

IN THE MATTER OF THE PETITION FOR ISSUANCE OF WRIT OF HABEAS CORPUS OF COLONEL JOSE F. GAMOS, COLONEL JOSE F. GAMOS, PETITIONER, VS. LT. GEN. EFREN F. ABU, COMMANDING GENERAL, P...

G.R. No. 163998. September 13, 2004

Ponente: AZCUNA, J.

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AZCUNA, J.:

Before us is a petition for habeas corpus filed by Colonel Jose F. Gamos, who is at present under arrest or restricted to his quarters at B1933 PAOVILLE, Fort Bonifacio.

Col. Gamos claims in his petition that on or about March 25, 2004, he sought permission for a leave of absence of sixty (60) days for the following reasons: “(a) to attend to some very important personal and family concerns; and (b) to have ample time to finish [my] thesis as required [for the completion] of [my] MA in Public Administration at the Centro Escolar University in Manila.”[1] He purportedly went to Mindanao sometime around the last week of April, 2004, and stayed particularly in the Region IX area. According to him, he used to be assigned in the said area and he went there to buy scrap metals, a business in which he had lately been engaged. This, said petitioner, is his way of augmenting the family income. While there, he met with former classmates from the Philippine Military Academy (PMA) who helped him look for scrap metals. However, before he could consummate any transaction regarding this business, he received word that his leave of absence had been cut short, effective May 15, 2004. He was ordered to report back to his mother unit at the 901st Infantry Brigade based in Villahermosa, Albay. Petitioner claims that it was only after his making some inquiries that he learned that the heads of the AFP in Manila received intelligence reports that he traveled to Region IX for the purpose of monitoring the election in the area on behalf of the presidential candidate, Fernando Poe, Jr. Petitioner flew back to Manila from Zamboanga City on May 20, 2004. Upon his arrival in Manila, he was allegedly “immediately taken into custody and placed under house arrest or restricted to his quarters” upon the orders of Lieutenant General Efren F. Abu, the Commanding General of the Philippine Army.[2] Petitioner Gamos claims that he was not given any opportunity to know the reason for his arrest and that no formal or written order for his commitment or arrest was ever issued by the AFP. According to him, his arrest was effected merely upon the verbal order of Lt. Gen. Abu.[3]

On June 14, 2004, petitioner’s counsel wrote a letter to Lt. Gen. Abu protesting the arrest and confinement of petitioner.[4] On June 18, 2004, petitioner, through his counsel, received a reply from the Army Judge Advocate stating that he had already been charged under Commonwealth Act No. 408, also known as the Articles of War. It further said that there is probable cause that petitioner Gamos “ha[d] committed gross violation[s] of the provisions of Commonwealth Act 408, particularly Article of War 96 (Conduct Unbecoming of an Officer and a Gentleman) and Article of War 97 (Disorders and Neglects to the Prejudice of Good Order and Military Discipline).” Attached to the letter were copies of the Charge Sheet dated June 8, 2004 and an Affidavit of a certain Mannan Tambayong stating that he saw petitioner Gamos campaigning for the presidential candidate, Fernando Poe, Jr., in Patikul, Sulu, on May 5, 2004.[5]

The respondents were required to file their Answer to the petition in a resolution issued by this Court on July 6, 2004. Represented by the Solicitor General, the respondents complied on July 21, 2004.

The question raised herein is whether or not petitioner's confinement is devoid of support in law.

The Solicitor General has submitted proof that orders for petitioner's arrest exist. Respondents set forth in the Answer that the arrest or restriction to quarters of petitioner was effected pursuant to a written order from the Commander of the Southern Command (COMSOUTHCOM) dated May 15, 2004, and signed by Colonel Pedro P. Biasbas, Acting Chief of Staff of the Southcom. Annexed to the Answer was a copy of the Official Report dated June 8, 2004, which was made by Army Provost Marshall Colonel Roberto C. Ver and submitted to the G1, Philippine Army, Assistant Chief of Staff for Personnel. The aforesaid report summarized the alleged electioneering activities of the petitioner in Mindanao. The contents of the report were based on investigation reports, disposition forms, affidavits, and other records of the Army Provost Marshall investigation proceedings. Respondents also aver that on May 27, 2004, at 2:30 p.m., the petitioner was informed during an investigation by the Army Provost Marshall of the reason for his arrest or restriction to quarters. Petitioner, allegedly, was with his counsel, Atty. Kenneth Radaza. It was also during this investigation that petitioner was shown the documentary evidence against him. Another investigation was conducted on June 3, 2004 at 4:00 p.m., during when petitioner was shown the affidavit of Mannan Tambayong, one of the alleged witnesses.

Furthermore, respondents argue that petitioner himself even admitted having received a facsimile copy of the Charge Sheet dated June 8, 2004, which he even appended as Annex "C" to his petition. A certified true copy of the charge sheet is also attached as Annex "4" to respondents' Answer herein, which has been furnished petitioner, through counsel.

Petitioner thus stands charged in court martial proceedings for alleged violations of the Articles of War, specifically, Articles of War 96 and 97 thereof.

The filing of the case against petitioner before the military court defeats this petition. The case having been filed in court, petitioner's remedy lies in that court.

WHEREFORE, the petition is DISMISSED. No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

Austria-Martinez and Carpio-Morales, JJ., on official leave.

[1] Petition, p. 2; Rollo, p. 4.

[2] Petition, p. 3; Rollo, p. 5.

[3] Petition, p. 4; Rollo, p. 6.

[4] Annex "A" of the Petition; Rollo, p. 17.

[5] Annexes "B" to "D" of the Petition; Rollo, pp. 20 - 23.

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