

POLICARPIO REAL, PETITIONER-APPELLANT, VS. JESSIE TROUTHMAN, RESPONDENT-APPELLEE.*G.R. No. 23074. May 24, 1967*

Ponente: BENGZON, J.P., J.

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Policarpio Real, litigating as a pauper, filed on May 22, 1964 a petition for habeas corpus in the Court of First Instance of Manila against Jessie Truthman alleging mainly that on May 6, 1964, the latter, a married man, persuaded his daughter, Lilian Real, by means of deceit, force, threats, intimidation and misrepresentation, to elope and live with him, without the knowledge and consent of her parents, and that she has since then been detained by Truthman and prevented from returning to appellant in violation of Article 403 of the Civil Code. Appellant thus prayed for the issuance of a writ of habeas corpus ordering the production of his daughter before the court and after hearing, that the latter issue an order directing her to "return to and live with the petitioner" plus payment of damages and attorney's fees, with costs.

An order was issued for Truthman to appear before it and produce the said Lilian Real on May 25, 1964.

Truthman did so and, in compliance with a verbal order of the court, also filed his answer on May 26, 1964, alleging that Lilian Real went voluntarily with him and that at the Police station, she herself, in the presence of her parents, explained that she voluntarily left home to go with him, thus causing the Police authorities to consider the case closed. Attached to the answer was Lilian's affidavit attesting to her voluntary deed.

After hearing, the lower court found that Lilian Real had attained the age of majority on May 16, 1964 and that respondent was not detaining her nor restraining her liberty or freedom nor preventing her from returning to her parents; that in fact she herself manifested, during the trial and afterwards - in the conference conducted for a possible amicable settlement - that she joined respondent freely and voluntarily and was not willing to go back to her parents. In view of these, the lower court dismissed the petition. Hence, this appeal.

Article 403 of the Civil Code provides:

"ART. 403. Notwithstanding the provisions of the preceding article, a daughter above twenty-one but below twenty-three years of age cannot leave the parental home without the consent of the father or mother in whose company she lives, except to become a wife, or when she exercises a profession or calling, or when the father or mother has contracted a subsequent marriage." (Underscoring supplied)

We are left with no other alternative but to order the dismissal, because as of now, 1967, Lilian Real is already more than 24 years of age and hence is unquestionably beyond the coverage of Article 403.

WHEREFORE, the petition for habeas corpus is dismissed on the ground that the same has become moot and academic. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

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