

**JUDGE MELVYN U. CALVAN, IN HIS CAPACITY AS PRESIDING JUDGE,
MUNICIPAL TRIAL COURT, BRANCH 127, THE PROVINCIAL WARDEN
OF THE PROVINCIAL JAIL OF ILOCOS NORTE, PETITIONERS, VS.
THE...**

G.R. No. 140823. October 03, 2000

Ponente: VITUG, J.

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VITUG, J.:

For resolution is the motion for reconsideration filed by the Office of the Solicitor General (for petitioners Judge Calvan, the Provincial Warden of Ilocos Norte and the People of the Philippines) seeking the nullification of the Court's resolution, dated 05 July 2000, that has denied the petition for review of the decision, dated 18 November 1999, of the Court of Appeals in CA-G.R. SP No. 54416, on a Petition for Habeas Corpus. Petitioners-movants claim that the petition which respondent Sales filed is a petition for habeas corpus which should then be confined to an inquiry on the validity of a person's detention at the time of the filing of the petition, and that the Court of Appeals has thus erred in ruling on the legality of the order and warrant of arrest which can only be a proper subject of a petition for certiorari, not a petition for habeas corpus.

The factual antecedents -

On 02 August 1999, at about 11:30 a.m., in a shootout at a sitio in Pagudpud, Ilocos Norte, Reynolan T. Sales, incumbent town mayor of Pagudpud, fatally shot former Mayor Rafael Benemerito. After the incident, Sales surrendered his handgun, placed himself under the custody of the Municipal Police and thereupon asked to be brought to the Provincial PNP headquarters in Laoag City.

The next day, 03 August, Police Chief Inspector Crispin Aguno and Thelma Benemerito, wife of the victim, lodged a criminal complaint for murder against Mayor Reynolan Sales at the Municipal Circuit Trial Court (MCTC) of Adams-Baagui-Dumalueg-Pagudpud, Branch 127, there docketed Criminal Case No. 9448-P, entitled "People of the Philippines vs. Mayor Reynolan T. Sales." Judge Melvyn U. Calvan, the Presiding Judge forthwith conducted a "preliminary examination" of the witnesses and issued the assailed order and warrant of arrest against the accused "with NO BAIL." Mayor Sales was transferred, on 04 August 1999, from the Provincial PNP headquarters to the Provincial Jail where he had since been detained under the custody of the Provincial Warden of the Ilocos Norte Provincial Jail. On 05 August 1999, Judge Melvyn Calvan, after conducting a "preliminary examination in accordance with Section 6(b) of Rule 112 of the 1989 Rules in Criminal Procedure," issued a two-page resolution forwarding the records of the case to the Office of the Provincial Prosecutor "for appropriate action." On 10 August 1999, Sales was notified by the Provincial Prosecutor to submit his counter-affidavit and defense evidence.

Contending that his right to due process was violated by the cavalier and perfunctory manner by which Judge Calvan suddenly terminated and concluded the preliminary investigation, without even allowing him to submit counter affidavit and present his witnesses, Mayor Sales filed a Petition For Habeas Corpus and Certiorari

(CA-G.R. SP No. 54416) before the Court of Appeals. He questioned his detention on the thesis that the Order and Warrant of Arrest were improvidently and illegally issued by Judge Calvin, the latter being a relative of complainant Thelma Benemerito within the third civil degree of affinity and, therefore, disqualified from conducting the preliminary investigation.

On 30 August 1999, the Court of Appeals dismissed the petition. On 19 September 1999 and while his motion for reconsideration was still pending, respondent Mayor Sales withdrew the petition for certiorari, leaving the petition for habeas corpus to be the only remaining petition. The Office of the Solicitor General was required to comment, and a hearing was conducted by the Court of Appeals on the habeas corpus on 05 October 1999. Oral argument preceded the filing of the respective memoranda of the parties.

On 18 November 1999, the appellate court granted the petition for habeas corpus and ordered the release of private respondent Mayor Sales, viz:

"WHEREFORE, the petition is GRANTED. The Court hereby orders the release from detention of petitioner Reynolan T. Sales, subject to the outcome of the proper preliminary investigation." [1]

A petition for review was filed with this Court by the Office of the Solicitor General seeking a review of the decision of the Court of Appeals. The Court denied the petition in its resolution of 05 July 2000. In its instant motion for reconsideration the Office of the Solicitor General would insist that the appellate court resolved the issues beyond the basic precepts of procedure on the theory that the determination on the legality of the order and warrant of arrest could not be resolved in a petition for habeas corpus, the issue being appropriate only for consideration in a petition for certiorari.

The Court of Appeals, in granting the petition for habeas corpus and in ordering the release of Mayor Sales, ratiocinated that -

"Section 1, Rule 137 of the Rules of Court disqualifies a judge from sitting in a case in which he is related to either party within the sixth degree of consanguinity or affinity. This disqualification is mandatory, unlike an inhibition which is discretionary. It extends to all proceedings, not just to trial as erroneously contended by respondent Judge. Even Canon 3.12 of the Code of Judicial Conduct mandates that a judge shall take no part in a proceeding where the judge's impartiality might reasonably be questioned, as when he is 'related by consanguinity or affinity to a party litigant within the sixth degree.' Due process likewise requires a hearing before an impartial and disinterested tribunal, so that no judge shall preside in a case in which he is not wholly free, disinterested, impartial and independent. (Gutierrez vs. Santos, 2 SCRA 249, 254 [1961].)

"In *Geotina vs. Gonzales*, (41 SCRA 66 [1971]) the judge who was admittedly related within the sixth civil degree of affinity to the private complainant ordered the arrest of the petitioner. The Supreme Court held:

"We therefore hold that the respondent judge is without authority to preside over the criminal case in question. Section 1, in commanding him to withdraw from the case herein involved, necessarily divests him of all authority to act in any judicial capacity in connection therewith. We further hold that where the disqualifying fact is indubitable and the parties to the case make no waiver of such disqualification as in the case at bar, sec. 1 forthwith completely strips the judge of authority to proceed. All his acts in the premises are without authority of law.' (Emphasis supplied.)

"The High Court also stated that where the judge decides in favor of his own competency, proceeds to try a case and renders a verdict from which there is no appeal nor plain, speedy, adequate remedy in the ordinary course of law, resort to the extraordinary remedies, of which habeas corpus can be cited as one, constitutes the only means available for review by a superior court.

"In the case at bench, the order and warrant of arrest issued by respondent Judge by virtue of which the petitioner

is detained offers no speedy, adequate remedy or appeal in the ordinary course of law. Habeas corpus is the only remedy to release him from the effects of the illegal order or one issued without any legal authority, to use the language of *Geotina vs. Gonzales*." [2]

The Solicitor General now contends, however, that the writ of habeas corpus is simply a writ of inquiry, tasking the person who keeps a detainee in custody to explain or justify the detention, conformably with Sections 1, 3 and 6, Rule 102, of the Rules of Court.

"SECTION 1. To what habeas corpus extends. - Except as otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.

"x x x x x x x x

"SEC. 3. Requisites of application therefor. - Application for the writ shall be by petition signed and verified either by the party for whose relief it is intended, or by some person on his behalf, and shall set forth:

"(a) That the person in whose behalf the application is made is imprisoned or restrained of his liberty;

"(b) The officer or name of the person by whom he is so imprisoned or restrained; or, if both are unknown or uncertain, such officer or person may be described by an assumed appellation, and the person who is served with the writ shall be deemed the person intended;

"(c) The place where he is so imprisoned or restrained, if known;

"(d) A copy of the commitment or cause of detention of such person, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or restraint is without any legal authority, such fact shall appear.

"x x x x x x x x

"SEC. 6. To whom writ directed, and what to require. - In case of imprisonment or restraint by an officer, the writ shall be directed to him, and shall command him to have the body of the person restrained of his liberty before the court or judge designated in the writ at the time and place therein specified. In case of imprisonment or restraint by a person not an officer, the writ shall be directed to an officer, and shall command him to take and have the body of the person restrained of his liberty before the court or judge designated in the writ at the time and place therein specified, and to summon the person by whom he is restrained then and there to appear before said court or judge to show the cause of the imprisonment or restraint."

The writ, the Solicitor General submits, should then be addressed, not to the judge or person who issued the warrant of arrest, but to the officer or anyone who actually detains the person in whose behalf the application is made. Since the petition for habeas corpus concedes that Mayor Sales is in the custody of the Provincial Warden of Laoag City, the latter, not petitioner Judge, should be the proper party respondent.

The proceedings before the Court of Appeals being confined to the habeas corpus case, the petition should ordinarily be addressed to the person under whom Mayor Sales is in detention or in alleged illegal custody [3] who would thereby be in a position to produce at the hearing the body of the person in whose behalf the petition is made, [4] consistently with the import of Section 6, Rule 102, of the Rules. Judge Calvan, it might here be pointed out, however, has constructive custody over respondent for having issued the order and warrant for his arrest.

The petition filed before the Court of Appeals was originally one for habeas corpus and certiorari. The writ of certiorari was intended to assail the Order and Warrant of Arrest issued by Judge Melvyn Calvan while the writ of habeas corpus was sought to relieve Mayor Sales from detention predicated on the alleged illegal

Order and Warrant of Arrest issued by Judge Calvin by reason of his disqualification. Indeed, a writ of habeas corpus could be so employed as a remedy ancillary to a proceeding in certiorari for purposes of review.[5] Later, however, respondent Mayor withdrew the petition for certiorari but not the petition for habeas corpus leaving the latter to sail alone. The withdrawal must not be deemed to affect adversely the jurisdiction of the appellate court, already acquired, to resolve all the issues theretofore brought before it. Procedural precepts, it must again be stressed, are aids, not obstacles, in the achievement of substantial justice.

Judge Calvin concededly is related to the complainant, Thelma Benemerito, within the third civil degree of affinity (his wife Susan Benemerito-Calvan being the niece of the deceased).

Rule 137, Section 1 provides:

"SECTION 1. Disqualification of judges. - No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

"A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above."

The proscription against the judge from proceeding with the case is predicated on the principle that no judge should preside in a case in which he may not be wholly free, disinterested, impartial and independent.[6] In *Geotina vs. Gonzales*,[7] this Court has said that where the disqualifying fact is indubitable and the parties to the case make no waiver of such disqualification, the Rules forthwith strips the judge of any authority to proceed.

The inquiry on a writ of habeas corpus is addressed, not to errors committed by a court within its jurisdiction, but to the question of whether the proceeding or judgment under which the person has been restrained is a complete nullity. The probe may thus proceed to check on the power and authority, itself an equivalent test of jurisdiction, of the court or the judge to render the order that so serves as the basis of imprisonment or detention. Keeping in mind the limitation that in habeas corpus the concern is not merely whether an error has been committed in ordering or holding the petitioner in custody, but whether such error is sufficient to render void the judgment, order, or process, an inquiry into the validity of the proceedings or process[8] can be crucial in safeguarding the constitutional right of a potential accused against an obvious and clear misjudgment. The intrinsic right of the State to prosecute and detain perceived transgressors of the law must be balanced with its duty to protect the innate value of individual liberty.

Quite evidently, the circumspection and objectivity required of the judge could not be assured in the case at bar. Stringent standard should be applied in order to avoid hasty and improvident issuance of a warrant for the arrest of an accused. The deprivation of liberty, regardless of its duration, is too invaluable a price even just to stake for any wrongful prosecution and unwarranted detention.

In *Allado vs. Diokno*,[9] the Court has cautioned:

"Clearly, probable cause may not be established simply by showing that a trial judge subjectively believes that he has good grounds for his action. Good faith is not enough. If subjective good faith alone were the test, the constitutional protection would be demeaned and the people would be 'secure in their persons, houses, papers and effects' only in the fallible discretion of the judge. (*Beck v. Ohio*, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed. 2d.142 [1964].) On the contrary, the probable cause test is an objective one, for in order that there be probable cause the facts and circumstances must be such as would warrant a belief by a reasonably discreet and prudent

man that the accused is guilty of the crime which has just been committed. (Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d. 889 [1968].)[10]

In this regard, the Court of Appeals has observed that -

"The preliminary examination conducted by respondent Judge does not accord with the prevailing rules. He did it under the old rules, where the preliminary investigation by a municipal judge had two stages: (1) the preliminary examination stage during which the investigating judge determines whether there is reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial; and (2) the preliminary investigation proper where the complaint or information is read to the accused after his arrest and he is informed of the substance of the evidence adduced against him, after which he is allowed to present evidence in his favor if he so desires. Presidential Decree 911 (further amending Sec. 1, RA 5180, as amended by P.D. 77) upon which the present rule is based, removed the preliminary examination stage and integrated it into the preliminary investigation proper. Now, the proceedings consist of only one stage. (Sangguniang Bayan vs. Albano, 260 SCRA 566 [1996].)

"Respondent Judge did not conduct the requisite investigation prior to issuance of the arrest warrant. The Rules require an examination in writing under oath in the form of searching questions and answers. (Roberts, Jr. vs. CA, supra; Sec. 6 (b), Rule 112.) The statements of witnesses were not sworn before him but before the Provincial Prosecutor. The purported transcript of the stenographic notes do not bear the signature of the stenographer.

"Moreover, he did not complete the preliminary investigation. He claimed to have examined only the witnesses for the complainant. He issued a Resolution and forwarded the records to the Provincial Prosecutor without giving the accused (petitioner) an opportunity to submit counter-affidavits and supporting documents. (Sec. 3 (b), Rule 112.)

"While it is true that the usual remedy to an irregular preliminary investigation is to ask for a new preliminary investigation or a reinvestigation, such normal remedy would not be adequate to free petitioner from the warrant of arrest which stemmed from that irregular investigation. The Provincial Prosecutor has no power to recall the warrant of arrest."[11]

Habeas corpus, is a high prerogative writ,[12] which furnishes an extraordinary remedy and may not thus be invoked under normal circumstances but, as the Court of Appeals has so aptly explained, the illegal order and warrant of arrest issued by petitioner Judge subsists and private respondent is offered no speedy, adequate remedy or appeal in the ordinary course of law. The writ of habeas corpus, although not designed to interrupt the orderly administration of justice, can be invoked, in fine, by the attendance of a special circumstance that requires immediate action. Such a special circumstance is here present considering that respondent cannot resort to the remedy of a motion to quash, the case no longer being with petitioner judge, and neither could he ask for a reinvestigation because the preliminary investigation for purposes of filing the information has already been taken over by the Provincial Prosecutor. The latter, upon the other hand, does not have the authority to lift the warrant of arrest issued by the disqualified judge. Meantime, respondent is being held and detained under an illegal order and warrant of arrest which has no legal standing.

WHEREFORE, the motion for reconsideration is DENIED. This denial is final.

SO ORDERED.

Melo, (Chairman), Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Penned by Justice Ruben T. Reyes and concurred in by Justice Jainal D. Rasul and Justice Remedios Salazar-Fernando (Rollo, p. 42).

[2] Rollo, pp. 34-36.

[3] *Alimpoos vs. CA*, 106 SCRA 159.

[4] 39 Am. Jur. 196.

[5] 39 Am. Jur. 2d Habeas Corpus, Section 175.

[6] *Urbanes, Jr. vs. CA*, 236 SCRA 72; *Garcia vs. dela Peña*, 229 SCRA 766; *Umale vs. Villaluz*, 51 SCRA 84; *Ubarra vs. Mapalad*, 220 SCRA 224.

[7] 41 SCRA 66.

[8] *Huffman vs. Alexander*, 197 or 283 cited in 39 Am. Jur. 2d Habeas Corpus, Section 11, p. 185.

[9] 232 SCRA 192.

[10] At p. 206.

[11] Rollo, pp. 39-41.

[12] *Ex-parte Watkins*, 3 Pet. (US) 193, 7 L Ed 650 cited in 139 Am. Jur., Section 8.

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