

DONATO OLIVEROS DE TAN, ON BEHALF OF HER HUSBAND, CHENG SAN (ALIAS FRANCISCO TAN, ALIAS TAN KO), PETITIONER, VS. ENGRACIO FABRE, JESUS BAUTISTA, AND OSCAR ARANETA, BOARD OF COMM...

G.R. No. L-2518. May 28, 1949

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for certiorari and habeas corpus filed on September 27, 1948, against the respondents Commissioners of Immigration, who after due investigation, ordered on September 3, 1948, the deportation of a Chinaman by the name of Cheng San alias Francisco Tan, who was deported by virtue of said order to China on September 8, 1948, before the filing of the present petition.

The petitioner alleges that Cheng San alias Francisco Tan was, at the time of the filing of the petition, being illegally detained by the respondents by virtue of a decision rendered by said respondents under the provisions of section 37 (a), paragraph 8, of the Philippine Immigration Act of 1940, which is not applicable to an alien who has already entered and is residing in the Philippines, and therefore the respondents have no jurisdiction to detain and order the deportation of said Cheng San alias Francisco Tan.

The person in whose favor the petition for habeas corpus was filed having been already deported to a place out of the Philippines, and being therefore beyond the jurisdiction and control of the respondents at the time of the filing of this petition for habeas corpus, this Court has no jurisdiction or power to compel the respondents to produce the body of said person and order the latter's release. The ruling of this court in the case of Villavicencio vs. Lucban, 39 Phil., 778, quoted by the petitioner is not applicable to the present case, because the persons in whose behalf the petition was filed in that case were within the Philippines and the respondent had it in his power to obey the order of the court, which is not the case in the present instance.

Besides, the jurisdiction of the respondents to order the deportation of an undesirable alien from the Philippines under section 37 (a) of the Philippine Immigration Act of 1940, has been upheld by this Court in its decision in the case of Lao Tang Bun vs. Fabre (81 Phil., 682) which is squarely applicable to the present case.

Wherefore, the petition is denied with costs against the petitioner. So ordered.

Moran, C. J., Ozaeta, Paras, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

DISSENTING

PERFECTO, J.:

We vote to grant the petition.

The fact that the person in whose favor the petition for habeas corpus was filed has already been deported to a place out of the Philippines at the time the petition was filed contrary to the majority's position, did not and does not deprive the Supreme Court of its jurisdiction to compel respondents to produce the body of said person and order his release, as there cannot be any question that respondents are amenable to the orders of this Court.

Whether respondents would be able or not to bring back to the Philippines the person in whose favor the petition for habeas corpus was filed, is a question that cannot affect the jurisdiction of the Supreme Court. The ability or inability of a litigant to perform the orders of a court of justice is absolutely alien to the question as to whether the court of justice has or no jurisdiction to issue the orders. They are two orders of ideas that cannot be confused or identified with one another.

We are of opinion that, under the facts in this case, the person in whose behalf the petition for habeas corpus was filed was the victim of an illegal and arbitrary detention and deportation and, therefore, is entitled to be returned to the Philippines and ordered released by this Court.

Of course, if, upon ordering the bringing back of said person, respondents should be unable to bring him back for reasons beyond their control, that fact will relieve respondents of responsibility for not complying with the order.

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