

FIRST DIVISION

[A.M. No. MTJ-02-1430, September 08, 2003]

**SPECIAL PROSECUTOR ROMEO B. SENSON, COMPLAINANT, VS.
JUDGE HERIBERTO M. PANGILINAN, MTCC, PUERTO PRINCESA
CITY, RESPONDENT.**

D E C I S I O N

VITUG, J.:

The administrative complaint against Judge Heriberto M. Pangilinan relates to an order he has issued, authorizing, prior to the arraignment of the accused and the pre-trial of a criminal case, the release of seized evidence to movants who claim ownership thereof.

On 14 March 2000, several persons were apprehended for violation of Section 86 of Republic Act No. 8550, also known as "The Philippine Fisheries Code of 1998"^[1] by members of the Philippine National Police. The items seized from those arrested included (a) 1 unit fish net, (b) 36 units lights (300 watts), (c) 1 unit light (500 watts), (d) 1 unit buoy, (e) 7 containers, (f) 7 plastic container boxes, (g) 4 styropore boxes, and (h) 10 boxes of fish. On the same day, Criminal Case No.15019 against them was filed. Three days later, Danilo Alayon and Norma Villarosa, asserting to be the co-owners of the M/B King Fisher that was used in the illegal fishing activity, filed an "Urgent Motion for Custody of Fishing Net," alleging that the fish net which costs "no less than P600,000.00" was left unattended at the beach exposed to the elements and movements of the sea which could cause its early deterioration and ultimate loss. Respondent Judge, despite the vigorous objection of the public prosecutor, granted the motion in his order of 22 March 2000, in part, to the following effect -

"To obviate their possible loss, destruction and/or deterioration, pending resolution of the above-captioned case, the apprehending officers or whoever has the custody, are ordered to cause the immediate turn over of the following items to movants who undertake to produce the same whenever needed in court, as they can only be properly confiscated in favor of the government upon conviction of the accused.

- "1. 1 unit fish net
- "2. 36 units lights (300 watts)
- "3. 1 unit light (500 watts)
- "4. 1 unit buoy
- "5. 7 containers
- "6. 7 plastic container boxes
- "7. 4 styropore boxes
- "8. 10 boxes of fish"

The public prosecutor filed, on 24 March 2000, a motion for reconsideration. Instead of deciding the pending motion, respondent Judge deferred its resolution until after the arraignment of the accused and the pretrial of the case would have been had.^[2]

Special Prosecutor Romeo B. Senson filed an administrative complaint against respondent Judge for "Gross Misconduct with Prayer for Preventive Suspension" asseverating that the release of the evidence had exposed said evidence to tampering and that the deferment of the resolution of the motion for reconsideration virtually resulted in the undue archive of the case.

In his comment, respondent contended that Republic Act No. 8550, the law under which the accused were charged with having transgressed, did not provide for the seizure of the fishing paraphernalia pending trial and that the prosecution still could prove the guilt of the accused beyond reasonable doubt even without the evidence being presented since it had sufficient witnesses for the purpose.

The attempt at justification must fail.

As the Office of the Court Administrator has so correctly pointed out, "while it can be argued that the remedy is judicial in nature or that the case involves an error in judgment, Rule 127, Section 12, of the Rules of Court (however), is much too elementary to be brushed aside (and that) x x x the existence of a judicial remedy does not (necessarily) preclude resort to an administrative remedy." Nowhere in the statute would it appear that the seizure of the items, alleged to have been used in the illegal fishing activity, is proscribed by it. Evidently, the seizure of the fishing paraphernalia has been made as being an incident to a lawful arrest. Rule 127, Section 12, of the Rules of Court^[3] provides:

"SEC. 12. Search incident to lawful arrest.- A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant."

In *Arsenio N. Roldan, Jr. vs. Francisco Arca*,^[4] where the crew of certain fishing vessels were caught, *in flagrante*, illegally fishing with dynamite and without the requisite license, their apprehension without a warrant of arrest and the seizure of the vessel, as well as its equipment and the dynamites found therein, as an incident to a lawful arrest was held to be lawful.

All criminal actions commenced by a complaint or information are prosecuted under the direction and control of the prosecutor.^[5] The seized items ordered released by respondent Judge have not yet been offered in evidence; hence, the prosecution, not the court, could still be deemed to be in the legal custody and to have the responsibility over such items.^[6] The pronouncement by the Court in *Vlasons Enterprises Corporation vs. Court of Appeals*^[7] is instructive; viz:

"x x x The outcome of the criminal action will dictate the disposition of the seized property. If found to be contraband, *i.e.*, articles the possession of which, without more, constitutes a crime and the repossession of which would subject defendant to criminal penalties and frustrate the express policy against the possession of such objects, they