

PEOPLE OF THE PHILIPPINES, PETITIONER-APPELLANT, VS. COURT OF APPEALS, HON. LORENZO VENERACION, RICARDO B. BANGAYAN, BENJAMIN BANGAYAN, JR., ROBERTO BANGAYAN, RODRIGO BANGAYAN, ...

G.R. No. 125164. September 25, 1998

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This petition for review on certiorari seeks to reverse the 23 May 1996 decision[1] of the Court of Appeals in CA-G.R. CR No.15113 which denied petitioner's petition for review of the order[2] of Branch 47, Regional Trial Court (RTC) of Manila granting private respondents' motion to quash the informations in Criminal Case No. 93-118715 for violation of Section 3602 in relation to Section 3601 of the Tariff and Customs Code of the Philippines.

The factual and procedural antecedents are summarized in the challenged decision of public respondent Court of Appeals, as follows:

On March 30, 1993, State Prosecutor Brenda P. Lumabao of the Department of Justice, filed with the Regional Trial Court of Manila an information against private respondents Ricardo B. Bangayan, Benjamin Bangayan, Jr., Roberto Bangayan, Rodrigo Bangayan, Lanie L. Zipagan, Almario Amador, Manny Sia, Jose "Pepe" Aguilar, Angelito Chua, Eduardo Ignacio, Bernadette C. Cristobal, Oscar L. Macalino, Hilario L. Culla, Basilio B. Zapata and Ricardo J. Ebuna, for the [sic] violation of Section 3602 in relation to Section 3601 of the Tariff and Customs Code of the Philippines (hereinafter, TCCP) allegedly committed as follows:

"That in [sic] or about and during the period from July 16, 1992 to August 12, 1992, in Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously cause the entry of 64,480 bags more or less of PVC resins in three (3) shipments from Busan, Korea, consigned to Peaks Marketing, LBZ Commercial and Final Sales Enterprises, respectively; thereafter, secured their release from the Manila International Container Port, using Bureau of Customs Official Receipts (BCOR'S 26386184, 26387164, 26634054) issued by Rizal Commercial Banking Corporation (RCBC) Binondo Branch, purportedly representing final payment of customs duties and other charges due on the importations in the amount of P13,265,225.00, when in truth and in fact, as shown [by] the records of the Bureau of Customs, no such payments were remitted to the National Treasury and the three (3) importers above-named are fictitious; and further, on September 20 and 21, 1992, illegally withdrew 14 truckloads of said PBC [sic] resins from the warehouse at 716 Gen. Luis St., Bagbaguin, Caloocan City, by breaking the official Customs [s]eal affixed by the Bureau of Customs operatives pursuant to Warrants of Seizure and Detention, all to the damage and prejudice of the government."

The information was docketed as Criminal Case No. 903 [sic]-118715 [sic] of said court and assigned by raffle to Branch 47 thereof with respondent Lorenzo E. Veneracion presiding.

Thereafter, the different accused, through their respective counsel, filed omnibus motions, the principal thrust of which is the quashal of the information filed, premised upon Sections 3(a), (f), and (g), Rule 117 of the Rules on Criminal Procedure in that: (1) the facts charged do not constitute an offense; (2) the criminal action or liability has been extinguished; and (3) the information contains averments which if true would constitute a legal excuse or justification. Additionally, the accused maintained that, as attested to by the files, documents, and other public records in the possession of the prosecution, the final payment of customs duties and other charges xxx in the amount of P13,265,225.00 had been made.

The accused, now private respondents in this petition, argue that the information filed against them averred that they had secured the release of approximately 64,480 bags of imported PVC resins from the Manila International Container Port, using Bureau of Customs Official Receipts No. 26386184, 26387164, and 26634054, purportedly representing final payment of customs duties and other charges due on the importation in the amount of P13,265,225.00 "when in truth and in fact, no such payments were remitted to the National Treasury xxx and that, on September 20 and 21, 1992, private respondents "illegally withdrew 14 truckloads of said PVC resins from the warehouse at 716 Gen. Luis St., Bagbaguin, Caloocan City xxx. Private respondents however claim that, even before the filing of the information against them on March 30, 1993, the customs duties and penalties in the amount of P13,265,225.00 had been fully paid, as shown by three RCBC (the Bureau of Customs Collecting Bank) Official Receipts in the amounts of P4,431,099.00, P4,901,396.00, and P4,132,730.00, respectively, with corresponding Bureau of Customs Official Receipts, or a total of P13,265,225.00, and the required Central Bank Release Certificates. It is therefore the submission of private respondents, that upon the issuance of the Bureau of Customs Official Receipts and the Central Bank Release Certificates which are the clearances for the importation of the PVC resins, whatever infraction there may have been prior to the payments and clearances are deemed condoned, waived, quit claimed [sic], otherwise extinguished when the "res" is cleared of any taint of violation of the Traffic and Customs Code, the offenses alleged to have been committed, if any at all, under the Code, are deemed extinguished.

After due hearing on private respondents' omnibus motions, respondent court in an order dated May 19, 1993, dismissed said Criminal Case No. 93-118715, reasoning that:

"It is undisputed that the importers in this case, represented by some of the accused, paid the customs duties and other charges in the amount of P13,265,225.00 after they were informed in a letter dated September 19, 1992, by District Collector of Customs Buenaventura C. Maniego, that the Bureau of Customs official receipts covering the final payment described in the said letter and which were the basis for the release of the shipment in question, were not remitted to the National Treasury through the Central bank and in view thereof, demand was made for the immediate reimbursement of the said amount immediately from the date thereof, 'otherwise appropriate legal action shall be taken under the premises'.

"Accordingly, and in compliance therewith and before the investigation by the Department of Justice could be commenced on October 13, 1992, the said amount of P13,265,225.00 was made to the Bureau of Customs through the RCBC, which payment and receipts have been acknowledged to be genuine and authentic. (Underscoring supplied)

"Clearly, the allegations in the information that no such payment of P13,265,225.00 was remitted to the National Treasury is not therefore accurate. The Court also finds that the conclusion of the prosecution that the three firms, namely: Fix [sic] Marketing, LBC Commercial and Final Sales to be fictitious, appears not supported by the evidence. The Letters of Credit covering the importations were issued upon proper application by these companies, and pursuant to the existing regulations; unless these companies are duly registered with the appropriate agencies of the government, and duly accredited by the Bureau of Customs, the letters of credit could not have been opened by the bank in their favor. The fact that letters of credit were

issued by the RCBC and that these firms were duly accredited by the Bureau of Customs, and appropriate Central Bank clearances were issued for the release of the shipments in question, to the mind of the Court clearly shows that the said companies are legally authorized to transact the importations in question.

"The Court also finds and so holds that the accused should not be faulted for the alleged withdrawal of 14 truckloads of PVC resins on September 20 and 21, 1992 from the warehouse described in the information, considering that said withdrawal is covered by a valid Temporary Restraining Order issued by the Regional Trial Court of Manila through then 1st Executive Judge now Court of Appeals Justice Corona Ibay Somera.

"While this Court strongly believes that the laws of the land should be strictly enforced to instill national discipline among our people, this Court feels that our business entrepreneurs are entitled to assistance by the government as provided for under existing laws and regulations to the end that they can contribute to the growth of the economy. This Court believes that proceeding in this case in the manner the prosecution would like to do, will not serve the government and the higher interest of our country and people. It may, as a matter of fact, give a wrong signal to the business community, which certainly will be detrimental to our economic growth. Besides, the government appears not prejudiced in this case.

"WHEREFORE, premises considered, this case is hereby dismissed.

"SO ORDERED."

The prosecution (hereinafter referred to as petitioner) received a copy of the aforesaid Order of Dismissal on June 3, 1993.

On June 10, 1993, petitioner filed its motion dated June 8, 1993, for the reconsideration of said order of dismissal, arguing that

"xxx the gravamen of violation of Sec. 3602 is not the non-payment of customs duties and that therefore, the payment made by accused Angelito Chua thru the RCBC on October 13, 1992 long after the offense was committed in July and August, 1992, did not extinguish the criminal action or liability."

Petitioner's motion for reconsideration however did not contain the appropriate notice of hearing required by Sections 4 and 5, Rule 15 of the Rules of Court. Accordingly, on June 11, 1993, respondent court issued an order stating that "it cannot act on the petitioner's motion dated June 8, 1993 because there is no date set for its hearing".

Notwithstanding the forgoing Order of June 11, 1993 of respondent court, it was only on July 1, 1993, that petitioner asked for leave of court that its motion for reconsideration filed on June 10, 1993, be set for hearing "preferably on July 8, 1993, at 10:00 o'clock in the morning with the request that notice thereof be sent to the accused who were already furnished copies of the motion for reconsideration".

On August 19, 1993, respondent court issued its order denying petitioner's motion for reconsideration, ratiocinating that:

x x x

"A review of the records of this case shows that the action taken by this Court embodied in its Order of May 19, 1993, was anchored on its verification that the accused had already remitted to the Bureau of Customs the taxes and duties due these importations in question in the total amount of P13,265,225.00, in compliance with the formal demand by the Bureau of Customs to Rizal Commercial Banking Corporation (RCBC). The Court recalls that representatives of the Bureau of Customs were summoned to appear before this Court, and said representatives, assisted by the State Prosecutor admitted in open Court that the receipts presented by the accused covering the remittance of said amount of P13,265,225.00 are genuine, and the receipt of said amount by the Bureau of Customs was duly acknowledged and confirmed. To the mind of the Court, the foregoing

admissions by the representatives of the Bureau of Customs and the State Prosecutor negate the allegations in the information that the taxes and duties of P13,265,225.00 had not been remitted to the National Treasury, and that the Government was, accordingly, damages [sic] and prejudiced thereby.

"A thorough review of the Motion for Reconsideration, Comments and Rejoinders by the State Prosecutor does not show that the foregoing observations of this Court had been refuted or challenged.

"The Court notes further that the remittance by the accused of the taxes and duties in the amount of P13,265,225.00 was not in the nature of a compromise settlement of the taxes and duties of the importations in question, but in compliance with the letter of demand of the Bureau of Customs."

A copy of the aforesaid Order denying petitioner's motion for reconsideration was received by the former on August 26, 1993. On September 3, 1993, petitioner filed with the Supreme Court a petition for an extension of thirty days within which to file its petition for the review on certiorari, which was granted by the First Division of said Court in a resolution dated September 22, 1993 in G.R. No. 111510.

On September 24, 1993, petitioner, by reason of the aforesaid grant of extension, filed with the Supreme Court a petition for review on certiorari, which the latter thereafter referred to this Court in a resolution dated October 18, 1993 reading as follows:

"G.R. No. 111510 (People of the Philippines vs. Hon. Lorenzo Veneracion, et. al.,) - The petition for certiorari filed pursuant to the provisions of Rule 65 of the Rules of Court, is REFERRED to the Court of Appeals for reconsideration and adjudication on the merits, the latter having jurisdiction concurrent with this Court over the case, and this Court having been cited to no special and important reason for it to take cognizance of said case in the first instance."

This Court thereafter gave due course to the petition and directed private respondents to file their answers thereto.

On December 12, 1994, private respondent Ricardo Bangayan filed a Manifestation with this Court calling attention that after private respondents have filed their answers herein, a related case arising from the same incident, but which was separately investigated by petitioner, docketed as Criminal Case No. 94-137856 of respondent court, was ordered dismissed by said court against private respondent Ricardo Bangayan upon recommendation of a State Prosecutor of the Department of Justice, duly approved by Assistant Chief State Prosecutor Jovito R. Zuño.[3]

In its decision of 23 May 1997,[4] public respondent Court of Appeals denied the petition on grounds hereafter summarized.

First, the petition, although filed within the period allowed by this Court in G.R. No. 111510, was filed "far beyond the reglementary period allowed by the Rules and existing circulars." Petitioner's motion for reconsideration of the order of the trial court granting the motions to quash, although filed on the seventh day after receipt of the order, did not toll the running of the period to appeal as the motion did not contain a notice of hearing addressed to the private respondents' counsel, pursuant to *Manakil v. Revilla*,[5] *Manila Surety Co. v. MRR*[6] and *Del Castillo v. Aguinaldo*. [7] As such, it was a mere scrap of paper in accordance with *Goldloop Properties Inc. v. Court of Appeals*. [8] The filing of a motion to set the motion for reconsideration for hearing only on 1 July 1993 was:

[T]oo late in the day to give due course [to said motion to set for hearing] because the order of dismissal of May 19, 1993, having been received by petitioner on June 3, 1993, attained finality on June 19, 1993, after the expiration of fifteen days from notice to petitioner. The duty to give notice of the hearing devolves upon the movant, not the court.[9] The belated motion of July 1, 1993, filed by petitioner after the period of appeal from the Order of May 19, 1993, had already expired, did not cure the defect of the earlier lack of notice. Neither

was the defect cured by the subsequent order of respondent court dated August 19, 1993, acting upon, although denying, petitioner's motion for reconsideration because, as held in *Manila Electric Company vs. La Campana Foods Products*, 247 SCRA 77 (1995), a motion that does not meet the requirements of Section 4 and 4, Rule 145 of the Rules of Court is a worthless piece of paper and a court has no authority to act upon it. A fortiori, this Court holds the view that petitioner's motion for extension of time, as well as its petition for review on certiorari, were filed with the Supreme Court far beyond the reglementary period allowed by the Rules and existing circulars. The mere fact that the Supreme Court, in its Resolution of September 22, 1993 in G.R. No. 111510, granted petitioner and extension of thirty days within which to file its petition for review, does not likewise erase such a defect because the grant of such extension was "conditioned upon the timeliness of the filing of said motion and the timeliness of the payment of the legal fees.

Second, even if the petition for review be treated as a special civil action for certiorari under Rule 65 of the Rules of Court, the petition would still fail for certiorari can not be resorted to as a substitute for the lost remedy of appeal.[10]

Finally, even if it be further conceded that the petition was filed on time or that it could be properly treated as a special civil action for certiorari, the petition would still fail, for the trial court did not err in holding that no criminal liability was incurred since there was payment of taxes and duties on 13 October 1992 upon demand by the Bureau of Customs, several months before the filing of the information on 30 March 1993 and before any apprehension was made. On this matter the Court of Appeals noted:

Petitioner however argues that though the payment of the taxes and duties due were made before the filing of the information on March 30, 1993, such payment was however done only on October 13, 1992, long after the offense was committed in July and August, 1992, and the last paragraph of Section 3602 of the Tariff and Customs [Code] provides:

"When, upon trial for violation of this section, the defendant is shown to had had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, THAT PAYMENT OF THE TAX DUE AFTER APPREHENSION SHALL NOT CONSTITUTE A VALID DEFENSE IN ANY PROSECUTION UNDER THIS SECTION." (Capitalization ours)

"Apprehension", as defined in *Black's Law Dictionary*, Fifth Edition, is "the seizure, taking, or arrest of a person on a criminal charge" (p. 92). *Philippine Legal Encyclopedia*, upon the other hand, defines it as "the taking into custody of a person accused of a crime. Synonymous with arrest, which, however, is also used in connection with civil process." (p. 52) But no evidence whatsoever was presented by petitioner during the hearing of the motion to quash to establish such "apprehension" as contemplated in the last paragraph of Section 3602 of the Tariff and Customs Code. The only vague reference of petitioner, which it argues, amounts to an apprehension, is the alleged retrieval by the Bureau of Customs of the "remaining PVC resins from the NFA compound totalling 14,000 bags more or less" (See Annex "B", Petition, p. 50 Rollo). But no proof had been adduced that any of private respondents had been arrested or apprehended during this alleged raid, and therefore, this Court could not consider the same to be an apprehension as understood in the last paragraph of Section 3602 of the Tariff and Customs Code earlier cited in this decision. As explained by respondent court in its assailed order of May 19, 1993, it appears that respondents had paid the amount of P13,265,225.00 to the Bureau of Customs by reason of the latter's demand for its payment, and not because of any apprehension.

Before us, petitioner asserts, in the main, that the shipments were constructively seized by the Bureau of Customs and the payments of the taxes and duties were made after the seizure of the goods; hence the crime was already committed before the payment. Accordingly, the motions to quash should have been denied. Petitioner likewise assails the Court of Appeals' resort to technicalities concerning the notice of hearing on the motion for

reconsideration, contending that absence of notice in the motion for reconsideration was deemed cured when the trial court took cognizance of said motion considering that the adverse party was also notified.

We gave due course to the petition after the filing of private respondents' separate comments. Except for petitioner which adopted the petition as its memorandum, private respondents filed separate memoranda.

Notwithstanding petitioner's arguments, clearly, the key issue here is the time-worn question of whether absence of notice of hearing is fatal to a motion for reconsideration.

Under Section 4 of Rule 15[11] of the Rules of Court, the applicable law during the pendency of the case before the trial court, every written motion must be set for hearing by the applicant and served together with the notice of hearing thereof, in such a manner as to ensure receipt by the other party at least three days before the date of hearing, unless the court, for good cause, sets the hearing on shorter notice. Under Sections 5 and 6[12] thereof, the notice of hearing shall be addressed to the parties concerned and shall specify the time and date of the hearing of the motion; no motion shall be acted upon by the court without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party are not affected.

A motion without a notice of hearing is pro forma, a mere scrap of paper that does not toll the period to appeal,[13] and upon expiration of the 15-day period, the questioned order or decision becomes final and executory. The rationale behind this rule is plain: unless the movant sets the time and place of hearing, the court will be unable to determine whether the adverse party agrees or objects to the motion, and if he objects, to hear him on his objection, since the rules themselves do not fix any period within which he may file his reply or opposition.[14]

A supplemental pleading subsequently filed to remedy the previous absence of notice will not cure the defect nor interrupt the tolling of the prescribed period within which to appeal. In *Cledera v. Sarmiento*,[15] citing *Manila Surety v. Bath*,[16] this Court ruled:

We are not impressed by the argument that the supplement filed by the appellants on May 30 should be deemed retroactive as of the date the motion for reconsideration was filed and, therefore, cured the defect therein. To so consider it would be to put a premium on negligence and subject the finality of judgments to the forgetfulness or whims of parties-litigants and their lawyers. This of course would be intolerable in a well-ordered judicial system.

[A]ppellants were or should have been alerted to the fact that their motion for reconsideration of May 12 did not interrupt the period for appeal when they received the court's order of May 21, 1959, wherein it was stated that what appellants had filed was not even a motion and presented no question which the court could decide.

This ruling squarely applies here. When petitioner filed its motion for reconsideration of the Court's order of dismissal on 10 June 1993 without setting the same for hearing, said motion was pro forma such that the period to appeal from the order was not tolled. Further, petitioner's filing of the 1 July 1993 motion for leave to set for hearing the Motion for Reconsideration was akin to the supplemental motion in *Cledera v. Sarmiento*, and did not prevent the order from becoming final and executory.

It follows then that insofar as petitioner is concerned, the Order of 19 May 1993 dismissing Criminal Case No. 93-118715 became final and executory on 18 June 1993, because petitioner received a copy thereof on 3 June 1993 and its motion for reconsideration filed on 10 June 1993, or on the seventh day of its period to appeal, did not suspend the running of the period to appeal. The subsequent action of the trial court in formally denying the motion for reconsideration on grounds other than that the motion was a mere scrap of paper for want of notice and that the assailed order had already become final and executory, neither created any right in favor of petitioner nor conceded to it any benefit.

Needless to state, petitioner lost its right to appeal from the order of 19 May 1993 by the negligence of its counsel who could have easily filed a motion to set the motion for reconsideration for hearing immediately after receipt of a copy of the trial court's order of 11 June 1993 informing the parties that it could not act on the motion for reconsideration because no date was set for hearing. Thus, on 3 September 1993, when petitioner filed with us G.R. No. 111510, its motion for extension of time to file therein a petition for review on certiorari was already rendered moot and academic as the order sought to be challenged in the intended petition had long become final and executory. Respondent Court of Appeals was then correct in holding that while we granted the motion for extension, such was "conditioned upon the timeliness of the filing of the said motion"" This element of "timeliness," of course, had reference to the filing of the motion before the expiration of the original period to file the petition, pursuant to Section 1[17] of Rule 45 of the Rules of Court. If it be subsequently shown that the motion for extension was filed beyond the original period, the grant of the motion was ineffective and did not amount to a suspension of the Rules to bestow upon petitioner a fresh period to assail the trial court's order.

In view of the foregoing, resolution of the issue concerning the propriety of the order dismissing the information in Criminal Case No. 93-118715 is unnecessary.

WHEREFORE, the instant petition is DENIED and the challenged decision of respondent Court of Appeals of 23 May 1996 in CA-G.R. CR No. 15113 is AFFIRMED.

No costs.

SO ORDERED.

Bellosillo, Vitug, Panganiban and Quisumbing, JJ., concur.

[1] Rollo, 36-47. Per Ricardo P. Galvez, J, with Benipayo, A. and Versola, E., JJ, concurring.

[2] CA Rollo, 83-86. Per Judge Lorenzo E. Veneracion, dated 19 May 1993.

[3] Rollo, 36-42.

[4] Supra note 1.

[5] 42 Phil. 81 [1921].

[6] 21 SCRA 974 [1967].

[7] 212 SCRA 169 [1992].

[8] Id., 498 [1992].

[9] Citing Bank of P.I. v. Far Eastern Molasses, 198 SCRA 689 [1991].

[10] Citing Antonio v. Intermediate Appellate Court, 216 SCRA 214 [1992]; Aqualyn Corp. v. Court of Appeals, 214 SCRA 307 [1992]; Sy v. Romero, 214 SCRA 187 [1992]; Lim v. Court of Appeals, 193 SCRA 597 [1991].

[11] Now Section 4, with amendments, Rule 15, 1997 Rules of Civil Procedure.

[12] Now Sections 5 and 6, id.

[13] Fulton Insurance Co. v. Manila Railroad Corporation, 21 SCRA 974, 982 [1967]; Sembrano v. Ramirez, 166 SCRA 30,36 [1988]; Bank of the Philippine Islands v. Far East Molasses, 198 SCRA 689, 698 [1991]; Goldloop

Properties v. Court of Appeals, 212 SCRA 498, 504 [1992]; Cui v. Madayag, 245 SCRA 1, 10 [1995]; Marikina Valley v. Flojo, v. 251 SCRA 87, 93 [1995].

[14] Manila Surety and Fidelity Co. v. Bath, 14 SCRA 435, 437-438 [1965]; In re Almacen, 31 SCRA 562, 575 [1970]; Cledera et. al. v. Sarmiento, 39 SCRA 552, 569 [1971]; Dela Peña v. Dela Peña, 258 SCRA 298, 304 [1996].

[15] Supra note 15 at 564.

[16] Supra note 15.

[17] Now Section 2, Rule 45 of the 1997 Rules of Civil Procedure.

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