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Power of Courts

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**NEW YORK CITY CRIMINAL COURT
QUEENS COUNTY**

People v. Trabazo¹
(decided March 22, 1999)

Defendant, Victor Trabazo, was charged with Criminal Contempt and Harassment in the Second Degrees² for actions allegedly violating the Supreme Court's order of protection in the matrimonial action between Trabazo and his wife.³ The defendant moved to dismiss the criminal contempt and harassment charges before the Criminal Court of the City of New York, Queens County, pursuant to an order issued by the Supreme Court, Queens County, purporting to combine the criminal and matrimonial actions and transfer them to the Supreme Court.⁴ The Criminal Court held that the Supreme Court lacked jurisdiction over the action before the Criminal Court,⁵ and even if the Supreme Court had jurisdiction over the criminal action, "no mechanism exists to allow the purported transfer to the Supreme Court."⁶

The defendant was charged "with Criminal Contempt in the Second Degree and Harassment in the Second Degree" for an incident which took place on August 25, 1998.⁷ The conduct allegedly violated the Supreme Court's order of protection, which was issued in the matrimonial dispute.⁸ The defendant, in his motion to dismiss or transfer and merge the criminal and matrimonial actions, claimed that the Supreme Court is of "unlimited and illimitable" jurisdiction.⁹ Therefore, he contended that the Supreme Court had the power "to remove the instant

¹ 690 N.Y.S.2d 829 (N.Y.C. Crim. Ct., Queens County 1999).

² *Id.* at 830.

³ *Id.*

⁴ *Id.*

⁵ *People v. Trabazo*, 690 N.Y.S.2d 829, 830 (N.Y.C. Crim.Ct., Queens County 1999).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

criminal action from the Criminal Court and merge it into the civil matrimonial action.”¹⁰

The defendant alleged that the jurisdiction of the Supreme Court is completely unlimited.¹¹ The Criminal Court refuted this allegation by explaining how this statement was not completely true.¹² Under Article VI, § 7 of the New York Constitution, the Supreme Court is granted the authority “to entertain all causes of action unless jurisdiction has been specifically proscribed”¹³ However, in *Sohn v. Calderon*,¹⁴ the Court of Appeals of New York held that the Supreme Court lacked subject matter jurisdiction over disputes regarding rent control and stabilization.¹⁵ The Supreme Court’s constitutionally protected jurisdiction does not forbid the legislature from designating “exclusive original jurisdiction upon an agency in connection with the administration of a statutory regulatory program.”¹⁶ Thus, the Supreme Court’s jurisdiction is not absolutely unlimited.

The Legislature intrudes upon the Supreme Court’s jurisdiction under the Constitution when it conveys exclusive jurisdiction to

¹⁰ Trabazo at 830.

¹¹ *Id.*

¹² *Id.* One example where the Supreme Court lacks jurisdiction exists in claims filed against the State of New York. In these instances, the Court of Claims has exclusive jurisdiction. *Id.*

¹³ N.Y. CONST. art. VI § 7. This section provides in pertinent part:

The Supreme Court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided. In the city of New York, it shall have exclusive jurisdiction over crimes prosecuted by indictment, provided, however, that the legislature may grant to the city-wide court of criminal jurisdiction of the city of New York jurisdiction over misdemeanors prosecuted by indictment

Id.

¹⁴ 78 N.Y.2d 755, 766, 587 N.E.2d 807, 811, 579 N.Y.S.2d 940, 944 (1991).

¹⁵ *Id.* at 944. The Legislature, not the common law, created the category of rent control and rent stabilization. As a result, this category does not fit into the category of original jurisdiction conferred upon the Supreme Court by Article VI § 7(a) of the New York Constitution. *Id.*

¹⁶ *Id.* at 944-945.

another court.¹⁷ However, the Legislature has not bestowed “exclusive jurisdiction of misdemeanors and violations to Criminal Court,”¹⁸ resulting in concurrent jurisdiction between the Supreme Court and the Criminal Court over the prosecution of such.¹⁹ The Legislature has provided that, by an order of the Grand Jury, the Supreme Court may exercise jurisdiction over violations and misdemeanors.²⁰ The New York Constitution²¹ establishes that the New York City Criminal Court has jurisdiction in all unindicted misdemeanor prosecutions.²²

[W]hile exclusive jurisdiction exists in the Supreme Court for the trial and/or disposition of felony prosecutions, that jurisdiction is activated only upon the action of the Grand Jury notwithstanding the fact that jurisdiction for all prosecutions commenced by arrest without prior indictment, viz. felony, misdemeanor or violation is vested in Criminal Court.²³

¹⁷ *Trabazo*, 690 N.Y.S.2d at 830. New categories established by the Legislature do not take away the general jurisdiction conferred on the Supreme Court by the State Constitution, Article 6 § 7(a). *Nestor v. McDowell*, 81 N.Y.2d 410, 415, 615 N.E.2d 991, 993, 599 N.Y.S.2d 507, 509 (1993).

¹⁸ *Trabazo*, 690 N.Y.S.2d at 830.

¹⁹ *Id.*

²⁰ *Id.* at 831.

²¹ N.Y. CONST. art. VI § 15(c). This section provides:

The court of city-wide criminal jurisdiction of the city of New York shall have jurisdiction over crimes other violations of law, other than those prosecuted by indictment, provided, however, that the legislature may grant to said court jurisdiction over misdemeanors prosecuted by indictment; and over such other actions and proceedings, not within the exclusive jurisdiction of the supreme court, as may be provided by law.

Id.

²² Under the authority of the State Constitution, article 6 § 18, the Legislature established that the New York City Criminal Court, replacing the former Court of Special Sessions, has jurisdiction over misdemeanors in the city of New York. *People v. Morganbesser*, 57 Misc.2d 678, 679, 293 N.Y.S.2d 397, 399 (N.Y.C. Crim. Ct. Kings County 1968).

²³ *People v. Edwards*, 101 Misc.2d 747, 749, 422 N.Y.S.2d 324, 326. (N.Y.C. Crim. Ct. New York County 1979).

According to the Code of Criminal Procedure, “the Supreme Court had preliminary jurisdiction over misdemeanors prosecuted by information, but not trial jurisdiction.”²⁴

The Criminal Procedure Law explicitly states that the Supreme Court’s exercise of jurisdiction over criminal offenses is activated only by action of the Grand Jury or by a Superior Court information filing.²⁵ In the present case, because the Grand Jury has taken no action regarding the charges before the Criminal Court and the Superior Court has not filed an information, the Supreme Court lacks jurisdiction over the present action.²⁶ The lack of trial jurisdiction is partially due to the fact that the action involves non-felonies, over which the Criminal Court has lawful jurisdiction.²⁷ The fact that two exclusive processes exist to give the Supreme Court jurisdiction over criminal actions does not destroy the unlimited jurisdiction granted by the Constitution to the Supreme Court.²⁸ The Supreme Court shares concurrent jurisdiction with the Criminal Court regarding misdemeanors, but

²⁴ *Trabazo*, 690 N.Y.S.2d at 831.

²⁵ *Id.* at 832 (citing N.Y. CRIM. PROC. LAW. § 10.30 (McKinney 1999)). This statute provides in pertinent part:

Local criminal courts have trial jurisdiction of all offenses other than felonies. They have . . . [t]rial jurisdiction of misdemeanors concurrent with that of the superior courts but subject to divestiture thereof by the latter in any particular case. Local criminal courts have preliminary jurisdiction of all offenses subject to divestiture thereof by the latter in any particular case by the superior courts and their grand juries.

Notwithstanding the provisions of subdivision one, a superior court judge sitting as a local criminal court does not have trial jurisdiction of any offense, but has preliminary jurisdiction only, as provided in subdivision two.

Id. at 831-32.

²⁶ *Id.* at 832. Criminal misdemeanor charges may be tried in Criminal Court or in the Supreme Court, as the court of “general original jurisdiction.” However, the only means by which the charges may be prosecuted in the Supreme Court are by the District Attorney’s filing of a Superior Court information or by the Grand Jury filing an indictment. *People v. Kotler*, 143 Misc. 287, 289, 540 N.Y.S.2d 937, 939 (N.Y.C. Crim. Ct. Kings County 1989).

²⁷ *Trabazo*, 690 N.Y.S.2d at 832.

²⁸ *Id.*

it can only exercise that jurisdiction if the Grand Jury issues an indictment with respect to the charges against the defendant.²⁹ In this case, there was no indictment; therefore, the Supreme Court has no trial jurisdiction over the action.³⁰

The Supreme Court does not have the power to shift the criminal action from the Criminal Court to itself.³¹ The Supreme Court issued a protection order as an exercise of its valid civil jurisdiction, without the power of jurisdiction over the criminal action.³² Without either an indictment or a Superior Court information, the Supreme Court cannot exercise jurisdiction; therefore, its order has no legal effect.³³

The Court also pointed out that the Legislature amended the law to grant concurrent jurisdiction on family offenses in Criminal Court and Family Court, declaring that domestic violence is one of the most critical problems facing New York.³⁴ The Legislature's statement that the prosecution of domestic violence is of dire importance makes it obvious that the Legislature's intent was not to have criminal actions nullified and merged into civil actions.³⁵ This is especially clear in a criminal action, when the District Attorney is a required party to the action and as the Constitutional enforcer responsible for the prosecution of crimes, is not present before the Supreme Court in the civil action.³⁶

²⁹ *d.*

³⁰ *Id.* at 833.

³¹ *Trabazo*, 690 N.Y.S.2d at 833. The Supreme Court lacks the power to transfer because it does not possess an accusatory instrument, such as an indictment or an information. *Id.*

³² *Id.* Without jurisdiction in the criminal action, the Supreme Court's order does not constitute "a determination of a criminal court." *Id.*

³³ *Id.*

³⁴ *Id.* The Legislature's amendment intended to announce "that in circumstances where domestic violence continues in violation of lawful court orders, actions under the criminal law must remain in place as a necessary and available option. *Id.* See FAM. CT. ACT, Art. 8 § 812, Legislative History, 179-80 (McKinney 1999).

³⁵ *Trabazo*, 690 N.Y.S.2d at 833.

³⁶ *Id.*

“The Supreme Court is a court of original general jurisdiction” as designated in Article VI § 7 of the New York Constitution.³⁷ Though it may be argued that Article VI of the Constitution gives the Supreme Court the authority to transfer to itself the criminal case, the power is not self-activated.³⁸ “As may be provided by law,” clearly indicates that legislative action is needed for the Supreme Court to have the power to make the transfer.³⁹ The Criminal Court was not able to find any Constitutional authority that exists to allow the Supreme Court to transfer the criminal action.⁴⁰

While the Court did not discuss any federal constitutional issues, the New York State constitutional issues are clearly settled. The Supreme Court’s power to exercise trial jurisdiction over criminal actions is activated only by the intervention of the Grand Jury or by the filing of a Superior Court information.⁴¹

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³⁷ N.Y. CONST. art. VI, § 7. *See supra* note 13 and accompanying text.

³⁸ N.Y. CONST. art. VI, § 19 (9). This section provides in pertinent part: “As may be provided by law, the Supreme Court may transfer to itself any action or proceeding originated or pending in another court within the judicial department other than the Court of Claims upon finding that such a transfer will promote the administration of justice.”

³⁹ *Trabazo*, 690 N.Y.S.2d at 834.

⁴⁰ *Id.*

⁴¹ *Id.* at 832.

