

ALFREDO L. AZARCON, PETITIONER, VS. SANDIGANBAYAN, PEOPLE OF THE PHILIPPINES AND JOSE C. BATAUSA, RESPONDENTS.

G.R. No. 116033. February 26, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Does the Sandiganbayan have jurisdiction over a private individual who is charged with malversation of public funds as a principal after the said individual had been designated by the Bureau of Internal Revenue as a custodian of distrained property? Did such accused become a public officer and therefore subject to the graft court's jurisdiction as a consequence of such designation by the BIR?

These are the main questions in the instant petition for review of respondent Sandiganbayan's Decision[1] in Criminal Case No. 14260 promulgated on March 8, 1994, convicting petitioner of malversation of public funds and property, and Resolution[2] dated June 20, 1994, denying his motion for new trial or reconsideration thereof.

The Facts

Petitioner Alfredo Azarcon owned and operated an earth-moving business, hauling "dirt and ore." [3] His services were contracted by the Paper Industries Corporation of the Philippines (PICOP) at its concession in Mangagoy, Surigao del Sur. Occasionally, he engaged the services of sub-contractors like Jaime Ancla whose trucks were left at the former's premises. [4] From this set of circumstances arose the present controversy.

"x x x It appears that on May 25, 1983, a Warrant of Distrainment of Personal Property was issued by the Main Office of the Bureau of Internal Revenue (BIR) addressed to the Regional Director (Jose Batausa) or his authorized representative of Revenue Region 10, Butuan City commanding the latter to distrain the goods, chattels or effects and other personal property of Jaime Ancla, a sub-contractor of accused Azarcon and, a delinquent taxpayer. The Warrant of Garnishment was issued to accused Alfredo Azarcon ordering him to transfer, surrender, transmit and/or remit to BIR the property in his possession owned by taxpayer Ancla. The Warrant of Garnishment was received by accused Azarcon on June 17, 1985." [5]

Petitioner Azarcon, in signing the "Receipt for Goods, Articles, and Things Seized Under Authority of the National Internal Revenue," assumed the undertakings specified in the receipt the contents of which are reproduced as follows:

"(I), the undersigned, hereby acknowledge to have received from Amadeo V. San Diego, an Internal Revenue Officer, Bureau of Internal Revenue of the Philippines, the following described goods, articles, and things:

Kind of property

Isuzu dump truck

Motor number

E120-229598

Chassis No.

SPZU50-1772440

Number of CXL

6

Color

Blue

Owned By

Mr. Jaime Ancla

the same having been this day seized and left in (my) possession pending investigation by the Commissioner of Internal Revenue or his duly authorized representative. (I) further promise that (I) will faithfully keep, preserve, and, to the best of (my) ability, protect said goods, articles, and things seized from defacement, demarcation, leakage, loss, or destruction in any manner; that (I) will neither alter nor remove, nor permit others to alter or remove or dispose of the same in any manner without the express authority of the Commissioner of Internal Revenue; and that (I) will produce and deliver all of said goods, articles, and things upon the order of any court of the Philippines, or upon demand of the Commissioner of Internal Revenue or any authorized officer or agent of the Bureau of Internal Revenue.”[6]

Subsequently, Alfredo Azarcon wrote a letter dated November 21, 1985 to the BIR’s Regional Director for Revenue Region 10 B, Butuan City stating that

“x x x while I have made representations to retain possession of the property and signed a receipt of the same, it appears now that Mr. Jaime Ancla intends to cease his operations with us. This is evidenced by the fact that sometime in August, 1985 he surreptitiously withdrew his equipment from my custody. x x x In this connection, may I therefore formally inform you that it is my desire to immediately relinquish whatever responsibilities I have over the above-mentioned property by virtue of the receipt I have signed. This cancellation shall take effect immediately. x x x .”[7]

Incidentally, the petitioner reported the taking of the truck to the security manager of PICOP, Mr. Delfin Panelo, and requested him to prevent this truck from being taken out of the PICOP concession. By the time the order to bar the truck’s exit was given, however, it was too late.[8]

Regional Director Batausa responded in a letter dated May 27, 1986, to wit:

“An analysis of the documents executed by you reveals that while you are (sic) in possession of the dump truck owned by JAIME ANCLA, you voluntarily assumed the liabilities of safekeeping and preserving the unit in behalf of the Bureau of Internal Revenue. This is clearly indicated in the provisions of the Warrant of Garnishment which you have signed, obliged and committed to surrender and transfer to this office. Your failure therefore, to observe said provisions does not relieve you of your responsibility.”[9]

Thereafter, the Sandiganbayan found that

“On 11 June 1986, Mrs. Marilyn T. Calo, Revenue Document Processor of Revenue Region 10 B, Butuan City, sent a progress report to the Chief of the Collection Branch of the surreptitious taking of the dump truck and that

Ancla was renting out the truck to a certain contractor by the name of Oscar Cueva at PICOP (Paper Industries Corporation of the Philippines, the same company which engaged petitioner's earth moving services), Mangagoy, Surigao del Sur. She also suggested that if the report were true, a warrant of garnishment be reissued against Mr. Cueva for whatever amount of rental is due from Ancla until such time as the latter's tax liabilities shall be deemed satisfied. x x x However, instead of doing so, Director Batausa filed a letter-complaint against the (herein Petitioner) and Ancla on 22 January 1988, or after more than one year had elapsed from the time of Mrs. Calo's report.”[10]

Provincial Fiscal Pretextato Montenegro “forwarded the records of the complaint x x x to the Office of the Tanodbayan” on May 18, 1988. He was deputized Tanodbayan prosecutor and granted authority to conduct preliminary investigation on August 22, 1988, in a letter by Special Prosecutor Raul Gonzales approved by Ombudsman (Tanodbayan) Conrado Vasquez.[11]

Along with his co-accused Jaime Ancla, petitioner Azarcon was charged before the Sandiganbayan with the crime of malversation of public funds or property under Article 217 in relation to Article 222 of the Revised Penal Code (RPC) in the following Information[12]filed on January 12, 1990, by Special Prosecution Officer Victor Pascual:

“That on or about June 17, 1985, in the Municipality of Bislig, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused Alfredo L. Azarcon, a private individual but who, in his capacity as depository/administrator of property seized or deposited by the Bureau of Internal Revenue, having voluntarily offered himself to act as custodian of one Isuzu Dumptruck (sic) with Motor No. E120-22958, Chassis No. SPZU 50-1772440, and number CXL-6 and was authorized to be such under the authority of the Bureau of Internal Revenue, has become a responsible and accountable officer and said motor vehicle having been seized from Jaime C. Ancla in satisfaction of his tax liability in the total sum of EIGHTY THOUSAND EIGHT HUNDRED THIRTY ONE PESOS and 59/100 (P80,831.59) became a public property and the value thereof as public fund, with grave abuse of confidence and conspiring and confederating with said Jaime C. Ancla, likewise, a private individual, did then and there wilfully, (sic) unlawfully and feloniously misappropriate, misapply and convert to his personal use and benefit the aforementioned motor vehicle or the value thereof in the aforesaid amount, by then and there allowing accused Jaime C. Ancla to remove, retrieve, withdraw and tow away the said Isuzu Dumptruck (sic) with the authority, consent and knowledge of the Bureau of Internal Revenue, Butuan City, to the damage and prejudice of the government in the amount of P80,831.59 in a form of unsatisfied tax liability.

CONTRARY TO LAW.”

The petitioner filed a motion for reinvestigation before the Sandiganbayan on May 14, 1991, alleging that: (1) the petitioner never appeared in the preliminary investigation; and (2) the petitioner was not a public officer, hence a doubt exists as to why he was being charged with malversation under Article 217 of the Revised Penal Code.[13] The Sandiganbayan granted the motion for reinvestigation on May 22, 1991.[14] After the reinvestigation, Special Prosecution Officer Roger Berbano, Sr., recommended the “withdrawal of the information”[15] but was “overruled by the Ombudsman.”[16]

A motion to dismiss was filed by petitioner on March 25, 1992 on the ground that the Sandiganbayan did not have jurisdiction over the person of the petitioner since he was not a public officer.[17] On May 18, 1992, the Sandiganbayan denied the motion.[18]

When the prosecution finished presenting its evidence, the petitioner then filed a motion for leave to file demurrer to evidence which was denied on November 16, 1992, “for being without merit.”[19] The petitioner then commenced and finished presenting his evidence on February 15, 1993.

The Respondent Court's Decision

On March 8, 1994, respondent Sandiganbayan[20] rendered a Decision,[21] the dispositive portion of which reads:

“WHEREFORE, the Court finds accused Alfredo Azarcon y Leva GUILTY beyond reasonable doubt as principal of Malversation of Public Funds defined and penalized under Article 217 in relation to Article 222 of the Revised Penal Code and, applying the Indeterminate Sentence Law, and in view of the mitigating circumstance of voluntary surrender, the Court hereby sentences the accused to suffer the penalty of imprisonment ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor in its maximum period to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of Reclusion Temporal. To indemnify the Bureau of Internal Revenue the amount of P80,831.59; to pay a fine in the same amount without subsidiary imprisonment in case of insolvency; to suffer special perpetual disqualification; and, to pay the costs.

Considering that accused Jaime Ancla has not yet been brought within the jurisdiction of this Court up to this date, let this case be archived as against him without prejudice to its revival in the event of his arrest or voluntary submission to the jurisdiction of this Court.

SO ORDERED.”

Petitioner, through new counsel,[22] filed a motion for new trial or reconsideration on March 23, 1994, which was denied by the Sandiganbayan in its Resolution[23]dated December 2, 1994.

Hence, this petition.

The Issues

The petitioner submits the following reasons for the reversal of the Sandiganbayan's assailed Decision and Resolution:

“I. The Sandiganbayan does not have jurisdiction over crimes committed solely by private individuals.

II. In any event, even assuming *arguendo* that the appointment of a private individual as a custodian or a depositary of distrained property is sufficient to convert such individual into a public officer, the petitioner cannot still be considered a public officer because:

[A]

There is no provision in the National Internal Revenue Code which authorizes the Bureau of Internal Revenue to constitute private individuals as depositaries of distrained properties.

[B]

His appointment as a depositary was not by virtue of a direct provision of law, or by election or by appointment by a competent authority.

III. No proof was presented during trial to prove that the distrained vehicle was actually owned by the accused Jaime Ancla; consequently, the government's right to the subject property has not been established.

IV. The procedure provided for in the National Internal Revenue Code concerning the disposition of distrained property was not followed by the B.I.R., hence the distraint of personal property belonging to Jaime C. Ancla and found allegedly to be in the possession of the petitioner is therefore invalid.

V. The B.I.R. has only itself to blame for not promptly selling the distrained property of accused Jaime C. Ancla

in order to realize the amount of back taxes owed by Jaime C. Ancla to the Bureau.”[24]

In fine, the fundamental issue is whether the Sandiganbayan had jurisdiction over the subject matter of the controversy. Corollary to this is the question of whether petitioner can be considered a public officer by reason of his being designated by the Bureau of Internal Revenue as a depositary of distrained property.

The Court’s Ruling

The petition is meritorious.

Jurisdiction of the Sandiganbayan

It is hornbook doctrine that in order “(to) ascertain whether a court has jurisdiction or not, the provisions of the law should be inquired into.”[25] Furthermore, “the jurisdiction of the court must appear clearly from the statute law or it will not be held to exist. It cannot be presumed or implied.”[26] And for this purpose in criminal cases, “the jurisdiction of a court is determined by the law at the time of commencement of the action.”[27]

In this case, the action was instituted with the filing of this information on January 12, 1990; hence, the applicable statutory provisions are those of P.D. No. 1606, as amended by P.D. No. 1861 on March 23, 1983, but prior to their amendment by R.A. No. 7975 on May 16, 1995. At that time, Section 4 of P.D. No. 1606 provided that:

“SEC. 4. Jurisdiction. -- The Sandiganbayan shall exercise:

(a) Exclusive original jurisdiction in all cases involving:

(1) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code;

(2) Other offenses or felonies committed by public officers and employees in relation to their office, including those employed in government-owned or controlled corporations, whether simple or complexed with other crimes, where the penalty prescribed by law is higher than prison correccional or imprisonment for six (6) years, or a fine of P6,000.00: PROVIDED, HOWEVER, that offenses or felonies mentioned in this paragraph where the penalty prescribed by law does not exceed prison correccional or imprisonment for six (6) years or a fine of P6,000.00 shall be tried by the proper Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court and Municipal Circuit Trial Court.

x x x x x x x x

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees.

x x x x x x x x.”

The foregoing provisions unequivocally specify the only instances when the Sandiganbayan will have jurisdiction over a private individual, i.e. when the complaint charges the private individual either as a co-principal, accomplice or accessory of a public officer or employee who has been charged with a crime within its jurisdiction.

Azarcon: A Public Officer or A Private Individual?

The Information does not charge petitioner Azarcon of being a co-principal, accomplice or accessory to a public officer committing an offense under the Sandiganbayan’s jurisdiction. Thus, unless petitioner be proven a public officer, the Sandiganbayan will have no jurisdiction over the crime charged. Article 203 of the RPC determines

who are public officers:

“Who are public officers. -- For the purpose of applying the provisions of this and the preceding titles of the book, any person who, by direct provision of the law, popular election, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or classes, shall be deemed to be a public officer.”

Thus,

“(to) be a public officer, one must be --

(1) Taking part in the performance of public functions in the government, or

Performing in said Government or any of its branches public duties as an employee, agent, or subordinate official, of any rank or class; and

(2) That his authority to take part in the performance of public functions or to perform public duties must be --

a. by direct provision of the law, or

b. by popular election, or

c. by appointment by competent authority.”[28]

Granting arguendo that the petitioner, in signing the receipt for the truck constructively distrained by the BIR, commenced to take part in an activity constituting public functions, he obviously may not be deemed authorized by popular election. The next logical query is whether petitioner’s designation by the BIR as a custodian of distrained property qualifies as appointment by direct provision of law, or by competent authority.[29] We answer in the negative.

The Solicitor General contends that the BIR, in effecting constructive distraint over the truck allegedly owned by Jaime Ancla, and in requiring the petitioner Alfredo Azarcon who was in possession thereof to sign a pro forma receipt for it, effectively “designated” petitioner a depository and, hence, citing *U.S. vs. Rastrollo*,[30] a public officer.[31] This is based on the theory that

“(t)he power to designate a private person who has actual possession of a distrained property as a depository of distrained property is necessarily implied in the BIR’s power to place the property of a delinquent tax payer (sic) in distraint as provided for under Sections 206, 207 and 208 (formerly Sections 303, 304 and 305) of the National Internal Revenue Code, (NIRC) x x x.”[32]

We disagree. The case of *U.S. vs. Rastrollo* is not applicable to the case before us simply because the facts therein are not identical, similar or analogous to those obtaining here. While the cited case involved a judicial deposit of the proceeds of the sale of attached property in the hands of the debtor, the case at bench dealt with the BIR’s administrative act of effecting constructive distraint over alleged property of taxpayer Ancla in relation to his back taxes, property which was received by petitioner Azarcon. In the cited case, it was clearly within the scope of that court’s jurisdiction and judicial power to constitute the judicial deposit and give “the depository a character equivalent to that of a public official.”[33] However, in the instant case, while the BIR had authority to require petitioner Azarcon to sign a receipt for the distrained truck, the NIRC did not grant it power to appoint Azarcon a public officer.

It is axiomatic in our constitutional framework, which mandates a limited government, that its branches and administrative agencies exercise only that power delegated to them as “defined either in the Constitution or in

legislation or in both.”[34] Thus, although the “appointing power is the exclusive prerogative of the President, x x x”[35] the quantum of powers possessed by an administrative agency forming part of the executive branch will still be limited to that “conferred expressly or by necessary or fair implication” in its enabling act. Hence, “(a)n administrative officer, it has been held, has only such powers as are expressly granted to him and those necessarily implied in the exercise thereof.”[36] Corollarily, implied powers “are those which are necessarily included in, and are therefore of lesser degree than the power granted. It cannot extend to other matters not embraced therein, nor are not incidental thereto.”[37] For to so extend the statutory grant of power “would be an encroachment on powers expressly lodged in Congress by our Constitution.”[38] It is true that Sec. 206 of the NIRC, as pointed out by the prosecution, authorizes the BIR to effect a constructive distraint by requiring “any person” to preserve a distrained property, thus:

“x x x x x x x x

The constructive distraint of personal property shall be effected by requiring the taxpayer or any person having possession or control of such property to sign a receipt covering the property distrained and obligate himself to preserve the same intact and unaltered and not to dispose of the same in any manner whatever without the express authority of the Commissioner.

x x x x x x x x”

However, we find no provision in the NIRC constituting such person a public officer by reason of such requirement. The BIR’s power authorizing a private individual to act as a depository cannot be stretched to include the power to appoint him as a public officer. The prosecution argues that “Article 222 of the Revised Penal Code x x x defines the individuals covered by the term ‘officers’ under Article 217[39] x x x” of the same Code.[40]And accordingly, since Azarcon became “a depository of the truck seized by the BIR” he also became a public officer who can be prosecuted under Article 217 x x x.”[41]

The Court is not persuaded. Article 222 of the RPC reads:

“Officers included in the preceding provisions. -- The provisions of this chapter shall apply to private individuals who, in any capacity whatever, have charge of any insular, provincial or municipal funds, revenues, or property and to any administrator or depository of funds or property attached, seized or deposited by public authority, even if such property belongs to a private individual.”

“Legislative intent is determined principally from the language of a statute. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation would be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice.”[42]This is particularly observed in the interpretation of penal statutes which “must be construed with such strictness as to carefully safeguard the rights of the defendant x x x.”[43]The language of the foregoing provision is clear. A private individual who has in his charge any of the public funds or property enumerated therein and commits any of the acts defined in any of the provisions of Chapter Four, Title Seven of the RPC, should likewise be penalized with the same penalty meted to erring public officers. Nowhere in this provision is it expressed or implied that a private individual falling under said Article 222 is to be deemed a public officer.

After a thorough review of the case at bench, the Court thus finds petitioner Alfredo Azarcon and his co-accused Jaime Ancla to be both private individuals erroneously charged before and convicted by Respondent Sandiganbayan which had no jurisdiction over them. The Sandiganbayan’s taking cognizance of this case is of no moment since “(j)urisdiction cannot be conferred by x x x erroneous belief of the court that it had jurisdiction.”[44] As aptly and correctly stated by the petitioner in his memorandum:

“From the foregoing discussion, it is evident that the petitioner did not cease to be a private individual when he agreed to act as depositary of the garnished dump truck. Therefore, when the information charged him and Jaime Ancla before the Sandiganbayan for malversation of public funds or property, the prosecution was in fact charging two private individuals without any public officer being similarly charged as a co-conspirator. Consequently, the Sandiganbayan had no jurisdiction over the controversy and therefore all the proceedings taken below as well as the Decision rendered by Respondent Sandiganbayan, are null and void for lack of jurisdiction.”[45]

WHEREFORE, the questioned Resolution and Decision of the Sandiganbayan are hereby SET ASIDE and declared NULL and VOID for lack of jurisdiction. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1]Rollo, pp. 43-63.

[2] Ibid., pp. 64-67.

[3] Memorandum for Petitioner, p. 2; Rollo, p. 194.

[4] Petition, pp. 5-6; Rollo, pp. 6-7.

[5] Decision of the Sandiganbayan, p. 13; Rollo, p. 55.

[6] Rollo, p. 85.

[7]Ibid., p.87.

[8] Ibid., p.86.

[9] Ibid., p. 88.

[10] Ibid., p. 7.

[11] Ibid., p. 197.

[12] Ibid., p. 94.

[13] Ibid., p. 97.

[14] Ibid., p. 100.

[15] Ibid., p. 103.

[16]Ibid., p. 199.

[17] Ibid., pp. 105-109

[18] Ibid., pp. 110-115.

[19] Ibid., p. 200.

[20]Second Division, composed of J. Narciso T. Atienza, ponente, and JJ. Romeo M. Escareal and Augusto M. Amores, concurring.

[21] Rollo, pp. 43-63.

[22] Ongkiko, Dizon, Ongkiko & Panga Law Offices.

[23] Rollo, pp. 64-67.

[24] Memorandum for Petitioner, pp. 10-11; Rollo, pp. 202-203.

[25] Quiason, Camilo D., *Philippine Courts and their Jurisdictions*, 1993, p. 36; citing *PAFLU v. Padilla*, 106 Phil. 591, (1959), *De Jesus v. Garcia*, 19 SCRA 554, February 28, 1967, *Auyong Hian v. Commissioner of Internal Revenue*, 21 SCRA 749, October 31, 1967, *People vs. Lava*, 28 SCRA 72, May 16, 1969, and *Collector v. Villaluz*, 71 SCRA 356, June 18, 1976.

[26] *Ibid.*; citing *Tenario v. Batangas Transportation Co.*, 90 Phil. 804, (1952), *Dimagiba v. Geraldez*, 102 Phil. 1016, (1958), and *De Jesus v. Garcia*, *supra*.

[27] *People vs. Magallanes*, 249 SCRA 212, p. 227, October 11, 1995.

[28] Reyes, Luis B., *Criminal Law*, 1993, pp. 314, 315.

[29] See also Rollo, p. 216.

[30] 1 Phil. 22, (1901).

[31] *Ibid.*, pp. 22-23. The factual background reads:

“x x x The attached property remained in the possession of the debtor, Rastrollo, who, with the consent of the attorney for the plaintiff, sold the same to the Manila Fire Department. Rastrollo failed to deliver the proceeds of the sale x x x to the attorney for the plaintiff x x x.”

[32] Rollo, p. 153.

[33] *U.S. vs. Rastrollo*, *supra*, p. 23.

[34] Gonzales, Neptali A., *Administrative Law*, 1979, p. 45.

[35] *Manalang vs. Quitariano*, 94 Phil. 903, p. 911, (1954).

[36] Gonzales, *Supra*; citing *Gonzalo Sy Trading vs. Central Bank*, 70 SCRA 570, April 30, 1976, and *Makati Stock Exchange, Inc. vs. SEC*, 14 SCRA 620, June 30, 1965.

[37] Quiason, *Supra*, p. 121; citing *University of Santo Tomas vs. Board of Tax Appeals*, 93 Phil. 376, (1953).

[38] *University of Santo Tomas vs. Board of Tax Appeals*, *Supra*, p. 382.

[39] Article 217 of the Revised Penal Code reads:

“Malversation of public funds or property -- Presumption of malversation. -- Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, x x x

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses.”

[40] Rollo, p. 151.

[41] Ibid., p. 152.

[42] Ramirez vs. Court of Appeals, 248 SCRA 590, 596, September 28, 1995.

[43] Agpalo, Ruben E., Statutory Construction, 1990, p. 209; citing U.S. vs. Go Chico, 14 Phil. 128, 141, (1909).

[44] Quiason, Supra, pp. 37, 39; citing People vs. Martinez, 76 Phil. 599, (1946), Squillantini vs. People, 88 Phil. 135, (1951), Cruzcosa vs. Concepcion, 101 Phil. 146, (1957), and Tolentino vs. SSC, 138 SCRA 428, September 6, 1985.

[45] Rollo, p. 209; citing Badua vs. Cordillera Badong Administration, 194 SCRA 101, February 14, 1991.

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