

THIRD DIVISION

[G.R. No. 116033, February 26, 1997]

**ALFREDO L. AZARCON, PETITIONER, VS. SANDIGANBAYAN,
PEOPLE OF THE PHILIPPINES AND JOSE C. BATAUSA,
RESPONDENTS.**

DECISION

PANGANIBAN, J.:

Does the Sandiganbayan have jurisdiction over a private individual who is charged with malversation of public funds as a principal after the said individual had been designated by the Bureau of Internal Revenue as a custodian of distrained property? Did such accused become a public officer and therefore subject to the graft court's jurisdiction as a consequence of such designation by the BIR?

These are the main questions in the instant petition for review of respondent Sandiganbayan's Decision^[1] in Criminal Case No. 14260 promulgated on March 8, 1994, convicting petitioner of malversation of public funds and property, and Resolution^[2] dated June 20, 1994, denying his motion for new trial or reconsideration thereof.

The Facts

Petitioner Alfredo Azarcon owned and operated an earth-moving business, hauling "dirt and ore."^[3] His services were contracted by the Paper Industries Corporation of the Philippines (PICOP) at its concession in Mangagoy, Surigao del Sur. Occasionally, he engaged the services of sub-contractors like Jaime Ancla whose trucks were left at the former's premises.^[4] From this set of circumstances arose the present controversy.

"x x x It appears that on May 25, 1983, a Warrant of Dstraint of Personal Property was issued by the Main Office of the Bureau of Internal Revenue (BIR) addressed to the Regional Director (Jose Batausa) or his authorized representative of Revenue Region 10, Butuan City commanding the latter to dstraint the goods, chattels or effects and other personal property of Jaime Ancla, a sub-contractor of accused Azarcon and, a delinquent taxpayer. The Warrant of Garnishment was issued to accused Alfredo Azarcon ordering him to transfer, surrender, transmit and/or remit to BIR the property in his possession owned by taxpayer Ancla. The Warrant of Garnishment was received by accused Azarcon on June 17, 1985."^[5]

Petitioner Azarcon, in signing the "Receipt for Goods, Articles, and Things Seized Under Authority of the National Internal Revenue," assumed the undertakings specified in the receipt the contents of which are reproduced as follows:

“(I), the undersigned, hereby acknowledge to have received from Amadeo V. San Diego, an Internal Revenue Officer, Bureau of Internal Revenue of the Philippines, the following described goods, articles, and things:

Kind of property	Isuzu dump truck
Motor number	E120-229598
Chassis No.	SPZU50-1772440
Number of CXL	6
Color	Blue
Owned By	Mr. Jaime Ancla

the same having been this day seized and left in (my) possession pending investigation by the Commissioner of Internal Revenue or his duly authorized representative. (I) further promise that (I) will faithfully keep, preserve, and, to the best of (my) ability, protect said goods, articles, and things seized from defacement, demarcation, leakage, loss, or destruction in any manner; that (I) will neither alter nor remove, nor permit others to alter or remove or dispose of the same in any manner without the express authority of the Commissioner of Internal Revenue; and that (I) will produce and deliver all of said goods, articles, and things upon the order of any court of the Philippines, or upon demand of the Commissioner of Internal Revenue or any authorized officer or agent of the Bureau of Internal Revenue.”^[6]

Subsequently, Alfredo Azarcon wrote a letter dated November 21, 1985 to the BIR’s Regional Director for Revenue Region 10 B, Butuan City stating that

“x x x while I have made representations to retain possession of the property and signed a receipt of the same, it appears now that Mr. Jaime Ancla intends to cease his operations with us. This is evidenced by the fact that sometime in August, 1985 he surreptitiously withdrew his equipment from my custody. x x x In this connection, may I therefore formally inform you that it is my desire to immediately relinquish whatever responsibilities I have over the above-mentioned property by virtue of the receipt I have signed. This cancellation shall take effect immediately. x x x .”^[7]

Incidentally, the petitioner reported the taking of the truck to the security manager of PICOP, Mr. Delfin Panelo, and requested him to prevent this truck from being taken out of the PICOP concession. By the time the order to bar the truck’s exit was given, however, it was too late.^[8]

Regional Director Batausa responded in a letter dated May 27, 1986, to wit:

“An analysis of the documents executed by you reveals that while you are (sic) in possession of the dump truck owned by JAIME ANCLA, you voluntarily assumed the liabilities of safekeeping and preserving the unit in behalf of the Bureau of Internal Revenue. This is clearly indicated in the provisions of the Warrant of Garnishment which you have signed, obliged and committed to surrender and transfer to this office. Your failure therefore, to observe said provisions does not relieve you of your responsibility.”^[9]

Thereafter, the Sandiganbayan found that

"On 11 June 1986, Mrs. Marilyn T. Calo, Revenue Document Processor of Revenue Region 10 B, Butuan City, sent a progress report to the Chief of the Collection Branch of the surreptitious taking of the dump truck and that Ancla was renting out the truck to a certain contractor by the name of Oscar Cueva at PICOP (Paper Industries Corporation of the Philippines, the same company which engaged petitioner's earth moving services), Mangagoy, Surigao del Sur. She also suggested that if the report were true, a warrant of garnishment be reissued against Mr. Cueva for whatever amount of rental is due from Ancla until such time as the latter's tax liabilities shall be deemed satisfied. x x x However, instead of doing so, Director Batausa filed a letter-complaint against the (herein Petitioner) and Ancla on 22 January 1988, or after more than one year had elapsed from the time of Mrs. Calo's report."^[10]

Provincial Fiscal Pretextato Montenegro "forwarded the records of the complaint x x x to the Office of the Tanodbayan" on May 18, 1988. He was deputized Tanodbayan prosecutor and granted authority to conduct preliminary investigation on August 22, 1988, in a letter by Special Prosecutor Raul Gonzales approved by Ombudsman (Tanodbayan) Conrado Vasquez.^[11]

Along with his co-accused Jaime Ancla, petitioner Azarcon was charged before the Sandiganbayan with the crime of malversation of public funds or property under Article 217 in relation to Article 222 of the Revised Penal Code (RPC) in the following Information^[12] filed on January 12, 1990, by Special Prosecution Officer Victor Pascual:

"That on or about June 17, 1985, in the Municipality of Bislig, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused Alfredo L. Azarcon, a private individual but who, in his capacity as depository/administrator of property seized or deposited by the Bureau of Internal Revenue, having voluntarily offered himself to act as custodian of one Isuzu Dumptruck (sic) with Motor No. E120-22958, Chasis No. SPZU 50-1772440, and number CXL-6 and was authorized to be such under the authority of the Bureau of Internal Revenue, has become a responsible and accountable officer and said motor vehicle having been seized from Jaime C. Ancla in satisfaction of his tax liability in the total sum of EIGHTY THOUSAND EIGHT HUNDRED THIRTY ONE PESOS and 59/100 (P80,831.59) became a public property and the value thereof as public fund, with grave abuse of confidence and conspiring and confederating with said Jaime C. Ancla, likewise, a private individual, did then and there wilfully, (sic) unlawfully and feloniously misappropriate, misapply and convert to his personal use and benefit the aforementioned motor vehicle or the value thereof in the aforestated amount, by then and there allowing accused Jaime C. Ancla to remove, retrieve, withdraw and tow away the said Isuzu Dumptruck (sic) with the authority, consent and knowledge of the Bureau of Internal Revenue, Butuan City, to the damage and prejudice of the government in the amount of P80,831.59 in a form of unsatisfied tax liability.

CONTRARY TO LAW."

The petitioner filed a motion for reinvestigation before the Sandiganbayan on May 14, 1991, alleging that: (1) the petitioner never appeared in the preliminary investigation; and (2) the petitioner was not a public officer, hence a doubt exists as

to why he was being charged with malversation under Article 217 of the Revised Penal Code.^[13] The Sandiganbayan granted the motion for reinvestigation on May 22, 1991.^[14] After the reinvestigation, Special Prosecution Officer Roger Berbano, Sr., recommended the "withdrawal of the information"^[15] but was "overruled by the Ombudsman."^[16]

A motion to dismiss was filed by petitioner on March 25, 1992 on the ground that the Sandiganbayan did not have jurisdiction over the person of the petitioner since he was not a public officer.^[17] On May 18, 1992, the Sandiganbayan denied the motion.^[18]

When the prosecution finished presenting its evidence, the petitioner then filed a motion for leave to file demurrer to evidence which was denied on November 16, 1992, "for being without merit."^[19] The petitioner then commenced and finished presenting his evidence on February 15, 1993.

The Respondent Court's Decision

On March 8, 1994, respondent Sandiganbayan^[20] rendered a Decision,^[21] the dispositive portion of which reads:

"WHEREFORE, the Court finds accused Alfredo Azarcon y Leva GUILTY beyond reasonable doubt as principal of Malversation of Public Funds defined and penalized under Article 217 in relation to Article 222 of the Revised Penal Code and, applying the Indeterminate Sentence Law, and in view of the mitigating circumstance of voluntary surrender, the Court hereby sentences the accused to suffer the penalty of imprisonment ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor in its maximum period to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of Reclusion Temporal. To indemnify the Bureau of Internal Revenue the amount of P80,831.59; to pay a fine in the same amount without subsidiary imprisonment in case of insolvency; to suffer special perpetual disqualification; and, to pay the costs.

Considering that accused Jaime Ancla has not yet been brought within the jurisdiction of this Court up to this date, let this case be archived as against him without prejudice to its revival in the event of his arrest or voluntary submission to the jurisdiction of this Court.

SO ORDERED."

Petitioner, through new counsel,^[22] filed a motion for new trial or reconsideration on March 23, 1994, which was denied by the Sandiganbayan in its Resolution^[23] dated December 2, 1994.

Hence, this petition.

The Issues

The petitioner submits the following reasons for the reversal of the Sandiganbayan's assailed Decision and Resolution:

"I. The Sandiganbayan does not have jurisdiction over crimes committed solely by private individuals.

II. In any event, even assuming *arguendo* that the appointment of a private individual as a custodian or a depository of distrained property is sufficient to convert such individual into a public officer, the petitioner cannot still be considered a public officer because:

[A]

There is no provision in the National Internal Revenue Code which authorizes the Bureau of Internal Revenue to constitute private individuals as depositories of distrained properties.

[B]

His appointment as a depository was not by virtue of a direct provision of law, or by election or by appointment by a competent authority.

III. No proof was presented during trial to prove that the distrained vehicle was actually owned by the accused Jaime Ancla; consequently, the government's right to the subject property has not been established.

IV. The procedure provided for in the National Internal Revenue Code concerning the disposition of distrained property was not followed by the B.I.R., hence the distraint of personal property belonging to Jaime C. Ancla and found allegedly to be in the possession of the petitioner is therefore invalid.

V. The B.I.R. has only itself to blame for not promptly selling the distrained property of accused Jaime C. Ancla in order to realize the amount of back taxes owed by Jaime C. Ancla to the Bureau."^[24]

In fine, the fundamental issue is whether the Sandiganbayan had jurisdiction over the subject matter of the controversy. Corollary to this is the question of whether petitioner can be considered a public officer by reason of his being designated by the Bureau of Internal Revenue as a depository of distrained property.

The Court's Ruling

The petition is meritorious.

Jurisdiction of the Sandiganbayan

It is hornbook doctrine that in order "(to) ascertain whether a court has jurisdiction or not, the provisions of the law should be inquired into."^[25] Furthermore, "the jurisdiction of the court must appear clearly from the statute law or it will not be held to exist. It cannot be presumed or implied."^[26] And for this purpose in criminal