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# THIRD DIVISION

# [ G.R. No. 145425, December 09, 2002 ]

## SALVADOR K. MOLL, PETITIONER, VS. COURT OF APPEALS, HON. VIRGINIA ALMONTE, PRESIDING JUDGE, RTC, BR. 17, TABACO, ALBAY; HON. SAMUEL A. BUENDIA, PRESIDING JUDGE OF THE MUNICIPAL CIRCUIT TRIAL COURT OF TIWI-MALINAO AND PROS. NICETO VILLAMIN, ASST. PROVINCIAL PROSECUTOR AT TABACO, ALBAY, RESPONDENTS.

## D E C I S I O N

**CORONA, J.:**

Before this Court is an Urgent Motion to Lift, Recall and/or Withdraw Warrant of Arrest, filed by petitioner relative to a criminal case filed against him in which he was convicted.

Petitioner Salvador K. Moll was elected as vice-mayor of the Municipality of Malinao, Albay in 1989.

Sometime in April 1989, petitioner entered into a contract with a certain Ysmael Zepeda for and in behalf of the local government of Malinao. The said memorandum of agreement placed under administration of the municipal government the catching and sale of bangus in the coastal waters of Malinao and authorized Zepeda to be the administrator thereof.

Mayor Misericordia Clavecilla, the duly elected mayor at that time, did not share the same view. She asserted that herein petitioner and the Sangguniang Bayan members were bereft of any authority to enter into such a contract nor was he vested with any appointing authority. Consequently, the mayor filed criminal charges against petitioner.

Herein petitioner was initially charged and convicted for violation of Section 3 (e) of Republic Act No. 3019 by the Regional Trial Court of Tabaco, Albay. This case is still the subject of an appeal at the Sandiganbayan.

Petitioner was likewise charged before and convicted by the Municipal Circuit Trial Court of Tiwi-Malinao in Criminal Case No. 4088 for usurpation of authority as penalized under Article 177 of the Revised Penal Code, in a decision dated March 29, 1999, penned by public respondent Judge Samuel Buendia.

The promulgation of judgment of the aforestated Criminal Case No. 4088 was initially set by respondent Judge Samuel Buendia on April 21, 1999. It was, however, postponed and reset to May 5, 1999 because petitioner and counsel did not appear.[1] However, on May 4, 1999, a day before the intended promulgation, petitioner Salvador K. Moll filed a motion to quash on the ground of double jeopardy and set the hearing of the said motion on May 11, 1999.

The promulgation of judgment which was rescheduled on May 5, 1999 was, however, again cancelled due to the absence of petitioner's counsel and the pendency of his motion to quash which was set for hearing on May 11, 1999.[2]

On May 11, 1999, after counsels were allowed to deliberate on the motion to quash, respondent Judge Buendia denied the aforesaid motion and proceeded to render his judgment. The pertinent order stated:

> On call of this case for promulgation of judgment, the accused and his counsel Atty. Romeo Gonzaga appeared. Accused's motion to quash is also set for hearing. This case was also set for promulgation of judgment on April 21 and May 5, 1999 during which accused and counsel respectively did not appear.
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> Before the promulgation of judgment, the Assistant Provincial Prosecutor and defense counsel were allowed by this Court to argue their respective position anent the motion to quash. After the oral arguments, the Court decided to deny the motion.
>
> Xxx xxx xxx
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> The Court believes that accused can still be prosecuted as was prosecuted under Art. 177 of the Revised Penal Code.
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> *After the denial of the motion, the Court ordered that the promulgation proceed. Defense counsel vehemently objected* contending that the promulgation will be unlawful, unjust and unfair and that accused will not participate in the promulgation. *Thereafter, counsel and accused left the courtroom.*
>
> In view thereof, the Court was constrained to proceed with the promulgation which shall consist in the recording of the judgment in the criminal docket.
>
> Let this case be promulgated by recording the judgment in the criminal docket and serve a copy thereof upon the accused and his counsel.
>
> SO ORDERED.[3]
>
> [Italics Ours]

A motion for reconsideration of the denial of the motion to quash was filed but was denied in an order dated June 18, 1999[4].

Thereafter, petitioner, believing that he was denied due process when the promulgation of judgment proceeded despite his absence on June 25, 1999, filed before the Regional Trial Court of Tabaco, Albay, a petition for certiorari under Rule 65. This was, however, also dismissed in an order dated July 12,1999, on the ground that the petition was insufficient in form and substance.

A motion for reconsideration of the said order also proved futile.

Undaunted, herein petitioner, on October 18, 1999, filed a petition for review under Rule 42 before the Court of Appeals, docketed as CA-GR No. 44511. The appellate

court, in a decision dated May 22, 2000, denied it for lack of merit. The Court of Appeals held:

> Petitioner cannot even continue to harp on the alleged denial of due process when respondent MCTC Judge Buendia decided to promulgate the decision in Criminal Case No. M-4088 on the very same day the order denying the motion to quash was resolved. What is repugnant to due process is the denial of opportunity to be heard (Korean Airlines Co., Ltd. v. Court of Appeals, 247 SCRA 599). *There is nothing in the facts as to show us that petitioner was never afforded the opportunity to be heard. The fact that the promulgation of the decision in Criminal Case No. M-4088 was reset several times cannot be attributed to the MCTC. Petitioner and his counsel, even with due notice, had repeatedly failed to appear at the prior dates scheduled for the said promulgation.* In view of the foregoing, we find no error on the part of respondent MCTC who at times even exercised liberality to accommodate the postponement. *Petitioner, therefore, should be the last to claim denial of opportunity after squandering several opportunities to do so.*
>
> Considering the foregoing discussion, the denial of petitioner's case in *Special Civil Action No. T-2022* must remain undisturbed, more so in the light of the fact that while it is true that litigation is not a game of technicalities it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice (Garbo v. Court of Appeals, 258 SCRA 159).
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> *At any rate, assuming arguendo that the petition in Special Civil Action No. T-2022 is not defective in either its form or substance, we nevertheless would have reached the same conclusion of the MCTC upholding in toto the decision in Criminal Case No. M-4088, finding ourselves similarly constrained to proceed with the promulgation consisting in the recording of the judgment in the criminal docket. Besides, we see no point in remanding the case to the trial court just for the purpose of reading again the judgment which is not only sound but also already known to the petitioner*.[5]
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> [Italics ours]

Petitioner filed two motions for reconsideration before the appellate court. Both were denied.

On October 30, 2000, petitioner filed before this Court a petition for review on certiorari. He contended that the Court of Appeals erred when it affirmed the decision of the trial court, considering that there was an invalid or improper promulgation of the judgment in his criminal case. In fact, petitioner even posited the view that his period to appeal never commenced to run in view of the improper promulgation made by the trial court.

The petition, however, was denied in a resolution dated December 6, 2000 for failure of petitioner to appeal within the reglementary period, pay the prescribed legal fees on time, attach the certification against forum-shopping and submit an affidavit of service of the petition on respondents and the Court of Appeals.[6]