

MARTINIANO P. VIVO, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF IMMIGRATION AND RICARDO P. PORTUGAL, IN HIS OFFICIAL CAPACITY AS SECURITY OFFICER, DETENTION STATION, BUREAU OF I...*G.R. No. 24510 & 24525. December 18, 1967*

Ponente: SANCHEZ, J.

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In these two cases, both of which stand submitted for decision by this Court, the Solicitor General, representing the Commissioner of Immigration and the Security Officer or Overseer of the Immigration Detention Station, launches a two-pronged attack - certiorari and appeal - against the lower court's decision of April 30, 1965 rendered in the case below.[1] That decision granted Corazon Perez Pitcock's petition for habeas corpus, and ordered the Commissioner of Immigration, the Overseer of the Immigration Detention Station and/or any officer acting by authority of said Commissioner, to release her husband, Leonard E. Pitcock, Jr., an American citizen, from custody within twenty-four hours from receipt of a copy of the decision, without pre-judice to placing the said Pitcock under the surveillance of immigration authorities, in such form and manner as may be reasonable and/or adequate to insure that he keep the peace and be available if and when the Government becomes ready to deport him; and without prejudice to requiring a bond under Section 40 of Commonwealth Act 613 to assure Pitcock's surrender upon orders of the Commissioner.

The habeas corpus case, filed below on April 27, 1965, came about because of the arrest and apprehension on April 12, 1965 by NBI authorities of Leonard E. Pitcock, Jr. and his subsequent detention by immigration authorities. These were upon a warrant of deportation issued in pursuance of an order of deportation by the Board of Commissioners rendered on June 7, 1963, which found that at the time of Pitcock's entry, he was not lawfully admissible in this country. This order of deportation became final and executory upon denial by said Board on July 12, 1963 of a reconsideration of said order.

From the facts of record, Pitcock was, on March 17, 1960, ordered deported for overstaying the limited period allowed him to remain in this country as a temporary visitor. On April 8, 1960, after he was allowed an extension of stay, he left the country voluntarily. But, on June 12, 1960, he was able to reenter. On February 28, 1962, he again left the country voluntarily, but two days later - March 2, 1962 - came back, a temporary visitor. On April 20, 1962, he was about to leave when he was arrested at the airport by the Pasay police authorities to answer criminal charges for slight physical injuries and oral defamation. He posted bail for his provisional liberty. Later on, he voluntarily surrendered to the immigration authorities when the former issued a warrant for his arrest for deportation purposes. He was released from custody upon his filing of a P2,000-cash bond and a P5,000-surety bond. Then came, as stated earlier, his arrest and detention on April 12, 1965 at a time when the order for his deportation became final and executory. On April 14, 1965, Pitcock, then under detention, requested the Commissioner to allow him to depart voluntarily. The latter, however, required Pitcock first to secure the dismissal of the criminal charges against him. Hence, the habeas corpus case filed below, in which Corazon Perez

Pitcock averred, amongst others, that her husband was not deportable because there was already an implied waiver of his exclusion when he was granted an extension of stay before his departure on April 8, 1960, and when he was allowed to reenter the Philippines on June 12, 1960.

In rendering the decision aforesaid in the habeas corpus case, the lower court came to the conclusion that Leonard E. Pitcock, Jr., detained by the immigration authorities preparatory to deportation, should not be deported until the final disposition of pending criminal cases.[2] against him and until the dissolution of the writ of preliminary injunction issued in Civil Case 50339 in another branch of the court,[3] restraining the immigration authorities from ordering his arrest and deportation.

The two cases now at bar are offshoots of the proceedings below.

One is a direct appeal therefrom (L-24525) by the immigration authorities, thru the Solicitor General, seeking to reverse the lower court's judgment of April 30, 1965 hereinbefore mentioned. The appeal is based essentially upon the grounds that: (1) Pitcock should be deported even with the pendency of the criminal cases against him because the execution of a final order of deportation takes precedence over other processes and proceedings of this Republic as it is a supreme and para-mount act of the State, an act of self-preservation of a national scale, predicated on the finding that an alien's continued presence here is inimical to its interest, welfare and safety; and the interest of any party in any pending criminal case must be deemed subordinate thereto and must yield to such overriding necessity; and (2) the writ of preliminary injunction issued in Civil Case 50339 of the Court of First Instance of Manila, heretofore adverted to, restraining the Commissioner of Immigration from arresting and deporting Pitcock, no longer subsists, because it was, on June 5, 1962, dissolved and for the reason that Civil Case 50339 had since been dismissed without prejudice "for lack of interest to prosecute" and that reconsideration of the order of dismissal was denied on July 13, 1963.

The other case (L-24510) is an original action in this Court lodged likewise by the immigration authorities thru the Solicitor General, for certiorari and prohibition with preliminary injunction. Petitioners, in this second case, contend that the lower court lacks jurisdiction to take cognizance of the habeas corpus case because the detention of Pitcock, preparatory to exclusion or expulsion pursuant to a final order of deportation, is valid and the courts have no authority to assert jurisdiction unless there is abuse of power or legal error or lack of a fair hearing, and none exists in Pitcock's case. Petitioners also assail the validity of the lower court's two orders of May 3, 1965, the first fixing a P5,000-bond for Pitcock's immediate release pending proceedings on appeal; and the second ordering Pitcock's immediate release from custody - the P5,000-bond having been filed - upon receipt of the order of release; and another order of May 5, 1965, directing the release of Pitcock within thirty-six hours from receipt thereof. The government assault on these three orders just mentioned is planted upon its averment that upon the perfection of an appeal in the habeas corpus case below, which was on the same day the decision therein was rendered (April 30, 1965), the trial court lost jurisdiction over the case, which jurisdiction was instantly transferred to this Court to which the appeal was made.[4]

On May 6, 1965, this Court issued a temporary restraining order in the second case (L-24510) effective until May 12, 1965 enjoining respondents therein from enforcing or implementing the decision dated April 30, 1965, the two orders dated May 3, 1965, and the order of May 5, 1965.

Then, at the hearing on the motion for preliminary injunction on May 12, 1965 in L-24510, the parties agreed that Leonard E. Pitcock, Jr. shall depart from the country on or before May 22, 1965. On the same date, May 12, 1965, this Court resolved to continue the restraining order until May 22, 1965.

Upon the Solicitor General's motion, Pitcock's passports were withdrawn from the evidence submitted in the case (L-24510) and replaced with photographic copies.

On June 4, 1965, the Solicitor General manifested to this Court in L-24510 and L-24525 that Leonard E. Pitcock, Jr. "had left the country on May 22, 1965, in accordance with the decision of the Board of Commissioners, and the warrant of deportation, both dated June 7, 1963." A similar manifestation was also filed on September 17, 1965 for the two cases (L-24510 and L-24525) by counsel for respondents Leonard E. Pitcock, Jr. and Corazon Perez Pitcock in L-24510, also counsel for petitioner-appellee Corazon Perez Pitcock in L-24525.

In his memorandum in lieu of oral arguments filed on September 2, 1965 in L-24510, the Solicitor General stated that the case "has become moot and academic" in view of Pitcock's departure.

These two cases should be dismissed. With the departure of Leonard E. Pitcock, Jr., the subject of these two proceedings, the question of the legality of his detention preparatory to deportation becomes moot and academic. Any decision on the merits of either case would be of no practical value or effect. Indeed, it would be idle ceremony if we rule upon the merits that Pitcock's detention was illegal and, therefore, he should be released from custody. For, he is no longer detained nor in custody. Useless, too, would be a reverse holding that Pitcock's detention is valid and that he is deportable. For, Pitcock is now beyond the legal processes of this country.[5]

For the reasons given, the habeas corpus case now on appeal in this Court (L-24525), and the original petition for certiorari and prohibition (L-24510) filed in connection with that habeas corpus case, are hereby dismissed.

No costs.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Bengzon, Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Special Proceedings 60696, Court of First Instance of Manila, Branch XIII, entitled "In the Matter of the Petition for Habeas Corpus of Leonard E. Pitcock; Corazon Perez Pitcock, petitioner, vs. Hon. Martiniano P. Vivo, Commissioner of Immigration and Atty. Ricardo Portugal, Over-seer, Immigration Detention Station, respondents."

[2] Criminal Cases 16919 and 16920, Municipal Court of Pasay City, for slight physical injuries and oral defamation, respectively, upon the complaint of a certain Jack Lerner. Pitcock was convicted by said court and sentenced to pay fines of P200 and P50, respectively. On August 20, 1963, he appealed to the Court of First Instance of Rizal (Pasay), docketed as Criminal Cases 6157-P and 6158-P, respectively. These cases have already been dismissed.

[3] Civil Case 50339, Court of First Instance of Manila, Branch XVII, entitled "Leonard E. Pitcock, Jr., petitioner, vs. The Honorable Board of Commissioners of the Bureau of Immigration and Hon. Agapito R. Conchu, as Acting Commissioner of Immigration, respondents," a case of certiorari and prohibition with preliminary injunction, to compel the respondents to extend petitioner Pitcock's stay in the Philippines until the termination of the criminal cases against him.

[4] The lower court passed upon this question in its order of May 5, 1965, with the ruling that said court retains jurisdiction over habeas corpus cases, despite a notice of appeal already filed, so long as the records of the case have not yet been transmitted to the appellate court.

[5] Lewin vs. The Deportation Board, L-16872, January 31, 1962.

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