

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. THE COURT OF APPEALS, MANILA. SURETY & FIDELITY COMPANY, INC., CHENG BAN YEK & COMPANY, LTD., AND CHUNG LIU, RESPONDENTS.

G. R. No. L-9928. January 31, 1958

Ponente: PADILLA, J.

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PADILLA, J.:

Appeal by certiorari under Rule 46 by the Republic of the Philippines to set aside a judgment rendered by the Court of Appeals which reversed that of the Court of First Instance of Manila, declaring forfeited the surety bond in the sum of P30,000 filed by the respondent Manila Surety & Fidelity Company, Inc. for the provisional release of Chung Kiat Kang whose deportation as an undesirable alien had been ordered by the President of the Republic.

On 27 June 1947 the President ordered the deportation of Chung Kiat Kang as an undesirable alien. The latter moved for reconsideration of the deportation order, and pending action thereon he was allowed to be at liberty upon the filing of a surety bond, the pertinent parts of which will be mentioned in the course of this opinion. On 3 July 1947 the Manila Surety & Fidelity Company, Inc. filed the bond. The other two respondents are sureties of the counterbond. On 3 May 1949 the petition for reconsideration of the deportation order was denied. Thereupon, the Commissioner of Immigration required the alien to appear and report to him but he failed to do so. On 16 May 1949 the Commissioner declared the surety bond forfeited, of which forfeited the surety was notified the following day, and demanded from it the payment of the amount of the surety bond within 24 hours. The surety having failed to pay the amount of the bond as demanded by the Commissioner of Immigration, on 1 August 1949 a complaint was filed in the Court of First Instance of Manila for the forfeiture of the surety bond.

After trial, on 5 January 1952 the Court of First Instance of Manila rendered judgment declaring forfeited the surety bond of P30,000 filed by the Manila Surety & Fidelity Company, Inc. for the provisional release of Chung Kiat Kang pending action on his petition for reconsideration of the deportation order, 6 per cent interest thereon from the date of the filing of the complaint until paid, and costs; and ordering Cheng Ban Yek & Company, Ltd. and Chung Liu, the sureties of the counterbond, to pay the Manila Surety & Fidelity Company, Inc. any amount the latter shall have paid unto the Republic of the Philippines, 6 per cent interest thereon, 15 per cent on the amount as attorney's fees, and costs. From that judgment all the defendants appealed.

At the hearing in the Court of Appeals counsel for the appellants, the surety and the counter sureties, filed copies of official documents marked as Exhibits "1-Appeal" and "2-Appeal" for admission as additional evidence to show that the Chairman of the Deportation Board authorized the release and/or cancellation of the cash and surety bonds filed in behalf of Chung Kiat Kang by the Manila Surety & Fidelity Company, Inc. for his temporary release in connection with deportation case No. R-13. On the strength of the two exhibits, especially of Exhibit "2-Appeal", the Court of Appeals rendered judgment reversing that of the Court of First Instance, because it is of the opinion that the release and/or cancellation authorized by the Chairman of the Commission of Immigration is

tantamount to a release of the surety bond filed in behalf of the alien.

The petitioner submits that the Court of Appeals erred in-

* * * stating that the counsel for the petitioner-appellant Republic of the Philippines made no objection when counsel for other respondent-appellees presented as additional evidence copies of official documents marked Exhibits "1-Appeal" and "2-Appeal."

* * * finding that the release of the cash and surety bonds of the principal Chung Kiat Kang in the instant case was authorized by the Chairman of the Commission of Immigration as shown, according to the respondent court, by Exhibit "2-Appeal." *

* * * declaring "that the Commissioner of Immigration or his duly authorized representative, has the inherent discretionary power to discharge or lift the forfeiture which he himself declared of the surety bond which he himself required to be filed in a deportation case," because Exhibit "2-Appeal" was not signed by the Chairman of the Immigration Commission and that the surety bond was required by the President.

* * * lifting the forfeiture of the surety bond of P30,000 in its entirety in the exercise of its inherent discretionary power, even after final judgment, and even when the principal was not produced before the Commissioner of Immigration and he did not voluntarily appear before the trial court of first instance of Manila.

* * * holding that the revocation of the order of deportation, even if it was issued after the court had already assumed jurisdiction of the confiscation of the bond and in fact it had already declared said bond forfeited could still have the effect of remitting the said bond.

Laying aside the question of whether the admission of Exhibits "1-Appeal" and "2-Appeal" was legally correct, the only question which requires determination by this Court is whether the Chairman of the Deportation Board was authorized to release or cancel the cash and surety bonds filed in behalf of the alien whose deportation had been ordered. By the failure of the alien to appear before the Commissioner of Immigration and to report to him once a week as stipulated in the surety bond, the terms thereof were breached not only by the principal but also by the surety, which justified the forfeiture of the bond by the Commissioner of Immigration and by the Court. The reversal of the judgment of the Court of First Instance of Manila by the Court of Appeals is predicated upon a document signed by the Chairman of the Deportation Board, where after reciting that the order of deportation dated 27 June 1947 having been revoked by an order of the President dated 29 December 1953, and Chung Kiat Kang having been allowed to reside in the Philippines, the release and/or cancellation of the cash and surety bonds filed in his behalf with the Bureau of Immigration and the Deportation Board for his temporary release in connection with deportation case No. R-13 was authorized. This is a misapprehension. The Chairman of the Deportation Board is not clothed with authority to release or cancel the bonds. The revocation of the order of deportation does not have the effect of setting aside or annulling the forfeiture of the bond ordered by the Commissioner of Immigration and by the Court of First Instance of Manila, because the terms of the surety bond had already been breached by the failure of the principal to appear at the Immigration Commission when required and to report to the Commissioner once a week as stipulated in the surety bond. The revocatory order of the President does not cancel or release the principal and the surety from their recognizance or undertaking. A contrary view would encourage aliens and their sureties to take lightly, if not flout, their undertakings. The reversal of the judgment of the Court of First Instance being predicated upon a misapprehension, to wit: that the Chairman of the Deportation Board is authorized to release the principal and the surety from their undertaking, the same should be reversed. This conclusion is arrived at despite the provisions of section 1, paragraph (c), Executive Order No. 398, dated 5 January 1951, 47 Off. Gaz., 6, that—

Any respondent may file a bond with the Deportation Board in such amount and containing such conditions as

the Chairman of the Board may approve and prescribe: Provided, however, That if at any stage of the proceedings it appears to the Board that there is strong evidence against the respondent or there is strong probability of his escaping or evading the proceedings of the Board, it may order his arrest and commitment.

The Chairman of the Deportation Board may prescribe and approve the amount and terms of the bond that may be filed by any respondent for his release but nowhere in the aforesaid executive order is he authorized to release the principal and the surety from a bond filed, especially after the terms thereof had been violated by both the principal and the surety.

The judgment under review is reversed and the judgment of the Court of First Instance of Manila rendered in the case is revived, with costs against the respondents except the Court of Appeals.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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