

## FORMER SPECIAL SIXTH DIVISION

[ CA-G.R. SP No. 00053 - W/A, March 12, 2015 ]

**IN THE MATTER OF THE PETITION FOR WRIT OF AMPARO AND  
WRIT OF HABEAS DATA FOR ATTY. MARIA CATHERINE DANNUG  
SALUCON.**

**ATTY. MARIA CATHERINE DANNUG-SALUCON, PETITIONER, VS.  
H.E. BENIGNO SIMEON C. AQUINO III, IN HIS CAPACITY AS THE  
COMMANDER-IN-CHIEF OF THE ARMED FORCES OF THE  
PHILIPPINES, VOLTAIRE GAZMIN IN HIS CAPACITY AS  
SECRETARY OF THE DEPARTMENT OF NATIONAL DEFENSE  
(DND), GEN. EMMANUEL BAUTISTA, IN HIS CAPACITY AS THE  
CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES  
(AFP) GEN. EDUARDO AÑO, IN HIS CAPACITY AS THE  
COMMANDING OFFICER OF THE INTELLIGENCE SERVICE OF THE  
ARMED FORCES OF THE PHILIPPINES, (ISAFP), GEN. HERNANDO  
IRRIBERI, IN HIS CAPACITY AS THE COMMANDING GENERAL OF  
THE PHILIPPINE ARMY, GEN. BENITO ANTONIO T. DE LEON, IN  
HIS CAPACITY AS THE COMMANDING GENERAL OF THE 5TH  
INFANTRY DIVISION, P/DIR. GEN. ALAN PURISIMA, IN HIS  
CAPACITY AS THE DIRECTOR GENERAL OF THE PHILIPPINE  
NATIONAL POLICE (PNP), AND C/SUPT. MIGUEL DE MAYO  
LAUREL, IN HIS CAPACITY AS THE CHIEF OF THE ISABELA  
PROVINCIAL POLICE OFFICE, RESPONDENTS**

### D E C I S I O N

**ABDULWAHID, J.:**

Before us is a *Petition for Writ of Amparo and Writ of Habeas Data*<sup>[1]</sup> under The Rule on the Writ of *Amparo*<sup>[2]</sup> and The Rule on the Writ of *Habeas Data*<sup>[3]</sup>, respectively, filed on April 11, 2014 by petitioner Atty. Maria Catherine Dannug-Salucon before this Court, praying that a temporary protection order be issued for her and her immediate family's protection. In addition, she prayed that, after notice and hearing on the petition, judgment be rendered ordering the issuance of the privilege of the Writ of *Amparo* in her favor. Finally, petitioner prayed that the Court order the issuance of the Writ of *Habeas Data*, directing the respondents to: (1) disclose to petitioner and to provide her with copies of all the facts, information, statements, records, photographs, dossier and all other evidence, documentary or otherwise, pertaining to her in their files or record, including the watch list of alleged communist supporters and the Memorandum Order of the Philippine National Police (PNP); and (2) destroy any information gathered on petitioner.

On April 22, 2014, the Special Sixth Division of this Court gave due course to the instant petition and issued the writs of *amparo* and *habeas data*, ordering the respondents to make a verified return on the writ and to file a comment on the

petition within five days from service of the writ.<sup>[4]</sup>

On May 5, 2014, respondents filed their *Return of the Writs and Comment on the Petition*<sup>[5]</sup>, expressly denying the allegations in the petition and praying that the same be denied for lack of merit and/or that His Excellency President Benigno Simeon C. Aquino III be dropped as a respondent on the grounds of immunity from suit and failure by the petitioner to allege any specific unlawful act or omission on the part of the former which violated or threatened the latter's rights to life, liberty and security, or, at the least, establish any link between President Aquino and the acts which allegedly violated said rights. In addition, respondents described the respective responses made or actions taken by them upon receipt of the writs to verify the truth of petitioner's allegations.

During the preliminary hearing held on May 23, 2014, the parties stipulated on the following facts: (1) the identity and ranks of respondents; (2) that respondents are impleaded in their official capacity; and (3) that respondents knew for a fact that petitioner was a member of the Philippine bar even prior to the filing of the petition.

<sup>[6]</sup> Thereafter, trial on the merits of the case ensued.

### **Petitioner's Allegations**

Petitioner had been a human rights lawyer since her admission to the Philippine Bar in 2005, although she initially worked with the Public Attorney's Office (PAO), Ilagan District Office in Isabela. Moreover, she was one of the founding members of the National Union of People's Lawyer (NUPL), a national association of human rights lawyers, law students and paralegals who were principally engaged in public interest cases and human rights advocacy, among others. She was also the incumbent National Auditor of the NUPL and was thus visibly active in participating in all of its activities, even from the time that she was still employed with the PAO. After resigning from government service and putting up her own law firm, she took on the defense of several political detainees, most of which were leaders and/or members of peasant and other sectoral organizations and people's organizations, including human rights defenders, who were labeled or suspected to be members of the Communist Party of the Philippines (CPP) and/or the New People's Army (NPA), and who were harassed with trumped up charges by the Government.<sup>[7]</sup>

On March 24, 2014, petitioner was at a lunch meeting with the relatives of a detained political prisoner client who was allegedly among several leaders of people's organizations/sectoral organizations who were falsely charged in a murder and frustrated murder case pending before the Regional Trial Court (RTC) of Lagawe, Ifugao. As they were discussing the security risks involved in the handling of the case, William Bugatti, her paralegal who was working with her on said case and who was also an activist and human rights defender, informed her that he had personally observed that surveillance was being conducted on them, including petitioner, especially during scheduled hearings for the above case. Thus, he suggested certain security measures for her own protection. Petitioner realized the significance of Bugatti's advice when he was fatally gunned down later that evening. Parenthetically, petitioner had tasked him early that very day to identify the names, ranks and addresses of the handler/s of the prosecution witness in the Lagawe case, whom petitioner suspected of lying on the witness stand.<sup>[8]</sup>

That same evening, petitioner was informed by a client (name withheld purportedly for security reasons) working as a civilian asset for the PNP Intelligence Section that the Regional Intelligence of the PNP, through the PNP Isabela Provincial Police Office, had issued a directive to PNP Burgos, Isabela, petitioner's hometown, to conduct a background investigation on her and to confirm whether she was a "Red Lawyer". She also learned that she was being secretly followed by agents of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) and that persons looking like military/policemen had been asking people around her office about her whereabouts and routine. Further, petitioner's name was reportedly included in the military's Watch List of so-called communist terrorist supporters rendering legal services.<sup>[9]</sup>

On March 31, 2014, petitioner again received a call from her confidential informant, confirming that she was indeed the subject of surveillance and that, in fact, he was tailed by ISAFP operatives when he came to petitioner's office a few nights earlier. The day before, the confidential informant was allegedly cornered by three ISAFP operatives who interrogated him on the purpose of his visit to petitioner's office. They also asked him why petitioner was acquainted with known NPA members such as Randy Malayao and Grace Bautista, and why she was always the lawyer of several suspected communist terrorists.<sup>[10]</sup>

Upon further investigation, petitioner discovered the following things:

- 1) On or about March 12, 19 and 21, 2014, when petitioner had out-of-town hearings, different individuals riding on motorcycles and appearing to be soldiers approached one of the *buko* and *tupig* vendors in front of petitioner's office. Each of them similarly questioned the vendor as to where petitioner went, with whom, what time she usually returned to the office and who stayed behind in the office whenever she left. The vendor was surprised because the questions of the individuals were uniform on all occasions and they did not go into petitioner's office despite the vendor's advice for them to talk to petitioner's secretary. The above incidents were narrated to petitioner by her driver, Regie Lutao Gamongan, who had gotten the information from the vendor.<sup>[11]</sup>
- 2) On March 31, 2014, a member of the Criminal Investigation Service (CIS) of the Criminal Investigation Detection Group (CIDG) came to the law office, asking for petitioner, but without telling her secretary why he was looking for her. Upon learning that she was not there, he left, then returned again in the afternoon. However, he left again upon finding out that petitioner had decided to stay at the Hall of Justice longer than expected.<sup>[12]</sup>
- 3) On the same day, petitioner received a text message from the Chief Investigator of the CIDG, asking for a copy of the records of a human rights case involving three Bayan Muna members who were allegedly arbitrarily arrested on the basis of trumped up charges for two counts of frustrated murder and tortured in the hands of the 86<sup>th</sup> Infantry Battalion intelligence operatives. Said case was dismissed by the Office of the Provincial Prosecutor during preliminary investigation. Petitioner was surprised at the request because it was the third time that the investigator was requesting

for a copy of the records and he could have readily secured the same from the Provincial Prosecutor's Office. Thus, petitioner ignored the text message.<sup>[13]</sup>

- 4) On or about 7:30 AM on April 3, 2014, while petitioner's driver, Gamongan, was waiting for her in front of her residence at Poblacion, Burgos, Isabela, a red "Wave" motorcycle with its plate number cased inside a tinted plastic cover, making it impossible to read the same, passed by their house. The motorcycle driver, who was of medium height, with dark complexion, a haircut and a demeanor of a military /policeman, with a tattoo on his left arm, wearing a white sando shirt and with a pistol bag slung around his shoulder, looked intently at Gamongan as he passed by, "as if he wanted to do something wrong". After passing by petitioner's compound, the motorcycle rider suddenly made a u-turn and again stared intently at Gamongan as he passed by. As he headed towards the highway, Gamongan noticed that the man was continually observing him through the side mirror. In relation to this incident, witness Gamongan executed a *Judicial Affidavit*<sup>[14]</sup> and testified during the trial proceedings.
- 5) On or about April 7 and 10, 2014, soldiers came to petitioner's office in the guise of asking her to notarize documents. Since petitioner was on out-of-town hearings, her secretary suggested names of other available notaries public. However, instead of leaving right away, the military men asked where petitioner went and with whom, and insisted on leaving the document and picking it up later on when petitioner arrived.<sup>[15]</sup>
- 6) On April 10, 2014, a known civilian asset of the Military Intelligence Group (MIG) in Isabela, who also happened to be the "close-in" secretary and part-time driver of an uncle who was a municipal circuit judge, came to petitioner's office, trying to convince her to meet with the head of MIG Isabela so that the latter could explain why petitioner was being watched. However, petitioner declined. The following day, the civilian asset returned and told her that she was being watched by the MIG because of a land dispute which she was handling at a court in Roxas, Isabela. Petitioner did not believe him because, just a couple of days prior to that date, the MIG operatives had talked to the client/confidential informant who had first informed petitioner of the purported surveillance operations on her, asking for petitioner's phone number and inviting him to join them as civilian asset in their anti-insurgency operations.<sup>[16]</sup>

In her *Petition*, petitioner posited that the above-described acts, taking into consideration previous incidents where human rights lawyers, human rights defenders, political activists and defenders, were killed or abducted after being labeled as "communists" and being subjected to military surveillance, may be interpreted as preliminary acts leading to the abduction and/or killing of petitioner. Moreover, while petitioner admitted that the purported military and police operatives who conducted, and were still conducting, surveillance and harassments on petitioner were still unidentified, she maintained that the same were identified as

members of the ISAFP, the Philippine Army and the police, and that there was no doubt that they all acted upon orders of their superiors within the chain of command.<sup>[17]</sup> Petitioner reported the incidents to the NUPL and the human rights group KARAPATAN (Alliance for the Advancement of People's Rights), who agreed to help her in filing the instant petition. She also tried reporting the incidents to the National Bureau of Investigation (NBI) in Isabela, but, as of the present, no positive report had been made identifying the individuals who conducted the alleged surveillance, although available information specifically pointed to the military and police units as the ones doing the surveillance.<sup>[18]</sup>

During trial, petitioner presented two witnesses, namely, herself and her driver, Regie Lutao Gamongan. She also formally offered in evidence her<sup>[19]</sup> and Gamongan's<sup>[20]</sup> respective *Judicial Affidavits*, as well as several *Informations*<sup>[21]</sup> in criminal cases where the accused were political detainees, leaders or members of peasant and other sectoral organizations and people's organizations, human rights defenders and/or suspected NPA members, and the private complainants were either military or police officers/personnel.

### **Respondents' Allegations/Comment on the Petition**

The following are the respondents who were impleaded in the instant petition: (1) C/Supt. Miguel De Mayo Laurel, in his capacity as the alleged Chief of the Isabela Provincial Police Office; (2) P/Dir. Gen. Alan Purisima, in his capacity as the PNP Director General; (3) Gen. Benito Antonio T. De Leon, in his capacity as the Commanding General of the 5<sup>th</sup> Infantry Division; (4) Gen. Hernando Irriberri, in his capacity as the Commanding General of the Philippine Army; (5) Gen. Eduardo Año, in his capacity as the Commanding Officer of the Intelligence Service of the Armed Forces of the Philippines (ISAFP); (6) Gen. Emmanuel Bautista, in his capacity as the Chief of Staff of the Armed Forces of the Philippines; (7) Voltaire Gazmin, in his capacity as the Secretary of the Department of National Defense (DND); and (8) His Excellency President Benigno Simeon C. Aquino III, in his capacity as the Commander-in-Chief of the AFP.

Respondents categorically denied petitioner's allegation that she was ever under surveillance by the military and/or police under the command of respondents officials. Moreover, respondents asserted that respondent President Aquino should not have been impleaded as party respondent in the instant petition on the ground of immunity from suit of the President of the Philippines. In any event, petitioner failed to clearly and sufficiently establish any specific unlawful act or omission on the part of respondent President Aquino that violated or threatened petitioner's rights to life, liberty and security or, at least, establish any link between President Aquino and the acts that allegedly violated said rights.

In the same vein, respondents objected to the impleading of the other respondents in their official capacities, allegedly under the doctrine of command responsibility. Respondents maintained that the doctrine of command responsibility is a substantive rule that establishes criminal or administrative liability that is different from the purpose and approach under the Rule on the Writ of *Amparo*. Thus, it can only be invoked in a full-blown criminal or administrative case and not in a summary *amparo* proceeding.