# MABUHAY VINYL CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION) CAGAYAN DE ORO CITY AND ANTONIO V. CAÑETE, RESPONDENTS.

*G.R. No. 96329. September 18, 1992*

Ponente: NOCON, J.

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**NOCON, J.:**

This is a petition for certiorari under Rule 65 of the Rules of Court with a prayer for the issuance of a writ of preliminary injunction or restraining order to annul and set aside the Resolution promulgated on September 13, 1990 of the National Labor Relations Commission (NLRC) of Cagayan de Oro City[1] affirming the decision promulgated on March 13, 1987 of the NLRC of Manila[2] in declaring the dismissal of private respondent Antonio V. Canete illegal and in ordering petitioner Mabuhay Vinyl Corporation to pay private respondent backwages, separation pay and attorney's fees.

It appears on record that private respondent Antonio V. Cañete was employed as a supervisor of petitioner Mabuhay Vinyl Corporation's Shop Steel Fabrication Division. At around 1:50 p.m. of June 28, 1984, a truck with Plate No. MAD-135 driven by Cecilio Tagalog and owned by private respondent entered the premises of petitioner at Assumption Heights, Barangay Buru-un, Iligan City to haul cargoes from petitioner's bodega to Vinatex. Said truck did not contain any cargo when it was being inspected by the petitioner's security guards nor did the driver of said truck declare any cargo to said security guards.

At around 4 p.m. of that same day, the driver of said truck, before leaving the premises of the petitioner, presented a gate pass for the items loaded inside the truck. However, during the routine inspection, the security guards discovered that aside from the items specified in the gate pass, some other items which were hidden at the back of the driver's seat comprising 113 pieces of welding rods and 37 pieces of stainless steel rings which were wrapped in a plastic cellophane and covered by a rug as shown by the pictures taken by the safety inspector of petitioner immediately after said discovery.

When said security guards confronted and questioned the driver, the latter pointed to the private respondent as the one who personally loaded said stolen items inside the truck.

After a verification from petitioner's inventory control clerk that said welding rods and steel rings came from its stock room, private respondent was placed on preventive suspension pending investigation of said case by the petitioner.

On July 5, 1984, an administrative investigation was conducted but, aside from claiming ownership over said stolen goods without presenting any documentary evidence, private respondent refused to answer the questions propounded to him during said investigation.

Upon private respondent's refusal to respond to petitioner's letter dated July 9, 1984 requiring the former to explain his participation in the commission of the criminal offense and after evaluating the evidences, petitioner

terminated the services of private respondent on August 9, 1984 for gross insubordination and for loss of trust and confidence as a managerial employee based on said theft incident.

On July 11, 1984, petitioner filed a criminal complaint for Qualified Theft and Theft against private respondent and his driver, respectively, with the City Fiscal of Iligan City which was, however, dismissed by the investigating fiscal On August 24, 1984 on the claim of ownership made by the private respondent over the stolen items as supported by Sales Invoice No. 048 dated April 17, 1984 issued by Asia Meco Mercantile for the said welding rods and the Official Receipt No. 1547 dated June 25, 1984 issued by Lactao and Sons Engineering Auto Repair and Machine Shop for said steel rings.

On Novembers 16, 1984, private respondent filed a complaint against petitioner for illegal dismissal with the NLRC of Cagayan de Oro City. Said complaint was referred to Hearing Officer Acaina D. Bagul who subsequently recommended the reinstatement of private respondent without loss of seniority rights and the payment of backwages in her Progress Report dated July 18, 1985.

On August 6, 1985, petitioner filed again a criminal charge for Qualified Theft and Theft against private respondent and his driver, respectively, as well as another criminal complaint for Falsification and Use of Falsified Documents against private respondent with the Fiscal's Office of Iligan City alleging newly discovered evidence showing that the documents presented to the investigating fiscal by the private respondent on the latter's claim of ownership over the stolen items were falsified.

On August 28, 1985, a decision was rendered by the NLRC of Cagayan de Oro City dismissing private respondent's complaint for illegal dismissal with prejudice for lack of merit.[3] Thereafter, private respondent filed an appeal with the public respondent NLRC of Manila.

On March 6, 1986, Fiscal Amer R. Ibrahim of Iligan City rendered a Resolution finding the criminal charge against private respondent and his driver to be fully supported by evidence and recommended the filing of the corresponding criminal information against the latter which was approved by the City Fiscal Dominador L. Padilla.

On March 13, 1987, public respondent NLRC rendered a decision reversing the decision of the NLRC of Cagayan de Oro City, the dispositive portion of which reads as follows:

> "WHEREFORE, premises considered, the appealed Decision is as it is hereby REVERSED and another one issued:
>
> “1. Declaring complainant-appellant's termination illegal;
>
> “2. Ordering respondent-appellee to pay complainant-appellant backwages from the time of illegal dismissal and up to the time of the rendition of this Decision;
>
> “3. Ordering respondent-appellee to pay complainant-appellant separation pay equivalent to one-half (1/2) month pay for every year of service, a fraction of at least six (6) months considered as one year; and
>
> “4. To pay complainant-appellant attorney's fees equivalent to ten (10%) percent of the total award.
>
> "All other claims are dismissed for evident lack of merit."[4]

On June 16, 1987, NLRC Manila denied petitioner's Motion for Reconsideration.

On August 13, 1987, the City Fiscal Ulysses V. Lagcao dismissed the criminal charges against private respondent and his driver for insufficiency of evidence.[5] Thereafter or on September 12, 1987, petitioner filed a petition for review with the Secretary of Justice for said dismissal.


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On December 2, 1987, this Court denied petitioner's Petition for Review on Certiorari of the public respondent NLRC decision for having been filed out of time and said decision became final and executory after this Court, likewise, denied petitioner's Motion for Reconsideration.

Subsequently, private respondent filed a Motion for Execution of said decision and the resolution of which was suspended by an exchange of pleadings filed by the contending parties relative to the correct computation of the monetary award of the private respondent.

On December 14, 1988, the Secretary of Justice Sedfrey A. Ordonez reversed the Resolution of the City Fiscal of Iligan ordering the dismissal of the complaint against private respondent and his driver, the dispositive portion of which reads:

> "WHEREFORE, you are hereby directed to file the corresponding information for qualified theft against Antonio Cañete and Cecilio Tagalog and to report to this Office the action taken hereon within five (5) days from receipt hereof. Returned herewith are the complete records of the case."[6]

Thereafter, or on January 20, 1989, Fiscal Lagcao filed an information for qualified theft against private respondent and his driver with the Regional Trial Court of Iligan City, Branch 2, docketed as Criminal Case No. 2265.

On January 29, 1989, petitioner filed an Opposition to Execution and/or Motion to Quash Execution due to the supervening event that the finding of the Secretary of Justice directly contradicted the decision of the public respondent NLRC thereby rendering said decision unenforceable.

Acting on said Motion, the Labor Arbiter issued an Order on March 8, 1989 denying said Motion, the dispositive portion of which reads:

> "WHEREFORE, in view of the foregoing premises and considerations the respondent - Mabuhay Vinyl Corporation is hereby ORDERED to pay the complainant-Antonio Cañete the total amount of ONE HUNDRED TWENTY NINE THOUSAND THREE HUNDRED NINETY FOUR PESOS and 07/100 (P129,394.07) within fifteen (15) days from receipt of this Order, otherwise a WRIT OF EXECUTION shall immediately issue for the said amount."[7]

Thereafter, petitioner filed with the public respondent NLRC a Memorandum on Appeal with Urgent Prayer for Injunction and Restraining Order.

On March 20, 1990, a decision was rendered by the Regional Trial Court of Iligan City, in the Qualified Theft case, acquitting private respondent Antonio Cañete but convicting his driver, Cecilio Tagalog of simple theft, the dispositive portion of which reads as follows:

> "WHEREFORE, finding accused CECILIO TAGALOG guilty beyond reasonable doubt of the crime of THEFT, he is hereby sentenced to suffer an indeterminate penalty of THREE (3) MONTHS and ELEVEN (11) DAYS of arresto mayor as minimum to ONE (1) YEAR, EIGHT (8) MONTHS and TWENTY-ONE (21) DAYS of prision correccional as maximum and to pay costs.
>
> "For failure of the prosecution to prove the guilt of accused ANTONIO CAÑETE beyond reasonable doubt, he is hereby acquitted of the crime charged in the information. The bond put up by said accused for his provisional liberty is hereby discharged."[8]

On April 4, 1990, private respondent filed an Urgent Motion to Dismiss the Memorandum on Appeal on the ground of his acquittal in the criminal case.

On September 13, 1990, a Resolution was issued by the public respondent NLRC, the dispositive portion of which

reads as follows:

> "WHEREFORE, the questioned order of March 8, 1989 is hereby AFFIRMED and the appeal therefrom is DISMISSED.
>
> "Accordingly, the petition for the issuance of a writ of preliminary prohibitory injunction is Denied for being moot and academic.
>
> "Let the records of this case be immediately remanded to the Arbitration Branch of origin for execution of judgment."[9]

Hence, this petition alleging grave abuse of discretion on the part of the public respondent NLRC in affirming the Labor Arbiter's Order which refused to declare unenforceable its Resolution dated March 13, 1987 by reason of the supervening event, which is the consequent filing of the criminal information against private respondent, that has made its execution unjust and inequitable.

This petition is meritorious.

While it is true that once a judgment has become final and executory said judgment can no longer be amended or corrected by the court since the only jurisdiction left with the court is to order its execution, however, said rule admits of certain exceptions, as in the instant case, where the execution of a final and executory judgment may be stayed "when facts and events transpire after a judgment has become executory which on equitable grounds render its execution impossible or unjust."[10]

In this case, the filing of the criminal information for qualified theft against private respondent is a supervening fact and event which should render impossible and unjust the execution of the decision of the public respondent NLRC in declaring the termination of private respondent's services as illegal since said decision based its conclusions solely on the dismissal of the criminal charges against the latter. The fact that private respondent was subsequently acquitted of qualified theft is of no moment because his acquittal was not based on his innocence but rather on the failure on the part of the prosecution to prove his guilt beyond reasonable doubt. "Loss of confidence is established as a valid ground for the dismissal of an employee. The law does not require proof beyond reasonable doubt of the employees' misconduct to invoke such a justification. It is sufficient that there is some basis for the loss of trust or that the employer has reasonable grounds to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position."[11]

Indeed, it is unfair and unreasonable to require petitioner to accept back private respondent in whom it has already lost confidence because of the latter's act of dishonesty in spite of his having been acquitted in the course of a criminal prosecution.

Furthermore, “it is well-settled that when after a judgment has become final and executory, facts and circumstances transpire which render its execution impossible or unjust, the interested party may ask a competent court to stay its execution or to prevent its enforcement.”[12]

WHEREFORE, this petition for certiorari is granted and the questioned Resolution of the public respondent NLRC is hereby annulled and set aside thereby dismissing the complaint against petitioner.

**SO ORDERED.**

Narvasa, C.J., (Chairman), Regalado, and Campos, Jr., JJ., concur.
Padilla, J., see dissenting opinion.

[1] Rollo, pp. 38-46. Penned by Commissioner G. Gonzaga, Jr., with the concurrence of Presiding Commissioner Musib M. Buat and Commissioner Oscar N. Abella.

[2] Id., at pp. 103-109. Penned by Commissioner Domingo H. Zapanta with the concurrence of Presiding Commissioner Daniel M. Lucas, Jr. and Commissioner Oscar N. Abella.

[3] Decision, NLRC, Cagayan de Oro City; Rollo, pp. 48-85.

[4] Ibid., at p. 109.

[5] Id., at p. 110.

[6] Id., at p. 114.

[7] Id., at p. 136.

[8] Id., at p. 162.

[9] Id., at p. 45.

[10] Baclayan vs. Court of Appeals, 182 SCRA 761 (1990).

[11] Ocean Terminal Services, Inc. vs. NLRC, 197 SCRA 491 (1991).

[12] Lee vs. De Guzman, Jr., 187 SCRA 276 (1990).

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## DISSENTING OPINION

**PADILLA, J.:**

I find myself unable to concur with the ponencia, particularly because it would enable the petitioner company to skirt the effects of a final and executory judgment of the respondent Commission. I believe that the private respondent employee ought to be given the already-awarded backwages as a clear measure of equitable relief to one who has been the subject of an already-determined illegal dismissal.

It is true that exceptional supervening events may call for a stay in the enforcement of a final judgment. It is pointed out in the ponencia that after the respondent Commission's judgment had become final and executory, the prosecutorial authorities filed criminal charges for theft against the private respondent before the Regional Trial Court. But the last act in this drama was the acquittal of the private respondent albeit on reasonable doubt. It is true that the acquittal notwithstanding, there would still be ground to insist on private respondent's dismissal from the company for, as the ponencia indicates, at such stage, loss of confidence has already supervened. Yet, it cannot be denied that we are faced here with a final and executory judgment which, regularly, calls for enforcement. The petitioner invokes equity, and the Court has indicated its willingness to grant the same. Yet, one who seeks equity must at the same time be prepared to dispense it, and, specifically, in the present case, in the form of accepting not reinstatement of the dismissed employee but simply the grant to him of backwages.

Before I conclude, I would also wish to register my exception to the observation IN the ponencia that it would be unreasonable to require the petitioner company to take back the private respondent employee when it has already lost confidence in him (Decision, p. 11). The records, particularly the assailed judgment of the respondent


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Commission, clearly indicate that what was awarded the private respondent were backwages and separation pay, the latter having been granted as a result of the perceived strained relations clearly existing between the company and the employee that would make actual reinstatement impractical. An award of separation pay is inconsistent with the concept of reinstatement - the respondent Commission did not include reinstatement in the questioned decision; consequently, reinstatement should not be of any concern to this Court at this stage.

I, therefore, vote to dismiss the petition and to uphold respondent Commission's award of backwages (counted from date of private respondent's illegal dismissal to date of finality of judgment) and separation pay (computed at half-a-month's pay for every year of service); without reinstatement.


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