

**RICARDO C. SILVERIO, PETITIONER, VS. THE COURT OF APPEALS,
HON. BENIGNO G. GAVIOLA, AS JUDGE OF THE REGIONAL TRIAL
COURT OF CEBU CITY, BRANCH IX, AND PEOPLE OF THE
PHILIPPINES, ...**

G.R. No. 94284. April 08, 1991

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court praying that the Decision of respondent Court of Appeals in CA-G.R. SP No. 15827, entitled "Ricardo C. Silverio v. Hon. Benigno C. Gaviola, etc., et al.," dated 31 January 1990, as well as the Resolution of 29 June 1990 denying reconsideration, be set aside.

On 14 October 1985, Petitioner was charged with violation of Section 20 (4) of the Revised Securities Act in Criminal Case No. CBU-6304 of the Regional Trial Court of Cebu. In due time, he posted bail for his provisional liberty.

On 26 January 1988, or more than two (2) years after the filing of the Information, respondent People of the Philippines filed an Urgent ex-parte Motion to cancel the passport of and to issue a hold-departure Order against accused-petitioner on the ground that he had gone abroad several times without the necessary Court approval resulting in postponements of the arraignment and scheduled hearings.

Overruling opposition, the Regional Trial Court, on 4 April 1988, issued an Order directing the Department of Foreign Affairs to cancel Petitioner's passport or to deny his application therefor, and the Commission on Immigration to prevent Petitioner from leaving the country. This Order was based primarily on the Trial Court's finding that since the filing of the Information on 14 October 1985, "the accused has not yet been arraigned because he has never appeared in Court on the dates scheduled for his arraignment and there is evidence to show that accused Ricardo C. Silverio, Sr. has left the country and has gone abroad without the knowledge and permission of this Court" (Rollo, p. 45). Petitioner's Motion for Reconsideration was denied on 28 July 1988.

Petitioner's Certiorari Petition before the Court of Appeals met a similar fate on 31 January 1990. Hence, this Petition for Review filed on 30 July 1990.

After the respective pleadings required by the Court were filed, we resolved to give due course and to decide the case.

Petitioner contends that respondent Court of Appeals erred in not finding that the Trial Court committed grave abuse of discretion amounting to lack of jurisdiction in issuing its Orders, dated 4 April and 28 July 1988, (1) on the basis of facts allegedly patently erroneous, claiming that the scheduled arraignments could not be held because there was a pending Motion to Quash the Information; and (2) finding that the right to travel can be impaired upon lawful order of the Court, even on grounds other than the "interest of national security, public safety or public

health."

We perceive no reversible error.

1) Although the date of the filing of the Motion to Quash has been omitted by Petitioner, it is apparent that it was filed long after the filing of the Information in 1985 and only after several arraignments had already been scheduled and cancelled due to Petitioner's non-appearance. In fact, said Motion to Quash was set for hearing only on 19 February 1988. Convincingly shown by the Trial Court and conformed to by respondent Appellate Court is the concurrence of the following circumstances:

"1. The records will show that the information was filed on October 14, 1985. Until this date (28 July 1988), the case had yet to be arraigned. Several scheduled arraignments were cancelled and reset, mostly due to the failure of accused Silverio to appear. The reason for accused Silverio's failure to appear had invariably been because he is abroad in the United States of America;

"2. Since the information was filed, until this date, accused Silverio had never appeared in person before the Court;

"3. The bond posted by accused Silverio had been cancelled twice and warrants of arrest had been issued against him all for the same reason - failure to appear at scheduled arraignments.

In all candidness, the Court makes the observation that it has given accused Silverio more than enough consideration. The limit had long been reached" (Order, 28 July 1988, Crim. Case No. CBU-6304, RTC, Cebu, p. 5; Rollo, p. 73).

Patently, therefore, the questioned RTC Orders, dated 4 April 1988 and 28 July 1988, were not based on erroneous facts, as Petitioner would want this Court to believe. To all appearances, the pendency of a Motion to Quash came about only after several settings for arraignment had been scheduled and cancelled by reason of Petitioner's non-appearance.

2) Petitioner's further submission is that respondent Appellate court "glaringly erred" in finding that the right to travel can be impaired upon lawful order of the Court, even on grounds other than the "interest of national security, public safety or public health."

To start with, and this has not been controverted by Petitioner, the bail bond he had posted had been cancelled and Warrants of Arrest had been issued against him by reason, in both instances, of his failure to appear at scheduled arraignments. Warrants of Arrest having been issued against him for violation of the conditions of his bail bond, he should be taken into custody. "Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, conditioned upon his appearance before any court when so required by the Court or the Rules (1985 Rules on Criminal Procedure, as amended, Rule 114, Secs. 1 and 2).

The foregoing condition imposed upon an accused to make himself available at all times whenever the Court requires his presence operates as a valid restriction of his right to travel (*Manotoc, Jr. v. Court of Appeals, et al.* No. 62100, 30 May 1986, 142 SCRA 149). A person facing criminal charges may be restrained by the Court from leaving the country or, if abroad, compelled to return (Constitutional Law, Cruz, Isagani A., 1987 Edition, p. 138). So it is also that "An accused released on bail may be re-arrested without the necessity of a warrant if he attempts to depart from the Philippines without prior permission of the Court where the case is pending (*ibid.*, Sec. 20 [2nd par.]).

Petitioner takes the posture, however, that while the 1987 Constitution recognizes the power of the Courts to curtail the liberty of abode within the limits prescribed by law, it restricts the allowable impairment of the right to travel only on grounds of interest of national security, public safety or public health, as compared to the

provisions on freedom of movement in the 1935 and 1973 Constitutions.

Under the 1935 Constitution, the liberty of abode and of travel were treated under one provision. Article III, Section 1(4) thereof reads:

"The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired."

The 1973 Constitution altered the 1935 text by explicitly including the liberty of travel, thus:

"The liberty of abode and of travel shall not be impaired except upon lawful order of the court or when necessary in the interest of national security, public safety, or public health" (Article IV, Section 5).

The 1987 Constitution has split the two freedoms into two distinct sentences and treats them differently, to wit:

"Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law."

Petitioner thus theorizes that under the 1987 Constitution, Courts can impair the right to travel only on the grounds of "national security, public safety, or public health."

The submission is not well taken.

Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without Court Order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "national security, public safety, or public health" and "as may be provided by law," a limitative phrase which did not appear in the 1973 text (The Constitution, Bernas, Joaquin G., S.J., Vol. I, First Edition, 1987, p. 263). Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party (See *Salonga v. Hermoso & Travel Processing Center*, No. 53622, 25 April 1980, 97 SCRA 121).

Article III, Section 6 of the 1987 Constitution should by no means be construed as delimiting the inherent power of the Courts to use all means necessary to carry their orders into effect in criminal cases pending before them. When by law jurisdiction is conferred on a Court or judicial officer, all auxiliary writs, process and other means necessary to carry it into effect may be employed by such Court or officer (Rule 135, Section 6, Rules of Court).

Petitioner's argument that the ruling in *Manotoc, Jr., v. Court of Appeals, et als.* (supra), to the effect that the condition imposed upon an accused admitted to bail to make himself available at all times whenever the Court requires his presence operates as a valid restriction on the right to travel no longer holds under the 1987 Constitution, is far from tenable. The nature and function of a bail bond has remained unchanged whether under the 1935, the 1973, or the 1987 Constitution. Besides, the *Manotoc* ruling on that point was but a re-affirmation of that laid down long before in *People v. Uy Tusing*, 61 Phil. 404 (1935).

Petitioner is facing a criminal charge. He has posted bail but has violated the conditions thereof by failing to appear before the Court when required. Warrants for his arrest have been issued. Those orders and processes would be rendered nugatory if an accused were to be allowed to leave or to remain, at his pleasure, outside the territorial confines of the country. Holding an accused in a criminal case within the reach of the Courts by preventing his departure from the Philippines must be considered as a valid restriction on his right to travel so that he may be dealt with in accordance with law. The offended party in any criminal proceeding is the People of the Philippines. It is to their best interest that criminal prosecutions should run their course and proceed to finality

without undue delay, with an accused holding himself amenable at all times to Court Orders and processes.

WHEREFORE, the judgment under review is hereby AFFIRMED. Costs against petitioner, Ricardo C. Silverio.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

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