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Antonio, J., concurs in the result.

Aquino, J., took no part.

SECOND DIVISION

[G.R. No. L-45633. February 28, 1979]

ELIZABETH PAPILOTA, for herself and as guardian of the minors: MARILOU, MARIJEAN, CERES, LUISITO, CRISPULO, JR., and DENNIS all surnamed PAPILOTA, SPOUSES HERMINIAS CALMERIN and ESTRELLA SUAGA, NICOLAS BRETAÑA, WARLITO PAPILOTA and ELISA DIROY, THE HON. MIDPANTAO L. ADIL, The Deputy Provincial Sheriff of Iloilo, RODOLFO S. BESA, *petitioners, vs.* **COURT OF APPEALS, SAN MIGUEL CORPORATION and ROMEO C. ZARRIS**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; COURT OF APPEALS; HAS JURISDICTION TO ENTERTAIN PETITION FOR *CERTIORARI* AND *MANDAMUS*.** — Where the Supreme Court dismissed a petition for review on *certiorari* of a decision of the Court of Appeals granting a petition for *certiorari* and *mandamus*, the clear implication of the dismissal is the recognition of the existence of jurisdiction of the latter to entertain said petition for *certiorari* and *mandamus*.

2. **ID.; ID.; SUPREME COURT; DENIAL OF PETITION FOR REVIEW, EFFECT.** — Where the Supreme Court denied for "lack of merit" an appeal by way of petition for review from the decision

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of the Court of Appeals, it is in effect an affirmation that said decision is correct.

3. ID.; ACTIONS; DISMISSAL; ACADEMIC QUESTIONS NOT INQUIRED INTO. — It has been held that the Supreme Court will not decide purely academic questions.

APPEARANCES OF COUNSEL

Ramon A. Gonzales for petitioners.

Angara, Abello, Concepcion, Regala & Cruz for private respondents.

D E C I S I O N

DE CASTRO, *J.*:

In this petition for *certiorari* and prohibition with preliminary injunction filed on February 24, 1977, petitioners seek to restrain enforcement of the writ of preliminary injunction dated January 10, 1977 issued by the respondent Court of Appeals in CA-G.R. No. SP-06239, entitled "*San Miguel Corporation vs. Hon. Midpantao L. Adil*," and to prohibit the respondent Court of Appeals from taking cognizance of said case.

On June 30, 1969, Crispulo Papilota and Warlito Calmerin were killed and Nicolas Bretaña, Warlito Papilota, Elisea Diroy, Dionisio Catoto and Antonio Las were injured in a collision between a passenger jeepney in which they were passengers and two (2) Coca-Cola trucks, owned by private respondent San Miguel Corporation (herein called as SMC), driven by private respondent Romeo C. Zarris (hereinafter called as Zarris). In the criminal case that followed, private respondents Zarris was acquitted. However, in the Civil Case No. 9941 against private respondents Zarris and SMC, entitled "*Elizabeth Papilota, et al., vs. San Miguel Corporation, et al.*," the latter were condemned to pay jointly and severally petitioners ₱433,000.00 for actual damages, moral damages, exemplary damages and attorney's fees in a judgment dated August 24, 1976 after petitioners were allowed to present their evidence *ex-parte* on account of private respondent's failure to appear at the

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hearing. (p. 2, *Rollo*). On August 25, 1976, private respondents were served with copy of the decision; and on September 6, 1976, they filed a notice of appeal and paid the corresponding appeal bond. On the following day, they were granted 30-days time from September 7, 1976, or up to October 7, 1976, within which to file their record on appeal. On September 24, 1976, the 30th day after receipt of copy of the decision, private respondents filed a motion for reconsideration and/or new trial. On October 21, 1976, petitioners filed a motion for execution alleging that (a) having filed a notice of appeal, private respondents were precluded from the filing their motion for reconsideration and/or New Trial; and that (b) since private respondents had failed to submit their record on appeal by October 7, 1976, the decision had become final and executory. On December 7, 1976, petitioner Judge Adil issued an order (a) denying private respondents' motion for reconsideration and/or New Trial; (b) disallowing the appeal of private respondents, and (c) directing the issuance of a writ of execution. On December 8, 1976, a writ of execution was issued. On the same day, December 8, 1976, petitioner Provincial Sheriff attached several trucks of private respondent SMC and scheduled their sale at public auction on December 17, 1976. On December 9, 1976, private respondents, upon receipt of copy of the order of December 7, 1976, filed a new notice of appeal, a new cash appeal bond and a record on appeal. On the same day of December 9, 1976, petitioner Judge Adil suspended the scheduled sale of the levied trucks of private respondent SMC. On January 5, 1977, petitioner Judge Adil lifted the suspension of the auction sale of the properties of respondent SMC. On January 7, 1977, petitioner Judge Adil denied private respondents motion for approval of their record on appeal on the ground that the decision had already become final and executory. (pp. 323 to 325, *Id.*). Hence, on January 8, 1977, private respondents SMC and Zarris filed a petition for *certiorari* and *mandamus*, with preliminary injunction with respondent Court of Appeals docketed as CA-GR No. 06239 against petitioners.

On January 10, 1977, respondent Court of Appeals issued a writ of preliminary injunction enjoining the enforcement of the questioned orders issued in Civil Case No. 9941 entitled

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"*Elizabeth Papilota, et al., vs. San Miguel Corporation, et al.*," which orders are enumerated as follows:

1. The order dated 7 December 1976 of the respondent judge ordering the immediate execution of the decision;
2. The writ of execution dated 8 December 1976 issued by the Deputy Clerk of Court;
3. The Notice of Public Auction sale dated 8 December 1976;
4. The order of the respondent Judge dated 5 January 1977, ordering immediate execution of the decision;
5. The Notice of Sale at Public Auction of the respondent Deputy Provincial Sheriff of Iloilo dated 6 January 1977;
6. The Notice of Garnishment issued on 6 January 1977 by the Deputy Provincial Sheriff of Iloilo;
7. The order dated 7 January 1977, denying petitioner's motion for approval of Record on Appeal (p. 53, *Id.*).

On January 14, 1977, petitioners filed a motion to lift preliminary injunction issued by respondent Court of Appeals on January 10, 1977 which was, however, denied by respondent Court of Appeals in its resolution dated February 15, 1977. (p. 79, *rollo*). Hence, the present petition in which Court, on March 2, 1977, issued a resolution, requiring without giving due course to this petition, the private respondents to comment thereon (not to file a motion to dismiss) within ten (10) days from notice hereof. (p. 85, *rollo*). On March 14, 1977, counsel for the petitioners filed a motion the issuance of a restraining order prayed for in this petition, followed by the private respondents' opposition to such motion. This Court issued a resolution dated June 27, 1977 giving due course to this petition. (p. 215, *Id.*). On July 22, 1977, a resolution was issued by this Court which, among others deferred action on the prayer for the issuance of a preliminary injunction until the case is decided on the merits (p. 220, *Id.*).

Thereafter, this case was declared submitted for decision by this Court in its resolution dated September 7, 1977. (p. 302, *Id.*). However, on September 28, 1977, this Court issued a resolution setting aside its resolution dated September 7, 1977 and declaring this case submitted for decision anew. (p. 315, *Id.*).

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In the meantime, and pending resolution of this petition, respondent Court of Appeals rendered a decision on April 1, 1977 in CA-G.R. No. SP-06239, entitled "*San Miguel Corporation vs. Hon. Midpantao L. Adil*, the dispositive portion which reads:

"WHEREFORE, the petition for *certiorari* and *Mandamus* is hereby granted.

(a) The Orders of respondent Judge of December 7, 1976, of January 5, 1977, and of January 7, 1977, are set aside, and the Writ of Execution, the Notices of Public Auction Sale, dated December 8, 1976 and January 6, 1977, as well as the Notice of Garnishment dated January 6, 1977 are invalidated.

(b) Respondent Judge is hereby ordered to give due course to DEFENDANTS' appeal from the DECISION rendered in the CASE BELOW.

Without pronouncement as to costs.

SO ORDERED." (p. 328, *rollo*).

On September 16, 1977, petitioners filed a separate petition for review of the decision dated April 1, 1977 of respondent Court of Appeals and its resolution denying the motion for reconsideration thereof. That petition was docketed as G.R. No. L-46693, entitled "*Elizabeth Papilota, et al. vs. Court of Appeals, et al.*" Subsequently, in reference to that petition, this Court issued a resolution dated February 13, 1978 which reads as follows:

"L-46693 (*Elizabeth Papilota, etc., et al. vs. Court of Appeals, et al.*) — Considering the allegations, issues and arguments adduced in the petition for review on *certiorari* of the decision of the Court of Appeals, respondents' comment thereon as well as petitioners' reply thereto, the Court Resolved to DENY the petition for lack of merit." (p. 334, *rollo*).

Again, on April 14, 1978, this Court issued the following resolution:

"L-46693 (*Elizabeth Papilota, etc., et al. vs. Court of Appeals, et al.*) — Considering the grounds of petitioners' motion for reconsideration of the resolution of February 13, 1978 which denied

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the petition for review, the Court Resolved to DENY the motion for lack of merit and this denial is FINAL." (p. 335, *rollo*).

On April 29, 1978, counsel for the petitioner filed a motion to amend prayer of the petition, seeking in addition to their prayer as stated in said petition, to set aside the decision dated April 1, 1977 rendered by the Court of Appeals, in CA-G.R. No. SP-06239. (p. 319, *rollo*). Respondents, on May 18, 1978, filed an opposition to motion to amend prayer of the petition alleging, among others, that the motion be denied for lack of merit, and that the present petition be dismissed for being moot and academic. (p. 331, *Id.*) A reply to respondents' opposition was filed by petitioners. (p. 340, *Id.*)

The question raised in this present petition is whether or not respondent Court of Appeals has an appellate jurisdiction over the petition for *certiorari* and *mandamus* with preliminary injunction docketed as CA-G.R. No. SP-06239 entitled "*San Miguel Corporation, et al. vs. Hon. Midpantao L. Adil, et al.*" filed by herein respondents on January 8, 1977.

We are of the opinion that the resolutions issued in G.R. No. L-46693, entitled "*Elizabeth Papilota, et al. vs. Court of Appeals, et al.*" by this Court dated 13 February 1978 and 14 April 1978, respectively denying petitioners' petition for review on *certiorari* of the decision of respondent Court of Appeals in CA-G.R. No. SP-06239, entitled "*San Miguel Corporation, et al. vs. Hon. Midpantao L. Adil, et al.*" rendered moot and academic the issue of jurisdiction raised in this instant petition. The clear implication of the dismissal by this Court of petitioners' petition for review on *certiorari* is the recognition of the existence of jurisdiction of the respondent Court of Appeals to entertain private respondents' petition for *mandamus* and *certiorari* with preliminary injunction.

What is more, this Court's denial for "lack of merit" of petitioners' appeal by way of petition for review from the decision of the respondent Court of Appeals dated April 1, 1977 is in effect an affirmation that said decision is correct. As aptly stated by this Court in the case of *Tayag, et al. vs. Yuseco, et al.*, L-14043, April 16, 1959. (105 Phil. 488):

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"Petitioners herein filed with us a petition for *certiorari* to review said decision of the Court of Appeals, but we dismissed said petition for lack of merit. In other words, we found said decision to be correct."

In the said decision dated April 1, 1977, respondent Court Appeals, among others, gave due course to respondents' appeal. Execution of the judgment appealed from may, therefore, not be allowed while the appeal is pending.

More importantly, the resolutions dated February 13, 1977 and April 14, 1978 issued by this Court deny for lack of merit the petitioners' petition for review on *certiorari* of the decision of the Court of Appeals dated 1 April 1977. A determination of the merits of the instant petition has, therefore, become purely moot and academic. As things now stand, the resolutions above adverted to set firmly the entire core of the instant petition, and our jurisprudence does not countenance any further lengthy discussion of the issues raised therein, for it has been held, that this Court will not decide purely academic questions. (*Meralco Workers Union vs. Yatco*, 19 SCRA 177; *Cruz vs. Tan*, 100 Phil. 911, 912-913; *Perez vs. Court of Appeals*, 101 Phil. 630, 635).

WHEREFORE, this present petition is dismissed for being moot and academic, and also for lack of merit, without pronouncement as to costs.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *Melencio Herrera, JJ.*, concur.