

**PEOPLE OF THE PHILIPPINES, REPRESENTED BY THE OFFICE OF
THE PROVINCIAL FISCAL LAGAWÉ, IFUGAO, PETITIONER, VS. HON.
FRANCISCO MEN ABAD, JUDGE OF THE COURT OF FIRST INSTANCE
OF IF...**

G.R. No. 55132. August 30, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

We annul the Order of respondent Judge of the Court of First Instance of Ifugao, Lagawe, Ifugao, dismissing the Information for "Theft of Minerals" filed against private respondents Julius Robles and thirteen (13) others on the ground that the facts charged do not constitute an offense.

The antecedental facts may be briefly recited thus:

- Prior to 27 March 1978, the Director of Mines issued a commercial lease permit to one Felix de Castro granting him the exclusive right to quarry, extract and carry away sand and gravel from the Sumigar Quarry located at Banaue, Ifugao.

- On complaint by Felix de Castro, an Information was filed in the Court of First Instance of Ifugao (Criminal Case No. 316), presided over by respondent Judge, charging private respondents with the crime of "Theft of Minerals" defined and penalized under Section 78 of Presidential Decree No 483, as amended by Presidential Decree No. 1385.

- The Information particularized the offense as follows:

"That on or about March 27, 1978, continuing thru April, May and June of 1978, thence to July, August and September of the same year, x x x and within the jurisdiction of this Honorable Court, the above-named accused, all residents of Banaue, Ifugao, conspiring, confederating, confabulating and mutually helping one another, with evident premeditation and with intent of gain, without the knowledge or consent of the said Permittee as well as against the latter's prohibition and protestations, and without any permit of their own pursuant to law, did then and there wilfully, unlawfully, and feloniously exact, gather, remove, take and/or dispose of the minerals or material aggregates like sand, gravel, stones, and boulders; by the use of force threat and intimidations against the Permittee and his laborers for the purpose of driving them away from the Quarry Site, and by accused extracting, gathering, taking and hauling said material aggregates or minerals therefrom, and disposing of the same for gain, as In fact they did gain from the disposition of all said minerals or aggregates so extracted, gathered, and removed, pursuant to FOUR (4) Contracts with the Ministry of Public Highways, Ifugao Engineering District, Lagawe, Province of Ifugao, and ONE (1) Contract with the DIMSON (Manila), Inc., stationed at Banaue, Ifugao, to the prejudice of said FELIX DE CASTRO, as permittee, in terms of the value of the minerals and material aggregates thus gathered, extracted, removed, and disposed of, to the

extent of FORTY THOUSAND FIVE HUNDRED AND NINETY TWO PESOS and THIRTY EIGHT CENTAVOS (P40,592.38) in addition to the royalty and the damage caused thereby.

"ALL CONTRARY TO LAW." (Annex "A", Petition, pp. 10-11, Rollo)

- Respondents-accused filed a Motion to Quash on the ground that the facts charged do not constitute an offense inasmuch as they had paid "sand and gravel tax," as shown by three official receipts dated February 2, 1978, April 13, 1978, and April 27, 1978, respectively, to the Municipal Treasurer of Banaue, Ifugao, for the quarrying of sand and gravel. The taking, therefore, according to private respondents, was with the consent of the government. They also invoked LOI No. 243, which allows persons to extract sand and gravel even within the leased area for use in government infrastructures.

- Petitioner opposed the quashal arguing that it is error to imply that consent was given by the Government through the Municipal Treasurer inasmuch as the taxes paid to the Municipal Government are not the fees required by the Bureau of Mines, which is the government entity empowered to approve permits and licenses and to regulate the exploitation of mineral resources. Further, LOI 243, as implemented by Mines Administrative Order No. MRD-16, Series of 3977, grants to government entities only the right to extract sand and gravel for infrastructure projects and not to any private person or entity.

- On 28 January 1980, respondent Judge issued the assailed Order quashing the Information on the ground that violation of P.D. No. 463 is limited to an administrative violation and that the crime of Theft under the Revised Penal Code (Article 308) has not been committed since malice, which is an essential element in the commission of a crime, is lacking,

- The reconsideration prayed for by petitioner was denied by respondent on 18 July 1980. Hence, this Certiorari Petition alleging grave abuse of discretion on the part of respondent Judge.

The crucial issue for resolution is whether or not the facts charged in the Information constitute an offense.

It is basic that since respondents-accused invoked the ground "that the facts charged do not constitute an offense" (Rule 117, Sec. 2[a] Rules of Court), the sufficiency of the Information hinges on the question of whether the facts alleged, if hypothetically admitted, meet the essential elements of the offense as defined in the law (*People vs. Segovia*, 103 Phil. 1162 [1958]).

The Information, filed on 31 May 1979, charged private respondents with the crime of "Theft of Minerals" defined and penalized under Section 78 of P.D. No. 463, as amended by Section 23 of P.D. No. 1385, effective 25 May 1978, providing:

"Section 78. Theft of Minerals. Any person who, without a mining lease or a temporary permit or any other permit granted by the Secretary or the Director under existing mining decrees, laws and regulations to mine, shall extract, remove and/or dispose of minerals belonging to the Government or from a mining claim or claims leased, held or owned by other persons, shall be deemed to have stolen the ores or the products thereof from the mines or mills. He shall, upon conviction, be imprisoned from six (6) months to six (6) years or pay a fine from one hundred pesos (P100.00) to ten thousand pesos (P10,000.00) or both, in the discretion of the court, besides paying compensation for the minerals removed, extracted and disposed of, the royalty and the damage caused thereby."

The elements of the offense, therefore, are that: (1) the accused extracted, removed and/or disposed of minerals; (2) these minerals belong to the Government or have been taken from a mining claim or claims leased, held or owned by other persons; and (3) the accused did not possess a mining lease or a temporary permit or any other permit to mine granted by the Secretary or the Director under existing mining decrees, laws and regulations.

Evidently, the Information filed in the Court below includes all the foregoing elements. Thus, it alleged (1) that the accused, conspiring and mutually helping one another, wilfully and feloniously extracted, removed and/or disposed of minerals or material aggregates like sand and gravel; (2) the minerals were taken from the Sumigar Quarry, Banaue, Ifugao, which is covered by a commercial permit issued by the Bureau of Mines, Baguio City, in favor of complaining witness Felix de Castro; and (3) the extracting was done without any mining lease or permit of their own pursuant to law.

It will have to be held, therefore, that based upon the facts alleged in the Information, the essential requisites of the offense of "Theft of Minerals," as specified by substantive law, are present. Thus, respondent Judge, in considering as evidence the three receipts of tax payments issued by the Municipal Treasurer of Banaue, Ifugao, exceeded his jurisdiction amounting to grave abuse of discretion when he considered matters of defense extrinsic to the allegations in the Information and which should be substantiated during the trial. Moreover, said receipts merely show payment of taxes pursuant to Provincial Ordinance No. 14 and not the authority to extract, remove, and/or dispose of minerals from the Sumigar Quarry as required by P.D. No. 463. Those receipts are insufficient evidence to prove that the proper Government office had, in effect, granted the required permit to extract minerals from said quarry.

The rationalization by respondent Judge that the taking away of sand and gravel was without malice because it was done with the knowledge and participation of the Government since private respondents had paid taxes on the sand and gravel extracted is not well-taken. In crimes punished by special laws, the act alone, irrespective of its motives, constitutes the offense.

WHEREFORE, the Petition is granted; the Orders, dated 28 January 1980 and 18 July 1980, of respondent Judge are annulled and set aside; and Criminal Case No. 3 16 of the Court a quo is ordered reinstated for further proceedings in accordance with law.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

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