

**THE ACTING DIRECTOR, NATIONAL BUREAU OF INVESTIGATION,
FOR AND IN BEHALF OF THE REPUBLIC OF THE PHILIPPINES,
PETITIONER, VS. THE HON. HERMOGENES CALUAG, ETC. ET AL.,
RESPONDENTS.**

G.R. No. 16146. May 31, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an original petition for mandamus and certiorari, with preliminary injunction, to annul certain orders of the Court of First Instance of Rizal, and to compel the same to give due course to an appeal interposed by herein petitioner, Acting Director of the National Bureau of Investigation, for and in behalf of the Republic of the Philippines, and to meanwhile restrain respondent Judge from executing one of the orders complained of.

On June 3, 1959, or three (3) days after the promulgation of our decision in *Philipps vs. The Municipal Mayor of Caloocan*, G.R. No. L-9183—holding that slot machines of the jackpot type are gambling devices, the operation of which is illegal, even if authorized by a license issued in pursuance of a municipal ordinance, for the same is illegal it being in contravention of section 2242 (j) of the Revised Administrative Code, imposing upon municipal councils the duty "to prohibit and penalize * * * gambling"—petitioner herein, through his agents, applied, from the Court of First Instance of Rizal, for search warrants for the purpose of seizing jackpot slot machines which, allegedly, were being operated in night and day clubs, restaurants and other places of amusement in Pasay City, specified in the respective applications. After due examination of petitioner's agents, said court issued, on the same date, the search warrants applied for, pursuant to which said agents seized about 68 jackpot slot machines and then filed in court, on June 5, 1959, the corresponding returns of said warrants.

Subsequently, a special prosecutor of the Department of Justice filed criminal cases for gambling against the owners of seventeen (17) of the slot machines thus seized, for which no permit had been issued by Pasay City. No criminal charges were preferred, however, against the owners of the remaining 51 slot machines, seized as above stated, which were covered by licenses issued pursuant to Ordinance No. 106 of said City. On September 1, 1959, the owners of said 51 slot machines, namely, respondents Sixto Magdaluyo and Rodolfo Taylan—hereinafter referred to as respondent-owners—moved for the return of said slot machines upon the ground that the same were not involved in any criminal case pending in court. (Carlos Magdaluyo is, likewise, one of the respondents in the case at bar, as one of the owners of said slot machines, who allegedly filed said motion, but, in his answer to the petition herein, Carlos Magdaluyo denied that he owns any of the machines in question and alleged that he had been wrongfully included as respondent herein.) Petitioner objected to said motion on September 1, 1959, alleging that the State, under the "Theory of Preventive Justice", may retain said slot machines to prevent the use thereof in committing further crimes, independently of the filing of criminal actions in connection with said slot machines, for the same have, allegedly, no legitimate use. This notwithstanding, by an order dated September 19, 1959, respondent Hon. Hermogenes Caluag, as Judge of First Instance of Rizal, directed the return of said slot machines as prayed for by respondent-owners.

Copy of said order was, on September 24, 1959, served upon petitioner herein, who, eight (8) days later, or on October 1, 1959, filed his notice of appeal from said order. Meanwhile, or on September 25, 1959, respondent-owners had moved for the immediate execution of the order of September 19, 1959, upon the theory that it is immediately executory. Petitioner objected thereto, on October 1, 1959, upon the ground that the immediate execution of said order of September 19, 1959, would render his appeal academic and nugatory. Five (5) days later, or on October 6, 1959, petitioner filed his record on appeal. The next day, respondent-owners moved to dismiss petitioner's appeal, alleging that the order of September 19, 1959, was interlocutory and, hence, unappealable. Subsequently, or on October 16, 1959, said respondent-owners filed an urgent motion praying that petitioner be cited for contempt of court, in view of his failure to return the aforementioned slot machines, despite the order of September 19, 1959. Soon thereafter, or on October 19, 1959, respondent Judge issued an order dismissing petitioner's appeal, upon the theory that the order of September 19, 1959 was interlocutory and unappealable.

On October 20, 1959, copy of this order was served upon petitioner, who, the next day moved for its reconsideration. Prior thereto, or on October 20, 1959, respondent-owners filed a supplemental "motion for contempt", reiterating their prayer that petitioner be immediately compelled to return said 51 slot machines under penalty of contempt. Four (4) days later, or on October 24, 1959, respondent Judge denied petitioner's motion for reconsideration and ordered him to appear in court on October 30, 1959, and "show cause why he should not be punished for contempt for his failure to deliver the slot machines in question as per order of the Court". Hence, on October 28, 1959, petitioner herein instituted the present action for certiorari and mandamus, with preliminary injunction, upon the ground that, in ordering the immediate return of said slot machines and in threatening to hold him in contempt unless he delivered the same to respondent-owners, despite the appeal taken by him from the order for the return thereof, respondent Judge had acted with grave abuse of discretion; that in dismissing petitioner's appeal, respondent Judge had unlawfully excluded him from his right to appeal from the order aforementioned; that petitioner has no other plain, speedy and adequate remedy in the ordinary course of law; and that respondent Judge would punish him for contempt unless restrained by this Court. Soon after the filing of the petition herein, we issued the writ of preliminary injunction therein prayed for, without bond.

In their answer to said petition, respondents maintain that the order of respondent Judge of September 19, 1959 is immediately executory and not appealable; that petitioner has no valid reason to retain the seized properties, under the so-called theory of preventive justice; and that, as a mere custodian, for the court, of said properties, petitioner has no personality to question said order of respondent Judge.

With respect to the merits or demerits of petitioner's alleged right to retain the slot machines in question under the theory of preventive justice, despite the fact that no criminal action has been filed against the owners of said machines, suffice it to say that this is neither the time nor the place to settle such a question, the main issue herein being whether the order of September 19, 1959, is appealable or not. If appealable, the validity of petitioner's aforementioned contention should be decided in the proceedings relative to said appeal, not in the case at bar.

As regards petitioner's right to assail the order of September 19, 1959, despite the fact that he is merely an agent of the court, insofar as the custody of the slot machines in question is concerned, we note that, although this point was mentioned in respondent's order of October 19, 1959, dismissing petitioner's appeal, said order relied, not upon the alleged lack of personality of petitioner to appeal, but upon the theory "that the order authorizing the return of the slot machines in question is merely interlocutory", and that Ordinance No. 106 of Pasay City is valid, unless declared otherwise. Considering, however, that a similar ordinance of the municipality of Caloocan was invalidated in the aforementioned case of Philipps vs. Municipal Mayor of Caloocan (*supra*), decided by this Court on May 30, 1959, petitioner may have earnestly believed that respondent Judge had, not only erred, but,

even committed a grave abuse of discretion, in holding otherwise in said order of October 19, 1959, as well as in issuing the order of September 19, 1959. Under these circumstances, we feel that, as a law enforcing agent, whose duty it is to execute the law, petitioner had sufficient personality to assail the aforementioned orders, particularly considering that the respondent Judge had threatened to punish him for contempt unless the slot machines were returned to respondent-owners, notwithstanding the appeal taken from the order of September 19, 1959.

In any event, judicial administrators and receivers are, likewise, officers of the court, and, as such, agents or representatives of the court in the custody of the property under administration or receivership. Yet, they may appeal from such final orders or decisions of the court affecting such custody as they consider erroneous. It may not be amiss to add, that the view in the Philipps case (*supra*) was, in effect, reiterated in *Uy Ha vs. City Mayor*, 108 Phil., 400; 56 Off. Gaz., [37] 5997; 108 Phil., 400, 59 Off. Gaz., [37] 5997; *City of Manila vs. Pallugna*, 109 Phil., - and *Morcoin Co., Ltd. and Suter Inc., vs. City of Manila*, 110 Phil., 918; 61 Off. Gaz., [16] 2343).

Referring now to the question whether said order of September 19, 1959, is interlocutory or not, it is clear to us that the answer should be in the negative. Said order is a final one, for it settled definitely the matter therein disposed of and no further proceeding would ensue, thereafter, in connection therewith. Some orders of execution might be interlocutory, such as those issued during the pendency of an appeal from the decision being executed, but this is not the nature of the order involved in this case. When the order of September 19, 1959 was issued, there was no pending appeal. In fact, said order was based upon the fact that no criminal action had been filed against the owners of the slot machines in question. In other words, there was no pending criminal case in connection with said slot machines, and, consequently, there could be no pending appeal in relation thereto. Had no appeal been taken by petitioner herein, said order of September 19, 1959, would have become executory. Certainly, such possible status negates the alleged interlocutory character of said order.

In short, the same was a final order, which, as such, was appealable, and consequently respondent Judge abused his discretion, as well as exceeded his jurisdiction and unlawfully excluded petitioner from the enjoyment of a right to which he is entitled, in dismissing his appeal.

Wherefore, the aforementioned orders of October 19 and 24, 1959, are set aside, and respondent Judge is directed to give due course to the aforementioned appeal of petitioner herein, with costs against respondents Sixto Magdaluyo and Rodolfo Taylan. Moreover, the writ of preliminary injunction heretofore issued is hereby made permanent. It is so ordered.

Bautista Angelo, Labrador, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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