi lex non distanguit nec nos distinguere debemus*.

Indisputably, respondent Judge Teresita Dizon-Capulong of Branch 172 of the RTC of Valenzuela, Metro Manila, committed grave abuse of discretion in granting the motion to quash the information in the CRIMINAL CASE and in dismissing the said case.

G.R. No. 104988

We find this petition to be without merit. The petitioner has miserably failed to show that the Court of Appeals committed any reversible error in its assailed decision of 29 November 1991.

It was duly established that on 1 April 1990, the petitioner's truck with Plate No. CCK-322 was coming out from the petitioner's lumberyard loaded with lauan and almaciga lumber of different sizes and dimensions which were not accompanied with the required invoices and transport documents. The seizure of such truck and its cargo was a valid exercise of the power vested upon a forest officer or employee by Section 80 of P.D. No. 705, as amended by P.D. No. 1775. Then, too, as correctly held by the trial court and the Court of Appeals in the FIRST CIVIL CASE, the search was conducted on a moving vehicle. Such a search could be lawfully conducted without a search warrant.

Search of a moving vehicle is one of the five doctrinally accepted exceptions to the constitutional mandate [34] that no search or seizure shall be made except by virtue of a warrant issued by a judge after personally determining the existence of probable cause. The other exceptions are (1) search as an incident to a lawful arrest, (2) seizure of evidence in plain view, (3) customs searches, and (4) consented warrantless search. [35]

We also affirm the rulings of both the trial court and the Court of Appeals that the search on 4 April 1990 was a continuation of the search on 3 April 1990 done under and by virtue of the search warrant issued on 3 April 1990

by Executive Judge Osorio. Under Section 9, Rule 126 of the Rules of Court, a search warrant has a lifetime of ten days. Hence, it could be served at any time within the said period, and if its object or purpose cannot be accomplished in one day, the same may be continued the following day or days until completed. Thus, when the search under a warrant on one day was interrupted, it may be continued under the same warrant the following day, provided it is still within the ten-day period.[36]

As to the final plea of the petitioner that the search was illegal because possession of lumber without the required legal documents is not illegal under Section 68 of P.D. No. 705, as amended, since lumber is neither specified therein nor included in the term forest product, the same hardly merits further discussion in view of our ruling in G.R. No. 106424.

G.R. No. 123784

The allegations and arguments set forth in the petition in this case palpably fail to show prima facie that a reversible error has been committed by the Court of Appeals in its challenged decision of 31 July 1995 and resolution of 6 February 1996 in CA-G.R. SP No. 33778. We must, forthwith, deny it for utter want of merit. There is no need to require the respondents to comment on the petition.

The Court of Appeals correctly dismissed the petitioner's appeal from the judgment of the trial court in the SECOND CIVIL CASE. The petitioner never disputed the fact that its lumber-dealer's license or permit had been suspended by Secretary Factoran on 23 April 1990. The suspension was never lifted, and since the license had only a lifetime of up to 25 September 1990, the petitioner has absolutely no right to possess, sell, or otherwise dispose of lumber. Accordingly, Secretary Factoran or his authorized representative had the authority to seize the lumber pursuant to Section 68-A of P.D. No. 705, as amended, which provides as follows:

Section 68-A. Administrative Authority of the Department Head or his Duly Authorized Representative to Order Confiscation.--In all cases of violations of this Code or other forest laws, rules and regulations, the Department Head or his duly authorized representative may order the confiscation of any forest products illegally cut, gathered, removed, or possessed or abandoned. . . .

The petitioner's insistence that possession or sale of lumber is not penalized must also fail in view of our disquisition and ruling on the same issue in G.R. No. 106424. Besides, the issue is totally irrelevant in the SECOND CIVIL CASE which involves administrative seizure as a consequence of the violation of the suspension of the petitioner's license as lumber dealer.

All told then, G.R. No. 104988 and G.R. No. 123784 are nothing more than rituals to cover up blatant violations of the Revised Forestry Code of the Philippines (P.D. No. 705), as amended. They are presumably trifling attempts to block the serious efforts of the DENR to enforce the decree, efforts which deserve the commendation of the public in light of the urgent need to take firm and decisive action against despoilers of our forests whose continuous destruction only ensures to the generations to come, if not the present, an inheritance of parched earth incapable of sustaining life. The Government must not tire in its vigilance to protect the environment by prosecuting without fear or favor any person who dares to violate our laws for the utilization and protection of our forests.

WHEREFORE, judgment is hereby rendered

1. (a) GRANTING the petition in G.R. No. 106424; (b) SETTING ASIDE and ANNULING, for having been rendered with grave abuse of discretion, the challenged orders of 16 August 1991 and 18 October 1991 of respondent Judge Teresita Dizon-Capulong, Branch 172, Regional Trial Court of Valenzuela, Metro Manila, in Criminal Case No. 324-V-91, entitled "People of the Philippines vs. Ri Chuy Po"; (c) REINSTATING the

information in the said criminal case; and (d) DIRECTING the respondent Judge on her successor to hear and decide the case with purposeful dispatch; and

2. DENYING the petitions in G.R. No. 104988 and in G. R. No. 123784 for utter failure of the petitioner to show that the respondent Court of Appeals committed any reversible error in the challenged decisions of 29 November 1991 in CA-G.R. SP No. 25510 in the FIRST CIVIL CASE and of 31 July 1995 in CA-G.R. SP No. 33778 in the SECOND CIVIL CASE.

Costs against the petitioner in each of these three cases.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

[1] Rollo, G.R. No. 10493, 37-38.

[2] Id., 40.

[3] Rollo, G.R. No. 106424, 6.

[4] Id., G.R. No. 104988, 38.

[5] Id.

[6] Id., 39.

[7] Rollo, G.R. No. 104988, 39.

[8] Id., 40.

[9] Rollo, G.R. 104988, 40-41.

[10] Rollo, G.R. No. 123784, 26-27.

[11] Id., G.R. No. 106424, 50-55 (Annex "I" of Petition).

[12] Rollo, G.R. No. 106424, 54.

[13] Id., 14.

[14] Id., 32.

[15] Id., G.R. No. 104988, 62. Per Judge Ramon P. Makasiar.

[16] Citing *People vs. Lo Ho Wing*, 193 SCRA 122 [1991].

[17] Citing *Johnson vs. state*, 146 Miss. 593.

[18] Citing VARON, *Searches, Seizures and Immunities*, vol. I, 2nd ed., 563-565, 568-570, which gave the example that a search warrant authorizing the search for and seizure of a gun includes the seizure of live shells found within the premises to be searched although not specifically mentioned in the warrant; in other words, a departure from the command of the search warrant describing what property may be seized thereunder is justified where there is a direct relation of the additional articles seized to the primary purpose of the search.

[19] Rollo, G.R. No. 106424, 33-35.

[20] *Id.*, 35.

[21] Rollo, G.R. No. 106424, 32-39 (annex "A" of Petition).

[22] *Id.*, 39.

[23] *Id.*, 40 (Annex "B" of Petition).

[24] *Id.*, G.R. No. 104988, 36. Per Chua, S., J., with Kapunan, S., and Victor L., JJ., concurring.

[25] *Id.*, 43.25

[26] Rollo, G.R. No. 104988, 45.

[27] *Id.*, 10.

[28] *Id.*, G.R. No. 123784, 26. Per Carpio-Morales, C., J., with Garcia C., and Callejo, R., JJ., concurring.

[29] FLORENZ D. REGALADO, *Remedial Law Compendium*, vol. 2, Seventh Revised ed. [1995], 392, citing *People vs. Supnad*, 7 SCRA 603 [1963]. See also VICENTE J. FRANCISCO, *The Revised Rules of Court (Criminal Procedure)*, 2nd, ed. [1969] 579; MANUEL V. MORAN, *Comments of the Rules of Court*, vol. 4. [1980], 222.

[30] Rollo, G.R. No. 106424, 41-42 (Annex "C" of Petition).

[31] *Id.*, 50-55 (Annex "I" of Petition).

[32] Page 1345.

[33] RUBEN E. AGPALO, *Statutory Construction*, Second ed. [1990], 131.

[34] Section 2, Article III of the Constitution, which reads:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses, he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[35] *People vs. Fernandez*, 239 SCRA 174 [1994]. In this book on Remedial Law, vol. 4 (Criminal Procedure), 1992 ed., 669, retired Justice Oscar M. Herrera of the Court of Appeals mentions a sixth exception, viz., search based on probable cause under extraordinary circumstances, citing *People vs. Posadas*, 188 SCRA 288 [1990]; *Valmonte vs. De Villa*, 178 SCRA 211 [1989]; *People vs. Maspil*, 188 SCRA 751 [1990]; *People vs. Sucro*, 195 SCRA 388 [1991]; *People vs. Malmstedt*, 198 SCRA 401 [1991].

[36] FLORENZ D. REGALADO, *Remedial Law Compendium*, vol. 2, Seventh Revised Ed. [1995], 526, citing *Uy Kheytyin vs. Villareal* 42 Phil. 886 [1920].

DISSENTING OPINION

VITUG, J.:

The prosecution seeks, in its petition for review on certiorari in G.R. No. 106424, the annulment of the 16th August 1991 Order of respondent Judge granting the motion of private respondent Ri Chuy Po to quash the information that has charged him with the Violation of Section 68 of Presidential Decree ("PD") No. 705

(otherwise known as the Forestry Reform Code, as amended by Executive Order ["EO"] No. 277[1]) and the 18th October 1991 Order denying petitioner's motion for reconsideration.

The information of 04 June 1991, containing the alleged inculpatory facts against private respondent, reads:

"The undersigned State Prosecutor hereby accuses RI CHUY PO of the crime of violation of Section 68, Presidential Decree No. 705, as amended by Executive Order No. 277, Series of 1987, committed as follows:

"That on or about the 3rd day of April 1990, or prior to or subsequent thereto, within the premises and vicinity of Mustang Lumber, Inc. in Fortune Drive, Fortune Village, Valenzuela, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, feloniously and unlawfully, have in his possession truckloads of almaciga and lauan and approximately 200,000 bd. ft. of lumber and shorts of various species including almaciga and supa, without the legal documents as required under existing forest laws and regulations.

""CONTRARY TO LAW.""[2]

Private respondent, on 10 July 1991, moved for the quashal of the information on the ground that the facts comprising the charge did not amount to a criminal offense, or in the alternative, to suspend the proceedings on the ground of a prejudicial question, private respondent having formally challenged the legality of the seizure of the lumber in question in a civil case before the Regional Trial Court ("RTC") of Manila, Branch 35, and now pending with the Court of Appeals.

On 16 August 1991, the trial court promulgated its now questioned order granting the motion of private respondent to quash the information. It ruled that, unlike the possession of "timber or other forest products" (without supporting legal documents), the mere possession of "lumber" had not itself been declared a criminal offense under Section 68 of PD 705. Petitioner moved for a reconsideration insisting that lumber should be held to come within the purview of "timber" defined by Section 2.26 (b) of DENR Administrative Order No. 50, Series of 1986. The motion for reconsideration was denied; hence, the petition for review on certiorari filed by the prosecution before this Court.

Private respondent maintains (1) that PD 705 distinguishes "timber" and "other forest products," on the one hand, from "lumber" and "other finished wood products," on the other, and that the possession of lumber of any specie, size or dimension, whether it be lauan, tanguile, apitong, almaciga, supa, or narra, is not under that law declared a criminal offense; (2) that DENR Administrative Order No. 74, Series of 1987, totally bans the cutting, handling and disposition of almaciga trees but that possession of almaciga lumber is not considered illegal; (3) that while under DENR Administrative Order No. 78, Series of 1987, the cutting or gathering of narra and other premium hardwood species (supa included) is prohibited, it does not, however, make possession of premium hardwood lumber (narra and supa included) punishable by mere inference; and (4) that Bureau of Forest Development Circular No. 10, Series of 1983, clarified by DENR Memorandum No. 12, Series of 1988, requires a certificate of lumber origin ("CLO") only on lumber shipped outside the province, city or the greater Manila area to another province or city or, in lieu of a CLO, an invoice to accompany a lumber shipment from legitimate sources if the origin and destination points are both within the greater Manila area or within the same province or city, and not, like in the instant case, where the lumber is not removed from the lumber yard.

Petitioner counters (1) that the almaciga, supa and lauan lumber products found in the compound of Mustang Lumber, Inc., are included in Section 68, PD 705, as amended by EO No. 277, the possession of which without requisite legal documents is penalized under Section 3.2 of DENR Administrative Order No. 19, Series of 1989, dated 17 March 1989, that defines "lumber" to be a-

"x x x solid wood not further manufactured other than sawing, resawing, kiln-drying and passing lengthwise

through a standard planing machine, including boules or unedged lumber";

and "timber," under Section 1.11 of DENR Administrative Order No. 80, Series of 1987, dated 28 December 1987, to be-

"x x x any piece of wood having an average diameter of at least 15 centimeters and at 1.5 meters long, except all mangrove species which in all cases, shall be considered as timber regardless of size";

which may either be-

a) Squared timber (or) timber squared with an ax or other similar mechanical hard tools in the forest and which from the size of the piece and the character of the wood is obviously unfit for use in that form (Sec. 1.10 DENR Administrative Order No. 80, Series of 1987, dated December 28, 1987); or

b) Manufactured timber (or) timber other than round and squared timber shall include logs longitudinally sawn into pieces, even if only to facilitate transporting or hauling, as well as all sawn products, all timber hewn or otherwise worked to approximate its finished form, such as house posts, ship keels, mine props, ties, trolley poles, bancas, troughs, bowls, cart wheels, table tops and other similar articles (Sec. 2.26, DENR Administrative Order No. 50, Series of 1986, dated November 11, 1986).

(2) that to exclude "lumber" under Section 68 of PD 705 would be to defeat the purpose of the law, i.e., to stop or minimize illegal logging that has resulted in the rapid denudation of forest resources; (3) that the claim of private respondent that a CLO is required only upon the transportation or shipment of lumber, and not when lumber is merely stored in a compound, contravenes the provisions of Section 68 of PD 705; (4) that the failure to show any CLO or other legal document required by administrative issuances raises the presumption that the lumber has been shipped or received from illegal sources; and, (5) that the decision of the RTC in Civil Case No. 90-53648 sustaining the legality of the seizure has rendered moot any possible prejudicial issue to the instant case.

The real and kernel issue then brought up by the parties in G.R. No. 106424, as well as in the two consolidated cases (G.R. No. 104988 and G.R. No. 123784), is whether or not the term "timber or other forest products" the possession of which without the required legal documents would be a criminal offense under Section 68 of PD 705 also covers "lumber."

Prefatorily, I might point out that the information, charging private respondent with the possession without required legal documents of "x x x truckloads of almaciga and lauan and approximately 200,000 bd. ft. of lumber and shorts of various species including almaciga and supa, x x x" has failed to specify whether the "almaciga" and "lauan" there mentioned refer to "timber" or "lumber" or both. A perusal of the pleadings and annexes before the Court, however, would indicate that only lumber has been envisioned in the indictment. For instance-

(a) The pertinent portions of the joint affidavit of Melencio Jalova, Jr., and Araman Belleng,[3] subscribed and sworn to before State Prosecutor Claro Arellano, upon which basis the latter recommended the filing of the information, read, as follows:

"That during the weekend, (April 1 and 2, 1990) the security detail from our agency continued to monitor the activities inside the compound and in fact apprehended and later on brought to the DENR compound a six-wheeler truck loaded with almaciga and lauan lumber after the truck driver failed to produce any documents covering the shipment;

"xxx xxx xxx.

"That we are executing this affidavit in order to lodge a criminal complaint against Mr. Ri Chuy Po, owner of Mustang Lumber for violation of Section 68, P.D. 705, as amended by Executive Order 277, having in its possession prohibited wood products and wood products without the required documents." [4] (Italics supplied)

(b) The resolution, dated 14 May 1991, issued by Investigating Prosecutor Arellano, approved by Undersecretary of Justice Silvestre Bello III, confirmed that-

"x x x. On April 1 and 2 1990, the security detail continued to monitor the activities inside the compound and in fact apprehended a six-wheeler truck coming from the compound of Mustang loaded with almaciga and lauan lumber without the necessary legal documents covering the shipment." [5]

(c) The 23rd April 1990 Order of then DENR Secretary Fulgencio Factoran, suspending the Certificate of Registration No. NRD-4-092590-0469 of Mustang Lumber, Inc., was issued because of, among other things, the latter's possession of almaciga lumber without the required documents. [6]

(d) The subsequent 03rd May 1990 Order, likewise issued by Secretary Factoran, authorized the confiscation of approximately 311,000 board feet of lauan, supa and almaciga lumber, shorts and sticks of various sizes and dimensions owned by Mustang Lumber, Inc. [7]

(e) The complaint filed on 27 July 1990 by Vincent A. Robles, Chief, PIC/SAID, DENR, before the Department of Justice, Manila, against private respondent was for possession of lauan and almaciga lumber without required legal documents, [8] in violation of P.D. 705, as amended by EO 277.

(f) The prosecution, in its opposition to private respondent's motion to quash, sought to argue that the possession of "almaciga supa and lauan lumber found in the compound of Mustang Lumber, Inc.," [9] was covered by the penal provisions of P.D. 705, as amended, pursuant to Section 32 of DENR Administrative Order No. 19, Series of 1989.

Indeed, the instant petition itself questions the quashal order of the court a quo solely on the thesis that "lumber" should be held to be among the items that are banned under Section 68 of PD 705.

While generally factual matters outside of the information should not weigh in resolving a motion to quash following the standing rule that the allegations of the information must alone be considered and should not be challenged, there should, however, be no serious objections to taking into account additional and clarificatory facts which, although not made out in the information, are admitted, conceded, or not denied by the parties. As early as the case of *People vs. Navarro*, [10] reiterated in *People vs. Dela Rosa*, [11] the Court has had occasion to explain-

"x x x It would seem to be pure technicality to hold that in the consideration of the motion the parties and the judge were precluded from considering facts which the fiscal admitted to be true, simply because they were not described in the complaint. Of course, it may be added that upon similar motions the court and the fiscal are not required to go beyond the averments of the information, nor is the latter to be inveigled into a premature and risky revelation of his evidence. But we see no reason to prohibit the fiscal from making, in all candor, admissions of undeniable facts, because the principle can never be sufficiently reiterated that such official's role is to see that justice is done: not that all accused are convicted, but that the guilty are justly punished. Less reason can there be to prohibit the court from considering those admissions, and deciding accordingly, in the interest of a speedy administration of justice."

And now on the main substantive issue.

Section 68 of PD 705, as amended by EO No. 277, reads:

"Section 68. Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License. Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in

the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

"The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found."

I agree with the court a quo that the coverage of Section 68, PD 705, as so amended, is explicit, and it is confined to "timber and other forest products." Section 3(q) of the decree defines "forest product" to mean-

"(q) x x x timber, pulpwood, firewood, bark, tree top, resin, gum, wood, oil, honey, beeswax, nipa, rattan, or other forest growth such as grass, shrub, and flowering plant, the associated water, fish, game, scenic, historical, recreational and geologic resources in forest lands" (Italics supplied);

and distinguishes it, in correlation with Section 3(aa) of the law, from that which has undergone processing. In defining a "processing plant," this section of the decree holds it to refer to-

"x x x any mechanical set-up, machine or combination of machine used for the processing of logs and other forest raw materials into lumber, veneer, plywood, wallboard, blockboard, paper board, pulp, paper or other finished wood products" (Italics supplied).

In fine, timber is so classified, under Section 3(q) of the law, as a forest product, while lumber has been categorized, under Section 3 (aa), among the various finished wood products.

The various DENR issuances, cited by the Solicitor General, to wit:

(1) Section 1.11 of the DENR Order No. 80, dated 28 December 1987, Series of 1987, which defines "timber" to be-

"x x x any piece of wood having an average diameter of at least 15 centimeters and at 1.5 meters long, except all mangrove species which in all cases, shall be considered as timber regardless of size;"[12] or

(2) Section 3.2 of DENR Administrative Order No. 19, dated 17 March 1989, Series of 1989, stating that "lumber" includes-

"x x x solid wood not further manufactured other than sawing, resawing, kiln-drying and passing lengthwise through a standard planing machine, including boules or unedged lumber"; and

(3) DENR Memorandum Order No. 36, Series of 1988, dated 06 May 1988, to the effect that the term "forest products" shall include "lumber"-

cannot, in my view, go beyond the clear language of the basic law.

While great weight is ordinarily accorded to an interpretation or construction of a statute by the government agency called upon to implement the enactment,[13] the rule would only be good, however, to the extent that such interpretation or construction is congruous with the governing statute.[14] Administrative issuances can aptly carry the law into effect[15] but it would be legal absurdity to allow such issuances to also have the effect, particularly those which are penal in nature, of extending the scope of the law or its plain mandate.[16]

Accordingly, and with respect, I vote to deny the petition in G.R. No. 106424, to grant the petition in G.R. No. 104988 and to require comment on the petition in G.R. No. 123784. I must hasten to add, nevertheless, that I do appreciate the well-meant rationale of DENR Memorandum Order No. 36, Series of 1988, for, indeed, the need for preserving whatever remains of the country's forest reserves can never now be fully emphasized. Until

properly addressed and checked, the continued denudation of forest resources, already known to be the cause of no few disasters, as well as of untold loss of lives and property, could well be on end the expected order of the day. I, therefore, join all those who call for the passage of remedial legislation before the problem truly becomes irreversible.

[1] "AMENDING SECTION 68 OF PRESIDENTIAL DECREE (PD) NO. 705, AS AMENDED, OTHERWISE KNOWN AS THE REVISED FORESTRY CODE OF THE PHILIPPINES, FOR THE PURPOSE OF PENALIZING POSSESSION OF TIMBER OR OTHER FOREST PRODUCTS WITHOUT THE LEGAL DOCUMENTS REQUIRED BY EXISTING FOREST LAWS, AUTHORIZING THE CONFISCATION OF ILLEGALLY CUT, GATHERED, REMOVED AND POSSESSED FOREST PRODUCTS, AND GRANTING REWARDS TO INFORMERS OF VIOLATIONS OF FORESTRY LAWS, RULES AND REGULATIONS."

[2] Rollo, pp. 15-16.

[3] Forester by profession and currently employed with the Personnel Investigation Committee, Special Action and Investigation Division, Department of Environment and Natural Resources. (Rollo, p. 41)

[4] Rollo, pp. 41-42.

[5] Rollo, p. 50.

[6] Rollo, pp. 43-44.

[7] Rollo, p. 45.

[8] "I have the honor to file a complaint against Mr. Ri Chuy Po, the owner of Mustang Lumber, Inc., with address at 1350-1352 Juan Luna St. Tondo, Manila for violation of the provisions of P.D. 705 as amended by Executive Order 277 for having in his possession lauan and almaciga lumber without the required documents." (Rollo, p.47.)

[9] Rollo, p. 17.

[10] 75 Phil. 516, 518-519.

[11] 98 SCRA 190.

[12] Rollo, p. 18.

[13] See Enrique vs. Court of Appeals, 229 SCRA 180.

[14] See Nestle Phils., Inc. vs. Court of Appeals, 203 SCRA 504.

[15] See Manuel vs. General Auditing Office, 42 SCRA 660; Teoxon vs. Members of the Board of Administrators, PVA, 33 SCRA 585.

[16] See Manuel vs. General Auditing Office, supra.

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