

SECOND DIVISION

[G.R. No. 138855, October 29, 2002]

**LAMBERTO CASALLA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, AND MILAGROS S. ESTEVANES, RESPONDENTS.**

R E S O L U T I O N

QUISUMBING, J.:

This petition for review on certiorari assails the decision^[1] dated November 17, 1998, and the resolution^[2] dated May 25, 1999 of the Court of Appeals in CA-G.R. SP No. 37031, denying petitioner's appeal as well as motion for reconsideration for lack of merit.

The facts, as summarized by the Court of Appeals from the records, are as follows:

The facts, as disclosed by the record, show that petitioner Lamberto Casalla issued two (2) Bank of Commerce checks in payment of the obligation of his wife, TERESITA CASALLA, to private respondent MILAGROS SANTOS-ESTEVANES, in order to avert a court litigation. The two (2) checks, however, were dishonored by the drawee bank for reason of insufficiency of funds.

Subsequently, private respondent filed two (2) criminal complaints against petitioner for violation of the Bouncing Checks Law (BP 22). The cases were docketed as Criminal Case Nos. 11844 and 11845 and raffled to Branch 68 of the Metropolitan Trial Court (MTC) of Pasig City.

On September 22, 1994, the MTC of Pasig City rendered a decision convicting the accused (petitioner herein) of the crime charged on two (2) counts.

Aggrieved by the decision of the trial court, petitioner interposed an appeal to the Regional Trial Court (RTC) of Pasig City, which was raffled to Branch 261 thereof presided upon by public respondent judge.

On January 18, 1995, the court *a quo* rendered its decision affirming the judgment of the lower court with the modification that appropriate subsidiary imprisonment be imposed on the accused in case of insolvency (Annex "H", Petition; pp. 24-28, *ibid.*).

Dissatisfied with the decision of the court *a quo*, petitioner filed a motion for reconsideration on February 8, 1995 (Annex "I", Petition; pp. 29-30, *ibid.*).

In an Order dated February 9, 1995, the lower court denied the motion for reconsideration on account of the absence of a notice of hearing and

because the issues raised therein have already been passed upon in its decision (Annex "J", Petition; p. 31, *ibid.*).

On February 22, 1995, petitioner filed a second motion for reconsideration (Annex "K", Petition; pp. 32-33, *ibid.*).

On February 24, 1995, private respondent filed with the RTC a motion for the issuance of a writ of execution (Annex "L", Petition; pp. 34-36, *ibid.*).

Opposition to the motion for the issuance of a writ of execution was filed by petitioner on March 3, 1995 (Annex "M", Petition; pp. 37-38, *ibid.*).

In an Order dated March 13, 1995, the court ***a quo*** denied petitioner's second motion for reconsideration and granted the motion for the issuance of a writ of execution (Annex "A", Petition; p. 14, *ibid.*).

On March 21, 1995, a writ of execution was issued by the court directing public respondent Deputy Sheriff Jose R. Santos to cause the execution of the judgment (Annex "B", Petition; p. 15, *ibid.*).^[3]

Petitioner interposed an appeal via a petition for review with prayer for preliminary injunction and/or temporary restraining order. On November 17, 1998, the appellate court promulgated its decision denying the appeal for lack of merit.^[4]

In its decision, the Court of Appeals noted that the petition before it did not contain a statement of material dates showing the timeliness of the petition. It also maintained that the petition was filed out of time, because the motion to reconsider the decision of the trial court did not contain a notice of hearing. Hence, being a mere scrap of paper, it did not interrupt the period for filing the petition before the appellate court, and the period had lapsed before the petition was filed. It also ruled that petitioner's second motion was not only a prohibited pleading but it was also filed out of time. Petitioner's motion for reconsideration before the Court of Appeals was denied.^[5] Hence, the present petition, raising the following errors:

I

THAT THE REQUIREMENT ON NOTICE OF HEARING DOES NOT APPLY IN PETITIONER'S MOTION FOR RECONSIDERATION.

II

THAT THE REGIONAL TRIAL COURT HAS NO AUTHORITY TO ISSUE A WRIT OF EXECUTION.^[6]

Petitioner argues that the requirement of a notice of hearing does not apply to the motion for reconsideration he filed before Branch 261 of the Regional Trial Court of Pasig City, as said court was acting only in its appellate jurisdiction, the proceedings therein being summary in nature. He further asserts that said trial court gravely abused its discretion when it issued the writ of execution, because it was the court of origin, the Metropolitan Trial Court of Pasig City, Branch 68, which had the authority to issue the writ.

For our resolution now is whether or not the Court of Appeals erred in denying the petition for review and the subsequent motion for reconsideration.