

THEODORE LEWIN, PETITIONER AND APPELLANT, VS. THE DEPORTATION BOARD, RESPONDENT AND APPELLEE.

G.R. No. 16872. January 31, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from an order of the Court of First Instance of Manila, Hon. Gustavo Victoriano, presiding, dated May 1, 1960, dismissing a combined petition for habeas corpus, certiorari, prohibition and mandamus with preliminary injunction filed by petitioner-appellant Theodore Lewin against respondent-appellee Deportation Board.

On December 2, 1959, the Special Prosecutors of the Department of Justice filed charges with the Deportation Board against said appellant Lewin (docketed as Deportation Case No. R-784), alleging therein that heiaiously engaged in illegal foreign exchange transactions in this country; that he maintained and still maintains casinos in Pasay City and other places; that in 1946, he was arrested and convicted by the municipal Court of Manila for maintaining a gambling joint in the Philippine Bank of Commerce building; that in 1959, he gave false testimony as to his criminal record in this country; that he is an undesirable alien whose presence in this country is inimical to public interest. The Special Prosecutors, therefore, prayed that the Board find appellant guilty of the charges and recommend his immediate deportation as an undesirable alien to the President of the Philippines. On the same date of the filing of the charges, and pursuant thereto, the Chairman of the Board issued a warrant for the arrest of appellant, and, consequently, he was confined in the NBI cell until December 3, 1959, when he was released on a bail bond of P25,000.

On December 26, 1959, after appellant was furnished a copy of the charges, he filed a motion to quash the same, alleging that the Board has no jurisdiction over his person and that the facts alleged do not constitute a valid and sufficient ground for his deportation. After an exchange of pleadings between the parties, the respondent-appellee Board resolved, after hearing, to deny the motion to quash. Not satisfied with the resolution of the Board, the appellant appealed to the President of the Philippines, who, in a letter dated January 27, 1960, dismissed the appeal and adopted the conclusions of the respondent-appellee Board.

Again on February 1, 1960, appellant filed another motion to quash and a motion for bill of particulars, and after an opposition thereto was filed by the Special Prosecutors, the Board, after hearing, denied both motions.

Consequently, on February 8, 1960, Lewin filed this combined petition for habeas corpus, certiorari, mandamus with preliminary injunction with the Court of First Instance of Manila against the Deportation Board, wherein he alleged the proceedings that transpired in the respondent Board and he prayed for the issuance of a writ of (a) preliminary injunction directing the respondent Board to desist from hearing said Deportation Case No. R-784 against petitioner; (b) habeas corpus to require respondent Board to produce the body of the petitioner and, after due hearing, to order his discharge from custody; and (c) certiorari to require elevation to the Supreme Court of all the records of the case; and he also asked for a judgment commanding the respondent Board to desist from further

proceeding with said deportation case, to declare the warrant of arrest issued against the petitioner null and void, and to order the cancellation and release of his bond.

A writ of preliminary injunction was issued ex-parte by the lower court on the same date of the filing of the petition.

On February 10, 1960, the respondent Board moved to dismiss the petition and to dissolve ex-parte the writ of preliminary injunction issued by the trial court. In its motion, the respondent alleged that the trial court had no authority and jurisdiction to take cognizance of the petition, or to issue ex-parte the writ; that the allegations of the petition are not tenable causes of action; that the issuance ex-parte of the writ upon a nominal bond is violative of the provisions of the Rules of Court and Canon 17 of Judicial Ethics.

Acting upon said motion and other pleadings subsequently filed by both parties, the lower court dismissed the petition of appellant Lewin and dissolved the writ of preliminary injunction. Hence this appeal.

In his appeal before this Court, petitioner-appellant Lewin assigned the following errors of the trial court, to wit:

"THE LOWER COURT ERRED IN DISMISSING THE COMBINED PETITION FOR HABEAS CORPUS, CERTIORARI, PROHIBITION, AND MANDAMUS;

"THE LOWER COURT ERRED IN DISSOLVING THE WRIT OF PRELIMINARY INJUNCTION IT ISSUED IN CONNECTION WITH THE COMBINED PETITION FOR HABEAS CORPUS, CERTIORARI, PROHIBITION, AND MANDAMUS;

"THE LOWER COURT ERRED IN UPHOLDING THE LEGALITY AND CONSTITUTIONALITY OF THE WARRANT OF ARREST ISSUED BY THE DEPORTATION BOARD, RESPONDENT-APPELLEE, AGAINST THE PETITIONER-APPELLANT IN CONNECTION WITH DEPORTATION CASE NO. R-784."

On December 4, 1961, this Court directed appellant's counsel to show cause why the appeal should not be dismissed for being academic, inasmuch as the brief of the Solicitor General shows that appellant has left the Philippines and has not returned since then, and that he was admitted on a temporary visa only.

In compliance with said resolution, counsel for appellant manifested before this Court that the deportation case against appellant is still pending before the respondent Board; that the legal issue is precedent-setting and involves a relationship between this country and other countries, that this is not the first time this Court has resolved a case involving academic or moot issues. Appellant's counsel, therefore, prays that the case be given due course and decided on its merits.

The issues involved in this appeal are incidents of Deportation Case No. 784, which seeks to deport appellant Theodore Lewin from the Philippines as an undesirable alien.

In the brief of the Solicitor General in G. R. No. L-15253, entitled "Theodore Lewin vs. Galang, etc.", It is alleged and the same has not been controverted, that Lewin had entered this country only as a temporary visitor, to stay only 59 days. However, he prolonged his stay by securing extensions after extensions from the Cabinet, until the last extension which expired on January 26, 1959. Before the last extension expired, however, petitioner-appellant left country, upon his filing a bond, without assurance by the Board that he will be admitted upon his return. Said Lewin has not yet returned and is now living in another country. His voluntary departure from the country, his long absence therefrom and his status when he entered the country being only as a temporary visitor have rendered academic the question of his deportation as an undesirable alien. Even if the deportation case is to proceed and even if this Court will decide this appeal on the merits, there would be no practical value or effect of such action upon Lewin, because he has already left the country and is now beyond the legal processes of this

country. Consequently, the issues involved herein have become moot and academic.

Consistent with our rulings that:

"* * *. as a general rule it is not within the function of a court to act upon and decide a moot question or speculative, theoretical, or abstract question or proposition, or a purely academic question. * * *.

"The application of the rule that a court will not determine moot questions or abstract propositions has resulted in other expressions or rules to the effect that the court will not express an opinion in a case in which no practical relief can be granted, or which can have no practical effect; * * *. (1 C. J. S. pp. 1013-1015)." (Castro vs. Tan, et al., 100 Phil., 910; Cruz vs. Encarnacion, 91, Phil., S6S; 48 Off. Gaz., 3382; Nierras vs. Po, L-10878, Feb. 22, 1957; Miranda vs. Enriquez, L-10527, April 29, 1957; Roxas vs. Rodriguez, L-8927, September 18, 1957; Perez vs. Teodoro, L-10489, Nov. 27, 1957; Henderson Trippe Shipping Co. vs. Reyes, L-11763, May 28, 1958; National Labor Union vs. Northern Motors, Inc., L-10021, July 31, 1958)

we hereby dismiss this appeal for the reason that the issues raised therein have become moot, academic and of no practical effect.

Wherefore, the appeal prosecuted by petitioner Lewin is hereby dismissed.

Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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