

**ROMEO S. CHUA, PETITIONER, VS. THE HON. COURT OF APPEALS,
DENNIS CANOY, AND ALEX DE LEON, RESPONDENTS.***G.R. No. 79021. May 17, 1993*

Ponente: BIDIN, J.

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This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court assailing the decision of the Court of Appeals dated May 7, 1987 which nullified the orders dated April 18, 1986 and May 19, 1986 of the Regional Trial Court of Cebu City Branch VIII.

The facts of the case are not disputed. On April 12, 1986, Judge Lauro V. Francisco of the Regional Trial Court of Cebu City Branch XIII, after examining 2Lt. Dennis P. Canoy and two (2) other witnesses, issued a search warrant directing the immediate search of the premises of R.R. Construction located at M.J. Cuenco Avenue, Cebu City, and the seizure of an Isuzu dump truck with plate number GAP-175. At twelve noon of the same date, respondent Canoy seized the aforesaid vehicle and took custody thereof.

On April 14, 1986, a civil action for Replevin/Sum of Money for the recovery of possession of the same Isuzu dump truck was filed by petitioner against respondent Canoy and one "John Doe" in the Regional Trial Court of Cebu City Branch VIII, presided by Judge Leonardo B. Cañares and docketed thereat as Civil Case No. CEB 4384 alleging among other things, petitioner's lawful ownership and possession of the subject vehicle; that he has not sold the subject vehicle to anyone; that he has not stolen nor carnapped it, and that he has never been charged of the crime of carnapping or any other crime for that matter. Further, petitioner questioned the validity of the search warrant and the subsequent seizure of the subject vehicle on the strength of the aforesaid search warrant.

On the same date, April 14, 1986, Judge Cañares of the Regional Trial Court of Cebu City Branch VIII directed the issuance of a writ of replevin upon the posting of a bond in the amount of one hundred thousand pesos (P100,000.00). The writ of replevin was also issued on the same date, and the subject vehicle was seized on 15 April 1986 by Deputy Sheriff Galicano V. Fuentes.

On April 16, 1986, respondent Canoy filed a motion for the dismissal of the complaint and for the quashal of the writ of replevin. The motion was opposed by petitioner. The motion to dismiss and to quash the writ of replevin was denied in an Order dated April 18, 1986. A motion for reconsideration of the aforementioned Order was filed and was opposed by petitioner. In an order dated May 19, 1986, the Regional Trial Court of Cebu Branch VIII denied the motion for reconsideration and directed the delivery of the subject vehicle to petitioner. Not satisfied, herein private respondents filed with the Court of Appeals a Petition for Certiorari and Prohibition praying for the nullification of the orders dated April 18, 1986 and May 19, 1986.

Meanwhile, a case for Carnapping docketed as I.S. No. 86-185, entitled "Alex De Leon, Complainant, vs. Romeo Chua, Respondent" pending preliminary investigation before the Office of the City Fiscal of Cebu City was provisionally dismissed upon motion of Romeo Chua with the following reservation: "without prejudice to its reopening once the issue of ownership is resolved", (Rollo, p. 62).

In a decision dated May 7, 1987, the Court of Appeals reversed the Regional Trial Court of Cebu City Branch VIII, and nullified the questioned orders. The appellate court ordered the dismissal of the Replevin action, and directed that possession of the subject vehicle be restored to Canoy. It applied the ruling in the case of *Pagkalinawan vs. Gomez* (21 SCRA 1275 [1967]) which held:

"Once a Court of First Instance has been informed that a search warrant has been issued by another court of first instance, it cannot require a sheriff or any proper officer of the court to take the property subject of the replevin action, if theretofore it came into custody of another public officer by virtue of a search warrant. Only the court of first instance that issued such a search warrant may order its release."

Furthermore, it was also pointed out in the same case that the validity of a search warrant may only be questioned in the same court that issued it.

Petitioner moved for a reconsideration of the decision, but the respondent court denied the same. Thus, petitioner filed this appeal by certiorari. The parties submitted their respective memoranda, and thereafter the case was deemed submitted for decision.

The issue presented before the Court is whether or not the validity of a seizure made pursuant to a search warrant issued by a court can be questioned in another branch of the same court, where the criminal action filed in connection with which the search warrant was issued, had been dismissed provisionally.

At the outset, it must be pointed out that the ruling made by the Office of the City Fiscal in the complaint for carnapping was erroneous. It held: "x x x the preliminary investigation of that case is premature until such time that the issue of ownership will be resolved by the Court of Appeals, so that the instant case is hereby dismissed provisionally without prejudice to its reopening once the issue of ownership is resolved in favor of complainant," (underscoring supplied).

A criminal prosecution for carnapping need not establish the fact that complainant therein is the absolute owner of the motor vehicle. What is material is the existence of evidence which would show that respondent took the motor vehicle belonging to another. The Anti-Carnapping Law or Republic Act No. 6539 punishes as carnapping the taking with intent to gain, of a motor vehicle belonging to another person, without the latter's consent or by means of violence or intimidation of person or by using force upon things.

Another aspect which needs to be stressed is the fact that since a preliminary investigation is not part of the trial, the dismissal of a case by the fiscal will not constitute double jeopardy and hence there is no bar to the filing of another complaint for the same offense (*People vs. Medted*, 68 Phil 435).

We find no merit in the main issue presented before Us. Petitioner seeks a reversal of a decision of the Court of Appeals which relied on the decision in *Pagkalinawan vs. Gomez* (supra).

The principle followed among courts in the dispensation of justice is that a judge who presides in a branch of a court cannot modify or annul the orders issued by another branch of the same court, since the two (2) courts are of the same rank, and act independently but coordinately (*Montesa vs. Manila Cordage Co.*, 92 Phil 25 [1952]).

It is a basic tenet of civil procedure that replevin will not lie for property in custodia legis. A thing is in custodia legis when it is shown that it has been and is subjected to the official custody of a judicial executive officer in pursuance of his execution of a legal writ (*Bagalihog vs. Fernandez*, 198 SCRA 614 [1991]). The reason posited for this principle is that if it was otherwise, there would be interference with the possession before the function of the law had been performed as to the process under which the property was taken. Thus, a defendant in an execution or attachment cannot replevy goods in the possession of an officer under a valid process, although after the levy is discharged, an action to recover possession will lie (*Francisco*, Revised Rules of Court in the

Philippines: Provisional Remedies, p. 402 [1985]).

The Court had occasion to rule on this issue in the case of Vlasons Enterprises Corporation vs. Court of Appeals (155 SCRA 186 [1987]). In the aforementioned case, two (2) propeller pieces were seized on the strength of a search warrant issued by the Court of First Instance of Manila Branch XVIII. After the seizure, criminal complaints were filed against the alleged thieves. However, the complaints were later on dismissed. Five (5) months later, a civil action for the recovery of the possession of the propellers were filed in the Court of First Instance of Manila Branch XXIX. The latter court granted the motion for repossession of the propellers. On appeal this Court held:

"The proceeding for the seizure of the property in virtue of a search warrant does not end with the actual taking of the property x x x and its delivery x x x, to the court x x x. It is merely the first step in the process to determine the character of the seized property. That determination is done in the criminal action involving the crime or crimes in connection with which the search warrant was issued. Hence, such a criminal action should be prosecuted, or commenced if not yet instituted, and prosecuted. The outcome of the criminal action will dictate the disposition of the seized property." (Vlasons Enterprises Corp. vs. Court of Appeals, supra.

In the Vlasons case, the Court differentiated the case brought before it therein, from the Pagkalinawan case. It stated that in the Pagkalinawan case, there was a conflict in jurisdiction. On the other hand, in the Vlasons case, it was certain that no criminal case would ensue subsequent to or in connection with the search warrant, hence no conflict in jurisdiction or in the ultimate disposition of the property could arise. Thus, where personal property is seized under a search warrant and it appears that the seizure will not be followed by the filing of any criminal action, but there are conflicting claims asserted over the seized property, the appropriate remedy is the institution of an ordinary civil action by any interested party, or of an interpleader action by the Government itself, in the proper competent court to which the seizing court shall transfer custody of the articles. Another branch of the same court, in an action to recover said property and during the pendency thereof, cannot order the delivery of said personal property to therein plaintiff pendente lite.

Construing the Pagkalinawan case together with the Vlasons case, we rule that where personal property is seized under a search warrant and there is reason to believe that the seizure will not anymore be followed by the filing of a criminal action, and there are conflicting claims over the seized property, the proper remedy is the filing of an action for replevin, or an interpleader filed by the Government in the proper court, not necessarily the same one which issued the search warrant; however, where there is still a probability that the seizure will be followed by the filing of a criminal action, as in the case at bar where the case for carnapping was "dismissed provisionally, without prejudice to its reopening once the issue of ownership is resolved in favor of complainant" (underscoring supplied), or the criminal information has actually been commenced, or filed, and actually prosecuted, and there are conflicting claims over the property seized, the proper remedy is to question the validity of the search warrant in the same court which issued it and not in any other branch of the said court.

Thus, the Regional Trial Court of Cebu Branch VIII erred when it ordered the transfer of possession of the property seized to petitioner when the latter filed the action for replevin. It should have dismissed the case since by virtue of the "provisional dismissal" of the carnapping case there is still a probability that a criminal case would be filed, hence a conflict in jurisdiction could still arise. The basic principle that a judge who presides in one court cannot annul or modify the orders issued by another branch of the same court because they are co-equal and independent bodies acting coordinately, must always be adhered to.

WHEREFORE, the petition is denied. The decision of the Court of Appeals dated May 7, 1987 is AFFIRMED.

SO ORDERED.

Feliciano, (Chairman), Davide, Jr., Romero, and Melo, JJ., concur.

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CONCURRING AND DISSENTING OPINION**DAVIDE, JR., J.:**

I agree with the majority that Branch VIII of the Regional Trial Court of Cebu should not have taken cognizance of the civil case for replevin (Civil Case No. CEB-4384).

However, I am not prepared to go along with the restatement of the rule on the recovery of property seized by virtue of a search warrant, to wit:

“Construing the Pagkalinawan case together with the Vlasons case, we rule that where personal property is seized under a search warrant and there is reason to believe that the seizure will not anymore be followed by the filing of a criminal action, and there are conflicting claims over the seized property, the proper remedy is the filing of an action for replevin, or an interpleader filed by the Government in the proper court, not necessarily the same one which issued the search warrant; however, where there is still a probability that the seizure will be followed by the filing of a criminal action, as in the case at bar where the case for carnapping was ‘dismissed provisionally, without prejudice to its reopening once the issue of ownership is resolved in favor of complainant’ (underscoring supplied), or the criminal information has actually been commenced, or filed, and actually prosecuted, and there are conflicting claims over the property seized, the proper remedy is to question the validity of the search warrant in the same court which issued it and not in any branch of the said court.”

I respectfully submit that regardless of the number of claimants to the property seized, the remedy should be obtained from the court which issued the warrant either by a motion to quash the search warrant or a motion to release the property. Replevin does not lie because regardless of the validity or invalidity of the search warrant, the property was effectively placed in custodia legis and, therefore, beyond the reach of a replevin suit. It would be entirely different if the seizure was unlawful, in which case replevin may prosper.

The reasons why the application for the recovery of the seized property must be made with the court issuing the warrant are quite obvious. It had acquired jurisdiction over the res. The pendency of the application could prod the Government to expedite the investigation and prosecution of the criminal case, if any, in connection with which the warrant was secured. The parties, especially the innocent parties, should not be made to await indefinitely the outcome of the criminal action which the prosecution arm may either delay or not file at all for reasons only known to itself.

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