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SECOND DIVISION

[G.R. No. 71229. September 30, 1986]

HANIL DEVELOPMENT CO., LTD., *petitioner, vs.* **HON. INTERMEDIATE APPELLATE COURT and M. R. ESCOBAR EXPLOSIVES ENGINEERS, INC., represented by its General Manager, MANUEL R. ESCOBAR,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURES; ATTACHMENT; CLAIMS FOR DAMAGES AGAINST AN ILLEGAL ATTACHMENT; REQUISITES.—** In *Malayan Insurance Co., Inc., vs. Sales* (90 SCRA 252), lays down the procedures regarding claims for damages against an illegal attachment. It states: "Under Section 20, in order to recover damages on a replevin bond (or on a bond for preliminary attachment, injunction or receivership) it is necessary (1) that the defendant-claimant has secured a favorable judgment in the main action, meaning that the plaintiff has no cause of action and was not, therefore, entitled to the provisional remedy of relieving; (2) that the application for damages, showing claimant's right thereto and the amount thereof, be filed in the same action before trial or before appeal is perfected or before the judgment becomes executory; (3) that due notice be given to the other party and his surety or sureties, notice to the principal not being sufficient; and (4) that their should be a proper hearing and the award for damages should be included in the final judgment (*Luneta Motor Co. vs. Menendez*, 117 Phil, 970, 974;.3 Moran's Comments on the Rules of Court, 1970 Ed., pp. 54-56. See *Cruz vs. Manila Surely & Fidelity* Co., zinc., 92 Phil. 699)."

2. **ID.; ID.; ID.; ID.; RULE TO FILE THEREOF.—** "As may be gathered from Section 20 of Rule 57 of the Rules of Court, the application for damages against the surely must be filed (with notice to the surety) in the court of the First Instance before the trial or before appeal is perfected or before the judgment becomes executory. If an appeal is taken, the application must be filed in the appellate court but always before the judgment of the court becomes executory so that the award may be included

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in its judgment" (*Luneta Motor Co. vs. Menendez*, 117 Phil. 970). "But it is not always mandatory that the appellate court should include in its judgment the award of damages against the surety. Thus, it was held that where the application of refer 'it' to the trial court and allow it to hear and decide the same" (*Rivera vs. Talavera*, 112 Phil. 209, 219). "Note that under the second paragraph of Section 20, Rule 57 of the present Rules of Court, the damages suffered during the pendency of an appeal in a case where the writs of attachment, injunction and replevin or an order or receivership were issued should be claimed in the appellate court." [*Malayan Insurance Co., Inc. vs. Salas* (90 SCRA 252)].

3. **ID.; ID.; ID.; ID.; SEASONABLY FILED IN CASE AT BAR.—** The notice of "file appellant's brief within 45 days from receipt" was received by the petitioners on February 25, 1985. The petitioner filed the application for judgment against the attachment bond and motion to defer filing of appellant's brief on March 13, 1985. Thus, the petitioner filed its motions on the 16th day after receipt of the notice to file appellant's brief and within the 45-day reglementary period. On March 26, 1985, the appellate court issued its resolution directing the private respondent to file its comment on the motions of the petitioner. At this point, counting from February 25, 1985 to March 26, 1985, a total number of 29 days had lapsed. Hence, the petitioners still had 16 days within the 45-day reglementary period to file its appellants brief in the event that its motions were denied. It is likewise the practice in the Court of Appeals, after granting an initial period of 45 days, to routinely grant a motion for extension of another 45 days for the filing of an appellant's brief. Considering the amount involved in this litigation and the nature of the defenses raised by the petitioner, the appellate court was unduly severe when it peremptorily dismissed the appeal.

4. **ID.; ID.; ID.; ID.; SURETY MUST BE INCLUDED IN THE FINAL JUDGMENT; PURPOSE.—** We have earlier rule that "the explicit provision of Section 20 of Rule 57, Revised Rules of the Court that the judgment against the surety should be included in the final judgment is to avoid additional proceeding (*Cruz vs. Manila Surety Fidelity Co., et al.,* 92 Phil. 699).

5. **ID.; ID.; INTERMEDIATE APPELLATE COURT; SCOPE OF POWER TO RESOLVE FACTUAL ISSUES IN CASES**

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FALLING WITHIN ITS ORIGINAL AND APPELLATE JURISDICTION.— Applying the principle laid down in *Malayan Insurance Co., Inc. vs. Sales* (90 SCRA 252) to the circumstances surrounding the application for judgment against attachment bond in this case, the appellate court committed grave abuse of discretion in denying the application for judgment against attachment bond. The appellate court's error in this case is more pronounced considering that under Section 9 of the Judiciary Reorganization Act of 1980 (Batas Pambansa Blg. 129) the Intermediate Appellate Court is now empowered to try cases and conduct hearings, receive evidence and perform acts necessary to resolve factual issues in cases falling within its original and appellate jurisdiction. Certainty, the amount, of damages, if any, suffered by the petitioner as a result of the issuance of the illegal attachment during the pendently of the appeal in a factual issue.

APPEARANCES OF COUNSEL

M.A. Aguinaldo & Associates for petitioner.
Ponciano H. Gupit for private respondent.

DECISION

GUTIERREZ, JR., *J.*:

This is a petition for *certiorari*, *mandamus,* and prohibition, with prayer for mandatory injunction and restraining order from the resolutions of the then Intermediate Appellate Court dated April 30, 1985 and June 20, 1985 in AC-G.R. No. 05055 entitled "*Hanil Development Co., Ltd. v. M.R. Escobar Explosives Engineers, Inc.*, represented by its General Manager, Manuel R. Escobar."

The present controversy has its origins in a complaint for recovery of a sum of money with damages filed by private respondent Escobar Explosives Engineers, Inc., against petitioner Hanil Development Co., Ltd., before the then Court of First Instance of Rizal, Branch XXXI, Pasig, Metro Manila. The petitioner is a foreign corporation organized under the laws of the Republic of Korea and doing business in the Philippines

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pursuant to the Corporation Code and the Foreign Investment Act. The complaint docketed as Civil Case No. 35966 sought to compel the petitioner to pay for the blasting services rendered by the private respondent in connection with the former's contract with the Ministry of Public Highways to construct the 200 Km. Oro - Butuan Road Project in Mindanao.

The trial court, on April 16, 1983, rendered a decision in favor of the private respondent. The petitioner was ordered to pay the private respondent the sum of P1,341,727.40 corresponding to the value of the rocks blasted by the private respondent; ten percent (10%) of said amount as attorney's fees and costs.

On May 6, 1982, the private respondent filed a petition for the issuance of a preliminary attachment. The motion was set for hearing.

On May 13, 1982, the petitioner filed its notice of appeal and cash appeal bond with the trial court.

On May 24, 1982, the trial court issued an order granting the petition for the issuance of preliminary attachment.

On May 26, 1982, the private respondent moved for the appointment of Deputy Sheriff Felix Honoracion as special sheriff to serve the writ of attachment/garnishment.

Consequently, the order dated May 24, 1982 and the writ of attachment dated May 27, 1982 were enforced by the respondents and the bank accounts of the petitioner were garnished and its equipment attached.

The petitioner then filed a motion for reconsideration of the May 24, 1982 order. While this motion was pending, the private respondent filed another motion, this time an 'Ex-Parte Motion to Deposit Cash" praying that an order be issued directing the Finance Manager of the National Power Corporation (NAPOCOR) to withdraw available funds of the petitioner from the NAPOCOR and deposit them with the clerk of court of the Court of First Instance of Rizal. This motion was granted in an order dated June 29, 1982.

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In view of this development, the petitioner filed with the then Intermediate Appellate Court a petition for *certiorari* with prayer for prohibition, injunction and preliminary restraining order challenging the orders dated May 24, 1982 and June 29, 1982 of the trial court. The case was docketed as CA-G.R. No. 14512.

The appellate court temporarily restrained the enforcement of the challenged orders and after a hearing issued a preliminary injunction enjoining the implementation of said orders upon the filing of a P50,000.00 cash bond by the petitioner.

In a decision dated February 3, 1983, the appellate court granted the petition and declared the challenged orders null and void, having been issued with grave abuse of discretion.

While the above-mentioned petition was pending before the appellate court and despite the writ of injunction issued by it, other developments continued to unfold in the trial court.

In an order dated August 23, 1982, the trial court disapproved the petitioner's amended record on appeal on the ground that it was "filed beyond the reglementary period and the extension granted." The appeal was dismissed. The petitioner filed a motion for reconsideration of the dismissal while the private respondent filed a motion for execution of judgment.

On October 19, 1982, the trial court issued an order denying the petitioner's motion for reconsideration and at the same time granting the private respondent's motion for execution of judgment.

The petitioner filed a petition for *certiorari* and *mandamus* with prayer for prohibition with the Intermediate Appellate Court assailing the trial court's orders dated August 23, 1982 and October 19, 1982. The case was docketed as AC-G.R. No. 15050.

The appellate court granted the petition. The challenged orders were set aside and declared null and void. Hence, the petitioner's appeal in Civil Case No. 35966 was reinstated and the trial court was ordered to elevate the entire records of the case to the appellate court.

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A petition for review of the decision in AC-G.R. No. 15050 was filed by the private respondent before this Court, but was denied for lack of merit.

After transmittal of the records, the appellate court on February 11, 1985, sent a notice to the petitioner to file appellant's brief within forty-five (45) days from receipt. The petitioner received the notice on February 25, 1985.

On March 13, 1985, and within the reglementary period to file appellant's brief, the petitioner filed an "Application for Judgment against Attachment Bond" and "Motion to Defer Filing of Appellant's Brief" praying for a hearing before the appellate court so it could prove the damages it sustained as a result of the illegal writ of attachment issued by the trial court. It wanted a judgment against the attachment bond posted by the private respondent and its insurer Sanpiro Insurance Corporation to be included in the final decision in the main case, Civil Case No. 35966, now pending before the appellate court.

Acting on the petitioner's motions, the appellate court issued a resolution directing the private respondent to comment on these motions.

The private respondent filed its "Comment" with a "Motion to Dismiss Appeal" for the petitioner's alleged failure to file its appellant's brief.

In a resolution dated April 30, 1985, the appellate court denied the petitioner's application for judgment against the attachment bond and the motion to defer filing of appellant's brief, granted the private respondent's motion to dismiss the appeal, and dismissed the appeal. The petitioner filed a motion for reconsideration but this was denied in a resolution dated June 20, 1985.

Hence, this petition.

In a resolution dated July 17, 1985, we issued a temporary restraining order to enjoin the respondents from proceeding with the execution of the decision in Civil Case No. 35966.

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The petitioner now asserts that the April 30, 1985 and June 20, 1985 resolutions were issued by the appellate court with grave abuse of discretion.

The questioned April 30, 1985 minute resolution of the appellate court states:

"Acting upon (1) the application for judgment against attachment bond, etc. filed by counsel for defendant-appellant on March 13, 1985; (2) the comment thereto; (3) the motion to dismiss appeal filed by counsel for plaintiff-appellee on April 24, 1985; and the docket report dated April 25, 1985, the COURT RESOLVED: (a) to DENY the application for judgment against attachment bond and the motion to defer filing of appellant's brief; and (b) to GRANT the motion to dismiss appeal and to dismiss the instant appeal."

The issues to be resolved in the instant petition are: (1) whether or not the petitioner's application for judgment against the attachment bond and its motion to defer filing of appellant's brief were correctly denied by the appellate court and (2) whether or not the same court rightly dismissed the petitioner's appeal.

Anent the first issue, the petitioner contends that its application for judgment against the attachment bond was pursuant to Section 20, Rule 57 of the Revised Rules of Court.

Section 20, Rule 57 of the Revised Rules of Court provides for the claim of damages on account of illegal attachment, to wit:

"*Claim for damages on account of illegal attachment.*— If the judgment on the motion be in favor of the party against whom attachment was issued, he may recover, upon the bond given or deposit made by the attaching creditor, any damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with notice to the attaching creditor and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof.

"If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages

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sustained during the pendency of the appeal by filing an application with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court."

In the instant case, the initial writ of attachment issued by the trial court in the main case — Civil Case No. 35966 which is the subject of appeal — was declared null and void by the appellate court in CA-G.R. No. 14512. This present writ of attachment was issued and subsequently enforced after the trial court's decision in Civil Case No. 35966 had been rendered and after the petitioner had already perfected its appeal. The petitioner, therefore, argues that the application for judgment against the attachment bond was properly lodged with the appellate court pursuant to Section 9, of the Judiciary Reorganization Act of 1980 (Batas Pambansa Blg. 129) which grants the Intermediate Appellate Court "power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues x x x." It contends that it is only in the appellate court that these damages could well be ventilated because they occurred during the pendency of the appeal in AC-G.R. No. 15050.

The petitioner's arguments are well-taken.

The application for judgment against attachment bond was filed to prove the damages sustained by the petitioner as a result of the illegal writ of attachment issued by the trial court so that the judgment against the attachment bond posted by the private respondent and *its insurer* could be included in the final judgment of the main case. The assessment and award of such damages could not have been made in CA-G.R. No. 14512 as alleged by the private respondent because the question therein was whether or not the writ of attachment in Civil Case No. 35966 should have been issued.

The object was to set aside the preliminary attachment immediately. It was a preventive measure.

The private respondent, in its petition for writ of attachment filed with the trial court, posted an attachment bond issued by

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the Sanpiro Insurance Corporation in the amount of P1,341,727.40, the relevant portion of which reads:

"WHEREFORE, WE, M.R. ESCOBAR EXPLOSIVE ENGINEERS as PRINCIPAL, and the SANPIRO INSURANCE CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the Philippines, as SURETY in consideration of the above and of the levying of said attachment, hereby jointly and severally bind ourselves in the sum of PESOS: ONE MILLION THREE HUNDRED FORTY ONE THOUSAND SEVEN HUNDRED TWENTY SEVEN & 40/100 (P1,341,727.40), Philippine Currency, under the condition that we will pay all the costs which may be adjudged to said defendant/s and all damages which said defendant/s may sustain by reason of the attachment, if the Court shall finally adjudge that plaintiff/s was/were not entitled thereto."

Contrary to the claim of the private respondent, this writ of attachment issued by the trial court was executed. The petitioner's equipment and bank accounts were garnished pursuant to the writ. In fact, the private respondent's opposition to the petitioner's motion for reconsideration of the trial court's order which issued the writ of attachment stated that the same should be denied for being moot and academic "because the writ of attachment and/or garnishment have already been executed."

Considering that the writ of attachment was declared null and void, the petitioner had the right to ask for whatever damages it may have incurred as a result of its issuance pursuant to Section 20, Rule 57 of the Revised Rules of Court.

Malayan Insurance Co., Inc. v. Salas (90 SCRA 252), lays down the procedure regarding claims for damages against an illegal attachment. It states:

"Under section 20, in order to recover damages on a replevin bond (or on a bond for preliminary attachment, injunction or receivership) it is necessary (1) that the defendant-claimant has secured a favorable judgment in the main action, meaning that the plaintiff has no cause of action and was not, therefore, entitled to the provisional remedy of replevin; (2) that the application for damages, showing claimant's right thereto and the amount thereof, be filed in the same action before trial or before appeal is perfected or before the judgment

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becomes executory; (3) that due notice be given to the other party and his surety or sureties, notice to the principal not being sufficient and (4) that there should be a proper hearing and the award for damages should be included in the final judgment (*Luneta Motor Co. v. Menendez*, 117 Phil. 970, 974; 3 Moran's Comments on the Rules of Court, 1970 Ed., pp. 54-56. See *Cruz v. Manila Surety & Fidelity Co., Inc.*, 92 Phil. 699).

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"As may be gathered from section 20 of Rule 57, the application for damages against the surety must be filed (with notice to the surety) in the Court of First Instance before the trial or before appeal is perfected or before the judgment becomes executory.

"If an appeal is taken, the application must be filed in the appellate court but always before the judgment of that court becomes executory so that the award may be included in its judgment (*Luneta Motor Co. v. Menendez, supra).*

"But it is not always mandatory that the *appellate court* should include in its judgment the award of damages against the surety. Thus, it was held that where the application for damages against the surety is seasonably made in the appellate court, 'the latter must either proceed to hear and decide the application or *refer 'it' to the trial court and allow it to hear and decide the same*' (*Rivera v. Talavera*, 112 Phil. 209, 219).

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"Note that under the second paragraph of section 20, Rule 57 of the present Rules of Court, the damages suffered during the pendency of an appeal in a case where the writs of attachment, injunction and replevin or an order of receivership were issued should be claimed in the appellate court."

x x x x x x x x x

In the instant case, the application for judgment against the attachment bond was filed under the following circumstances: (1) the writ of attachment was issued by the trial court after it had rendered its decision and after the petitioner had already perfected its appeal; (2) the private respondent posted a surety bond to answer for any damages that may be adjudged to the petitioner if the writ is later found to be illegal; (3) the writ of

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attachment was declared illegal; and (4) the application for Judgment against the attachment bond was made with notice to the insurer, Sanpiro Insurance Corporation.

Applying the principles laid down in the *Malayan* case to the circumstances surrounding the application for judgment against attachment bond in this case, the appellate court committed grave abuse of discretion in denying the application for judgment against attachment bond. The appellate court's error in this case is more pronounced considering that under Section 9 of the Judiciary Reorganization Act of 1980 (Batas Pambansa Blg. 129) the Intermediate Appellate Court is now empowered to try cases and conduct hearings, receive evidence and perform acts necessary to resolve factual issues in cases falling within its original and appellate jurisdiction. Certainly, the amount of damages, if any, suffered by the petitioner as a result of the issuance of the illegal attachment during the pendency of the appeal is a factual issue.

Moreover, the application for judgment against the bond seasonably filed by the petitioner in the appellate court would avoid multiplicity of suits. We have earlier ruled that "the explicit provision of Section 20 of Rule 57, Revised Rules of Court that the judgment against the surety should be included in the final judgment is to avoid additional proceedings. (*Cruz v. Manila Surety & Fidelity Co., Inc., et al.*, 92 Phil. 699; *Japco v. City of Manila*, 48 Phil. 851, 855 cited in *Malayan Insurance Corporation v. Salas, supra*).

Consequently, the appellate court also committed a grave abuse of discretion in denying the motion to defer filing of appellant's brief. The petitioner filed this motion for the purpose of first settling the issue on damages against the attachment bond so that such issue would be discussed and included in the appellant's brief and ultimately in the final judgment thereby avoiding multiplicity of suits.

Needless to say, the appellate court should not have dismissed the petitioner's appeal.

We take notice of the circumstances under which the appellate court dismissed the appeal. Granting that the petitioner's

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application for judgment against attachment bond was not meritorious, the appellate court's dismissal of the appeal would still be unwarranted.

The record shows that in response to the petitioner's application for judgment against the attachment bond and motion to defer filing of the appellant's brief which was filed on March 13, 1985 and within the 45-day reglementary period to file appellant's brief, the appellate court issued a resolution directing the private respondent to comment on the motion within ten (10) days from notice. Upon motion of the private respondent, the appellate court issued another resolution granting an extension of ten (10) days from April 13, 1985 to file comment on the said motions of the petitioner. The extension granted meant that the private respondent had until April 24, 1985 to file its comment. In addition to the comment, the private respondent filed on April 24, 1985 a motion to dismiss appeal contending that the petitioner had not filed its appellant's brief within the 45-day reglementary period. Upon verification from its docket decision that no appellant's brief was filed as of April 25, 1985, the appellate court dismissed the appeal.

Under these circumstances, the dismissal of the appeal by the appellate court due to the failure to file the appellant's brief within the 45-day reglementary period counted from February 25, 1985 to April 25, 1985 without allowing any interruption gave undue advantage to the private respondent. This is so, because the private respondent after having been given ten (10) days from receipt of notice to comment on the twin motions of the petitioner was again granted a ten-day extension or until April 24, 1985 to file its comment thereto. This, in effect, removed a substantial number of days from the 45-day period of the petitioner to file its brief, through no fault of its own.

The procedure adopted by the appellate court in interpreting the 45-day reglementary period to file appellant's brief was unfair. When the appellate court issued the resolution requiring the private respondent to comment on the petitioner's application for judgment against the attachment bond and motion to defer

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appellant's brief the 45-day period should be deemed to have stopped, and the period to commence again after denial of the motions.

The notice to "file appellant's brief within 45 days from receipt" was received by the petitioner on February 25, 1985. The petitioner filed the application for judgment against the attachment bond and motion to defer filing of appellant's brief in March 13, 1985. Thus, the petitioner filed its motions on the 16th day after receipt of the notice to file appellant's brief and within the 45-day reglementary period. On March 26, 1985, the appellate court issued its resolution directing the private respondent to file its comment on the motions of the petitioner. At this point, counting from February 25, 1985 to March 26, 1985, a total number of 29 days had lapsed. Hence, the petitioner still had 16 days within the 45-day reglementary period to file its appellant's brief in the event that its motions were denied.

It is likewise the practice in the Court of Appeals, after granting an initial period of 45 days, to *routinely* grant a motion for extension of another 45 days for the filing of an appellant's brief. Considering the amount involved in this litigation and the nature of the defenses raised by the petitioner, the appellate court was unduly severe when it peremptorily dismissed the appeal.

Therefore, we have to set aside the appellate court's action in simultaneously denying the application for judgment against the attachment bond and the motion to defer the filing of appellant's brief and in dismissing the appeal. Since the petitioner's two motions were denied on April 30, 1985, the petitioner still had 16 days from notice of the denial to file its appellant's brief. In short, the petitioner's 45-day period within which to file its appellant's brief had not yet lapsed when the appellate court dismissed the appeal. The brief could have been filed or a motion for extension of time requested.

WHEREFORE, the instant petition is GRANTED. The questioned resolutions dated April 30, 1985 and June 20, 1985 of the then Intermediate Appellate Court are hereby REVERSED and SET ASIDE. The Court of Appeals is directed to conduct

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hearings on the application for judgment against attachment bond filed by the petitioner and to reinstate the appeal. The temporary restraining order dated July 17, 1985 is made PERMANENT.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Paras, JJ.*, concur.

SECOND DIVISION

[G.R. No. 73245. September 30, 1986]

LAMSAN TRADING, INC., *petitioner, vs.* **THE HONORABLE VICENTE LEOGARDO, JR., Deputy Minister, Ministry of Labor and Employment, DANILO SARMIENTO, ISAGANI ACURIL, ROQUITO REYES, and RAFAEL TALAVER,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR LAW; LABOR RELATIONS; DISMISSAL OF EMPLOYEE; LOSS OF TRUST AND CONFIDENCE; NOT A JUSTIFIABLE GROUND FOR TERMINATION OF ORDINARY RANK AND FILE EMPLOYEE; CASE AT BAR.**— Reference to our ruling in *International Hardwood and Veneer Co. of the Philippines v. Leogardo* (117 SCRA 967), and to other cases on valid dismissals due to dishonesty or stealing is erroneous. The supposed dishonesty in this petition is not substantiated by any evidence whatsoever. If the private respondents are cashiers, managers, supervisors, salesmen, or other personnel occupying positions of responsibility, the requirement that an employee should enjoy the trust an confidence of his employer may justify their termination. (See *Reynolds Philippines vs. Eslava*, 137 SCRA 259; and other related cases cited) However, the private respondents are ordinary rank and file workers. They are electricians and operators of equipment. There has to be