

SATURNINO OCAMPO, ANTONIO LIAO, RAMON ISBERTO, ESTER CENIZA-ISBERTO, AND EVELYN SARMIENTO, PETITIONERS, VS. MILITARY COMMISSION NO. 25; TRIAL COUNSEL OF MILITARY COMMISSION NO. ...

G.R. No. 50155. November 06, 1981

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for habeas corpus and prohibition or mandamus with preliminary injunction or restraining order, seeking the following relief:

"WHEREFORE, your petitioners respectfully pray the Honorable Court:

- 1) To issue a Writ of Habeas Corpus with respect to the petitioners who are detained as indicated in paragraph 1;
- 2) To issue a Writ of Prohibition enjoining respondents and all persons acting in their name or in their behalf or under their orders, to desist from proceeding with petitioners' trial;
- 3) In the event that the Honorable Court should rule that prohibition does not lie, to issue a Writ of Mandamus ordering respondents to transfer the case of petitioners to a civil court; to amend the charge sheet so that petitioners would not be charged under P.D. 885 for acts allegedly committed before 3 February 1976, and to particularize the charges therein as indicated in paragraph 12.7; and to nullify the summary preliminary investigation of petitioners where their statements obtained in their custodial interrogation without the assistance of counsel were utilized against them;
- 4) Pending the issuance of Writ of Prohibition and/or Mandamus, to issue a writ of preliminary injunction or temporary restraining order directing the respondent Commission to cease and desist from proceeding with the trial of petitioners, without bond; and
- 5) To grant petitioners such other and further relief as may be just or equitable in the premises."^[1]

The record shows that the herein petitioners Saturnino Ocampo, Antonio Liao, Ramon Isberto, Ester Ceniza-Isberto, and Evelyn Sarmiento, and a number of other accused, are on trial for subversion before the respondent Military Commission No. 25 in Criminal Case No. MC-25-113, entitled: "People of the Philippines, plaintiff, versus Jose Ma. Sison, et al., accused"; under the following:

"SPECIFICATION:

In that the above-named accused, persons subject to trial by the Military Tribunals, on or about the year 1968 and for sometime prior and subsequent there-to, and continuously up to the present, in Capas, Tar-lac, and elsewhere in the Philippines, knowingly, wil-fully and by overt acts, did organize, join and remain as officers and/or ranking members of the Communist Party of the Philippines (CCP) and/or the New People's Army, the latter being the military arm of the former for the purpose of overthrowing the government of the Republic of

the Philippines or any of its political subdivisions through armed revolution, force, violence, deceit, subversion, and other illegal means with the covert assistance and support of a foreign power in order to establish therein a totalitarian regime subject to alien control and domination." [2]

The petitioners Saturnino Ocampo, Antonio Liao, and Ramon Isberto are presently detained at Camp Bagong Diwa, Taguig, Metro-Manila, while the petitioners Ester Ceniza-Isberto and Evelyn Sarmiento are on temporary release. The said Saturnino Ocampo was arrested and detained on January 14, 1976 by virtue of the Arrest, Search and Seizure Order (ASSO) No. 589, issued by the Secretary of National Defense, while Antonio Liao and Ramon Isberto were arrested and detained on February 9, 1977 and November 10, 1977, by ASSO Nos. 76-124 and 4391, respectively, likewise issued by the Secretary of National Defense. [3]

The case against the herein petitioners was initially set for arraignment and hearing on January 24, 1979, but in view of the motion of the accused for deferment on the ground that they had no sufficient time to prepare their case, the respondent Military Commission reset the hearing to February 23, 1979. At the hearing of February 23, 1979, the herein petitioners filed a (1) Motion to Quash, on the grounds of alleged denial of equal protection of the laws in that Letter of Instruction No. 772, dated November 27, 1978, which directed the filing henceforth of all criminal cases with the civil courts, was not applied in their case; alleged ex post facto application of Presidential Decree No. 885; and alleged duplicity of charges with respect to Saturnino Ocampo who had been accused of rebellion in another case; (2) Motion for Bill of Particulars; and (3) Motion for Discovery.

The said motions were opposed by the prosecution and thereafter, the respondent "Commission, in closed session, with the members consulting with one another, after giving due consideration to the arguments in support of the three motions of the defense, as well as the arguments in opposition thereof," denied the said three motions. [4]

Subsequently, the herein petitioners and their co-accused were ordered arraigned. But, the said petitioners refused to plead so that a plea of "Not Guilty" was ordered entered for each of them by the Commission. The trial of the case, however, was postponed to a later date to afford the accused therein the opportunity to challenge the rulings of the respondent military commission before this Honorable Court.

Hence, the present petition for habeas corpus and prohibition or mandamus with preliminary injunction or restraining order. As prayed for, the corresponding summons and a temporary restraining order were issued by the Court and the respondents were restrained from proceeding further with the trial of the herein petitioners. [5]

The issues raised by the petitioners are as follows:

- "1. Whether or not petitioners are entitled to be released on account of the public statements made by the President of the Philippines on three separate occasions;
2. Whether or not petitioner Saturnino Ocampo has been denied the right to speedy trial;
3. Whether or not the non-application in the case of petitioners of Letter of Instruction No. 772 constitutes a denial of their right to equal protection of the law;
4. Whether or not the charge sheet in the case of petitioners amount to an ex post facto application of Presidential Decree No. 885 which amended the Anti-Subversion Act on February 3, 1976;
5. Whether or not petitioners are entitled to a bill of particulars; and
6. Whether or not petitioners have been denied their right to counsel during the custodial investigation conducted after their arrest." [6]

The main issues presented by the petitioners have been previously raised by petitioner Saturnino Ocampo and ruled upon by the Court in the cases of *Luneta, et al. vs. Special Military Commission No. 1, et al.*, [7] so that this

petition has no merit and hence, should be dismissed. The Court therein said:

"The important issues raised by petitioners are succinctly stated in the memorandum of the respondents thus:

"QUESTIONS PRESENTED

"Petitioners' several actions raise the following questions:

In L-49473

"Habeas Corpus (to obtain the release of some of the petitioners):

1. Whether the petitioners concerned have been denied speedy trial and should thus be ordered released from detention via a writ of habeas corpus;
2. Whether petitioners are entitled to be released on the basis of certain statements made by the President of the Philippines in speeches delivered by him;

"Prohibition (to enjoin further pro-ceedings in SMC-1-1):

3. Whether respondent special Mili-tary Commission No. 1 has jurisdiction to hear the case of rebellion against peti-tioners;
4. Whether the petitioners who are not under detention have been denied the right to speedy trial;
5. Whether petitioners have been denied the equal protection of the law by the non-application in their case of Letter of Instruction No. 772 dated November 27, 1978;

"Mandamus (to compel respondent Commission to grant their various motions):

6. Whether the reference in the charge sheet to petitioners as being officers and leaders of the CPP/NPA at the time of the commission of the rebellion makes the charge sheet invalid for duplicity;
7. Whether petitioners are entitled to a bill of particulars;
8. Whether petitioners are entitled to make a discovery;
9. Whether petitioners are entitled to a pre-hearing on the voluntariness of their sworn statements;
10. As an incidental issue raised during the oral argument, whether the right to coun-sel in a custodial investigation imposes a duty on the part of the state to provide counsel where the person under investigation could not obtain one.

"(Petitioners raise in their supplemental petitions the matters of their challenge against the Law Member of respondent Commission, Lt. Col. Igualdad Cunanan, as well as the alleged absence of a preliminary investigation in the case of petitioner Romeo Enriquez. But in view of respondents' manifestation that, in the interest of aid-ing the resolution of the cases at bar, Lt. Col. Cunanan was willing to withdraw from the respondent Commission, as in fact he has been relieved, at his request, of his duties in the Commission per respondents' manifestation dated February 14, 1979, and that respondents were will-ing to conduct another preliminary investigation of the case of petitioner Enriquez, the two issues in question may be deemed moot and academic.)

In L-49571

"Certiorari and Prohibition (to enjoin further proceedings against the petitioners):

11. Whether the filing of Criminal Case SMC-1-1 for rebellion placed the petitioners concerned in jeopardy of conviction for the same offense a second time." (pp. 2023, Respondents' Memorandum.)

"At this stage of our jurisprudence governing the issues thus presented by petitioners, a lengthy disquisition, demonstrating the implausibility of their contentions seems superfluous. The matters discussed and vigorously insisted upon by counsel are already settled ones, not only in *Aquino vs. Enrile*, L-35546, September 17, 1974, 59 SCRA 183 but also in a number of subsequent cases of the same nature. Suffice it to say here that with the proclamation of martial law and the concomitant suspension of the privilege of the writ of habeas corpus, at least as a rule, claims of denial of speedy trial are unavailing, what with the recognized authority of the government or the administrator of the martial law to detain persons even only for preventive purposes. As to how long such preventive detention can last would necessarily depend on the circumstances and the sound discretion of the administrator, even if there are members of the Court who hold the view that the Supreme Court may in cases of demonstrated grave and palpable abuse of discretion intervene. The petitioners who are detained (some of them are not) have been apprehended on suspicion, if not charges of rebellion and subversion by virtue of arrest, search and seizure orders issued by the Minister of National Defense under authority of the President, and it is, therefore, with more reason that they cannot invoke habeas corpus.

"Whatever, We have carefully gone over the respective claims of the parties relative to the causes for the delay or protraction of the proceedings against petitioners, and We are satisfied that under existing rulings of this Court, the circumstances revealed in the recorded proceedings before and after their cases reached respondent Military Commission do not warrant their release on habeas corpus on the ground of denial of speedy trial, if only because in practically all instances of postponement or transfer deplored by petitioners, the reasons were either unavoidable or demanded by the nature of the proceedings, and in some instances done upon direct or indirect request of petitioners themselves.

"While perhaps there might be ground to hold that official and formal pronouncements of the President on public occasions of importance, such as those referred to in the petition, might come within the contemplation of the word 'acts' in Section 3 (2), Article XVII of the Philippine Constitution of 1973, albeit it must be noted that the same provision refers to those 'promulgated' and not merely delivered orally, the point is that, as contended and explained by the Solicitor General, (Pp. 33-43, Respondents' Memo) the statements of the President before the U.P. Law Alumni Association on January 7, 1977, the Foreign Correspondence Association of the Philippines on June 3, 1977 and the 8th World Law Conference on August 21, 1977 do not include the situation in which the petitioners find themselves. It is to think too much bad faith on the part of the President to maintain that were his intention in those statements invoked by petitioners was to have them released, actually he had in mind not to do so. Those statements of the President must not be taken out of context to give them a meaning farthest from the truth. They were uttered to reassure all and sundry of the deep regard and respect the President has for individual rights and liberties, and to accuse him practically of duplicity and of offering false hopes for political purposes is certainly incompatible with intelligent and conventional knowledge.

"The jurisdiction of military commissions to hear and determine the cases of rebellion and subversion of petitioners is now indubitable, in the light of the existing rulings of this Court. The mere fact that civil courts are open and are functioning normally is of no consequence in this respect, as We shall explain later.

"For in addition to the foregoing, the Court reserves the preparation of a more extended opinion. Time constraint related to the steps needed for the earliest lifting of martial law require that this decision be released soonest. There are indeed other considerations related to the points above-discussed that render the plea of petitioners for the granting of the relief they pray for unavailing, and We propose to dwell on them soon enough in such more extended opinion, which would necessarily include the disposition of the remaining points in the petitions, namely, (1) duplicity in the charges, (2) need for a bill of particulars, (3) entitlement of petitioners to discovery and most important of all, (4) their claim to a right to a preliminary

hear-ing on the voluntariness of their supposed confessions as well as their other right to counsel during custodial investigation. All of these issues are worthy of fur-ther elaborate disquisition. We shall do so in due time, but Our conclusion in regard to them is that petitioners have not successfully shown any substantial breach of the fundamental law of the land nor of their inherent right and liberties, when measured alongside the imperatives of national security and survival."

Whatever skepticism may exist as to the continued suspension of the privelege of the writ of habeas corpus and the power of the respondent military commission to try the petitioners in view of the lifting of martial law, should be dispelled by the clear mandate of Proclamation No. 2045, dated January 17, 1981, which categorically provides, as follows:

"x x x x x x x x

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President/Prime Minister of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby revoke Procla-mation No. 1081 (Proclaiming a State of Martial Law in the Philippines) and Proclamation No. 1104 (Declaring the Continuation of Martial Law) and proclaim the termination of the state of martial law throughout the Philippines; Pro-vided, that the call to the Armed Forces of the Philippines to prevent or suppress lawless violence, insurrection, re-bellion and subversion shall continue to be in force and effect; and Provided that in the two autonomous regions in Mindanao, upon the request of the residents therein, the suspension of the privilege of the writ of habeas corpus shall continue; and in all other places the suspension of the privilege of the writ shall also continue with re-spect to persons at present detained as well as others who may hereafter be similarly detained for the crimes of insurrection or rebellion, subversion, conspiracy or pro-posal to commit such crimes, and for all other crimes and offenses committed by them in furtherance or on the occa-sion thereof, or incident thereto, or in connection there-with.

"General Order No. 8 is also hereby revoked and the military tribunals created pursuant thereto are hereby dissolved upon final determination of cases pending there-in which may not be tranferred to the civil courts without irreparable prejudice to the state in view of the rules on double jeopardy, or other circumstances which render fur-ther prosecution of the cases difficult, if not impossible;

"Pursuant to Article XVII, Section 3, Paragraph 2 of the Constitution, all proclamations, orders, decrees, instructions, and acts promulgated, issued or done by the incumbent President constitute part of the law of the land, and shall remain valid, legal, binding, and effective even after lifting of martial law, unless modified, revoked, or superseded by sub-sequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly." (Italics supplied for emphasis.)

WHEREFORE, the petition should be, as it is hereby DISMISSED. Without costs.

SO ORDERED.

Barredo, Makasiar, Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., no part.

Teehankee, J., dissents in a separate opinion.

Aquino, J., in the result.

[1] Rollo, pp. 27-28.

[2] Id., pp. 32-34.

[3] Id., pp. 118, 119, 120.

[4] Id., pp. 63-69.

[5] Id., pp. 72, 73.

[6] Id., pp. 172-173.

[7] G.R. Nos. L-49473 and L-49571, prom. January 16, 1981.

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Dissenting Opinion

TEEHANKEE, J.:

I dissent on the grounds stated in my separate opinions in *Aquino vs. Military Commission No. 2* (63 SCRA 546) and in the latest cases of *Buscayno vs. Enrile* (L-47185, January 15, 1981, reported in 102 SCRA 7, 21), *Sison vs. Enrile* (L-49579, January 15, 1981, reported in 102 SCRA 33, 38) and *Luneta vs. Special Military Commission No. 1*, cited in the majority opinion of Mr. Justice Con-cepcion (102 SCRA 56, 68).

These cases were all decided before the President's issuance of Proclamation No. 2045 on January 17, 1981 revoking his previous proclamations of martial law (Nos. 1081 and 1104) as well as General Order No. 8, directing that "the military tribunals created pursuant thereto are hereby dissolved upon final determination of cases pend-ing therein which may not be transferred to the civil courts without irreparable prejudice to the state in view of the rules on double jeop-ardy, or other circumstances which render further prosecution of the cases difficult, if not impossible."

In *Sison* particularly, the Court in dismissing the petition, unanimously noted that "(T)he President of the Philippines has an-nounced that the military tribunals are being phased out. It is re-ported that the Ministry of Justice is now taking steps to transfer cases pending before the military tribunals to the civil courts. Hence the issues raised by the petitioners have become moot and academic."

With the issuance of Proclamation 2045 and the revocation of the General Order creating military tribunals, and pursuant to the Court's above-quoted pronouncement in *Sison* on the phaseout of military tribunals, there is no longer any justification for subjecting petitioners-civilians to trial by military commissions in derogation of the judicial power vested exclusively in the civil courts.

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