

(With Resolution. March 31, 1964)*G.R. No. 18899. February 29, 1964*

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-18899/>**CONCEPCION, J.:**

The Director of the National Bureau of Investigation hereinafter referred to as the Director seeks the review of an order of the Court of First Instance of Rizal directing the return of fifty-one (51) slot machines, and the paraphernalia thereof, to the owners thereof. The appeal is before us only questions of law being raised therein.

It appears that sometime before September 1, 1959, said slot machines and paraphernalia were being operated by the owners thereof in Pasay City pursuant to licenses issued by said City in conformity with its Ordinance No. 106. On the date adverted to above, the aforementioned machines and paraphernalia, together with slot machines operated without said license, were seized under and by virtue of search warrants issued by a Judge of the Court of First Instance of Rizal. Said unlicensed slot machines were the subject matter of criminal case Nos. 9571-1 and 9569-I of the Municipal Court of Pasay City. However, the special prosecutor in charge of said cases opined that no criminal cases should be filed against the owners of the fifty-one (51) slot machines involved in the case at bar, and, accordingly, recommended that said machines and its paraphernalia be released and returned to the owners thereof. As a consequence, on September 2, 1959, the Secretary of Justice ordered the Director to release said slot machines to their respective owners. However, this order was subsequently suspended, the Director having invited attention to the fact that the court which issued the search warrants adverted to above might punish him for contempt if he released the machines without judicial authority therefor. This led to the filing of a motion by the owners of said machines praying that the same be ordered released and returned to them.

The Director objected to the motion upon the ground that the machines in question are intended to be used for the commission of an offense (gambling), and are a public nuisance, as well as illegal per se. After due hearing, the lower court overruled this opposition and granted said motion. Hence this appeal.

The main issue therein is whether or not the aforementioned slot machines constitute a nuisance per se or will be devoted, if released, to some unlawful use. Appellant maintains that the answer should be in the affirmative, relying mainly upon the decision of this Court in *Philips vs. Municipal Mayor* (G. R. No. L-9183, promulgated May 30, 1959), in which we held that an ordinance of the municipality of Caloocan authorizing the operation of slot machines was illegal it being violative of section 2242 (j) of the Revised Administrative Code imposing upon municipal councils the duty "to prohibit and penalize gambling."

The doctrine laid down in the *Philips* case is not in point, for Republic Act No. 188, which is the Charter of Pasay City (Section 16[n]), expressly authorizes its municipal board "to regulate and fix the amount of license fees for" inter alia, "slot machines" a power not granted to the municipal council of Caloocan. It being conceded that the municipal board of Pasay City has passed Municipal Ordinance No. 108 (approved on June 26, 1957), fixing the amount of the license fees for the operation of slot machines, and that the owners of the slot machines in question have paid said fees and secured the corresponding licenses, it follows that the operation of said machines is neither illegal nor constitutes a nuisance. Needless to say:

"The mere possession of slot machines or even its operation for amusement and not for profit does not constitute a crime." (38 CJS. 159, footnote 99 [1].)

"A slot machine is not a 'gambling device' per se, because it can be operated legally as well as illegally." (Gen. Code No. 13066, Nader vs. State, Ohio Supp. 287.)

WHEREFORE, the order appealed from is hereby affirmed, without special pronouncement as to costs. It is so ordered.

Bengzon, C. J., Bautista Angelo, Labrador, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

RESOLUTION

March 31, 1964

CONCEPCIÓN, J.:

Appellant seeks a reconsideration of the decision of this Court in the above-entitled case upon the ground that the ruling therein made is a complete reversal of the view taken in *Uy Ha vs. City of Manila* (108 Phil., 400); that the slot machines in question are gambling devices the operation of which constitutes a violation of Article 195 of the Revised Penal Code punishing gambling; and that said slot machines are illegal per se.

Appellant's contention is untenable inasmuch as:

- The case of *Uy Ha vs. City of Manila* (L-14149, May 30, 1960), relied upon by appellant, does not support his pretense for:

(a) In the case cited there was an ordinance in effect prohibiting "the installation and/or operation of * * * 'pinball' machines", the legality of which ordinance was contested by *Uy Ha*, but upheld by the Court, as a valid exercise of the authority of the City of Manila, under the general welfare clause found in its charter, whereas the ordinance involved in the case at bar expressly authorizes the operation of the slot machines in question;

(b) In the *Uy Ha* case this Court quoted with approval that view that "a slot machines is not per se a gambling device, since it may be used and played upon for innocent purposes" and that the "use to which it is put must determine its character", as set forth in *Heartley vs. State* (157 S.W. 2nd 1, 178 Tenn. 354), applying the doctrine laid down in *Ex parte Overby* (279 P. 523, 524, 43 OH. Cr. 400, 39 Words and Phrases, p. 519);

- In *Phillips vs. Municipal Mayor* (G.R. No. L-9183 May 30, 1959), cited in appellant's brief, there was evidence regarding the nature of the slot machines involved therein as gambling devices; but no such evidence has been introduced or sought to be introduced in the case at bar. In *Sopor vs. Michal* (123 Md. 542, 91 Atl. 684, LRA 1915A 232), it was held, reiterating the view expressed in *Wagner vs. Upshur* (95 Md. 519, 52 Atl. 509, 93 Am. St. Rep. 412), "that articles or property that may or may not be used for legal purposes cannot be seized until it has first been established that the article was procured, held or used for an illegal purpose" and "that in order to establish that the article was designed to be put, or has been put, to an illegal use, there must be a proceeding in a court of criminal jurisdiction * * *,"

- No such proceeding has taken place in connection with the slot machines involved in the present case. Worse still, no such proceeding is seemingly contemplated to be instituted in relation thereto. Although appellant maintains that the operation of said slot machines constitutes a crime:

(a) The special prosecutor of the Department of Justice in charge of the case in the lower court declined to file any

information against the owners and/or operators of said slot machines, upon the theory that they had committed no criminal offense, and, accordingly, recommended that said machines be released and returned to its owners;

(b) Acting favorably upon his recommendation, the Secretary of Justice, in his letter to appellant herein, dated September 2, 1959, ordered him to return said machines "no criminal case having been filed in connection with their possession and operation" and "inasmuch as no further action is contemplated by this Office or any prosecuting agency in connection with them";

(c) Although this order was suspended upon the suggestion of appellant herein, to forestall any possible liability for contempt of court—should the release be made without express authority of the court that issued the search warrant pursuant to which said machines had been seized—it would seem clear that the Department of Justice still intends to file no action against the owners of said machines, for no such action has been instituted despite the lapse of about five (5) years since the seizure took place, on June 3, 1959, notwithstanding the request, made by counsel for the owners of said machines, in a letter to the Secretary of Justice dated July 5, 1959, to the effect "that the NBI officers concerned should be directed to act promptly—either to return the properties to their owners or to institute such action, which they may deem proper—in order that the owners will have the opportunity to protect their rights and obtain redress of the wrong done against them;"

- Appellant would have the court order, in effect, the forfeiture or confiscation of the slot machines in question without a proceeding appropriate therefor. In *Woods vs. Cottrell* (55 W. Va. 476, 47 SE 275, 65 LRA 616, 104 Am. St. Rep. 1004, 2 Ann. Cas. 933), the Court had the following to say:

"* * * We think that whether the machines shall be burnt or released depends on whether the accused is guilty. If not guilty lie is not himself to be punished, neither is the machine to be burnt, and as only the trial court can determine his guilt, so only it can condemn the machine to be burnt. If the party is guilty, destruction of the machine follows the ascertainment of his guilt; if acquitted, judgment of restitution to him of his property follows. Though the thing be plainly an instrument of gaming under the statute, yet its owner be acquitted of using it for the purpose, it cannot be destroyed, as it is only instruments actually used and kept for gaming that are thus condemned to destruction." (Italics ours.)

In *Church vs. Goodnough* (14 F. [2d] 432, 434), it was held:

"When the goods seized are not in themselves subject to condemnation except when intended or used for illegal purposes, judicial proceedings for forfeiture, which shall give notice to claimants and afford them an opportunity to show that condemnation is not justified, seem necessary for due process of law." (Italics ours.)

To the same effect in *Robenson vs. Inches* (220 Mich. 490, 190 NW 227, 228) from which we quote:

"* * * while the officers had a right to seize the money to be used as evidence, it was their plain duty to return it when complaint was neither made nor contemplated." (Citing *Newberry vs. Carpenter*, 107 Mich. 573, 65 N.W. 530, 31 L.R.A. 163, 61 Am. St. Rep. 346, *Taylor vs. Circuit Judge*, 209 Mich. 101, 176 N.W. 550, and sections 15880-15883, Comp. Law 1915.) (Italics ours.)

- Although the operation of slot machines in the Philippines may—under certain conditions, the existence of which has not been established in the case at bar—constitute gambling, the latter is illegal not per se, but only if and when prohibited by statute;

- There can be no doubt but that, under the theory of preventive justice, the state may by law prohibit and punish such things as it may deem inimical to the common good, such as lottery lists, tickets and advertisements, and papers and other matters containing letters, figures, Signs or symbols which pertain to or are in any manner used

in the game of jueteng or any similar game, as well as instruments or implements intended to be used in the commission of the offenses of counterfeiting or falsification, the possession of which is punished in the Revised Penal Code (Articles 176, 195 [c] and 196), but neither said Code nor any other law punishes the possession of slot machines of any kind whatsoever. Thus, in *Mullen vs. Mosely* (12 L.R.A. [n] 394), *State vs. Soucie's Hotel* (95 Mo. 518, 50 Atl. 709), and *Police Commissioner vs. Wagner* (93 Md. 182, 48 A 455, 52 L.R.A. 775, 86 Am. St. Rep. 423)—cited in petitioner's brief—the theory of preventive justice was applied to justify the summary abatement of the objects involved therein, as authorized by a statute declaring said objects noxious per se. Upon the other hand, in *McConnel vs. McKillip* (99 N.W. 505), involving the seizure by a game warden of three (3) shotguns used in hunting chicken in violation of the game law, which provided for the forfeiture of said guns to the state, it was held that which forfeiture may take place only upon conviction to the user of the guns, and that otherwise he was entitled to recover the latter in an action for replevin; and

- If appellant still believes, as he claims, that the operation of the slot machines in question is violative of a criminal law, his remedy is obvious—to make proper representations with the Department of Justice, the views of which, thereon are binding upon him (Sections 79 [c] and 83, Revised Administrative Code), for the filing of the corresponding informations by officers of said Department.

Wherefore, the motion for reconsideration is hereby denied.

Bengzon, C. J., Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Dizon, Regala, and Makalintal, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.