

THIRD DIVISION

[G.R. No. 140823, October 03, 2000]

**JUDGE MELVYN U. CALVAN, IN HIS CAPACITY AS PRESIDING
JUDGE, MUNICIPAL TRIAL COURT, BRANCH 127, THE
PROVINCIAL WARDEN OF THE PROVINCIAL JAIL OF ILOCOS
NORTE, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS
AND MAYOR REYNOLAN T. SALES, RESPONDENTS.**

R E S O L U T I O N

VITUG, J.:

For resolution is the motion for reconsideration filed by the Office of the Solicitor General (for petitioners Judge Calvan, the Provincial Warden of Ilocos Norte and the People of the Philippines) seeking the nullification of the Court's resolution, dated 05 July 2000, that has denied the petition for review of the decision, dated 18 November 1999, of the Court of Appeals in CA-G.R. SP No. 54416, on a Petition for *Habeas Corpus*. Petitioners-movants claim that the petition which respondent Sales filed is a petition for *habeas corpus* which should then be confined to an inquiry on the validity of a person's detention at the time of the filing of the petition, and that the Court of Appeals has thus erred in ruling on the legality of the order and warrant of arrest which can only be a proper subject of a petition for *certiorari*, not a petition for *habeas corpus*.

The factual antecedents -

On 02 August 1999, at about 11:30 a.m., in a shootout at a sitio in Pagudpud, Ilocos Norte, Reynolan T. Sales, incumbent town mayor of Pagudpud, fatally shot former Mayor Rafael Benemerito. After the incident, Sales surrendered his handgun, placed himself under the custody of the Municipal Police and thereupon asked to be brought to the Provincial PNP headquarters in Laoag City.

The next day, 03 August, Police Chief Inspector Crispin Aguno and Thelma Benemerito, wife of the victim, lodged a criminal complaint for murder against Mayor Reynolan Sales at the Municipal Circuit Trial Court (MCTC) of Adams-Baagui-Dumalueg-Pagudpud, Branch 127, there docketed Criminal Case No. 9448-P, entitled "People of the Philippines vs. Mayor Reynolan T. Sales." Judge Melvyn U. Calvan, the Presiding Judge forthwith conducted a "preliminary examination" of the witnesses and issued the assailed order and warrant of arrest against the accused "with NO BAIL." Mayor Sales was transferred, on 04 August 1999, from the Provincial PNP headquarters to the Provincial Jail where he had since been detained under the custody of the Provincial Warden of the Ilocos Norte Provincial Jail. On 05 August 1999, Judge Melvyn Calvan, after conducting a "preliminary examination in accordance with Section 6(b) of Rule 112 of the 1989 Rules in Criminal Procedure," issued a two-page resolution forwarding the records of the case to the Office of the Provincial Prosecutor "for appropriate action." On 10 August 1999, Sales was

notified by the Provincial Prosecutor to submit his counter-affidavit and defense evidence.

Contending that his right to due process was violated by the cavalier and perfunctory manner by which Judge Calvan suddenly terminated and concluded the preliminary investigation, without even allowing him to submit counter affidavit and present his witnesses, Mayor Sales filed a Petition For *Habeas Corpus* and *Certiorari* (CA-G.R. SP No. 54416) before the Court of Appeals. He questioned his detention on the thesis that the Order and Warrant of Arrest were improvidently and illegally issued by Judge Calvan, the latter being a relative of complainant Thelma Benemerito within the third civil degree of affinity and, therefore, disqualified from conducting the preliminary investigation.

On 30 August 1999, the Court of Appeals dismissed the petition. On 19 September 1999 and while his motion for reconsideration was still pending, respondent Mayor Sales withdrew the petition for *certiorari*, leaving the petition for *habeas corpus* to be the only remaining petition. The Office of the Solicitor General was required to comment, and a hearing was conducted by the Court of Appeals on the *habeas corpus* on 05 October 1999. Oral argument preceded the filing of the respective memoranda of the parties.

On 18 November 1999, the appellate court granted the petition for *habeas corpus* and ordered the release of private respondent Mayor Sales, *viz*:

"WHEREFORE, the petition is GRANTED. The Court hereby orders the release from detention of petitioner Reynolan T. Sales, subject to the outcome of the proper preliminary investigation."^[1]

A petition for review was filed with this Court by the Office of the Solicitor General seeking a review of the decision of the Court of Appeals. The Court denied the petition in its resolution of 05 July 2000. In its instant motion for reconsideration the Office of the Solicitor General would insist that the appellate court resolved the issues beyond the basic precepts of procedure on the theory that the determination on the legality of the order and warrant of arrest could not be resolved in a petition for *habeas corpus*, the issue being appropriate only for consideration in a petition for *certiorari*.

The Court of Appeals, in granting the petition for *habeas corpus* and in ordering the release of Mayor Sales, ratiocinated that -

"Section 1, Rule 137 of the Rules of Court disqualifies a judge from sitting in a case in which he is related to either party within the sixth degree of consanguinity or affinity. This disqualification is mandatory, unlike an inhibition which is discretionary. It extends to all proceedings, not just to trial as erroneously contended by respondent Judge. Even Canon 3.12 of the Code of Judicial Conduct mandates that a judge shall take no part in a proceeding where the judge's impartiality might reasonably be questioned, as when he is 'related by consanguinity or affinity to a party litigant within the sixth degree.' Due process likewise requires a hearing before an impartial and disinterested tribunal, so that no judge shall preside in a case in which he is not wholly free, disinterested, impartial and independent. (*Gutierrez vs. Santos*, 2 SCRA

"In Geotina vs. Gonzales, (41 SCRA 66 [1971]) the judge who was admittedly related within the sixth civil degree of affinity to the private complainant ordered the arrest of the petitioner. The Supreme Court held:

"`We therefore hold that the respondent judge is without authority to preside over the criminal case in question. Section 1, in commanding him to withdraw from the case herein involved, necessarily divests him of all authority to act in any judicial capacity in connection therewith. We further hold that where the disqualifying fact is indubitable and the parties to the case make no waiver of such disqualification as in the case at bar, sec. 1 forthwith completely strips the judge of authority to proceed. All his acts in the premises are without authority of law.' (Emphasis supplied.)

"The High Court also stated that where the judge decides in favor of his own competency, proceeds to try a case and renders a verdict from which there is no appeal nor plain, speedy, adequate remedy in the ordinary course of law, resort to the extraordinary remedies, of which habeas corpus can be cited as one, constitutes the only means available for review by a superior court.

"In the case at bench, **the order and warrant of arrest issued by respondent Judge by virtue of which the petitioner is detained offers no speedy, adequate remedy or appeal in the ordinary course of law.** Habeas corpus is the only remedy to release him from the effects of the illegal order or one issued without any legal authority, to use the language of Geotina vs. Gonzales."^[2]

The Solicitor General now contends, however, that the writ of *habeas corpus* is simply a writ of inquiry, tasking the person who keeps a detainee in custody to explain or justify the detention, conformably with Sections 1, 3 and 6, Rule 102, of the Rules of Court.

"**SECTION 1.** *To what habeas corpus extends.* - Except as otherwise expressly provided by law, the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.

"x x x x x x x x x

"**SEC. 3.** *Requisites of application therefor.* - Application for the writ shall be by petition signed and verified either by the party for whose relief it is intended, or by some person on his behalf, and shall set forth:

"(a) That the person in whose behalf the application is made is imprisoned or restrained of his liberty;

"(b) The officer or name of the person by whom he is so imprisoned

or restrained; or, if both are unknown or uncertain, such officer or person may be described by an assumed appellation, and the person who is served with the writ shall be deemed the person intended;

"(c) The place where he is so imprisoned or restrained, if known;

"(d) A copy of the commitment or cause of detention of such person, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or restraint is without any legal authority, such fact shall appear.

"x x x x x x x x x

"SEC. 6. *To whom writ directed, and what to require.* - In case of imprisonment or restraint by an officer, the writ shall be directed to him, and shall command him to have the body of the person restrained of his liberty before the court or judge designated in the writ at the time and place therein specified. In case of imprisonment or restraint by a person not an officer, the writ shall be directed to an officer, and shall command him to take and have the body of the person restrained of his liberty before the court or judge designated in the writ at the time and place therein specified, and to summon the person by whom he is restrained then and there to appear before said court or judge to show the cause of the imprisonment or restraint."

The writ, the Solicitor General submits, should then be addressed, not to the judge or person who issued the warrant of arrest, but to the officer or anyone who actually detains the person in whose behalf the application is made. Since the petition for *habeas corpus* concedes that Mayor Sales is in the custody of the Provincial Warden of Laoag City, the latter, not petitioner Judge, should be the proper party respondent.

The proceedings before the Court of Appeals being confined to the *habeas corpus* case, the petition should ordinarily be addressed to the person under whom Mayor Sales is in detention or in alleged illegal custody^[3] who would thereby be in a position to produce at the hearing the body of the person in whose behalf the petition is made,^[4] consistently with the import of Section 6, Rule 102, of the Rules. Judge Calvan, it might here be pointed out, however, has constructive custody over respondent for having issued the order and warrant for his arrest.

The petition filed before the Court of Appeals was originally one for *habeas corpus* and *certiorari*. The writ of *certiorari* was intended to assail the Order and Warrant of Arrest issued by Judge Melvyn Calvan while the writ of *habeas corpus* was sought to relieve Mayor Sales from detention predicated the application on the alleged illegal Order and Warrant of Arrest issued by Judge Calvan by reason of his disqualification. Indeed, a writ of *habeas corpus* could be so employed as a remedy ancillary to a proceeding in *certiorari* for purposes of review.^[5] Later, however, respondent Mayor withdrew the petition for *certiorari* but not the petition for *habeas corpus* leaving the latter to sail alone. The withdrawal must not be deemed to affect adversely the jurisdiction of the appellate court, already acquired, to resolve all the issues