

NAVAL CAPT. RICARDO M. ORDOÑEZ (RETIRED), CDR. REYNALDO P. LOPEZ, HM2 WELMENIO U. AQUINO, LCDR. LUIDEGAR C. CASIS, LCDR. ALFREDERICK A. ALBA, MR2 SANDY P. MIRANDA, LCDR. JOSELIT...

Ponente: BATO, JR., J.

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BATO, JR., J.:

Before us is a petition for certiorari under Rule 65 of the Rules of Court, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, assailing the Omnibus Order^[1] dated February 26, 2014 issued by the Regional Trial Court (“RTC”) of Manila, Branch 55, in Criminal Case No. 13-294353, entitled *People of the Philippines vs. Lieutenant Commander Ricardo Ordoñez, et al.*, on the ground that it was issued without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. In the said Omnibus Order, the public respondent Judge Josefina E. Siscar (“Judge Siscar”) (a) denied the Motion for Reconsideration of the Order denying the Motion to Quash Information, (b) denied the Motion for Reconsideration of the Order to Transfer Custody of the Accused to the Manila City Jail, and (c) granted the Motion for Inhibition.

More specifically, the petitioners allege that (a) Judge Siscar abused her discretion when she failed to act on the motions pending before her despite the lapse of 276 days; (b) Judge Siscar gravely abused her discretion when she ruled on the pending motions adversely against the petitioners despite having inhibited herself from the case; (c) Judge Siscar committed grave abuse of discretion when she ordered the transfer of petitioners to the Manila City Jail; and (d) Judge Siscar gravely abused her discretion when she denied the Motion to Quash Information.

Also, the petitioners pray for the issuance of a temporary restraining order and/or a writ of preliminary injunction, alleging that the acts of Judge Siscar violated the constitutional rights of the petitioners to due process and liberty and, thus, should be immediately restrained.

After a cursory examination of the petition, this Court is convinced that the petition is patently without merit and should be denied outright. Applying Section 6, Rule 65 of the Rules of Court, the Court can dispense with the Comment from the respondents if the petition is not sufficient in form and substance to justify such process.

The extraordinary remedy of certiorari, under Section 1, Rule 65 of the Rules of Court is available when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.

The purpose of a petition for certiorari is to determine whether the challenged tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.^[2] Grave abuse of discretion was defined in *Tañada vs. Angara*,^[3] thus:

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to

lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty, enjoined or to act at all in contemplation of law.

Grave abuse of discretion may also arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence.[4] The grave abuse of discretion must be sufficiently established. Otherwise, failure on the part of the petitioner to show grave abuse of discretion will result in the dismissal of the petition.[5]

Petitioners allege that Judge Siscar committed grave abuse of discretion when she denied their numerous motions. According to them, Judge Siscar was guilty of bias or prejudice towards them. Additionally, they claim that Judge Siscar abused her discretion when she denied the petitioners' motion for reconsideration of the order denying the motion to quash, and their motion for reconsideration of the order to transfer them to the Manila City Jail.

The Court is not persuaded.

As for the charge of bias and prejudice, the same is already moot and academic. In the assailed Omnibus Order, Judge Siscar had already inhibited herself from handling the case. In fact, the case was already raffled to Branch 6 of the RTC of Manila, presided by public respondent Judge Jansen Rodriguez.

As for the order denying the motion to quash, we adopt the ruling of the Supreme Court held in *Soriano vs. People*,[6] to wit:

In fine, the Court has consistently held that a special civil action for certiorari is not the proper remedy to assail the denial of a motion to quash an information. The proper procedure in such a case is for the accused to enter a plea, go to trial without prejudice on his part to present the special defenses he had invoked in his motion to quash and if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law. Thus, petitioners should not have forthwith filed a special civil action for certiorari with the CA and instead, they should have gone to trial and reiterated the special defenses contained in their motion to quash. There are no special or exceptional circumstances in the present case that would justify immediate resort to a filing of a petition for certiorari. Clearly, the CA did not commit any reversible error, much less, grave abuse of discretion in dismissing the petition.[7]

Thus, this petition for certiorari is an exercise in futility because it is not a remedy to assail the denial of a motion to quash.

Lastly, as for the order transferring the petitioners to the Manila City Jail, the public respondent was only exercising a power that was vested in her by Republic Act No. 7055,[8] Section 1 of which states:

SECTION 1. Members of the Armed Forces of the Philippines and other persons subject to military law, including members of the Citizens Armed Forces Geographical Units, who commit crimes or offenses penalized under the Revised Penal Code or other special penal laws, or local government ordinances regardless of whether or not civilians are co-accused, victims, or offended parties which may be natural or juridical persons, shall be tried by the proper civil court except when the offense, as determined before arraignment by the civil court, is service-connected, in which case the offense shall be tried by court-martial: Provided, That the President of the Philippines may, in the interest of justice, order or direct at any time before arraignment that any such crimes or offenses be tried by the proper civil courts.

As used in this Section, service-connected crimes or offenses shall be limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended.

In imposing the penalty for such crimes or offenses, the court-martial may take into consideration the penalty prescribed therefor in the Revised Penal Code, other special laws, or local government ordinances.[9]

Furthermore, under Section 1 of Administrative Order No. 40, s. 1993, the person of the accused shall be delivered before the proper civil judicial authorities for appropriate action. More specifically, the provision states:

SECTION 1. In administrative cases where the administrative discharge of the military/police personnel with a pending criminal case cognizable before the civil courts is warranted and authorized under existing laws, rules and regulations, his discharge from the military/police service and release from custody should be effected simultaneously and contemporaneously with the referral of his case and the delivery of his person before the proper civil judicial authorities for appropriate action; provided that, if such military/police personnel is charged with a grave offense, the military/police organization should, in coordination with the government prosecutor, actively help to build-up and file the case against him before the civil court and, thereafter, obtain a court order committing him to military/police custody while undergoing trial to ensure his presence during court hearings; and provided further that, in the meantime, the firearms, ammunition, and all other government properties issued to him must be recalled forthwith.[10]

The aforementioned Section 1 of AO No. 40, s. 1993 also states that only when the military organization is able to obtain a commitment order from the court concerned may the accused military personnel (or former personnel) be placed in military or police custody while undergoing trial.

In this case, the Armed Forces of the Philippines ("AFP") failed to obtain a commitment order to place the petitioners in military custody. Thus, there was no reason for the public respondent not to order the transfer of the petitioners to the Manila City Jail. In fact, to refuse to do so would be dereliction of duty on the part of the magistrate.

Therefore, based on a preliminary consideration of the allegations of the petition, it is clear that it is devoid of merit. It can be denied outright.

As for the injunctive relief prayed for by the petitioners, the same should be accordingly denied. It is a mere provisional remedy which acquires its validity from the main action.

Besides, to be entitled to a writ of injunction, the complainant must establish the following requisites: (1) there must be a right in esse or the existence of a right to be protected; and (2) the act against which injunction is to be directed is a violation of such right.[11] The grant of the writ is conditioned on the existence of the complainant's clear legal right, which means one clearly founded in or granted by law or is "enforceable as a matter of law." [12]

From the discussion on the propriety and merits of the petition for certiorari, it is clear that the petitioners do not have a right that must be protected. The assailed Omnibus Order was undoubtedly issued in consonance with the law and pertinent rules and regulations.

WHEREFORE, in view of the foregoing, the instant petition for certiorari, with its prayer for issuance of temporary restraining order and/or writ of preliminary injunction, is DENIED outright.

SO ORDERED.

Zalameda and Sempio-Diy, JJ., concur.

[1] Rollo, p. 29.

[2] Ocate vs. COMELEC, G.R. No. 170522, November 20, 2006.

[3] G.R. No. 118295, May 2, 1997.

[4] Republic vs. COCOFED, G.R. Nos. 147062-64, December 14, 2001.

[5] Tañada vs. Angara, supra.

[6] G.R. No. 162336, February 1, 2010.

[7] Emphasis ours.

[8] An Act Strengthening Civilian Supremacy over the Military, Returning to the Civil Courts the Jurisdiction over Certain Offenses Involving Members of the Armed Forces of the Philippines, Other Persons Subject to Military Law, and the Members of the Philippine National Police, Repealing for the Purpose Certain Presidential Decrees.

[9] Emphasis ours.

[10] Emphasis ours.

[11] Vicente vs. Avera, G.R. No. 169970, January 20, 1990.

[12] Ibid.

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