

**REPUBLIC OF THE PHILIPPINES, FOR AND IN BEHALF OF THE
DEPORTATION BOARD, THE COMMISSIONER OF IMMIGRATION AND
THE CHIEF OF SECURITY OFFICER, IMMIGRATION DETENTION,
ENGINEER ISLAN...**

G.R. No. 20458. October 31, 1963

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

It appears that, after protracted hearings before the Deportation Board, on charges properly filed, and after considering the testimony of witnesses examined and cross-examined before it, in connection with other evidence, the said Board found as a fact that Vicente Kho, an alien residing in the Philippines, had willfully and fraudulently evaded payment of taxes of more than one million pesos; and so, in its report and recommendation to the President,' it urged the deportation of Vicente Kho as an undesirable alien; and in 1957, the President issued a deportation order; but due apparently to a motion to reconsider, it was not carried out.

However, when a new President was elected and took possession, another deportation order was issued on August 22, 1962, and in compliance therewith, Vicente Kho was taken into custody.

Wherefore, Kho filed in the Manila court of first instance, a petition for habeas corpus to test the legality of his arrest. During the pendency thereof, he asked for bail. Such petition having been granted over the objection of the Solicitor-General, this special civil action was immediately filed challenging the legality of the order granting bail. At the request of said officer, we issued an injunction to prevent the deportee's release on bail.

The report and recommendation to the President submitted by the Deportation Board of which the Chairman is now an honored member of this Court[1] consists of eleven pages. It explains in detail how the Government discovered the tax evasions committed by Vicente Kho, and his failure to pay over one million pesos in taxes; the long series of correspondence between him or his agent and the Collector of Internal Revenue; the steps taken by the Bureau to conduct a reinvestigation at Kho's request: the Bureau's decision that taxes of over one million had not been paid although overdue; the placing of the matter before the Fiscal for prosecution; and finally the Government's decision to proceed against him for deportation.

It seems that Kho again asked for reconsideration of the second order of deportation of August 1962, and that upon reference to the Board, it was denied partly on these grounds:

"This deportation case was begun in 1954; the record would show how difficult it had been for the Government even at the beginning even to arrest respondent; after a prolonged litigation, the Board prepared its report on 14 June, 1957; since then, and throughout the past administration, nothing was done to implement the report that recommended respondent's deportation, many things can be suspected perhaps unjustly but that fact is a circumstance that can indicate that respondent in all probability, managed to interfere in the disposition of his case by the Executive then; finally, the present Administration took over and the President issued the Deportation Order dated 20 August, 1962; even at that, respondent was not immediately arrested;

finally he was on 3 September, 1962; but curiously enough, prior to his arrest, his counsel had already filed motions and motions for reconsideration; without respondent being produced in the meantime; on 10 December, 1962, counsel for respondent appeared in the hearing and argued his points; but an examination of the same would show that they are repetitions of the points raised before the Old Board, said arguments being in brief, that respondent had not had a final assessment because he had protested and there was not final ruling in his case, but the recommendation quite clearly disposes of this as shown in pp. 168 et seq adding further to show respondents bad faith:

"With regards to the other main contention of Respondent that there is no evidence to show that he had willfully refused to pay and/or fraudulently intended to evade the payment of his income tax, this Board finds, and so holds, that respondent had not only willfully refused to pay the tax assessed, but had likewise, by his manifested conduct, fraudulently intended to evade the payment of the same. From the beginning, right after the seizure of the books of account from his establishment, respondent had resorted to every means to avoid the payment of the assessment."

In habeas corpus proceedings, to challenge a deportation order issued by the President upon recommendation of the Board, the real issue is whether or not due process has been observed. It is undeniable that charges against Vicente Kho had been filed before the Board; that hearings were held on said charges wherein he was afforded the opportunity to cross-examine the witnesses against him and present evidence to sustain his defense; that a written recommendation was made urging his deportation for willful and unlawful evasion of taxes. The recommendation is before us and upon a cursory reading thereof, we see no reason for criticism in so far as observance of due process is concerned.

It seems that the habeas corpus petition was filed upon the belief of counsel and the allegation of petitioner that the President would reconsider or suspend the order of deportation. All he could present is a telegram of the Assistant Executive Secretary in response to a letter of Kho's daughter praying for reinvestigation. Said telegram reads as follows:

"The President wishes me to administer receipt of your telegram dated September 4 and inform you matter treated therein will be given due consideration regards.

Sec. Bernal"

This telegram does not mean what Vicente Kho reads into it; namely, that the President "gave his assent to the request for reconsideration" or reinvestigation of the order. That telegram was dated September 5, 1962, and up to the hearing of this case in January of this year— even to this date—no modification of the deportation order has been issued.

When this case was heard, attorney for petitioner stated that the President had suspended the order of deportation. He was given a period of time—which was twice extended—to produce such order of suspension. Now, he finally admits his inability to do so. It seems that when he made the statement he construed the telegram above-quoted as a promise of Malacañan to reconsider, and had high hopes of securing such suspension upon settlement of the tax liabilities of his client. His hopes, however, have not materialized. Counsel should be reminded that the defense of a client does not require or authorize the attorney to state as a fact what he merely expects or hopes to accomplish. He is admonished to be more careful in the future.

As to the contention of Vicente Kho that he has filed with the Court of Tax Appeals a petition- for revision of the tax assessment, for non-payment of which he is being banished, it is enough to say that the assessment was made in 1951 and the revision was asked much too late— only in 1962, i.e., after he had been found liable to deportation.

We have already held that when an alien is detained by the Bureau of Immigration pursuant to an order of

deportation by the Deportation Board, the courts of first instance have no power to release such alien on bail even in habeas corpus proceedings because there is no law authorizing it ((Bengzon vs. Ocampo, 84 Phil., 611; Ong Hee Sang vs. Commissioner of Immigration, G. R. No. L-9700, February 28, 1962).

For the same reason, we must hold that respondent Kho, being held for deportation upon orders of the President, may not be released on bail.

The order granting bail must, consequently, be annulled with costs against the said alien deportee, and the injunction heretofore issued is made permanent. So ordered.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Mr. Justice Barrera.

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