

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF:  
LUCIEN TRAN VAN NGHIA, PETITIONER, VS. HON. RAMON J. LIWAG,  
ACTING COMMISSIONER OF THE COMMISSION ON IMMIGRATION  
AND DEPORTA...**

*G.R. No. 78596. July 13, 1989*

Ponente: FERNAN, C.J.

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**FERNAN, C.J.:**

This is a petition for the issuance of a writ of habeas corpus filed by Lucien Tran Van Nghia alleging that he was arrested without warrant and deprived of his liberty by respondent Commissioner of Immigration and Deportation and his agents.

Petitioner Lucien Tran Van Nghia is a French national with temporary address in Sta. Ana, Manila. Originally admitted to the Philippines on November 1, 1981 as a temporary visitor, his status was changed to that of an immigrant on November 16, 1984 based on his representation that he is financially capable and will invest in the Philippines. To date, however, petitioner has not made any investment and has engaged only in French tutoring and practice of acupressure.

On May 28, 1987, respondent CID Commissioner Ramon J. Liwag received a sworn complaint from a certain Dionisio G. Cabrera, Jr., allegedly petitioner's landlord, accusing petitioner of being an undesirable alien for "committing acts inimical to public safety and progress."<sup>[1]</sup>

Acting thereon, respondent Commissioner Liwag issued on June 1, 1987 a mission order to a team of seven (7) CID agents for them "to locate and bring subject to Intelligence Division for proper disposition" and "submit report."<sup>[2]</sup>

On June 2, 1987, the aforementioned CID agents went to petitioner's residence in Sta. Ana to invite the latter to the CID headquarters for verification of his status but petitioner and his then lady companion reportedly locked themselves inside their bedroom and refused to talk to the agents.

The immigration agents then sought the assistance of members of the Western Police District. Once again petitioner adamantly refused to be taken in and in the ensuing struggle, both petitioner and the lawmen were injured. Finally, petitioner was subdued and immediately taken to the CID Intelligence Office.

A warrant of arrest was issued by respondent Commissioner on June 2, 1987 but there is nothing in the records to convince this Court that said warrant was served on petitioner prior to his apprehension. Said warrant was based on the following acts and circumstances:

"That he applied for and was granted permanent status on his representation that he is financially capable of investing in the Philippines but he made no investments but engaged in tutoring in French and practice of acupressure; that he wilfully refused to recognize the authority of immigration agents who were sent to invite him to CID for verification of his status and physically resisted being taken in by the agents resulting in

physical injuries to himself and the agents; that he has thereby made himself an undesirable alien subject to deportation." [3]

By reason of the injuries he allegedly sustained when he was "brutally seized" by the CID agents, petitioner, upon request of the French consul, was transferred from his detention cell at the immigration office to the Philippine General Hospital for urgent medical treatment.

On June 10, 1987, petitioner's counsel filed the instant petition for habeas corpus to avert the "threatened removal" of petitioner from PGH and to question the validity of his detention by respondent Commissioner. A return of the writ was filed by the Solicitor General and the Court heard the case on oral argument on June 17, 1987. Thereafter, the parties were required to submit their respective memoranda.

The core issue is the legality of the arrest and detention of petitioner by the Immigration Commissioner preparatory to deportation proceedings. Petitioner insists that respondent official has no power, authority or jurisdiction to cause his arrest because under the 1987 Constitution, it is provided that "no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce x x x." [4]

The aforesaid argument raised by petitioner has been resolved in the case of *Harvey vs. Defensor-Santiago*, G.R. No. 82544. June 28, 1988, where the Court, through Madame Justice Melencio-Herrera, said: :

"The requirement of probable cause to be determined by a Judge, does not extend to deportation proceedings.' (*Morano vs. Vivo*, supra, citing *Tiu Chun Hai vs. Commissioner*, infra). There need be no 'truncated' recourse to both judicial and administrative warrants in a single deportation proceeding.

"The foregoing does not deviate from the ruling in *Qua Chee Gan vs. Deportation Board* (G.R. No. 10280, September 30, 1963, 9 SCRA 27 [1963]) reiterated in *Vivo vs. Montesa*, supra, that under the express terms of our Constitution (the 1935 Constitution), it is therefore even doubtful whether the arrest of an individual may be ordered by authority other than a judge if the purpose is merely to determine the existence of a probable cause, leading to an administrative investigation.'

"What is essential is that there should be a specific charge against the alien intended to be arrested and deported, that a fair hearing be conducted (Section 37 [c]) with the assistance of counsel, if desired, and that the charge be substantiated by competent evidence. x x x."

The particular circumstances obtaining in the case at bar have seriously placed on doubt the legality and propriety of petitioner's apprehension by respondent Commissioner. For unlike in the *Harvey* case where the warrantless capture of two suspected alien pedophiles was based on probable cause ascertained only after close surveillance for a three-month period during which their activities were monitored, herein petitioner was "invited" by a combined team of CID agents and police officers at his apartment unit on the strength of a mission order issued by the Commissioner on Immigration based on a sworn complaint of a single individual. The essential requisite of probable cause was conspicuously absent.

But even assuming that the arrest of petitioner was not legal at the beginning, certain events have supervened to render his petition moot and academic or to otherwise cure whatever defect there was at the inception of his arrest.

Firstly, petitioner is no longer under confinement. On June 20, 1987, petitioner was released upon the posting and approval of a personal bailbond on June 19, 1987 in the amount of P20,000.00 during the pendency of the administrative proceedings by the CID or until further orders of the Court.[5] The general rule in a number of cases is that the release, whether permanent or temporary, of a detained person renders the petition for habeas corpus moot and academic, unless there are restraints attached to his release which precludes freedom of action, in

which case the Court can still inquire into the nature of his involuntary restraint under the Villavicencio vs. Lukban rule.[6]

In Moncupa vs. Enrile, supra, the Court granted the writ of habeas corpus inspite of the fact that petitioner Moncupa had been temporarily released from detention on orders of the defense minister. In the Moncupa case, it was shown that attached to his discharge was the prohibition to travel, to change his abode and to grant interviews to members of the mass media without official permission. He was also ordered to report regularly to the military authorities. The Court subsequently nullified said conditions and ruled:

"Such restrictions limit the freedom of movement of the petitioner. It is not physical restraint alone which is inquired into by the writ of habeas corpus. x x x.[7]

"Where a person continues to be unlawfully denied one or more of his constitutional freedoms, where there is present a denial of due process, where the restraints are not merely involuntary but appear to be unnecessary, and where a deprivation of freedom originally valid has, in the light of subsequent developments, become arbitrary, the person concerned or those applying in his behalf may still avail themselves of the privilege of the writ."[8]

Petitioner Lucien Tran Van Nghia is not similarly restrained. The only condition in his bailbond is that ordinarily found in any other analogous undertaking, which is "to appear and answer the complaint x x x; will at all times hold himself x x x amenable to the orders and processes of the Court; and after conviction, he will surrender himself x x x in execution of such judgment x x x."[9]

Secondly, records show that formal deportation proceedings have been initiated against petitioner before the Board of Special Inquiry of the CID.[10] The restraint (if any) against petitioner's person has therefore become legal. The writ of habeas corpus has served its purpose.[11]

WHEREFORE, the petition is DISMISSED.

So ordered.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.  
Feliciano, J., on leave.

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[1] Rollo, p. 38.

[2] Rollo, p. 41.

[3] Rollo, p. 44.

[4] Article III, Section 2.

[5] Rollo, pp. 46, 52 and 72.

[6] Toyoto v. Fidel Ramos, G.R. No. 69270, October 15, 1985, 139 SCRA 316; Moncupa v. Enrile, G.R. No. 63345, January 30, 1986, 141 SCRA 233.

[7] Supra, p. 236.

[8] Supra, pp. 238-239.

[9] Rollo, p. 52.

[10] Rollo, p. 122.

[11] Harvey vs. Defensor-Santiago, supra.

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