

NURHIDA JUHURI AMPATUAN, PETITIONER, VS. JUDGE VIRGILIO V. MACARAIG, REGIONAL TRIAL COURT, MANILA, BRANCH 37, DIRECTOR GENERAL AVELINO RAZON, JR., DIRECTOR GEARY BARIAS, PSSUPT....

G.R. No. 182497. June 29, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

Before this Court is a Petition for Certiorari under Rule 65[1] of the Rules of Court assailing the Order dated 25 April 2008 of the Regional Trial Court (RTC) of Manila, Branch 37, in Special Proceeding No. 08-119132 which denied the petition for Habeas Corpus filed by herein Petitioner Nurhida Juhuri Ampatuan in behalf of her husband Police Officer 1 Bassar B. Ampatuan[2] (PO1 Ampatuan).

Petitioner alleged in her petition that her husband PO1 Ampatuan was assigned at Sultan Kudarat Municipal Police Station. On 14 April 2008, he was asked by his Chief of Police to report to the Provincial Director of Shariff Kabunsuan, Superintendent Esmael Pua Ali (Supt. Ali). The latter brought PO1 Ampatuan to Superintendent Piang Adam, Provincial Director of the Philippine National Police (PNP) Maguindanao. PO1 Ampatuan was directed to stay at the Police Provincial Office of Maguindanao without being informed of the cause of his restraint. The next day, 15 April 2008, PO1 Ampatuan was brought to the General Santos City Airport and was made to board a Philippine Airlines plane bound for Manila. Upon landing at the Manila Domestic Airport, PO1 Ampatuan was turned over to policemen of Manila and brought to Manila Mayor Alfredo Lim by Police Director Geary Barias and General Roberto Rosales. A press briefing was then conducted where it was announced that PO1 Ampatuan was arrested for the killing of two Commission on Elections (COMELEC) Officials. He was then detained at the Police Jail in United Nations Avenue, Manila. Thereafter, PO1 Ampatuan was brought to inquest Prosecutor Renato Gonzaga of the Office of the City Prosecutor of Manila due to the alleged murder of Atty. Alioden D. Dalaig, head of the Law Department of the COMELEC. On 20 April 2008, PO1 Ampatuan was turned-over to the Regional Headquarters Support Group in Camp Bagong Diwa, Taguig City.[3]

Petitioner continues that on 21 April 2008, Chief Inquest Prosecutor Nelson Salva ordered the release for further investigation of PO1 Ampatuan.[4] The Order was approved by the City Prosecutor of Manila. But Police Senior Superintendent Co Yee Co, Jr., and Police Chief Inspector Agapito Quimson refused to release PO1 Ampatuan.

This prompted Petitioner to file the petition for writ of habeas corpus in the RTC of Manila, Branch 37.[5]

Private respondents had another version of the antecedent facts. They narrated that at around 7:08 o'clock in the evening of 10 November 2007, a sixty-four-year-old man, later identified as Atty. Alioden D. Dalaig, Head of the COMELEC Legal Department, was killed at the corner of M. H. Del Pilar and Pedro Gil Streets, Ermita, Manila. Investigation conducted by the Manila Police District (MPD) Homicide Section yielded the identity of the male perpetrator as PO1 Ampatuan. Consequently, PO1 Ampatuan was commanded to the MPD District Director for

proper disposition. Likewise, inquest proceedings were conducted by the Manila Prosecutor's Office.

On 18 April 2008, Police Senior Superintendent Atty. Clarence V. Guinto, rendered his Pre-Charge Evaluation Report against PO1 Ampatuan, finding probable cause to charge PO1 Ampatuan with Grave Misconduct (Murder) and recommending that said PO1 Ampatuan be subjected to summary hearing.

On even date, a charge sheet for Grave Misconduct was executed against PO1 Ampatuan, the accusatory portion of which reads:

CHARGE SHEET

THE UNDERSIGNED NOMINAL COMPLAINANT hereby charges above-named respondent of the administrative offense of Grave Misconduct (murder) pursuant to Section 52 of R.A. 8551[6] in relation to NAPOLCOM Memorandum Circular 93-024, committed as follows:

That on or about 7:08 in the evening of November 10, 2007, in M.H. Del Pilar and Pedro Gil St., Ermita, Manila, above-named respondent while being an active member of the PNP and within the jurisdiction of this office, armed with a cal .45 pistol, with intent to kill, did then and there willfully, unlawfully and feloniously, shot Atty. Alioden D. Dalaig, Jr., COMELEC official on the different parts of his body, thereby inflicting upon the latter mortal gunshot wounds which directly cause (sic) his death.

Acts contrary to the existing PNP Laws rules and Regulations.[7]

Also, through a Memorandum dated 18 April 2008, Police Director General Avelino I. Razon, Jr. directed the Regional Director of the National Capital Regional Police Office (NCRPO) to place PO1 Ampatuan under restrictive custody, thus:

- Reference: Memo from that Office dated April 15, 2008 re Arrest of PO1 Busser Ampatuan, suspect in the killing of Atty. Alioden Dalaig and Atty. Wynne Asdala, both COMELEC Legal Officers.
- This pertains to the power of the Chief, PNP embodied in Section 52 of RA 8551, to place police personnel under restrictive custody during the pendency of a grave administrative case filed against him or even after the filing of a criminal complaint, grave in nature, against such police personnel.
- In this connection, you are hereby directed to place PO1 Busser Ampatuan, suspect in the killing of Atty. Alioden Dalaig and Atty. Wynne Asdala, both COMELEC Legal Officers, under your restrictive custody.
- For strict compliance.[8]

On 19 April 2008, through a Memorandum Request dated 18 April 2008, respondent Police Director Geary L. Barias requested for the creation of the Summary Hearing Board to hear the case of PO1 Ampatuan.[9]

On 20 April 2008, Special Order No. 921 was issued by Police Director Edgardo E. Acuña, placing PO1 Ampatuan under restrictive custody of the Regional Director, NCRPO, effective 19 April 2008. Said Special Order No. 921, reads:

Restrictive Custody

PO1 Bassar B. Ampatuan 128677, is placed under restrictive custody of the Regional Director, NCRPO effective April 19, 2008. (Reference: Memorandum from CPNP dated 18 April 2008).

BY COMMAND OF POLICE DIRECTOR GENERAL RAZON:[10]

Meanwhile, on 21 April 2008, the City Prosecutor of Manila recommended that the case against PO1 Ampatuan be set for further investigation and that the latter be released from custody unless he is being held for other

charges/legal grounds.[11]

Armed with the 21 April 2008 recommendation of the Manila City's Prosecution Office, petitioner, who is the wife of PO1 Ampatuan, filed a Petition for the Issuance of a Writ of Habeas Corpus before the RTC of Manila on 22 April 2008. The petition was docketed as Special Proceeding No. 08-119132 and was raffled to Branch 37.

On 24 April 2008, finding the petition to be sufficient in form and substance, respondent Judge Virgilio V. Macaraig ordered the issuance of a writ of habeas corpus commanding therein respondents to produce the body of PO1 Ampatuan and directing said respondents to show cause why they are withholding or restraining the liberty of PO1 Ampatuan.[12]

On 25 April 2008, the RTC resolved the Petition in its Order which reads:

Essentially, counsels for petitioner insists that PO1 Bassar Ampatuan is being illegally detained by the respondents despite the order of release of Chief Inquest Prosecutor Nelson Salva dated April 21, 2008. They further claim that as of April 23, 2008, no administrative case was filed against PO1 Ampatuan.

Respondents, while admitting that to date no criminal case was filed against PO1 Ampatuan, assert that the latter is under restrictive custody since he is facing an administrative case for grave misconduct. They submitted to this Court the Pre-charge Evaluation Report and Charge Sheet. Further, in support of their position, respondents cited the case of SPO2 Manalo, et al. v. Hon. Calderon, G.R. No. 178920 claiming that habeas corpus will not lie for a PNP personnel under restrictive custody. They claim that this is authorized under Section 52, Par. 4 of R.A. 8551 authorizing the Chief of PNP to place the PNP personnel under restrictive custody during the pendency of administrative case for grave misconduct.

Petitioner countered that the administrative case filed against PO1 Ampatuan was ante-dated to make it appear that there was such a case filed before April 23, 2008.

The function of habeas corpus is to determine the legality of one's detention, meaning, if there is sufficient cause for deprivation or confinement and if there is none to discharge him at once. For habeas corpus to issue, the restraint of liberty must be in the nature of illegal and involuntary deprivation of freedom which must be actual and effective, not nominal or moral.

Granting arguendo that the administrative case was ante-dated, the Court cannot simply ignore the filing of an administrative case filed against PO1 Ampatuan. It cannot be denied that the PNP has its own administrative disciplinary mechanism and as clearly pointed out by the respondents, the Chief PNP is authorized to place PO1 Ampatuan under restrictive custody pursuant to Section 52, Par. 4 of R.A. 8551.

The filing of the administrative case against PO1 Ampatuan is a process done by the PNP and this Court has no authority to order the release of the subject police officer.

Lastly, anent the contention of the petitioner that the letter resignation of PO1 Ampatuan has rendered the administrative case moot and academic, the same could not be accepted by this Court. It must be stressed that the resignation has not been acted (sic) by the appropriate police officials of the PNP, and that the administrative case was filed while PO1 Ampatuan is still in the active status of the PNP.

WHEREFORE, premises considered, the petition for habeas corpus is hereby DISMISSED.[13]

Distressed, petitioner is now before this Court via a Petition for Certiorari under Rule 65 of the Rules of Court to question the validity of the RTC Order dated 25 April 2008. The issues are:

I. THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN IT FAILED TO CONSIDER THAT THE ARREST AND DETENTION OF PO1 BASSER B. AMPATUAN WAS MADE WITHOUT ANY WARRANT AND THEREFORE, ILLEGAL;

II. THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN IT CONCEDED THE AUTHORITY OF RESPONDENT AVELINO RAZON, JR. UNDER SEC. 52, PAR. 4, R.A. 8551 TO PLACE AMPATUAN UNDER RESTRICTIVE CUSTODY FOR ADMINISTRATIVE PROCEEDINGS;

III. THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN IT SHIRKED FROM ITS JUDICIAL DUTY TO ORDER THE RELEASE OF PO1 AMPATUAN FROM THE CUSTODY OF RESPONDENTS MAMANG PULIS.[14]

Essentially, a writ of habeas corpus applies to all cases of illegal confinement or detention by which any person is deprived of his liberty.[15]

Rule 102 of the 1997 Rules of Court sets forth the procedure to be followed in the issuance of the writ. The Rule provides:

RULE 102

HABEAS CORPUS

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.

SEC 2. Who may grant the writ. - The writ of habeas corpus may be granted by the Supreme Court, or any member thereof, on any day and at any time, or by the Court of Appeals or any member thereof in the instances authorized by law, and if so granted it shall be enforceable anywhere in the Philippines, and may be made returnable before the court or any member thereof, or before a Court of First Instance, or any judge thereof for hearing and decision on the merits. It may also be granted by a Court of First Instance, or a judge thereof, on any day and at any time, and returnable before himself, enforceable only within his judicial district.

x x x x

SEC. 4. When writ not allowed or discharge authorized. - If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

The objective of the writ is to determine whether the confinement or detention is valid or lawful. If it is, the writ cannot be issued. What is to be inquired into is the legality of a person's detention as of, at the earliest, the filing of the application for the writ of habeas corpus, for even if the detention is at its inception illegal, it may, by reason of some supervening events, such as the instances mentioned in Section 4 of Rule 102, be no longer illegal at the time of the filing of the application.[16]

Plainly stated, the writ obtains immediate relief for those who have been illegally confined or imprisoned without sufficient cause. The writ, however, should not be issued when the custody over the person is by virtue of a judicial process or a valid judgment.[17]

The most basic criterion for the issuance of the writ, therefore, is that the individual seeking such relief is illegally deprived of his freedom of movement or placed under some form of illegal restraint. If an individual's liberty is restrained via some legal process, the writ of habeas corpus is unavailing.[18] Fundamentally, in order to justify the grant of the writ of habeas corpus, the restraint of liberty must be in the nature of an illegal and involuntary

deprivation of freedom of action.[19]

In general, the purpose of the writ of habeas corpus is to determine whether or not a particular person is legally held. A prime specification of an application for a writ of habeas corpus, in fact, is an actual and effective, and not merely nominal or moral, illegal restraint of liberty. The writ of habeas corpus was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom. A prime specification of an application for a writ of habeas corpus is restraint of liberty. The essential object and purpose of the writ of habeas corpus is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient.[20]

In passing upon a petition for habeas corpus, a court or judge must first inquire into whether the petitioner is being restrained of his liberty. If he is not, the writ will be refused. Inquiry into the cause of detention will proceed only where such restraint exists. If the alleged cause is thereafter found to be unlawful, then the writ should be granted and the petitioner discharged. Needless to state, if otherwise, again the writ will be refused.[21]

While habeas corpus is a writ of right, it will not issue as a matter of course or as a mere perfunctory operation on the filing of the petition. Judicial discretion is called for in its issuance and it must be clear to the judge to whom the petition is presented that, prima facie, the petitioner is entitled to the writ. It is only if the court is satisfied that a person is being unlawfully restrained of his liberty will the petition for habeas corpus be granted. If the respondents are not detaining or restraining the applicant or the person in whose behalf the petition is filed, the petition should be dismissed.[22]

Petitioner contends that when PO1 Ampatuan was placed under the custody of respondents on 20 April 2008, there was yet no administrative case filed against him. When the release order of Chief Inquest Prosecutor Nelson Salva was served upon respondents on 21 April 2008, there was still no administrative case filed against PO1 Ampatuan. She also argues that the arrest on 14 April 2008 of PO1 Ampatuan in Shariff Kabunsuan was illegal because there was no warrant of arrest issued by any judicial authority against him.

On the other hand, respondents, in their Comment[23] filed by the Office of the Solicitor General, argue that the trial court correctly denied the subject petition. Respondents maintain that while the Office of the City Prosecutor of Manila had recommended that PO1 Ampatuan be released from custody, said recommendation was made only insofar as the criminal action for murder that was filed with the prosecution office is concerned and is without prejudice to other legal grounds for which he may be held under custody. In the instant case, PO1 Ampatuan is also facing administrative charges for Grave Misconduct. They cited the case of *Manalo v. Calderon*,[24] where this Court held that a petition for habeas corpus will be given due course only if it shows that petitioner is being detained or restrained of his liberty unlawfully, but a restrictive custody and monitoring of movements or whereabouts of police officers under investigation by their superiors is not a form of illegal detention or restraint of liberty.[25]

The Solicitor General is correct.

In this case, PO1 Ampatuan has been placed under Restrictive Custody. Republic Act No. 6975 (also known as the Department of Interior and Local Government Act of 1990), as amended by Republic Act No. 8551 (also known as the Philippine National Police Reform and Reorganization Act of 1998), clearly provides that members of the police force are subject to the administrative disciplinary machinery of the PNP. Section 41(b) of the said law enumerates the disciplinary actions, including restrictive custody that may be imposed by duly designated supervisors and equivalent officers of the PNP as a matter of internal discipline. The pertinent provision of Republic Act No. 8551 reads:

Sec. 52 - x x x.

x x x x

4. The Chief of the PNP shall have the power to impose the disciplinary punishment of dismissal from the service; suspension or forfeiture of salary; or any combination thereof for a period not exceeding one hundred eighty (180) days. Provided, further, That the Chief of the PNP shall have the authority to place police personnel under restrictive custody during the pendency of a grave administrative case filed against him or even after the filing of a criminal complaint, grave in nature, against such police personnel. [Emphasis ours].

Given that PO1 Ampatuan has been placed under restrictive custody, such constitutes a valid argument for his continued detention. This Court has held that a restrictive custody and monitoring of movements or whereabouts of police officers under investigation by their superiors is not a form of illegal detention or restraint of liberty.[26]

Restrictive custody is, at best, nominal restraint which is beyond the ambit of habeas corpus. It is neither actual nor effective restraint that would call for the grant of the remedy prayed for. It is a permissible precautionary measure to assure the PNP authorities that the police officers concerned are always accounted for.[27]

Since the basis of PO1 Ampatuan's restrictive custody is the administrative case filed against him, his remedy is within such administrative process.

We likewise note that PO1 Ampatuan has been under restrictive custody since 19 April 2008. To date, the administrative case against him should have already been resolved and the issue of his restrictive custody should have been rendered moot and academic, in accordance with Section 55 of Republic Act No. 8551, which provides:

SEC. 55. Section 47 of Republic Act No. 6975 is hereby amended to read as follows:

Sec. 47. Preventive Suspension Pending Criminal Case. - Upon the filing of a complaint or information sufficient in form and substance against a member of the PNP for grave felonies where the penalty imposed by law is six (6) years and one (1) day or more, the court shall immediately suspend the accused from office for a period not exceeding ninety (90) days from arraignment: Provided, however, That if it can be shown by evidence that the accused is harassing the complainant and/or witnesses, the court may order the preventive suspension of the accused PNP member even if the charge is punishable by a penalty lower than six (6) years and one (1) day: Provided, further, That the preventive suspension shall not be more than ninety (90) days except if the delay in the disposition of the case is due to the fault, negligence or petitions of the respondent: Provided, finally, That such preventive suspension may be sooner lifted by the court in the exigency of the service upon recommendation of the Chief, PNP. Such case shall be subject to continuous trial and shall be terminated within ninety (90) days from arraignment of the accused. (Emphasis supplied.)

Having conceded that there is no grave abuse of discretion on the part of the trial court, we have to dismiss the petition.

In sum, petitioner is unable to discharge the burden of showing that she is entitled to the issuance of the writ prayed for in behalf of her husband, PO1 Ampatuan. The petition fails to show on its face that the latter is unlawfully deprived of his liberty guaranteed and enshrined in the Constitution.

WHEREFORE, premises considered, the instant petition is **DISMISSED** for lack of merit.

Costs against petitioner.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Del Castillo, JJ., concur.

- [1] Certiorari, Prohibition and Mandamus.
- [2] Also spelled as Busser B. Ampatuan in some parts of the records.
- [3] Rollo, p. 3.
- [4] Records, p. 9.
- [5] Id. at 1.
- [6] Philippine National Police Act of 1990.
- [7] Records, p. 9.
- [8] Rollo, p. 75.
- [9] Id. at 76.
- [10] Id. at 77.
- [11] Id. at 78.
- [12] Records, p. 24.
- [13] Rollo, pp. 17-18.
- [14] Id. at 10.
- [15] *Moncupa v. Enrile*, 225 Phil. 191, 197 (1986).
- [16] *Go, Sr. v. Ramos*, G.R. No. 167569, 4 September 2009, 598 SCRA 266, 301.
- [17] Id.
- [18] *In Re: The Writ of Habeas Corpus for Reynaldo De Villa*, G.R. No. 158802, 17 November 2004, 442 SCRA 706, 719.
- [19] *Veluz v. Villanueva*, G.R. No. 169482, 29 January 2008, 543 SCRA 63, 67-68.
- [20] Id. at 68.
- [21] Id.
- [22] Id. at 68-69.
- [23] Rollo, pp. 45-70.
- [24] G.R. No. 178920, October 15, 2007, 536 SCRA 290.
- [25] Id. at 294.
- [26] *Manalo v. Calderon*, supra note 24 at 294.
- [27] Id. at 307.

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