

EN BANC

[G. R. No. 182161, December 03, 2009]

REVEREND FATHER ROBERT P. REYES, PETITIONER, VS. COURT OF APPEALS, SECRETARY RAUL M. GONZALEZ, IN HIS CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF JUSTICE, AND COMMISSIONER MARCELINO C. LIBANAN, IN HIS CAPACITY AS THE COMMISSIONER OF THE BUREAU OF IMMIGRATION, RESPONDENTS.

DECISION

LEONARDO-DE CASTRO, J.:

For resolution is the petition for review under Rule 45 of the Rules of Court, assailing the February 4, 2008 Decision^[1] of the Court of Appeals (CA) in CA-G.R. No. 00011 which dismissed the petition for the issuance of the writ of *amparo* under A.M. No. 07-9-12-SC, as amended. It also assails the CA's Resolution dated March 25, 2008, denying petitioner's motion for reconsideration of the aforesaid February 4, 2008 Decision.

The undisputed facts as found by the CA are as follows:

Petitioner was among those arrested in the Manila Peninsula Hotel siege on November 30, 2007. In the morning of November 30, 2007, petitioner together with fifty (50) others, were brought to Camp Crame to await inquest proceedings. In the evening of the same day, the Department of Justice (DOJ) Panel of Prosecutors, composed of Emmanuel Y. Velasco, Phillip L. Dela Cruz and Aristotle M. Reyes, conducted inquest proceedings to ascertain whether or not there was probable cause to hold petitioner and the others for trial on charges of Rebellion and/or Inciting to Rebellion.

On December 1, 2007, upon the request of the Department of Interior and Local Government (DILG), respondent DOJ Secretary Raul Gonzales issued Hold Departure Order (HDO) No. 45 ordering respondent Commissioner of Immigration to include in the Hold Departure List of the Bureau of Immigration and Deportation (BID) the name of petitioner and 49 others relative to the aforementioned case in the interest of national security and public safety.

On December 2, 2007, after finding probable cause against petitioner and 36 others for the crime of Rebellion under Article 134 of the Revised Penal Code, the DOJ Panel of Prosecutors filed an Information docketed as I.S. No. 2007-1045 before the Regional Trial Court, Branch 150 of Makati City.

On December 7, 2007, petitioner filed a Motion for Judicial Determination of Probable Cause and Release of the Accused Fr. Reyes Upon Recognizance asserting that the DOJ panel failed to produce any evidence indicating his specific participation in the crime charged; and that under the Constitution, the determination of probable cause must be made personally by a judge.

On December 13, 2007, the RTC issued an Order dismissing the charge for Rebellion against petitioner and 17 others for lack of probable cause. The trial court ratiocinated that the evidence submitted by the DOJ Panel of Investigating Prosecutors failed to show that petitioner and the other accused-civilians conspired and confederated with the accused-soldiers in taking arms against the government; that petitioner and other accused-civilians were arrested because they ignored the call of the police despite the deadline given to them to come out from the 2nd Floor of the Hotel and submit themselves to the police authorities; that mere presence at the scene of the crime and expressing one's sentiments on electoral and political reforms did not make them conspirators absent concrete evidence that the accused-civilians knew beforehand the intent of the accused-soldiers to commit rebellion; and that the cooperation which the law penalizes must be one that is knowingly and intentionally rendered.

On December 18, 2007, petitioner's counsel Atty. Francisco L. Chavez wrote the DOJ Secretary requesting the lifting of HDO No. 45 in view of the dismissal of Criminal Case No. 07-3126.

On even date, Secretary Gonzales replied to petitioner's letter stating that the DOJ could not act on petitioner's request until Atty. Chavez's right to represent petitioner is settled in view of the fact that a certain Atty. J. V. Bautista representing himself as counsel of petitioner had also written a letter to the DOJ.

On January 3, 2008, petitioner filed the instant petition claiming that despite the dismissal of the rebellion case against petitioner, HDO No. 45 still subsists; that on December 19, 2007, petitioner was held by BID officials at the NAIA as his name is included in the Hold Departure List; that had it not been for the timely intervention of petitioner's counsel, petitioner would not have been able to take his scheduled flight to Hong Kong; that on December 26, 2007, petitioner was able to fly back to the Philippines from Hong Kong but every time petitioner would present himself at the NAIA for his flights abroad, he stands to be detained and interrogated by BID officers because of the continued inclusion of his name in the Hold Departure List; and that the Secretary of Justice has not acted on his request for the lifting of HDO No. 45. Petitioner further maintained that immediate recourse to the Supreme Court for the availment of the writ is exigent as the continued restraint on petitioner's right to travel is illegal.

On January 24, 2008, respondents represented by the Office of the Solicitor General (OSG) filed the Return of the Writ raising the following affirmative defenses: 1) that the Secretary of Justice is authorized to

issue Hold Departure Orders under the DOJ Circulars No. 17, Series of 1998^[2] and No. 18 Series of 2007^[3] pursuant to his mandate under the Administrative Code of 1987 as ahead of the principal law agency of the government; 2) that HDO No. 45 dated December 1, 2007 was issued by the Sec. Gonzales in the course of the preliminary investigation of the case against herein petitioner upon the request of the DILG; 3) that the lifting of HDO No. 45 is premature in view of public respondent's pending Motion for Reconsideration dated January 3, 2008 filed by the respondents of the Order dated December 13, 2007 of the RTC dismissing Criminal Case No. 07-3126 for Rebellion for lack of probable cause; 4) that petitioner failed to exhaust administrative remedies by filing a motion to lift HDO No. 45 before the DOJ; and 5) that the constitutionality of Circulars No. 17 and 18 can not be attacked collaterally in an *amparo* proceeding.

During the hearing on January 25, 2008 at 10:00 a.m. at the Paras Hall of the Court of Appeals, counsels for both parties appeared. Petitioner's counsel Atty. Francisco Chavez manifested that petitioner is currently in Hong Kong; that every time petitioner would leave and return to the country, the immigration officers at the NAIA detain and interrogate him for several minutes because of the existing HDO; that the power of the DOJ Secretary to issue HDO has no legal basis; and that petitioner did not file a motion to lift the HDO before the RTC nor the DOJ because to do so would be tantamount to recognizing the power of the DOJ Secretary to issue HDO.

For respondents' part, the Office of the Solicitor-General (OSG) maintained that the Secretary of the DOJ's power to issue HDO springs from its mandate under the Administrative Code to investigate and prosecute offenders as the principal law agency of the government; that in its ten-year existence, the constitutionality of DOJ Circular No. 17 has not been challenged except now; and that on January 3, 2008, the DOJ Panel of Investigating Prosecutors had filed a Motion for Reconsideration of the Order of Dismissal of the trial court.

On February 1, 2008, petitioner filed a Manifestation attaching thereto a copy of the Order dated January 31, 2008 of the trial court denying respondent DOJ's Motion for Reconsideration for utter lack of merit. The trial court also observed that the said Motion should be dismissed outright for being filed out of time. ^[4]

The petition for a writ of *amparo* is anchored on the ground that respondents violated petitioner's constitutional right to travel. Petitioner argues that the DOJ Secretary has no power to issue a Hold Departure Order (HDO) and the subject HDO No. 45 has no legal basis since Criminal Case No. 07-3126 has already been dismissed.

On February 4, 2008, the CA rendered the assailed Decision dismissing the petition and denying the privilege of the writ of *amparo*.

Petitioner's Motion for Reconsideration^[5] thereon was also denied in the assailed Resolution^[6] dated March 25, 2008.

Hence, the present petition which is based on the following grounds:

I.

THE DOJ SECRETARY'S ARROGATION OF POWER AND USURPATION OF AUTHORITY TO ISSUE A HOLD DEPARTURE ORDER CANNOT BE JUSTIFIED THROUGH A RATIONALE THAT IT HAS SUPPOSEDLY BEEN "REGULARLY EXERCISED IN THE PAST" OR HAS "NEVER BEEN QUESTIONED (IN THE PAST).

II.

THE DOJ HAS CLAIMED A POWER TO ISSUE AN HDO INDEPENDENT OF THAT OF THE REGIONAL TRIAL COURTS, HENCE, PETITIONER CANNOT MERELY RELY ON THE RESIDUAL POWER OF THE RTC MAKATI IN CRIMINAL CASE NO. 07-3126 TO ASSAIL SUCH CLAIMED POWER.

III.

THE UTMOST EXIGENCY OF THE PETITION IS EXEMPLIFIED BY THE CONTINUING ACTUAL RESTRAINT ON PETITIONER'S RIGHT TO TRAVEL THROUGH THE MAINTENANCE OF HIS NAME IN THE HDO LIST AND DOES NOT SIMPLY HINGE ON THE QUESTION OF WHETHER OR NOT PETITIONER WAS ABLE TO TRAVEL DESPITE SUCH A RESTRAINT.

IV.

DOJ CIRCULAR 17 SERIES OF 1998 PROVIDES NO STATUTORY BASIS FOR THE DOJ SECRETARY'S CLAIMED POWER TO ISSUE AN HDO FOR IT IS NOT A STATUTE. THE CIRCULAR ITSELF APPEARS NOT TO BE BASED ON ANY STATUTE, HENCE, IT DOES NOT HAVE THE FORCE OF LAW AND NEED NOT BE ATTACKED IN A DIRECT PROCEEDING.^[7]

Petitioner maintains that the writ of *amparo* does not only exclusively apply to situations of extrajudicial killings and enforced disappearances but encompasses the whole gamut of liberties protected by the Constitution. Petitioner argues that "[liberty] includes the right to exist and the right to be free from arbitrary personal restraint or servitude and includes the right of the citizens to be free to use his faculties in all lawful ways." Part of the right to liberty guaranteed by the Constitution is the right of a person to travel.

In their Comment,^[8] both respondents Secretary Gonzalez and Commissioner Libanan argue that: 1) HDO No. 45 was validly issued by the Secretary of Justice in accordance with Department of Justice Circular No. 17, Series of 1998,^[9] and Circular No. 18, Series of 2007,^[10] which were issued pursuant to said Secretary's mandate under the Administrative Code of 1987, as head of the principal law agency

of the government, to investigate the commission of crimes, prosecute offenders, and provide immigration regulatory services; and; 2) the issue of the constitutionality of the DOJ Secretary's authority to issue hold departure orders under DOJ Circulars Nos. 17 and 18 is not within the ambit of a writ of *amparo*.

The case hinges on the issue as to whether or not petitioner's right to liberty has been violated or threatened with violation by the issuance of the subject HDO, which would entitle him to the privilege of the writ of *amparo*.

The petition must fail.

Section 1 of the Rule on the Writ of *Amparo* provides:

Section 1. *Petition.* - The petition for a *writ of amparo* is a remedy available to any person whose **right to life, liberty and security** is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances or threats thereof.

The Court, in *Secretary of National Defense et al. v. Manalo et al.*,^[11] made a categorical pronouncement that the *Amparo* Rule in its present form is confined to these two instances of "extralegal killings" and "enforced disappearances," or to threats thereof, thus:

x x x As the *Amparo* Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are "killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings." On the other hand, "enforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law."^[12]

In *Tapuz v. Del Rosario*,^[13] the Court laid down the basic principle regarding the rule on the *writ of amparo* as follows:

To start off with the basics, the writ of *amparo* was originally conceived as a response to the extraordinary rise in the number of killings and enforced disappearances, and to the perceived lack of available and effective remedies to address these extraordinary concerns. It is intended **to address violations of or threats to the rights to life, liberty or security, as an extraordinary and independent remedy beyond those available under the prevailing Rules**, or as a remedy