

MOTHER M. MARGOLARI, F.M.M., PETITIONER, VS. TIBURCIO TANCINCO, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, MACARIO M. OFILADA, IN HIS CAPACITY AS EX-OFFICIO SHERIFF OF THE C...

G.R. No. L-3311. October 31, 1949

Ponente: TORRES, J.

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TORRES, J.:

During the pendency of Special Proceedings No. 9086 in the Branch of the Court of First Instance of Manila, presided by Judge Tiburcio Tancinco, wherein Mercedes Reyes Vda. de Agudo is suing out a writ of habeas corpus, directed to Mother Superior M. Margolari, F.M.M. (the petitioner in the case before us) to produce the body of Philomena Agudo before said court, because it is alleged that she is being detained and deprived of her liberty by said Mother Superior, and that the custody of Philomena Agudo be given to Mercedes Reyes Vda. de Agudo, on September 2, 1949, the court Issued a writ addressed to the Sheriff of Manila, commanding the latter to produce the body of said Philomena Agudo and to summon the respondent Mother Superior M. Margolari of the Saint Anthony's Institution, to appear likewise before the court issuing the said order.

At the hearing of said case and upon receiving the testimony of Mercedes Reyes Vda. de Agudo, on September 8, 1949, the court issued an order in the following terms:

"In the interest of equity and pending the final determination of this proceedings, the Sheriff of the City of Manila is hereby directed to take immediately from the care of Mother M. Margolari. Mother Superior of St. Anthony's Institution the body of Philomena Agudo and to deliver the said Philomena Agudo to the care and custody of the Social Welfare Commissioner, Manila.

"The expenses incident to Philomena's stay in the above named Institution shall, be borne by the petitioner herein. A representative of the Social Welfare Commissioner shall accompany Philomena Agudo to this Court at the next hearing of this case on September 14, 1949 at 8:00 o'clock in the morning.

"It is also ordered that any interested party or parties in this case may be allowed to visit Philomena at the Social Welfare Commission at any appropriate time of the day."

In an urgent motion, counsel for Mother M. Margolari moved for the reconsideration of said order of September 8, 1949, on the ground that: (1) There is no necessity for Philomena Agudo to be placed under the care and custody of the Social Welfare Commissioner; the respondent is placing Philomena Agudo at the disposal of the court, for which purpose she was offering to post a bond of P1,000 to guaranty Philomena Agudo's appearance at any time she is needed by the court. (2) Philomena Agudo, being of age and with sufficient discretion to decide where it is best for her to stay, does not want to leave the Saint Anthony's Institution. (3) She fears, that if she is taken out from the Saint Anthony's Institution, she may be physically molested and harassed, (4) She is a strong willed girl who can not be influenced by anybody, and having made up her mind to embrace the religious life, not even her own mother can prevail upon her to give up her intention; on the other hand, if she did not wish to take

up the religious life, neither the respondent Mother M. Margolari nor anyone else can prevail upon her to embrace such life. And (5) in an affidavit attached to this record as Annex F, Philomena Agudo declared that she is a postulant in the Saint Anthony's Institution of her own free will and volition and not due to force, duress or intimidation or undue influence on the part of anybody, and that she is staying in that institution voluntarily and deliberately and has "not authorized" her "mother or anybody" to file the habeas corpus petition, and therefore repudiates such move to take her away from the convent, "as contrary to her desire and wishes and she is happy and content in the convent."

It is further stated in the motion for reconsideration that sometime in February, 1948, she had applied for admission as a postulant in the Saint Anthony's Institution and was admitted only sometime in June, 1949. During the intervening period of about one year and four months, between her application and admission, "she had every chance and opportunity to deliberate and decide whether she should take up the religious life or not." The fact that—the motion for reconsideration concludes—"she was not immediately accepted also proves that no undue and improper influence had been brought to bear upon her by the respondent; otherwise, said postulant would have been immediately admitted."

Counsel, therefore, prayed that the order issued by the court "placing Philomena Agudo under the care and custody of the Social Welfare Commissioner and/or the Welfareville pending the trial of the instant proceedings be reconsidered, and that she be allowed to continue staying in the Saint Anthony's Institution."

After consideration of the motion of the respondent, the court denied the same and maintained its order of September 8, 1949. The court ruled, however, that "in view of the oral manifestation of counsel for the respondent that he will institute the necessary proceedings with the Supreme Court impugning the validity of this Court's order of September 8, 1949, the Sheriff of the City of Manila is hereby ordered to hold in abeyance, for a period of one day only, from the date the respondent is notified hereof, the execution of said order of September 8, 1949."

Counsel then filed on behalf of Mother M. Margolari, a petition for certiorari with prohibition and preliminary injunction praying this Court to issue an order requiring the court below to certify to this court the record of case No. 9086, particularly the orders of September 8 and 12, 1949, so that the same may be reviewed by us; to issue a writ of preliminary injunction after the necessary bond has been filed, restraining the Honorable Tiburcio Tancinco, Judge of the 5th Branch of the Court of First Instance and Macario Ofilada, ex-officio Sheriff of the City of Manila, from executing and enforcing the aforementioned orders of September 8 and 12, 1949, and after hearing the parties to render a decision declaring said orders of September 8 and 12, 1949, "to be null and void, and forever restraining the respondent judge and sheriff from enforcing or executing the same, and permitting Philomena Agudo to stay or live where she may choose during the pendency of the habeas corpus proceedings in the Court below."

Predicated on the above, the question brought before us for our determination is whether or not the court below has acted illegally and with abuse of discretion in issuing the above-quoted order of September 8, 1949, taking Philomena Agudo from the care of M. Margolari, Mother Superior of Saint Anthony's Institution and committing her to the care and custody of the Social Welfare Commissioner.

Counsel for Mercedes Reyes Vda. de Agudo argues that, pursuant to Section 12 of Rule 102 of the Rules of Court, the respondent judge has the power to issue the order of September 8, for the safekeeping of the person of Philomena Agudo. Said Section 12 says:

"SEC. 12. Hearing on return. Adjournments.—When the writ is returned before one judge, at a time when the court is in session, he may forthwith adjourn the case into the court, there to be heard and determined. The

court or judge before whom the writ is returned or adjourned must immediately proceed to hear and examine the return, and such other matters as are properly submitted for consideration, unless for good cause shown the hearing is adjourned, in which event the court or judge shall make such order for the safekeeping of the person imprisoned or restrained as the nature of the case requires. If the person imprisoned or restrained is not produced because of his alleged sickness or infirmity, the court or judge must be satisfied that it is so grave that such person cannot be produced without danger, before proceeding to hear and dispose of the matter. On the hearing the court or judge shall disregard matters of form and technicalities in respect to any warrant or order of commitment of a court or officer authorized to commit by law."

The facts which gave rise to these proceedings, examined in the light of the clear provisions of the above-quoted rule, evidently lead us to the conclusion that the order in question can find no support in the letter or spirit thereof. Philomena Agudo is in no need of protection or safekeeping. Her personal safety not being in danger, and inasmuch as she is safe in the convent where she is now, the order complained of is without basis.

Petition is, therefore, granted. No pronouncement is made as to costs.

Moran, C.J., Feria, Bengzon, Padilla, and Tuason, JJ., concur.

Paras, J., concurs in the result.

CONCURRING

OZAETA, J.:

Concurring in the result of the majority decision, I wish to record the mental processes by which I arrived at my own conclusion:

The main case pending in the Court of First Instance of Manila out of which this incident arose is a habeas corpus proceeding instituted by Mrs. Mercedes Reyes Vda. de Agudo to recover the rightful custody of her 24-year-old daughter Philomena Agudo which is alleged to be withheld from her by the therein respondent (petitioner herein). Mother Superior M. Margolari, F.M.M. Mrs. Mercedes Reyes Vda. de Agudo contends in said case that her daughter Philomena left her custody without her knowledge and consent to embrace the religious life in St. Anthony's Institution under the direction and control of Mother Superior M. Margolari. Mrs. Agudo invokes article 321 of the Civil Code, which says that notwithstanding the provision of article 320 to the effect that a person of age is qualified for all acts of civil life, "unmarried daughters who have attained their majority but are under twenty-five years of age cannot leave the parental home without permission of the father or mother in whose company they live, except to marry, or when the father or mother has remarried." In her return the Mother Superior alleges: "That under the provisions of article 321 of the civil Code, Philomena Agudo, who is already 24 years of age, has the right to leave the parental home without her parent's consent, and to take the religious life."

Upon an adjournment of the hearing of the petition for habeas corpus Judge Tancinco, acceding to an oral motion of counsel for Mrs. Agudo, ordered that in the interest of equity and pending the final determination of the proceedings Philomena Agudo be delivered to the care and custody of the Social Welfare Commissioner, upon the authority of section 12 of Rule 102, which says that when the hearing of a petition for habeas corpus is adjourned "the court or judge shall make such order for the safe-keeping of the person imprisoned or restrained as the nature of the case requires."

According to the manifestation made by counsel in open court during the hearing of the present petition for certiorari to annul that order of Judge Tancinco, the purpose of Mrs. Agudo in seeking such order was to place her daughter Philomena beyond the control and supposed undue influence of the authorities of the St. Anthony's

Institution so that when she, Philomena, should testify in the habeas corpus proceeding her testimony would be free from such influence. In other words, Mrs. Agudo apprehends that if her daughter should remain in the custody of the St. Anthony's Institution up to the time she is called to testify in the main case, she might testify that she had left the parental home and had decided to embrace the religious life of her own free will and without have been induced by anybody to do so, and that such testimony might not reflect the truth but only the wishes or instructions of the authorities of the St. Anthony's Institution, under whose control and direction she now is.

I am of the opinion that upon the circumstances above narrated the nature of the case does not require the transfer of the custody of Philomena Agudo from the St. Anthony's Institution to the Social Welfare Commissioner pending the determination of the habeas corpus proceeding, for the following reasons:

- Mrs. Agudo's fear that her daughter's testimony might be unduly influenced by the authorities of the St. Anthony's Institution seems to have been induced by a misapprehension regarding the materiality to the result of her petition for habeas corpus of whether or not her daughter had left the parental home of her own free will. As I construe article 321 of the Civil Code, upon which her petition for habeas corpus is predicated, in order to invoke it she does not have to prove that her unmarried daughter under twenty-five years of age left the parental home thru the inducement of another person or that she is being restrained or deprived of her liberty. Said article 321 says that "unmarried daughters who have attained their majority but are under twenty-five years of age cannot leave the parental home without permission of the father or mother in whose company they live, except to marry, or when the father or mother has remarried." The real controversy is between an unmarried daughter under twenty-five years of age and her mother. May the daughter, of her own free will but without the consent of her parent, leave the parental home and live a life of her own somewhere else? That, in my opinion, is the question (one of first impression) which the respondent judge has to decide in the habeas corpus proceeding pending before him. If he decides it in the negative, the petition for habeas corpus will prosper regardless of whether or not the unmarried daughter in question left the parental home of her own free will and whether or not she is free to remain in or leave the St. Anthony's Institution, where she now is.

- The nature of the case does not require the delivery of the person of Philomena Agudo to the Social Welfare Commissioner for safekeeping because it appears from her affidavit attached to the record that she feels safe in the St. Anthony's Institution and prefers to stay there pending the determination of the habeas corpus proceeding rather than be delivered to the custody of the Social Welfare Commissioner. Her wishes on this matter of prevention and safekeeping pending the hearing cannot be disregarded without doing violence to her dignity as a human person. To respect her wishes is not to prejudice the right asserted by her mother under article 321 above cited, which the respondent judge is called upon to decide after trying the case on the merits.

DISSENTING

REYES, J.:

I dissent. It seems evident that the purpose of the respondent judge in entrusting to the Welfare Commissioner, until the next hearing of the main case (*Mercedes Reyes Vda. de Agudo vs. Mother M. Margolari, F.M.M.*), the custody of the person alleged to be illegally detained in said case is to place the said person beyond the influence of either party. This does not constitute a grave abuse of discretion in the exercise of the authority conferred upon the trial judge by section 12 of Rule 102 and should therefore not be interfered with by this Court.

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