

**IN THE MATTER OF THE PETITION FOR A WRIT OF HABEAS CORPUS,
LUCIO SANTOS, PETITIONER-APPELLEE, VS. THE COMMISSIONER,
BUREAU OF IMMIGRATION, RESPONDENT-APPELLANT.***G.R. No. L-25694. November 29, 1976*

Ponente: FERNANDO, J.

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The ruling in *Qua Chee Gan v. Deportation Board*[1] is decisive of this appeal filed by the respondent Commissioner of Immigration from an order of the lower court in a habeas corpus proceeding to release petitioner Lucio Santos. Respondent official could order the arrest of an alien only after "there is already an order of deportation." [2] Such was not the case here as admitted in the brief of respondent. The application for habeas corpus was filed by petitioner, who was detained under a warrant of arrest issued by respondent on the ground of his being a Chinese citizen who entered the country illegally. The assertion that he was an alien was denied by him in his petition. Then as set forth in the brief of respondent: "On January 18, 1966, the lower Court issued a writ of habeas corpus commanding the Commissioner of Immigration to produce before it on January 19, 1966 at 8:30 A.M. the person of Lucio Santos; to explain under what circumstances he was arrested and is being detained; and to show cause why he should not be set at liberty * * *. On the scheduled day, respondent Commissioner asked the lower Court for three days within which to submit his written return. The lower Court granted his request and the hearing was set anew for January 25, 1966 at 8:30 A.M. * * *. On January 21, 1966, respondent official filed his return to the writ of habeas corpus. He stated that petitioner is not a Filipino citizen but a Chinese subject whose real name is Ong Hiong King; that petitioner illegally entered this country from Hongkong and was detained by virtue of a warrant of arrest issued by the Commissioner of Immigration; that deportation proceedings against petitioner were pending hearing before the Board of Special Inquiry; that petitioner had confessed that he was an illegal entrant to this country; that based on his own application for registration with the Philippine Consulate General in Hongkong for documentation as a Filipino, it is evident that petitioner is a Chinese because, even if he was born of a Filipino mother and a Chinese father, his election of Filipino citizenship was made much too late and thus he was in estoppel to claim or elect Filipino citizenship; that the lower Court is without jurisdiction because the subject matter of the action – the deportation of petitioner – is vested by law upon the Board of Commissioners after due hearing and determination of the existence of grounds for deportation; and that petitioner failed to exhaust available administrative remedies * * *." [3] The lower court, however, without passing on the question of citizenship, ordered the release of petitioner upon posting a bond of P5,000 to insure his appearance at the deportation hearing when ordered to do so. This order was appealed to this Court.

It appears clear, therefore, that at the time of the challenged order, the deportation proceeding was still pending. Moreover, the release was provisional. The crucial facts as thus noted would render clear that the appeal cannot prosper. The *Qua Chee Gan* ruling speaks too clearly to be misunderstood.

1. The question that had to be decided in *Qua Chee Gan*, according to the ponente, Justice Barrera, was whether the power of the President to conduct an investigation leading to deportation carries with it the authority to order

an arrest. It was answered in the negative. Thus: "Under the express terms of our Constitution, it is, therefore, even doubtful whether the arrest of an individual may be ordered by any authority other than the judge if the purpose is merely to determine the existence of a probable cause, leading to an administrative investigation. The Constitution does not distinguish between warrants in a criminal case and administrative warrants in administrative proceedings. And, if one suspected of having committed a crime is entitled to a determination of the probable cause against him, by a judge, why should one suspected of a violation of an administrative nature deserve less guarantee? Of course it is different if the order of arrest is issued to carry out a final finding of a violation, either by an executive or legislative officer or agency duly authorized for the purpose, as then the warrant is not that mentioned in the Constitution which is issuable only on probable cause. Such, for example, would be a warrant of arrest to carry out a final order of deportation, or to effect compliance of an order of contempt. The contention of the Solicitor General that the arrest of a foreigner is necessary to carry into effect the power of deportation is valid only when, as already stated, there is already an order of deportation. To carry out the order of deportation, the President obviously has the power to order the arrest of the deportee. But, certainly, during the investigation, it is not indispensable that the alien be arrested." [4]

2. It should not escape attention that under the present Constitution, a warrant of arrest may issue on a showing of "probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, * * *." [5] This case, however, is governed by the former Constitution. The conclusion reached by the lower court, therefore, finds support in *Qua Chee Gan*. We cannot set it aside.

WHEREFORE, the order of the lower court dated February 5, 1966 is affirmed. No costs.

Antonio, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Barredo, J., did not take part.

[1] L-10280, September 30, 1963, 9 SCRA 27.

[2] *Ibid*, 36.

[3] Brief for the Respondent-Appellant, 1-3.

[4] 9 SCRA 27, 36.

[5] Article IV, Section 3 of the present Constitution reads in full: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

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