

**PORFIRIO JOPILLO, JR., PETITIONER, VS. HON. COURT OF APPEALS,
HON. BALTAZAR R. DIZON, ARSENIO C. DE GUZMAN AND RAYMOND
LIM, RESPONDENTS.**

G.R. No. 76026. November 09, 1988

Ponente: GANCAYCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-76026/>

GANCAYCO, J.:

By this petition the Court is asked to resolve the question of whether or not a motion to discharge a writ of attachment should be granted upon presentation of evidence by the party whose property has been attached to show that the attachment is improper or irregular.

On October 18, 1985, private respondent Raymond Lim filed a complaint for the collection of a sum of money in the amount of about P100,000.00 with a prayer for preliminary attachment in the Regional Trial Court of Pasay City. It is alleged in the complaint that petitioner was, among others, guilty of fraud in contracting the obligation in that from the very beginning he had no intention to pay the same and that he is disposing of the scrap materials subject of their agreement to defraud private respondent.

On October 21, 1985, the trial court granted ex-parte the prayer for a writ of preliminary attachment having found sufficient cause therefor based on the verified complaint and the affidavit of merit executed by private respondent. The court, however, required the private respondent to file a bond in the amount of P100,000.00. Pursuant to the said order respondent sheriff Arsenio de Guzman attached a Chevrolet truck owned by petitioner.

On October 25, 1985, petitioner filed an urgent motion to discharge the writ of attachment in accordance with Section 13, Rule 57 of the Rules of Court alleging therein that the issuance of the writ was irregular and improper. At the hearing of the motion, petitioner testified that their agreement was for simple loans which have been fully paid by way of off-set when he delivered scrap materials to private respondent on various occasions. In support thereof, petitioner presented receipts purportedly signed by the secretary of private respondent accepting deliveries of the scrap materials.[1]

The trial court denied petitioner's motion in an order dated November 6, 1985. The trial court held that the writ of attachment is within the context of the law and instead required petitioner to put up a counterbond in the amount equal to the value of the property attached to discharge the writ of attachment pursuant to Section 12 of Rule 57 of the Rules of Court. Petitioner filed a motion for reconsideration of said order asking that the writ be discharged in accordance with Section 13 of Rule 57. It is alleged in the said motion that through his testimony and documentary evidence, he had established that the allegations in the affidavit of private respondent are not true and thus there is no cause of action to justify the issuance of a writ of attachment. The lower court denied the motion in an order dated November 26, 1985.

Hence, the petitioner filed a petition for certiorari with prayer for the issuance of a restraining order or the writ of preliminary injunction in the then Intermediate Appellate Court. On June 20, 1986, the appellate court denied due course to the petition and vacated the restraining order it earlier issued with costs against petitioner.[2]

Petitioner now comes to this Court by way of this petition for review assigning the following errors on the part of the respondent court:

FIRST ERROR

THE RESPONDENT COURT OF APPEALS COMMITTED AN ERROR OF LAW IN RULING THAT THE PETITION FOR CERTIORARI FILED BEFORE IT BY THE PETITIONER DID NOT PRESENT ANY JURISDICTIONAL ISSUE.

SECOND ERROR

THE RESPONDENT COURT OF APPEALS COMMITTED AN ERROR OF LAW IN HOLDING (BY IMPLICATION) THAT RESPONDENT JUDGE DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION.

THIRD ERROR

THE RESPONDENT COURT OF APPEALS COMMITTED AN ERROR OF LAW FOR HAVING ERRONEOUSLY APPLIED INAPPROPRIATE AUTHORITIES AND JURISPRUDENCE IN RESOLVING THE PETITION FOR CERTIORARI. (Page 12, Rollo)

The petition is devoid of merit.

Petitioner argues that the respondent judge committed a grave abuse of discretion amounting to lack of jurisdiction when he refused to order the discharge of the writ of attachment. He also contends that having established by evidence that he had paid in full the obligation sued upon, the private respondent has no cause of action much less a ground to obtain a writ of attachment against him.

Citing *National Coconut Corporation vs. Pecson*,^[3] petitioner alleges that the attachment may be considered as improperly or irregularly issued when the facts alleged in the private respondent's affidavit have been shown to be untrue by petitioner. He contends that it is incumbent upon private respondent to prove the facts in issue either by affidavit or deposition or some form of evidence.^[4]

In denying due course to the petition, the appellate court made the following disquisition:

"The petition does not present any jurisdictional issue, hence, the remedy of certiorari is unavailable. Generally, when a court has jurisdiction over the subject matter and of the person, decisions upon all questions pertinent to the cause are decisions within its jurisdiction and however irregular or erroneous they may be, they cannot be corrected by certiorari. (*Napa vs. Weissenhagen*, 29 Phil. 182; *Gala vs. Cui and Rodriguez*, 25 Phil 522; *Matute v. Macadael and Medel*, J-9325, May 30, 1956; *NAWASA v. Municipality of Libmauan* 20 SCRA 337). And as the respondent court had jurisdiction to issue the writ of attachment its errors, if any, committed in the appreciation of the probative value of the facts stated in the petition for the writ and/or in the motion to discharge the attachment, does (sic) not affect its jurisdiction but merely the exercise of jurisdiction. (*Galang v. Endencia*, 73 Phil. 399) In the instant case, respondent Judge having acted within the law, there can be no capricious and whimsical exercise of judgment equivalent to lack of jurisdiction.

Furthermore, a perusal of the records shows that in order to resolve the issue as to whether petitioner's evidence proves the falsity of private respondent's allegations, respondent Court would have to go into the merits of the case aside from the evidence introduced in support of the motion to discharge the attachment. More particularly, the respondent Court would have to resolve whether the alleged receipts of deliveries are really genuine, that two (2) truckloads of scrap materials worth P30,000.00 was actually delivered and whether the amount of P100,000.00 covered by the "Agreement" was loan or advance payment for scrap iron that petitioner promised to deliver. The merits of the action in which a writ of preliminary attachment has been issued are not triable on a motion for dissolution of the attachment, otherwise an applicant for the dissolution

could force a trial of the merits of the case in motion (4 Am. Jur. Sec. 635, 934). Accordingly, while it is competent for the Court to decide whether the affidavits submitted show the existence of a cause of action against the defendant, this gives general right to a trial on such motion of the merits of such cause. (4 Am. Jur. 933, 934)

Moreover, in this instant petition, since petitioner (defendant in the lower court) has not yet answered the complaint and the principal action is not ready for trial, respondent Court cannot resolve the issue on the merits of the case. This, respondent Court would have to do to rule on the sufficiency of petitioner's evidence or falsity of the allegations contained in private respondent's affidavit for attachment. Thus, it has been held: 'XXX considering that the grounds invoked by the petitioner for the issuance of the writ of attachment form the very basis of the complaint x x x a trial on the merits, after answer shall have been filed by respondent, was necessary. In this case the hearing of the "Motion to Discharge" was held before the issues have been joined, and the order of the respondent Judge discharging the attachment would have the effect of deciding or prejudging the main action XXX'. (G.B., Inc., vs. Sanchez, 98 Phil. 886)"

We agree.

Section 13, Rule 57 of the Rules of Court provides:

"SEC. 13. Discharge of attachment for improper or irregular issuance.- The party whose property has been attached may also, at any time either before or after the release of the attached property, or before any attachment shall have been actually levied, upon reasonable notice to the attaching creditor, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order to discharge the attachment on the ground that the same was improperly or irregularly issued. If the motion be made on affidavits on the part of the party whose property has been attached, but not otherwise, the attaching creditor may oppose the same by counter-affidavits or other evidence in addition to that on which the attachment was made. After hearing, the judge shall order the discharge of attachment if it appears that it was improperly or irregularly issued and the defect is not cured forthwith." (Underscoring supplied.)

A motion to discharge a writ of attachment on the ground that the same was improperly or irregularly issued may be established by the affidavits submitted by the party whose property has been attached or such other evidence presented at the hearing of the motion. The attaching creditor may oppose the same by counter-affidavits or other evidence in addition to that with which the attachment was made.

If the movant establishes that the facts stated in the plaintiff's affidavit or some of them, are shown to be false or untrue, the writ of attachment may be considered as improperly or irregularly issued.[5] The determination of the existence of said grounds to discharge a writ of attachment rests in the sound discretion of the lower court.

In the present case, although the evidence submitted by petitioner tended to show payment of the obligation subject of the complaint, it appears that the genuineness of the alleged receipt of the scrap materials which petitioner claims to have delivered to private respondent to offset his obligation is in issue. Besides, the nature of the agreement and the actual deliveries made of the scrap materials, among others, are factual issues that must be resolved at the trial on the merits and not at the hearing of the motion to discharge the writ of attachment. If the private respondent did not present any counter-affidavit or evidence to counteract what has been adduced by petitioner at the hearing of the motion, it must be because private respondent believed that it was not necessary. As it is, the trial court was apparently not persuaded by the evidence presented by petitioner so it ordered that the writ of attachment be maintained and directed that if petitioner wants a discharge of the writ, he must put up a bond in accordance with Section 12, Rule 57 of the Rules which provides -

"SEC. 12. Discharge of attachment upon giving counterbond.- At any time after an order of attachment has been granted, the party whose property has been attached, or the person appearing on his behalf, may, upon

reasonable notice to the applicant, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order discharging the attachment wholly or in part on the security given. The judge shall, after hearing, order the discharge of the attachment if a cash deposit is made, or a counter-bond executed to the attaching creditor is filed, on behalf of the adverse party, with the clerk or judge of the court where the application is made, in an amount equal to the value of the property attached as determined by the judge, to secure the payment of any judgment that the attaching creditor may recover in the action. Upon the filing of such counter-bond, copy thereof shall forthwith be served on the attaching creditor or his lawyer. Upon the discharge of an attachment in accordance with the provisions of this section the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counterbond for any reason be found to be, or become, insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching creditor may apply for a new order of attachment."

However, petitioner insists that the attachment should be discharged in accordance with Section 13 of Rule 57 and refuses to put up a counterbond as suggested by the court a quo.

As correctly ruled by the respondent appellate court, even assuming that the trial court committed an error in denying the motion to discharge the writ of attachment the error (if it is an error at all) is an error in judgment which cannot be corrected through the extraordinary remedy of certiorari but by an ordinary appeal at the proper time.

Finally, the findings of the trial court as to whether or not the writ of attachment had been improperly or irregularly issued based on the evidence submitted at the hearing may not be disturbed on appeal unless there is a showing that it committed a grave abuse of discretion in its exercise. This petitioner failed to establish.

WHEREFORE, the petition is DISMISSED for lack of merit without pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.

Grino-Aquino, J., no part, I concurred in the C.A. decision.

[1] Annexes E and E-5.

[2] Mr. Justice Jorge S. Imperial was the ponente, concurred in by Justices Carolina C. Grino-Aquino, Jose F. Racela, Jr. and Fidel R. Purisima.

[3] 90 Phil. 809 (1952).

[4] Invoking Villongco vs. Panlilio, 94 Phil. 15 (1953).

[5] Hija de I. dela Rama vs. Sajo, 45 Phil. 703 (1924); Baron vs. David, 51 Phil. 1 (1927); and National Coconut Corporation vs. Pecson, supra.

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.