

TEO TUNG (ALIAS TEO TUNGA), PETITIONER AND APPELLANT, VS. PERRY L. MACHLAN, ACTING COLLECTOR OF CUSTOMS, AND JOSE MAGNO, CHIEF OF THE SECRET SERVICE OF CUSTOMS OF THE PORT OF JO...

G.R. No. 41740. November 16, 1934

Ponente: HULL, J.

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HULL, J.:

This is an appeal taken by Teo Tung (alias Teo Tunga) from the judgment of the Court of First Instance of Sulu denying the writ applied for by him and ordering his surrender to the customs authorities in compliance with the sentence of deportation rendered against appellant in criminal case No. 938 of the Court of First Instance of Sulu.

The case was decided on an agreed statement of facts, which translated reads:

"1. That petitioner, Teo Tung (alias Teo Tunga) came into the Philippines since the Spanish time, continuously residing in this country in the municipal district of Siasi, Province of Sulu right in the heart of the town until April 10, 1915, having in his favor the certificate of residence No. 425 issued by the customs authorities in his capacity as a Chinese laborer, which certificate is marked as Exhibit 3 for the respondents.

"2. That on April 24, 1914, he was convicted by the Honorable Court of First Instance of Sulu, to be deported to Singapore at the expense of the Government by virtue of the sentence for violating the Opium law, which sentence is dated April 24, 1914, as it appears in the record in criminal case No. 938 entitled, 'The United States versus Chino Teo Tung', of the said Court of First Instance of Sulu.

"3. That petitioner, Teo Tung (alias Teo Tunga), is the same defendant in the cited criminal case No. 938 in the Court of First Instance of Sulu.

"4. That said petitioner was deported from the Philippine Islands by the then Insular Collector of Customs, J. S. Stanley, on April 10, 1915, and Exhibit 3 was thereby cancelled as it appears in the written return attached to the record of criminal case No. 938, page 12.

"5. That said petitioner, Teo Tung (alias Teo Tunga), after having stayed for two months or more but less than one year from the Philippine Islands from April 10, 1915, the date of his deportation, came back to the Philippines, and since then joined and lived with his family in the townsite of the municipal district of Siasi, Sulu, within that same year, 1915, and continued or resumed his old business conducting a store or establishment, buying and selling products of the country, dry goods and any other saleable things. And that his purpose in coming back to the Philippines was his love and affection to his big family of seven children born to his wedlock with his wife named Kim Jan, a Filipino Chinese mestiza born in Siasi, Sulu; and that after coming to Siasi, Sulu, after his deportation in the same year, 1915, there was born to said petitioner two children named Dian Hua, a girl who is now 15 years of age, and Kong Hoy, a boy of 11 years of age. And that all his family composed by his daughters, sons, grandchildren, sons-in-law and daughters-in-law excepting a son named Kon Sen, and three sons-in-law appear in the photograph marked as Exhibit A for the petitioner.

"6. That after having returned to Siasi, Sulu, P. I., the petitioner continued residing in the townsite of Siasi, Sulu, at his house and store which is located at a distance of more than a hundred meters from the Constabulary Barracks and the municipal building and within the view and sight of the whole public and authorities either in Siasi or in Jolo, when said petitioner used to come to the capital of Jolo for the purpose of making purchase of saleable articles in his store at Siasi until he was arrested by the respondents on January 21, 1933, and was confined in the usual customs-detention place for detained aliens and was submitted to an investigation by the board of inquiry of the customhouse of Sulu on February 6, 1933, and a decision for his deportation was entered into by said board which gave ground to the complaint, the record whereof is composed of 3 pages marked as Exhibit 2. That during the time from 1915 until January 21, 1933, said petitioner continued paying yearly his cedula certificate at the office of the municipal treasurer of Siasi as well as the internal revenue licenses on his daily sales at every quarter during this time as could be seen by his several cedula certificates that are still left in his possession and a sale book under his name that have been found available for the purposes of proofs in the present case, marked as Exhibits B, B-11 and C, the latter being the last sale book of the petitioner for his store at Laminusa, Siasi, Sulu.

"7. That while the petitioner was thus residing at Siasi, Sulu, in 1917, said petitioner was again detained in the provincial jail of Sulu but coinciding with the arrival of the then Governor-General, Honorable Francis Burton Harrison, and upon the request of his family who interviewed this high authority at the house of the Sultan of Sulu, by virtue of verbal order of said Governor, said petitioner was again placed at liberty thus returning to Siasi to live with his family continuously ever since until his arrest on January 21, 1933.

"8. That petitioner is now more than 60 years of age since 1928 and that he has no relative in China nor properties and that shortly after the investigation by the Board of Inquiry in February, 1933, he was released by the customhouse authorities of Jolo under bond; and that it is the petitioner's desire to live here in the Philippines beside his family, he not having relative nor properties in China.

"9. It is hereby finally agreed upon that the record in criminal case No. 938 is the same record of criminal case prosecuted against the petitioner and is marked Exhibit 1 for the respondents."

The petition was for a writ of injunction prohibiting the respondents from interfering with the personal liberty of petitioner or, as an alternative, a writ of habeas corpus in case respondents have petitioner and appellant in confinement with a view to deportation, was prayed for.

It would have been proper to have compelled the petition to be stated in more exact terms in order that a clearcut issue might be formulated.

In this court, appellant contends that as the Revised Penal Code does not contain the penalty of deportation upon a recidivist for a violation of the Opium Law, the former sentence of deportation has been wiped out by article 22 of the Revised Penal Code.

The Solicitor-General concurs with this contention, basing his concurrence on the case of *Yu Sionga vs. Director of Prisons* (G. R. No. 39849, decided by resolution of July 10, 1933), in which this court construed article 22 of the Revised Penal Code as follows:

"Upon consideration of the petition of prisoner Yu Sionga in case G. R. No. 39849 (*Yu Sionga vs. The Director of Prisons*), praying that after proper proceedings an order be issued commanding the respondent to immediately release the petitioner from custody upon completion of service of the penalty of imprisonment imposed upon him, and declaring that the additional penalty of deportation imposed by the trial judge is illegal, null and void; and it appearing that the petitioner is confined in Bilibid Prisons by virtue of final judgment of the Court of First Instance of Romblon in case 1928, finding him guilty of illegal use of opium in violation of Act 2381, and sentencing him to 2 years of imprisonment, to pay a fine of P2,000 or to suffer 8 months subsidiary imprisonment in case of insolvency, and the additional penalty of deportation in accordance with

said Act, said additional penalty having been also imposed because the petitioner is a recidivist (section 2, Act No. 2381); and it appearing that the provisions of the Revised Penal Code relating to illegal possession, use, etc., of opium (arts. 190-194) do not contain the penalty of deportation, said provisions being, therefore more favorable to him (petitioner) in that respect and consequently he is entitled to the benefits thereof, by reason of which said additional penalty of deportation should now be understood as eliminated; * * *."

The two cases, however, are not on all fours. Yu Sionga had not yet been deported, and we held that only that portion of the sentence could not be enforced. But the sentence of deportation in the present case has long since been executed. The portion of the sentence in criminal case No. 938 relating to deportation having once been executed, is of no more force than that portion of the same sentence requiring confinement, which has likewise been executed.

Both appellant and the Solicitor-General are correct in stating that the order of the Court of First Instance that appellant be turned over to the custody of the respondents for deportation in accordance with the judgment in criminal case No. 938 of the Court of First Instance of Sulu, was incorrect. The fact that the provision for deportation found in section 31 of Act No. 1761 has been omitted from the Revised Penal Code, does not mean that an offender cannot be deported, but simply means that such cases are to be determined through the ordinary administrative proceedings rather than by sentence of a criminal court. Those who were lawfully deported under the then existing laws have not been given a right to return and live in these Islands by the change in the Penal Code.

Turning to paragraph 7 of the statement of facts, we find that seventeen years ago petitioner was arrested with a view to deportation but was restored to liberty by the then Governor-General of the Philippine Islands. The Governor-General has plenary powers in the deportation of undesirable aliens, and his act in 1917 must be held to be a decision that petitioner was not an undesirable alien and that any responsibility that respondents might have had for his conviction in criminal case No. 938, was terminated.

On the face of the record, we must hold that respondents in attempting to enforce the sentence of April 24, 1914, are acting arbitrarily and illegally, and in case petitioner is in custody, he is entitled to a writ of habeas corpus.

The judgment appealed from is therefore reversed and the case remanded for such further proceedings, consonant with this opinion, as may be necessary. Costs de oficio. So ordered.

Street, Abad Santos, Vickers, and Diaz, JJ., concur.

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