

ALFONSO YU AND SOLEDAD YU, PETITIONERS, VS. HON. JUDGE REYNALDO P. HONRADO, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH XXV-PASIG, MARCELO STEEL CORPORATION,...

G.R. No. 50025. August 21, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

For adjudication in this certiorari, prohibition and mandamus case is the possession of about forty-two metric tons of scrap engine blocks (valued at more than forty thousand pesos), part of a stock which Marcelo Steel Corporation sold to an alleged swindler and which scrap iron was allegedly purchased in good faith by the Yu spouses from the swindler but retrieved from the purchasers by Marcelo Steel Corporation by means of a search warrant.

The record shows that on June 27, 1978, Detective Carlos C. Nuestro of the police department Makati, Metro Manila filed with the Court of First Instance of Rizal, Pasig Branch XXV an application for a search warrant, entitled "People vs. Alfonso Yu, Proprietor, Soledad Junk Shop, 171-173 Maria Clara Street, Corner 8th Avenue, Grace Park, Caloocan, Metro Manila."

In that application, Nuestro alleged that he "has been informed and verily believes that Alfonso Yu" was in possession of "about 55 metric tons of unstripped assorted cast iron engine blocks embezzled" and that he "has verified the report and found (it) to be a fact" (p. 41, Rollo).

In his testimony before respondent Judge, Nuestro declared that he had personal knowledge that Alfonso Yu kept the said engine blocks, which were "embezzled"; that the said goods were purchased by Carlito Refuerzo on June 10, 1978 from Marcelo Steel Corporation; that Refuerzo paid for the goods with a check in the sum of P61,808.25, which check was dishonored for insufficient funds; that Refuerzo sold the engine blocks on June 12, 1978 to the Soledad Junk Shop and that Refuerzo was later apprehended and detained in the municipal jail of Makati (pp. 5-8 and 44-47, Rollo).

On that same day, June 27, or after the taking of Nuestro's testimony, respondent Judge issued a search warrant, commanding any peace officer to search the premises of the Soledad Junk Shop, to seize therefrom "55 metric tons of unstripped assorted cast iron engine blocks" and bring them to the court "to be dealt with as the law directs" (pp. 43, 47-48, Rollo).

Nuestro and four policemen implemented the search warrant on the following day, June 28. They seized from the Soledad Junk Shop 42.8 metric tons of engine blocks, which were loaded in six trucks and brought for safekeeping to the premises of Marcelo Steel Corporation, Punta, Sta. Ana, Manila with the understanding that they were in custodia legis (pp. 102-107, Rollo).

On July 12, 1978, the spouses Alfonso Yu and Soledad Yu filed with respondent Judge a motion to set aside the

search warrant and for the return of the engine blocks. Marcelo Steel Corporation opposed the motion.

After hearing, respondent Judge denied the motion in his order of November 9, 1978. The Yus' motion for the reconsideration of that order was also denied. On March 1, 1979, they filed in this Court the instant petition.

Parallel to or contemporaneously with the search warrant proceeding was the complaint for estafa filed by Marcelo Steel Corporation against Refuerzo, Soledad Yu and and Refuerzo's confederates in the office of the provincial fiscal of Rizal (I.S. No. 78-6734).

Assistant Fiscal Ricardo S. Sumaway in a resolution dated October 22, 1979 in the case of Marcelo Steel Corporation vs. Refuerzo, et al. found that Refuerzo, Ernesto Dumlao, Jose Alla and two other persons named Larry and Boy defrauded Marcelo Steel Corporation in the sum of P95,434.50 as the value of 90,890 kilos of scrap materials delivered to Refuerzo which were not paid for and that the Soledad Junk Shop paid Refuerzo P44,000 for 50,000 kilos of scrap materials (p. 306-310, Rollo).

Fiscal Sumaway found that Soledad Yu was not a co-conspirator of Refuerzo and that she was an innocent purchaser for value (p. 309, Rollo).

The fiscal filed in the Court of First Instance of Rizal an information for estafa also dated October 22, 1979 charging Refuerzo, Dumlao, and Alla with having obtained through false pretenses from Marcelo Steel Corporation 90,890 kilos of scrap cast iron engine blocks valued at P95,434.50 (Criminal Case No. 32394, p. 311, Rollo).

However, because the accused in that case have not been arrested, the trial court in its order of April 30, 1980 temporarily archived the case. Thus, there is no movement in that case.

On the other hand, it is imperative that a resolution be rendered as to the conflicting claims of the Yu spouses and Marcelo Steel Corporation with respect to the scrap engine blocks.

Considering the present situation of the parties and the absence of any final judgment in the estafa case as to the civil liability of the accused to make restitution, we hold that the Yu spouses are entitled to retain possession of the scrap engine blocks.

This case is governed by the ruling in *Chua Hai vs. Kapunan, Jr., etc. and Ong Shu*, 104 Phil. 110 "that the acquirer and possessor in good faith of a chattel or movable property is entitled to be respected and protected in his possession, as if he were the true owner thereof, until a competent court rules otherwise".

It was further ruled in the *Chua Hai* case that "the filing of an information charging that the chattel was illegally obtained through estafa from its true owner by the transferor of the bona fide possessor does not warrant disturbing the possession of the chattel against the will of the possessor".

In the *Chua Hai* case, it appears that Roberto Soto purchased on January 31, 1956 for P6,137.70 from Ong Shu's hardware store 700 sheets of corrugated galvanized iron and 249 pieces of round iron bar. Soto issued a bouncing check in payment for the GI sheets.

He sold in Pangasinan 165 GI sheets of which 100 were sold to Chua Hai. Soto was charged with estafa in the Court of First Instance of Manila. In that case, Ong Shu, the seller and complainant, filed a petition asking that the 700 GI sheets, which were deposited with the Manila Police Department, be returned to him.

Chua Hai opposed the petition as to the 100 GI sheets. The trial court ordered the return of the GI sheets to Ong Shu on condition that, as to the 100 sheets, he should post in favor of Chua Hai a bond for twice the value of the 100 GI sheets.

This Court reversed that order because "the possession of movable property acquired in good faith is equivalent to a title" and "every possessor has a right to be respected in his possession" (Arts. 539 and 559, Civil Code).

The instant case is similar to the Chua Hai case. The Yu spouses bought the scrap engine blocks in good faith for P44,000 from the alleged swindler without any notice that the same were obtained under false pretenses or by means of a bouncing check. The purchase by the Yu spouses of the scrap engine blocks from Refuerzo, doing business under the trade-name C.C. Varried Corporation, was covered by sales invoice and seemed to have been made in the ordinary course of business (p. 223, Rollo).

Marcelo Steel Corporation contends that it recovered the scrap engine blocks by means of a valid warrant. The Yu spouses counter that the search warrant was void because it was issued without probable cause on the basis of Nuestro's hearsay testimony.

We hold that the search warrant was lawfully issued. Respondent Judge complied with the requirements for its issuance as prescribed in section 3, Article IV of the Constitution and in sections 3 and 4, Rule 126 of the Rules of Court.

While Nuestro's knowledge of the alleged estafa was initially hearsay, yet his comprehensive investigation of the case enabled him to have direct knowledge of the sale made by Pablo Tiangco of Marcelo Steel Corporation Refuerzo and the sale made by Refuerzo and his confederates to the Yu spouses.

Nuestro's testimony was a sufficient justification for an examining magistrate to conclude that the scrap engine blocks were the subject of estafa. That conclusion was confirmed by the filing of information for estafa.

But from the fact that the search warrant was validly issued, it does not follow that Marcelo Steel Corporation is entitled to retain the same. There is as yet no decree of restitution in the criminal case entitling Marcelo Steel Corporation to recover the scrap iron from the third person who bought it in good faith and for value.

Article 105 of the Revised Penal Code provides that the restitution of the thing itself must be made whenever possible "even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him". However, there is no restitution in case "the thing has been acquired by the third person in the manner and under the requirements which, by law, bar an action for its recovery".

Hence, in the absence of any adjudication as to the civil liability, there is no legal basis for allowing Marcelo Steel Corporation to recover possession of the scrap engine blocks. Indeed, there is cogency in the view of Justice Felix in his concurring opinion in the Chua Hai case that restitution should not be required in a case where the offended party voluntarily delivered the thing to the offender-purchaser in the expectation of being paid the price and where, thereafter, the offender sold the thing to an innocent third party. That situation should be distinguished from the cases of theft and robbery where the offended party was involuntarily deprived of his property (104 Phil. 110, 120).

The case may be viewed from another angle. Since Marcelo Steel Corporation and the Yu spouses acted in good faith, the question is which of them should suffer the loss occasioned by the acts of the alleged swindler?

The answer is found in the rule, enunciated by Justice Holmes in *Eliason vs. Wilborn*, 281 U.S. 457 (applied here by analogy), that, "as between two innocent persons, one of whom must suffer the consequence of a breach of trust, the one who made it possible by his act of confidence must bear the loss".

WHEREFORE, respondent Marcelo Steel Corporation is ordered to return and deliver to the Yu spouses within ten days from notice of the entry of judgment in this case the 42.8 tons of scrap engine blocks in question. No

costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero,[*] and De Castro,[*] JJ., concur.

[*] Justices Guerrero and De Castro were designated to sit in the Second Division.

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