

GO BEE BEE @ SIOK KUAN, LIM TAN TONG @ LIM SUY HIO AND JOSE LIM @ LIM SIONG HING, PETITIONERS-APPELLEES, VS. COMMISSIONER OF IMMIGRATION, ET AL., RESPONDENTS-APPELLANTS.

G.R. No. 21424. November 15, 1967

Ponente: DIZON, J.

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DIZON, J.:

On August 20, 1962, appellees filed in the court below a petition for the issuance of a writ of habeas corpus, alleging therein that they were being unlawfully detained and deprived of liberty by the respondents Commissioner of Immigration and Chief of the Detention Station at Engineer Island, Manila, because the order for their deportation issued on December 28, 1961 by the President of the Philippines had been revoked on the 30th of the same month and year.

On August 21, 1962, the lower court ordered the respondents to bring the persons of appellees before the court and to submit their return.

On August 22 of the same year, the respondents filed an opposition to the petition, denying that the order of deportation mentioned above had ever been resolved.

On the same date, acting upon appellees' petition, the lower court ordered their release - as in fact they were released - from confinement upon the filing by each of them, and approval by the court, of a bond in the sum of P8,000.00.

On September 1, 1962, the Commissioner of Immigration submitted his return to the writ, stating therein that he was holding appellees under confinement by virtue of an outstanding and unrevoked deportation order issued by the President of the Philippines. He therefore prayed that the petition for habeas corpus be dismissed; that the bail bonds posted by appellees for their temporary liberty be cancelled, and that all of them be ordered re-arrested for immediate deportation.

On October 4, 1962, a supplemental petition was filed for the purpose of including Po Kim Chun as co-petitioner because he was also arrested and detained pursuant to the same allegedly revoked order of deportation. Thereupon, the Court issued an order directing appellants to bring the person of Po Kim Chun before the Court on the following day. The return filed by the Commissioner of Immigration in connection with the original petition was considered as filed in connection with the supplemental petition. Po Kim Chun was also allowed to be on provisional liberty on a similar bond, and upon the filing and approval thereof, he was released from custody.

On October 30, 1962, the Commissioner of Immigration filed a supplemental return and motion for the cancellation of the bonds mentioned heretofore, claiming that it had been definitely ascertained that there was no record whatsoever of the alleged order of December 30, 1961 revoking the deportation order against appellees, and alleging further that the proper public records showed that said deportation order had become final and

executory. The lower court, however, held in abeyance its resolution thereon.

The case as against Po Kim Chun was never tried and it appears that on June 30, 1963 he voluntarily left the country.

After due trial of the case as regards the other petitioners, appellees herein, the court rendered judgment declaring that they were unlawfully detained and deprived of their liberty and ordered their release. In due time the respondents appealed.

It is not disputed that appellees were among several aliens charged and made respondents in Case No. R-478 of the Deportation Board. After proper investigation by the latter, they were recommended for deportation due to their communistic or subversive activities, coupled with the utterance of counterfeit coins, and for prostitution. Accordingly, on December 28, 1961 the President of the Philippines declared them to be undesirable aliens and ordered that they be arrested by the Commissioner of Immigration and thereafter deported by the first available transportation to mainland China or Formosa. In compliance therewith, appellees were arrested and turned over to the Commissioner of Immigration. Preparatory to their deportation, they remained confined at the Detention Station at Engineer Island, Manila, until August 22, 1962 when they were released on bail by order of the lower court.

Subsequently, appellees sought from the President and the Deportation Board the reconsideration of the order of deportation, of the denial of the review thereof, and a new trial based on newly discovered evidence (Exhibit 4, pp. 46-47, Record, paragraph 9, Supplemental Return, Record p. 43), but this was denied by the President (paragraph 9-B, Supplemental Return, Record, p. 43; Exhibits 5, 5-A and 6, Record, pp. 105-107).

As raised by appellants the issues involved in this appeal are the following:

1. Did the President revoke on Dec. 30, 1961, his last day in office, the order of deportation issued against petitioners on Dec. 28, 1961?
2. Is the trial court possessed with jurisdiction to release petitioners from confinement on bail during the pendency of the proceedings for habeas corpus?
3. Are petitioners entitled to release on habeas corpus or are they lawfully detained by the Commissioner of Immigration pending deportation upon order of the President?

The alleged revocation of the presidential order of deportation is obviously of vital and decisive importance in the resolution of the first and last issues. Upon the facts stated heretofore, it is clear that appellees had the burden of proving not only that the revocation order was issued but also that it is valid. To discharge this burden, however, all that they could produce was (a) the alleged original of the order aforesaid claimed to have been signed not by the President but only by Assistant Executive Secretary Edilberto B. Gallares after the words "By the President:", and (b) a photostatic copy of an alleged duplicate of the same order signed neither by the President nor by Assistant Executive Secretary Gallares.

An examination of both documents is sufficient to convince anyone that they are of an extremely suspicious character. In the first place, why and how the alleged original of an official document has fallen into the hands of appellees has not been satisfactorily explained. In the second place, on the face thereof (Exhibit A, p. 97 of the Record) the name of the then President of the Philippines, Carlos P. Garcia, does not appear at all, while it does appear on the face of the alleged photostatic copy of an alleged duplicate. In the third place, upon the face of said photostatic copy, the following remarks appear:

"COPY FOR:

The Sec. of For. Affairs

The Chairman, Deportation Board

The Commissioner of Immigration"

The alleged original, however, does not contain the same remarks.

Add to the above the circumstance that the alleged revocation order was issued on the 30th day of December 1961, and one can readily reach the conclusion that, if it was really issued, it was one of the "midnight" orders and appointments that now belong to history.

Our conclusion, therefore, is that the documents upon which appellees rely are utterly insufficient to prove the alleged revocation of the order of deportation.

Having arrived at the above conclusion, We deem it unnecessary, for the purpose of this decision, to consider and resolve the other issue raised in appellants' brief.

WHEREFORE, the appealed decision is reversed and set aside and the appellees are hereby ordered re-arrested for deportation in accordance with the presidential order of deportation mentioned in the body of this decision. The bail bonds filed for their provisional liberty shall remain outstanding until after they have been re-arrested, to answer for any liability contracted under their terms. With costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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