

EMILIO SUNTAY Y AGUINALDO, PETITIONER VS. THE PEOPLE OF THE PHILIPPINES, THE HONORABLE NICASIO YATCO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, QUEZON CITY BRANCH V, AND...

G. R. No. L-9430. June 29, 1957

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ of certiorari to annul an order of the Court of First Instance of Quezon City directing—

* * * the National Bureau of Investigation and the Department of Foreign Affairs for them to take proper steps in order that the accused, Emilio Suntay y Aguinaldo, who is alleged to be in the United States, may be brought back to the Philippines, so that he may be dealt with in accordance with law, (Exhibit D) and of prohibition to enjoin the Secretary for Foreign Affairs from cancelling the petitioner's passport without previous hearing.

On 26 June 1954, Dr. Antonio Nubia, father of Alicia Nubia, a minor of 16 years, filed a verified complaint against Emilio Suntay in the Office of the City Attorney of Quezon City, as follows:

On or about June 21, 1954, the accused took Alicia Nubia from St. Paul's College in Quezon City with lewd design and took her to somewhere near the U.P. compound in Diliman, Quezon City and was then able to have carnal knowledge of her. Alicia Nubia is a minor of 16 years.

On 15 December 1954, after an investigation, an Assistant City Attorney recommended to the City Attorney of Quezon City that the complaint be dismissed for lack of merit. On 23 December 1954 attorney for the complainant addressed a letter to the City Attorney of Quezon City wherein he took exception to the recommendation of the Assistant City Attorney referred to and urged that a complaint for seduction be filed against the herein petitioner.

On 10 January 1955 the petitioner applied for and was granted a passport by the Department of Foreign Affairs (No. 5981 [A39184]). On 20 January 1955 the petitioner left the Philippines for San Francisco, California, U.S.A., where he is at present enrolled in school. On 31 January 1955 the offended girl subscribed and swore to a complaint charging the petitioner with seduction which was filed in the Court of First Instance of Quezon City after preliminary investigation had been conducted (crim. case No. Q-1E96, Exhibit B). On 9 February 1955 the private prosecutor filed a motion praying the Court to issue an order "directing such government agencies as may be concerned, particularly the National Bureau of Investigation and the Department of Foreign Affairs, for the purpose of having the accused brought back to the Philippines so that he may be dealt with in accordance with law." (Exhibit C.) On 10 February 1955 the Court granted the motion (Exhibit D). On 7 March 1955 the respondent Secretary cabled the Ambassador to the United States instructing him to order the Consul General in San Francisco to cancel the passport issued to the petitioner and to compel him to return to the Philippines to answer the criminal charges against him. "The Embassy was likewise directed to make representation with the

State Department that Emilio Suntay's presence outside the Philippines is considere

The petitioner contends that as the order of the respondent Court directing the Department of Foreign Affairs "to take proper steps in order that the" petitioner "may be brought back to the Philippines, so that he may be dealt with in accordance with law," may be carried out only "through the cancellation of his passport," the said order is illegal because "while a Court may review the action of the Secretary of Foreign Affairs in cancelling a passport and grant relief when the Secretary's discretion is abused, the court cannot, in the first instance, take the discretionary power away from the Secretary and itself order a passport to be cancelled." The petitioner further contends that while the Secretary for Foreign Affairs has discretion in the cancellation of passports, "such discretion cannot be exercised until after hearing," because the right to travel or stay abroad is a personal liberty within the meaning and protection of the Constitution and hence he cannot be deprived of such liberty without due process of law. The petitioner's contention cannot be sustained. The petitioner is charged with seduction. And the order of the respondent Court directing the Department of Foreign Affairs "to take proper steps in order that the accused * * * may be brought back to the Philippines, so that he may be dealt with in accordance with law," is not beyond or in excess of its jurisdiction.

When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by these rules, any suitable process or mode of proceeding may be adopted which appears most conformable to the spirit of said rules. (Section 6, Rule 124.)

Moreover, the respondent Court did not specify what step the respondent Secretary must take to compel the petitioner to return to the Philippines to answer the criminal charge preferred against him.

Section 25, Executive Order No. 1, series of 1946, 42 Off. Gaz. 1400, prescribing rules and regulations for the grant and issuance of passports, provides that—

The Secretary of Foreign Affairs as well as any diplomatic or consular officer duly authorized by him, is authorized, in his discretion, to refuse to issue a passport, to restrict a passport for use only in certain countries, to restrict it against use in certain countries, to withdraw or cancel a passport already issued, and to withdraw a passport for the purpose of restricting its validity or use in certain countries. (Italics supplied.)

True, the discretion granted, to the Secretary for Foreign Affairs to withdraw or cancel a passport already issued may not be exercised at whim. But here the petitioner was hailed to Court to answer a criminal charge for seduction and although at first an Assistant City Attorney recommended the dismissal of the complaint previously subscribed and sworn to by the father of the offended girl, yet the petitioner knew that no final action had been taken by the City Attorney of Quezon City as the case was still under study. And as the Solicitor General puts it, "His suddenly leaving the country in such a convenient time, can reasonably be interpreted to mean as a deliberate attempt on his part to flee from justice, and, therefore, he cannot now be heard to complain if the strong arm of the law should join together to bring him back to justice." In issuing the order in question, the respondent Secretary was convinced that a miscarriage of justice would result by his inaction and as he issued it in the exercise of his sound discretion, he cannot be enjoined from carrying it out.

Counsel for the petitioner insists that his client should have been granted a "quasi-judicial hearing" by the respondent Secretary before withdrawing or cancelling the passport issued to him. Hearing would have been proper and necessary if the reason (or the withdrawal or cancellation of the passport were not clear but doubtful. But where the holder of a passport is facing a criminal charge in our courts and left the country to evade criminal prosecution, the Secretary for Foreign Affairs, in the exercise of his discretion to revoke a passport already issued, cannot be held to have acted whimsically or capriciously in withdrawing and cancelling such passport. Due

process does not necessarily mean or require a hearing. When discretion is exercised by an officer vested with it upon an undisputed fact, such as the filing of a serious criminal charge against the passport holder, hearing may be dispensed with by such officer as a prerequisite to the cancellation of his passport; lack of such hearing does not violate the due process of law clause of the Constitution; and the exercise of the discretion vested in him cannot be deemed whimsical and capricious because of the absence of such hearing. If hearing should always be held in order to comply with the due process of law clause of the Constitution, then a writ of preliminary injunction issued ex parte would be violative of the said clause.

In the cases of *Bauer vs. Acheson*, 106 F. Supp. 445; *Nathan, vs. Dulles*, 129 F. Supp. 951; and *Schachtman vs. Dulles* No. 12406, 23 June 1955, all decided by the United States Court of Appeals for the district of Columbia, cited by the petitioner, the revocation of a passport already issued or refusal to issue a passport applied for, was on the vague reason that the continued possession or the issuance thereof would be contrary to the best interest of the United States.

The petition is denied, with costs against the petitioner.

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

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