

IN THE MATTER OF THE PETITION FOR THE ISSUANCE OF THE WRIT OF HABEAS CORPUS FOR DR. AURORA PARONG, NORBERTO PORTUGUESE, SABINO PADILLA, FRANCIS DIVINAGRACIA, IMELDA DE LOS SANTO...

G.R. No. 61388. July 19, 1985

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PER CURIAM:

Garcia Padilla v. Minister Enrile,[1] is an application for the issuance of the writ of habeas corpus on behalf of fourteen detainees, nine of whom were arrested on July 6, 1982,[2] another four on July 7, 1982,[3] and the last one on July 15, 1982.[4] The writ was issued, respondents were required to make a return, and the case heard on August 26, 1982.[5]

In such return, it was alleged: "The detainees mentioned in the petition, with the exception of Tom Vasquez, who was temporarily released on July 17, 1982, after his arrest on July 15, 1982, are all being detained by virtue of a Presidential Commitment Order (PCO) issued on July 12, 1982, pursuant to LOI No. 1211 dated March 9, 1982, in relation to Presidential Proclamation No. 2045 dated January 17, 1981. The said PCO was issued by President Ferdinand E. Marcos for violation of P.D. No. 885 * * *." [6]

The facts were set forth thus in the opinion of the Court penned by retired Justice Pacifico de Castro: "At the time of the arrest of the nine (9) of the fourteen (14) detainees herein on July 6, 1982, records reveal that they were then having conference in the dining room of Dr. Parong's residence from 10:00 a.m. of that same day. Prior thereto, all the fourteen (14) detainees were under surveillance as they were then identified as members of the Communist Party of the Philippines (CPP) engaging in subversive activities and using the house of detainee Dr. Aurora Parong in Bayombong, Nueva Vizcaya, as their headquarters. Caught in flagrante delicto, the nine (9) detainees mentioned scampered towards different directions leaving on top of their conference table numerous subversive documents, periodicals, pamphlets, books, correspondence, stationeries, and other papers, including a plan on how they would infiltrate the youth and student sector (code-named YORK). Also found were one (1) .38 cal. revolver with eight (8) live bullets, nineteen (19) rounds of ammunition for M16 armalite, eighteen thousand six hundred fifty pesos (P18,650.00) cash believed to be CPP/NPA funds, assorted medicine packed and ready for distribution, a sizeable quantity of printing paraphernalia, which were then seized." [7]

According to the main opinion of the Court, concurred in full by six other members:[8] "The function of the PCO is to validate, on constitutional ground, the detention of a person for any of the offenses covered by Proclamation No. 2045 which continues in force the suspension of the privilege of the writ of habeas corpus, if the arrest has been made initially without any warrant. Its legal effect is to render the writ unavailing as a means of judicially inquiring into the legality of the detention in view of the suspension of the privilege of the writ. The grant of the power to suspend the said privilege provides the basis for continuing with perfect legality the detention as long as the invasion or rebellion has not been repelled or quelled, and the need therefor in the interest of public safety continues." [9] Further: "The significance of the conferment of this power, constitutionally upon the President as Commander-in-Chief, is that the exercise thereof is not subject to judicial inquiry, with a view to determining its

legality in the light of the bill of rights guarantee to individual freedom." [10]

The opinion then went on to reiterate the doctrine that with the suspension of the privilege of the writ of habeas corpus, the right to bail is likewise suspended and to hold "that under LOI 1211, a Presidential Commitment Order, the issuance of which is the executive prerogative of the President under the Constitution, may not be declared void by the Courts, under the doctrine of 'political question,' as has been applied in the Baker and Castañeda cases, on any ground, let alone its supposed violation of the provision of LOI 1211, thus diluting, if not abandoning, the doctrine of the Lansang case." [11] Finally, the Court held "that upon the issuance of the Presidential Commitment Order against herein petitioners, their continued detention is rendered valid and legal, and their right to be released even after the filing of charges against them in court, to depend on the President, who may order the release of a detainee or his being placed under house arrest, as he has done in meritorious cases." [12]

The dispositive portion of the decision promulgated on April 20, 1983 reads as follows: "[Wherefore], the instant petition should be, as it is hereby dismissed." [13]

Thereafter, on June 6, 1983, a motion for reconsideration was filed by petitioner Garcia Padilla. The stress is on the continuing validity of *Garcia v. Lansang* [14] as well as the existence of the right to bail even with the suspension of the privilege of the writ of habeas corpus. The motion asserted further that the suspension of the privilege of the writ of habeas corpus does not vest the President with the power to issue warrants of arrest or presidential commitment orders, and that even it be assumed that he has such a power, the Supreme Court may review its issuance when challenged. It was finally alleged that since petitioners were not caught in flagrante delicto, their arrest was illegal and void.

In the comment of respondents on the motion for reconsideration, it was the submission of Solicitor General Estelito P. Mendoza that the suspension of the privilege of the writ of habeas corpus raises a political, not a judicial, question and that the right to bail cannot be invoked during such a period. On the question of whether or not the suspension of the privilege of the writ of habeas corpus vests the President with the power to issue warrants of arrest or presidential commitment orders, this is what the Comment stated: "It is to be pointed out that this argument was not raised in the petition. Nonetheless, suffice it to point out that an arrest order by the President incident to the suspension of the privilege of the writ of habeas corpus is essentially preventive in nature." [15] It added: "Besides, PD No. 1836 and LOI 1211 have vested, assuming a law is necessary, in the President the power of preventive arrest incident to the suspension of the privilege of the writ of habeas corpus. In addition, however, it should be noted that the PCO has been replaced by Preventive Detention Action (PDA), pursuant to PD No. 1877 dated July 21, 1983. As provided for in the said decree, a PDA constitute an authority to arrest and preventively detain persons committing the aforementioned crimes, for a period not exceeding one (1) year, with the cause or causes of their arrest subjected to review by the President or by the Review Committee created for that purpose." [16] The last argument of petitioner, namely that the detainees were not caught in flagrante delicto and therefore the arrest was illegal was refuted in the Comment thus: "Again petitioner simply misses the point. As this Court correctly observed, the crimes of subversion and rebellion are continuing offenses. Besides this point involves an issue of fact." [17]

It suffices to refer to the above Comment for the resolution of the motion for reconsideration. As therein noted, Presidential Decree No. 1877 dated July 21, 1983 limits the duration of the preventive detention action for the period not exceeding one year. In the language of such Decree: "When issued, the preventive detention action shall constitute authority to arrest the subject person or persons, and to preventively detain him or them for a period not exceeding one year and sequester all arms, equipment or properly used or to be used in the commission of the crime or crimes." [18] There is no need to mention the amendments as there is no change as to the

preventive detention period remaining at "not exceeding one year." This Presidential Decree No. 1877 explicitly provides in its Section 8: "The Minister of Defense shall promulgate the rules and regulations to implement this Decree." [19] Such implementing rules and regulations were issued on September 7, 1983 by Minister of National Defense, respondent Juan Ponce Enrile and duly approved by the President of the Philippines. One of its Sections deals with the period of detention under a presidential commitment order thus: "The period of detention of all persons presently detained by virtue of a Presidential Commitment Order or its derivatives shall not extend beyond one (1) year from and after the date of effectivity of Presidential Decree No. 1877, as amended. Upon the effectivity of these rules and regulations, all cases of persons presently detained under a presidential commitment order or its derivatives shall be governed by Presidential Decree No. 1877, as amended, and its implementing rules and regulations." [20]

Subsequently, on May 28, 1985, respondents filed the following Manifestation: "1. The persons listed below who were detained by virtue of Presidential Commitment Order (PCO) issued on July 12, 1982, and in whose behalf the above-captioned cases was filed have been released detention by the military authorities concerned on the dates appearing opposite their names, to wit: Names of Detainees — Dates of Release: a. Dr. Aurora Parong — December 12, 1983; b. Norberto Portuguese — January 31, 1985; c. Sabino Padilla — January 31, 1985; d. Francis Divinagracia — January 31, 1985; e. Imelda delos Santos — October 20, 1983; f. Benjamin Pineda — January 31, 1985; g. Zenaida Mallari — January 31, 1985; h. Tito Tanguilig — October 21, 1983; i. Letty Ballogan — March 4, 1983; j. Bienvenida Garcia — October 20, 1983; k. Eufonio Ortiz, Jr. — January 31, 1985; l. Juanito Granada — October 20, 1983. 2. The foregoing information was received from the Office of Civil Relations, Ministry of National Defense, through Major Felizardo O. Montero, JAGS-GHQ; 3. As regards Tom Vasquez, who was included in the instant petition, he was released on July 17, 1982, after his arrest on July 15, 1982, since he was not named in the PCO; 4. Anent Mariano Soriano, the undersigned have been informed by the Office of Civil Relations that the subject escaped from detention two (2) years ago and as of date hereof is still at large." [21]

There is no question, therefore, that the force and effectivity of a presidential commitment order issued as far back as July 12, 1982 had ceased to have any force or effect.

WHEREFORE, pursuant to Section 8 of Presidential Decree No. 1877 and Section 8 of the Rules and Regulations Implementing Presidential Decree No. 1877-A, the motion for reconsideration should have been granted, and the writ of habeas corpus ordering the release of the detainees covered by such Section 8 issued, but in the light of the foregoing manifestation as to Norberto Portuguese, Sabino Padilla, Francis Divinagracia, Imelda de los Santos, Benjamin Pineda, Zenaida Mallari, Mariano Soriano, Tito Tanguilig, Letty Ballogan, Bienvenido Garcia, Eufonio Ortiz, Jr., Juanito Granada, and Tom Vasquez, having been released, the petition as to them has been declared moot and academic. As to Dr. Aurora Parong, since a warrant of arrest against her was issued by the municipal court of Bayombong on August 4, 1982, for illegal possession of firearm and ammunitions, the petition is likewise declared moot and academic.

No costs.

Fernando[*], C.J., Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De La Fuente, Cuevas, and Alampay, JJ., concur.

Teehankee, J., files a separate opinion maintaining his original dissent from the all-encompassing scope of the majority opinion overturning Lansang and denying the constitutional right to bail.

Makasiar, Aquino, and Concepcion, Jr., in the result.

Abad Santos, J., see short concurrence.

[1] G.R. No. 61388, April 20, 1983, 121 SCRA 472. In addition to Minister Juan Ponce Enrile, the other respondents are Generals Fabian C. Ver, Fidel Ramos, and Lt. Col. Miguel Coronel.

[2] Dr. Aurora Parong, Benjamin Pineda, Sabino Padilla, Francisco Divinagracia, Zenaida Mallari, Letty Ballogan, Norberto Portuguese, Mariano Soriano, and Tito Tanguilig. Ibid, 483.

[3] Imelda de los Santos, Eufronio Ortiz, Jr., Juanito Granada, and Bienvenido Garcia, Ibid.

[4] Tom Vasquez. Ibid.

[5] Ibid, 485.

[6] Ibid.

[7] Ibid, 488.

[8] Retired Justices Guerrero and Vasquez concurred as well as Justices Plana, Escolin, Relova, and Gutierrez, Jr. Justices Makasiar, Concepcion Jr., Abad Santos, and Melencio-Herrera, concurred in the result. Chief Justice Fernando, while concurring in the result, dissented on the question of the constitutional right to bail being available, the matter in issue being considered political as he adhered to *Lansang v. Garcia*, and the indefinite duration of a PCO. The Chief Justice likewise stated that "while as a general rule preventive detention is an obstacle to judicial inquiry, [the] Court is empowered where compelling reasons exist to inquire into the matter." At 505. Justice Teehankee was "constrained to dissent from the all-encompassing scope of the main opinion of Mr. Justice de Castro which would overturn the landmark doctrine of *Lansang v. Garcia* which upheld the Supreme Court's authority to inquire into the existence of factual bases for the President's suspension of the privilege of the writ of habeas corpus in order to determine the constitutional sufficiency thereof and would revert to the retrogressive and colonial era ruling of *Barcelon v. Baker* and *Montenegro v. Castañeda* that the President's decision to so suspend the privilege of the writ 'is final and conclusive upon the courts and all other persons,' and would further deny the right to bail even after the filing of charges in court to persons detained under Presidential Commitment Orders." At 522. Justice Aquino was then on leave.

[9] Ibid, 490.

[10] Ibid, 491.

[11] Ibid, 504.

[12] Ibid, 505.

[13] Ibid.

[14] L-33964, December 11, 1971, 42 SCRA 448.

[15] Ibid, 13.

[16] Ibid, 14.

[17] Ibid, 19.

[18] Presidential Decree No. 1877, Section 3, as amended by Presidential Decree No. 1877-A issued two days later, on July 23, 1983.

[19] Ibid, Section 8.

[20] Rules and Regulations Implementing Presidential Decree No. 1877, as amended by Presidential Decree No. 1877-A, Section 8, 1983.

[21] Manifestation dated May 29, 1985.

[*] Let me state that while I signed that above per curiam opinion as it clarifies the duration of preventive detention, I am not persuaded that the original decision expresses what to my mind should be the controlling principles as to the questions dealt with in my separate opinion.

CONCURRING OPINION

ABAD SANTOS, J.:

I concur in the result, i. e. to dismiss the case for having become moot and academic. And if I had my way I would set the original decision aside because of its slavish tone.

DISSENTING OPINION

TEEHANKEE, J.:

I maintain my original dissent from the decision of April 20, 1983, thus: "I am constrained to dissent from the all-encompassing scope of the main opinion of Mr. Justice de Castro which would overturn the landmark doctrine of *Lansang vs. Garcia*[1] which upheld the Supreme Court's authority to inquire into the existence of factual bases for the President's suspension of the privilege of writ of habeas corpus in order to determine the constitutional sufficiency thereof and would revert to the retrogressive and colonial era ruling of *Barcelon vs. Baker*[2] and *Montenegro vs. Castañeda*[3] that the President's decision to so suspend the privilege of the writ 'is final and conclusive upon the courts and all other persons,' and would further deny the right to bail even after the filing of charges in court to persons detained under Presidential Commitment Orders," and "'The continuous flow of petitions for habeas corpus' filed with this Court should not be decried nor discouraged. The Court stands as the guarantor of the constitutional and human rights of all persons within its jurisdiction and must see to it that the rights are respected and enforced. It is settled in this jurisdiction that once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment or before whom the case is pending is ousted of jurisdiction and habeas corpus is the appropriate remedy to assail the legality of the detention.[4] So accused persons deprived of the constitutional right of speedy trial have been set free.[5] And likewise persons detained indefinitely without charges so much so that the detention becomes punitive and not merely preventive in character are entitled to regain their freedom. The spirit and letter of our Constitution negates as contrary to the basic precepts of human rights and freedom that a person be detained indefinitely without any charges."

As stated therein, "the higher and superior mandate of the Constitution guarantees the right to bail and vests the courts with the jurisdiction and judicial power to grant bail which may not be removed nor diminished nor abdicated. We cannot but so hold, if we are to be true to the fundamental precept that 'The Constitution is a law for rulers and for people equally in war and in peace and covers with the shield of its protection all classes of men at all times and under all circumstances.'"

It should be noted that the Court's Resolution at bar reaffirms the restrictive interpretation of preventive detention under section 3 of P.D. 1877 dated July 21, 1983 adopted by it in the *Jimenez*[6] and *Villaber*[7] cases, that it will set at liberty persons preventively detained without charges for over one year. Specifically cited is section 8 of the

Defense Minister's implementing rules and regulations duly approved by the President that "The period of detention of all persons presently detained by virtue of a Presidential Commitment Order or its derivatives shall not extend beyond one (1) year from and after the date of effectivity of Presidential Decree No. 1877, as amended. Upon the effectivity of these rules and regulations, all cases of persons presently detained under a presidential commitment order or its derivatives shall be governed by Presidential Decree No. 1877, as amended, and its implementing rules and regulations." The Court's Resolution further authoritatively states with the unqualified concurrence of at least ten (10) members that "(T)here is no question, therefore, that the force and effectivity of a presidential commitment order issued as far back as July 12, 1982 had ceased to have any force and effect," since the detention exceeded the prescribed one-year limitation and that "pursuant to Section 8 of Presidential Decree No. 1877 and Section 8 of the Rules and Regulations Implementing Presidential Decree No. 1877-A, the motion for reconsideration should have been granted, and the writ of habeas corpus or-dering the release of the detainees covered by such Section 8 issued," but for the release of the detainees effected earlier, mostly in January this year.

The crucial issues raised in petitioner's motion for reconsideration of June 6, 1983[8] will have to await determination in pending appropriate cases awaiting the Court's resolution.

[1] 42 SCRA 448 (1971).

[2] 5 Phil. 87 (1905).

[3] 91 Phil. 882 (1952).

[4] Gumabon v. Director of Prisons, 37 SCRA 420, 427.

[5] Conde vs. Diaz, 45 Phil. 173.

[6] G.R. No. 65623, August 16, 1984.

[7] G.R. No. 68657, August 27, 1984.

[8] See page 4 of Court's opinion.

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