

**LT. COL. EDUARDO KAPUNAN, JR., PAF, AND LT. COL. NELSON
ESLAO, PAF, PETITIONERS, VS. AFP CHIEF OF STAFF GEN. RENATO S.
DE VILLA, BRIG. GEN. MANUEL CASACLANG, AFP, COMMODORE
VIRG...**

G.R. No. 83177. December 06, 1988

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PER CURIAM:

In this petition for certiorari prohibition and/or habeas corpus, petitioners, who were implicated in the unsuccessful coup d'etat of August 28, 1987 and relieved of their duties in the Philippine Military Academy (PMA), seek the issuance of the writs of certiorari and prohibition (1) to set aside, as null and void, the "pre-trial investigation" report finding a prima facie case against them and recommending their trial for mutiny and conduct unbecoming an officer and the denial of their motion for reconsideration, and (2) to enjoin respondent General Court Martial No. 8 from further proceeding in the case of "People v. Lt. Col. Eduardo Kapunan, et al." Further, petitioner Kapunan seeks the issuance of a writ of habeas corpus to procure his release from confinement.

On May 19, 1988, the Court issued an order restraining respondent General Court Martial No. 8 from proceeding with the arraignment of petitioners scheduled for that date [Rollo, pp. 124-125.]

The Solicitor General filed a comment in behalf of the respondents, to which petitioners filed a reply. After petitioners moved for the early resolution of the case and respondents filed the required rejoinder, the Court considered the case ripe for resolution.

In brief, the pertinent facts are as follows:

In the aftermath of the failed August 28, 1987 coup d'etat, where cadets of the Philippine Military Academy reportedly openly supported the plotters and issued statements to that effect, respondent PMA Superintendent Dayan created on August 31, 1987 a PMA Board of Officers to investigate the alleged involvement of officers and cadets of the PMA [Rollo, p. 187.] A fact-finding investigation was conducted by the PMA Board from September 1 to 11, 1987 and on September 23, 1987 it submitted its findings to the AFP Chief of Staff [Rollo, p. 195.] On the basis of the findings of the PMA Board, respondent AFP Board of Officers recommended on October 8, 1987 the filing of charges against Maj. Doromal and Lts. Catapang and Baltazar and the reprimand of cadets Paredes, Tutaan, D. Macasaet, F. Macasaet, Lenterio, Rulloda and Balisi [Rollo, pp. 34-36.]

A few days later, respondent PMA Superintendent Dayan verbally instructed the PMA Board of Officers to take the testimonies of certain witnesses, which it did from October 12 to 16, 1987 [Rollo, p. 195.] These statements were submitted to the Chief of Staff [Rollo, p. 37], and became the basis for the recommendation of the AFP Board, dated October 30, 1987, for the filing of charges against petitioners [Rollo, pp. 38-40.] Charge sheets (and amended charge sheets) were filed against petitioners for mutiny and conduct unbecoming an officer (Arts. 67 and 96 of the Articles of War) [Rollo, pp. 42-45; 72-75] and a "pre-trial investigation" was conducted by respondent Maj. Baldonado.

Petitioners were subpoenaed and required by Maj. Baldonado to file their counter-affidavits or testify in the "pre-trial investigation" [Rollo, p. 41], but instead of doing so, petitioners filed an untitled pleading seeking the dismissal of the charges against them [Rollo, pp. 46-68.] In a "pre-trial investigation" report dated February 1, 1988, a prima facie case was found against petitioners and the case was recommended for trial by a general court martial [Rollo, pp. 76-80.] Petitioners' motion to dismiss was also denied.

Thereafter, petitioners were served subpoenas to appear before respondent General Court Martial No. 8 for arraignment. The first scheduled hearing for petitioners' arraignment was reset after three (3) members of the general court martial inhibited themselves. Petitioners, in the meantime, filed a motion for reconsideration of the "pre-trial investigation" report. In the next hearing, petitioners objected to their arraignment and moved for a deferment thereof. When this was denied, petitioners' civilian counsel (their counsel in this case) moved to be excused from the proceedings. The general court martial granted the motion and postponed the hearing to May 19, 1988, directing petitioners to secure the services of new counsel. It was at this point that the instant petition was filed before the Court.

In the meantime, petitioner Kapunan was allegedly summoned to the General Headquarters of the AFP for a dialogue, but upon his arrival thereat on September 4, 1987 he was ordered confined under "house arrest" by then Chief of Staff Gen. Fidel Ramos. On February 19, 1988, the arrest of petitioner Kapunan, together with three (3) others, was ordered by respondent Chief of Staff De Villa in connection with the killing of Atty. Rolando Olalia and Leonore Alay-ay [Rollo, p. 69.] On May 19, 1988, Gen. De Villa ordered the release of Kapunan in connection with the Olalia case since no charges had been filed therein, but ordered that he remain under confinement as an accused in the case before respondent General Court Martial No. 8 [Rollo, p. 200.] He has been so detained since then. Likewise, petitioners Kapunan and Eslao were relieved of their duties and functions as Assistant Chief of Staff for Operations and Assistant Commandant of Cadets of the PMA, respectively.

After the instant petition was filed, petitioners' motion for reconsideration of the "pre-trial investigation" report was denied by Gen. De Villa [Rollo, pp. 128-129.]

The issues raised in the petition are three-fold: (1) whether or not petitioners have been denied due process of law in the investigation of the charges against them; (2) whether or not respondent Maj. Baldonado gravely abused his discretion in finding a prima facie case and recommending the trial of petitioners before a court martial; and (3) whether or not the continued confinement of petitioner Kapunan is legal.

These issues shall be discussed ad seriatim.

1. Petitioners contend that they have been denied due process primarily because the procedure followed in the investigation of the charges against them was not in compliance with the requirements of the Articles of War (Commonwealth Act No. 408, as amended) and the law on preliminary investigations (Presidential Decree No. 77, as amended by P.D. No. 911.)

Under military law, the conduct of investigations is primarily governed by Art. 71 of the Articles of War, to wit:

Art. 71. Charges; Action upon. — Charges and specifications must be signed by a person subject to military law, and under the oath either that he has personal knowledge of, or has investigated, the matters set forth therein and that the same are true in fact, to the best of his knowledge and belief.

No charge will be referred to a general court-martial for trial until after a thorough and impartial investigation thereof shall have been made. This investigation will include inquiries as to the truth of the matter set forth in said charges, form of charges, and what disposition of the case should be made in the interest of justice and discipline. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or

mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides.

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On the other hand, P.D. No. 77, as amended by P.D. No. 911, which respondent Maj. Baldonado applied suppletorily to the Articles of War by requiring petitioners to file their counter-affidavits [Rollo, p. 41], provides:

Sec. 1. Notwithstanding any provision of law to the contrary and except when an investigation has been conducted by a judge of first instance, city or municipal judge or other officer in accordance with law and the Rules of Court of the Philippines, no information for an offense cognizable by the the Court of First Instance shall be filed by the provincial or city fiscal or his assistants or by a state prosecutor, without first conducting a preliminary investigation in the following manner:

a. All complaints shall be accompanied by statements of the complainant and his witnesses as well as other supporting documents. The statements of the complainant and his witnesses shall be sworn to before any fiscal or state prosecutor or before any government official authorized to administer oath. The officer administering the oath must certify that he has personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

b. If on the basis of the complainant's sworn statements and documents submitted, the investigating fiscal or state prosecutor finds no probable cause to conduct a preliminary investigation, he shall dismiss the case. If probable cause is established by complainant's evidence, he shall notify the respondent by issuing a subpoena requiring him to submit his counter-affidavit and the affidavit of his witnesses, if any, and other supporting documents, within ten (10) days from receipt of such subpoena. If respondent cannot be subpoenaed, or if subpoenaed he does not appear before the investigating fiscal or state prosecutor, the preliminary investigation shall proceed without him. To such subpoena shall be attached a copy of the complaint, the sworn statements and other documents submitted. Other evidence submitted shall be made available for examination of the respondent or his counsel. The statements of the respondent and his witnesses shall be sworn to before any fiscal or state prosecutor or before any government official authorized to administer oath and with the same certification as above-mentioned. The respondent shall finish the complainant copies of his counter-affidavits and other supporting documents.

c. If a prima facie case is established by the evidence, the investigating fiscal or state prosecutor shall immediately file the corresponding information in court. If he finds that there is no prima facie case, he shall dismiss the case unless he believes there are matters to be clarified in which case he may propound clarificatory questions to the parties or their witnesses affording both parties opportunity to be present but without right to examine or cross-examine. If the parties or their counsel so desire, they may submit questions to the fiscal which the latter may in his discretion propound to the parties concerned.

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The Court finds that, contrary to the contention of petitioners, there was substantial compliance with the requirements of law as provided in the Articles of War and P.D. No. 77, as amended by P.D. No. 911.

The amended charge sheets, charging petitioners and their co-respondents with mutiny and conduct unbecoming an officer [Rollo, pp. 42-45; 72-75], were signed by Maj. Antonio Ruiz, a person subject to military law, after he had investigated the matter through an evaluation of the pertinent records, including the reports of respondent AFP Board of Officers [Rollo, pp. 34-36; 38-40], and was convinced of the truth of the testimonies on record. The charge sheets were sworn to by Maj. Ruiz, the "accuser", in accordance with and in the manner provided under Art. 71 of the Articles of War [Rollo, pp. 45, 75.] Considering that P.D. No. 77, as amended by P.D. No. 911, is

only of suppletory application, the fact that the charge sheets were not certified in the manner provided under said decrees, i.e., that the officer administering the oath has personally examined the affiant and that he is satisfied that they voluntarily executed and understood his affidavit, does not invalidate said charge sheets.

Thereafter, a "pre-trial investigation" was conducted by respondent Maj. Baldonado, wherein, pursuant to P.D. No. 77, as amended by P.D. No. 911, petitioners were subpoenaed and required to file their counter-affidavits [Rollo, p. 41.] However, instead of doing so, they filed an untitled pleading seeking the dismissal of the charges against them [Rollo, pp. 46-68.] That petitioners were not able to confront the witnesses against them was their own doing, for they never even asked Maj. Baldonado to subpoena said witnesses so that they may be made to answer clarificatory questions in accordance with P.D. No. 77, as amended by P.D. No. 911.

Further, petitioners cannot complain that they were denied the opportunity to be heard, considering that, the arguments in their pleading seeking the dismissal of the charges were considered in Maj. Baldonado's "pre-trial investigation" report, as can be clearly seen from the text of the report itself [Rollo, pp. 76-80.]

Anent petitioners' contention that they were denied due process when they were not given the opportunity to be heard in the inquiry conducted by the PMA Board of Officers, it must be stressed that such was in the nature of a fact-finding inquiry, as distinguished from the "pre-trial investigation" conducted by Maj. Baldonado which corresponds to the preliminary investigation under P.D. No. 77, as amended by P.D. No. 911, where the object is to determine the existence of a prima facie case that would warrant the prosecution of the accused. Viewed from another angle, the investigations conducted by the PMA Board were akin to the investigations conducted by the police and other investigative agencies to gather facts to support the subsequent filing of the appropriate charges against suspects.

Collaterally, petitioners argue that they were denied due process because the investigators, Chief of Staff De Villa, who denied the motion to reconsider the "pre-trial investigation" report, and PMA Superintendent Dayan, who constituted the PMA Board of Officers and ordered the inquiry, were themselves culpable for the acts of the PMA cadets and officers on the basis of the doctrine of command responsibility. This argument must however fail as the doctrine finds no application to the facts of the case. The acts imputed to petitioners were allegedly in furtherance of the failed coup d'etat of August 28, 1987, which constituted a breach of and was directed against the chain of command of the AFP, which De Villa and Dayan formed part of. The fallacy in petitioners' reliance on the doctrine of command responsibility becomes apparent when their argument is pursued to its logical end. Under their theory, even the President, as Commander-in-Chief, can ultimately be held culpable for the unsuccessful August 28, 1987 coup d'etat.

2. The next issue raised by petitioners is the alleged insufficiency of the evidence to establish a prima facie case to warrant their prosecution. They argue that the factual findings of Maj. Baldonado in his "pre-trial investigation" report are insufficient to support a prima facie case for mutiny and conduct unbecoming an officer under Arts. 67 and 96 of the Articles of War and, therefore, he gravely abused his discretion, amounting to lack or excess of jurisdiction, in finding a prima facie case and recommending the trial of petitioners by court martial.

The Court finds the contention unmeritorious. No grave abuse of discretion amounting to lack or excess of jurisdiction can be attributed to Maj. Baldonado for finding a prima facie case, for such is supported by the evidence on record. Thus, the "pre-trial investigation" report states:

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5. On or about 2400H 28 Aug 87, CAPT ALFREDO BAMBICO JR PA a member of the Tactics Group briefed PMA Cadets at the Officer's Lounge about the camp defense plan and the movements of cadets from PMA to Baguio City. Present at the briefing were respondents LT COL EDUARDO KAPUNAN and LT COL

NELSON ESLAO and about thirty (30) junior officers. On or about 0200H 29 Aug 87, CAPT CELSO DEL ROSARIO CO, Transportation Maintenance Company, PMA received a call from LT COL KAPUNAN J-3, PMA to dispatch two (2) 6 x 6 trucks and one (1) bus to proceed near the vicinity of the J-3 Office. On or about 0200H - 0300H 29 Aug 87 said vehicles moved out with cadets on board, and led by respondent 1LT CATAPANG who was on board a jeep. CADET (1C) JOHN BULALACAO stated that 1LT BALTAZAR was with them in the bus. This movement of cadets and officers was not sanctioned by the PMA Superintendent. According to SGT MARBI RIMANDO, driver of one of the 6 x 6 trucks, the cadets were in fatigue uniform, wore black bonnets, had blackened their faces, and were armed.

6. SGT RICARDO LAGMAY, Truck Driver, Motor Pool, TMC, PMA averred that he was the driver of the other 6 x 6 truck with about forty (40) cadets on board, which moved out on that occasion. The column was, however, stopped at the checkpoint by an MP officer and they halted and parked thereat for about thirty (30) minutes, after which they returned to the mess hall. CADET (1C) BULALACAO stated that the cadets were met at the mess hall by LT COL KAPUNAN and were informed by the latter that the cause or coup was already finished. CADET (1C) NEMESIO GACAL stated that he heard LT COL KAPUNAN say, that "we are a hell of a corps". [Rollo, p. 77.]

Maj. Baldonado's findings are also supported by those of the AFP Board of Officers, which considered the testimonies of witnesses taken by the PMA Board of Officers pursuant to the order of PMA Superintendent Dayan [see Rollo, pp. 38-40.]

3. Finally, petitioner Kapunan questions the legality of his confinement under "house arrest" and seeks the issuance of a writ of habeas corpus to procure his release.

The Court finds that petitioner Kapunan's continued confinement is not tainted with illegality.

Among the grounds for the disallowance of the writ of habeas corpus is that the applicant has been charged with or convicted of an offense (Sec. 4, Rule 102, Rules of Court.) In the instant case, petitioner Kapunan had been charged with mutiny, a serious offense punishable by death or such other punishment as a court-martial may direct [Art. 67, Articles of War], for which he may be arrested or confined under Art. 70 of the Articles of War, to wit:

Art. 70. Arrest or confinement. — Any person subject to military law charged with crime or with a serious offense under these Articles shall be placed in confinement or in arrest, as circumstances may require; but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. . . .

Thus, at the time petitioner Kapunan applied to this Court for the issuance of the writ of habeas corpus, there was legal cause for his confinement. On this score, the writ prayed for will not issue.

On the matter of the restriction imposed on petitioner Kapunan as conditions for his "house arrest", particularly that he may not issue any press statements or give any press conference during the period of his detention at his quarters in Camp Aguinaldo, Quezon City [Rollo, P. 70], the Court is of the view that such is justified by the requirements of military discipline. It cannot be gainsaid that certain liberties of persons in the military service, including the freedom of speech, may be circumscribed by rules of military discipline. Thus, to a certain degree, individual rights may be curtailed, because the effectiveness of the military in fulfilling its duties under the law depends to a large extent on the maintenance of discipline within its ranks. Hence, lawful orders must be followed without question and rules must be faithfully complied with, irrespective of a soldier's personal views on the matter. It is from this viewpoint that the restrictions imposed on petitioner Kapunan, an officer in the AFP, have to be considered.

ACCORDINGLY, the Court Resolved to DISMISS the Petition. The temporary restraining order issued by the Court on May 19, 1988 is hereby LIFTED.

SO ORDERED.

Fernan, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

Narvasa, J., on leave.

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