

CIRILO ALAFRIZ, PETITIONER AND APPELLANT, VS. MARIANO NABLE, AS JUDGE OF MUNICIPAL COURT OF MANILA L. PASICOLAN, AS ACTING SHERIFF OF MANILA, AND PABLO T. ANGELES, DOING BUSINESS ...*G.R. No. 47780. June 10, 1941*

Ponente: MORAN, J.

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A judgment having been rendered by the municipal court of Manila against petitioner herein, Cirilo Alafriz, and two others, condemning them to pay jointly and severally one Pablo T. Angeles the sum of P492, a writ of execution was issued and in pursuance thereof the sheriff of Manila levied on certain properties of the petitioner. The judgment not having been fully satisfied, the sheriff sought to levy on certain household furniture of the petitioner worth P74 but on due petition for their exemption from execution, the respondent municipal court acceded in part thereto but refused exemption of ten (10) pieces of rattan furniture and one (1) ordinary-size mirror, altogether worth P45. Petitioner moved for reconsideration of the respondent court's order for the levy of these articles but this motion was denied in its order of August 24, 1938. The day following, petitioner instituted an action for certiorari in the Court of First Instance of Manila which action was dismissed, the court declaring that an appeal, not certiorari, is the proper remedy, there being no question of jurisdiction involved.

Certiorari lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion. "Without jurisdiction" means that the court acted with absolute want of jurisdiction. There is "excess of jurisdiction" where the court has jurisdiction but has transcended the same or acted without any statutory authority. (Leung Ben vs. O'Brien, 38 Phil., 182; Salvador Campos y Cia. vs. Del Rosario, 41 Phil., 45.) "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (Abad Santos vs. Province of Tarlac, 38 Off. Gaz., 830), or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be soCjpatent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. (Tavera-Luna, Inc. vs. Nable, 38 Off. Gaz., 62.)

In the instant case, the municipal court ordered the levy of the household furniture which were, under section 452 of the old Code of Civil Procedure as amended by Act No. 3862, clearly exempt from execution, their value, together with the others exempted by the respondent court, being far below P200. This is similar to ordering the attachment of property without absolutely any statutory authority therefor, which has been held to be an excess of jurisdiction. (Leung Ben vs. O'Brien, supra.) The instant case is, indeed, far worse, the order issued by the respondent court being violative of the exemption laws enacted to preserve the rights of citizens to necessities of life.

The remedy of appeal is not adequate, it appearing that the order of the respondent court was made peremptory and the sheriff threatened to carry out the sale immediately.

Judgment is reversed, and the order of the municipal court for the levy of ten (10) pieces of rattan furniture and one (1) ordinary-size mirror worth P45, is hereby set aside, and respondents-appellees are perpetually restrained from carrying into effect the sale of said properties, with costs against the appellees.

Avancena, C. J., Diaz, Laurel, and Horrilleno, JJ., concur.

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