

EN BANC

[G.R. No. 227635, October 15, 2019]

LEILA M. DE LIMA, PETITIONER, VS. PRESIDENT RODRIGO R. DUTERTE, RESPONDENT.

R E S O L U T I O N

BERSAMIN, C.J.:

By petition for the issuance of a writ of *habeas data* petitioner Senator Leila M. de Lima (Sen. De Lima) seeks to enjoin respondent Rodrigo Roa Duterte, the incumbent Chief Executive of the Philippines, from committing acts allegedly violative of her right to life, liberty and security.

At the core of the controversy is the inquiry on the application, scope and extent of the principle of presidential immunity from suit. The question concerns the immunity of the President from suit while he remains in office.

Yet, prior to the consideration and resolution of the controversy, a preliminary matter of substance must be considered and resolved. May the petition prosper because the incumbent President of the Philippines has been named herein as the sole respondent?

Antecedents

On May 9, 2016, Davao City Mayor Rodrigo Roa Duterte was elected as the 16th President of the Philippines. A key agenda of the Duterte Administration was the relentless national crackdown on illegal drugs. This prompted several human rights advocates to heavily criticize the strategies and devices forthwith adopted by law enforcement agencies in pursuing the crackdown. Among the vocal critics of the crackdown was Sen. De Lima.

On August 2, 2016, Sen. de Lima delivered a privilege speech on the floor of the Senate calling a stop to the alleged extrajudicial killings committed in the course of the crackdown, and urging her colleagues in the Senate to conduct investigations of the alleged victims.^[1]

In response, President Duterte issued a number of public statements against Sen. De Lima, including denunciations of her corruption and immorality. The statements prompted her to initiate this petition for the issuance of a writ of *habeas data* against President Duterte.

In her petition, Sen. De Lima adverted to several public statements that allegedly threatened her right to life, liberty and security, namely:

- a. The August 11, 2016 public statement of President Duterte threatening to destroy Sen. De Lima. The statement reads: "I know I'm the favorite whipping boy of the NGOs and the human rights stalwarts. But I have a special *ano kaya no*. She is a government official. One day soon I will – *bitiwan ko yan* in public and I will have to destroy her in public."^[2] Incidentally, in the same event, President Duterte insinuated that with the help of another country, he was keeping surveillance of her. "*Akala nila na hindi rin ako nakikinig sa kanila*. So while all the time they were also listening to what I've done, I've also been busy, and with the help of another country, listening to them;"^[3]
- b. The statement uttered in a briefing at the NAIA Terminal 3, Pasay City in August 17, 2016 wherein President Duterte named Sen. De Lima as the government official he referred to earlier and at the same time accused her of living an immoral life by having a romantic affair with her driver, a married man, and of being involved in illegal drugs. "There's one crusading lady, whose even herself led a very immoral life, taking his (sic) driver as her lover... Paramour *niya ang driver nya naging hooked rin sa drugs because of the close association*. You know, when you are an immoral, dirty woman, the driver was married. So you live with the driver, its concubinage."^[4]
- c. The statements that described her as an immoral woman;^[5] that publicized her intimate and personal life,^[6] starting from her new boyfriend to her sexual escapades;^[7] that told of her being involved in illegal drugs as well as in activities that included her construction of a house for her driver/lover with financing from drug-money;^[8] and
- d. The statements that threatened her ("*De Lima, you are finished*")^[9] and demeaned her womanhood and humanity.^[10] "If I were De Lima, ladies and gentlemen, I'll hang myself. Your life has been, *hindi lang* life, the innermost of your core as a female is being serialized everyday. *Dapat kang mag-resign*. You resign."^[11] and "De Lima better hang yourself ... *Hindi ka na nahiya sa sarili mo*. Any other woman would have slashed her throat. You? *Baka akala mo artista ka. Mga artistang x-rated paglabas sa, pagkatapos ng shooting, nakangiti ...*".^[12]

Sen. De Lima traces this personal presidential animosity towards her to the time when she first encountered President Duterte while he was still the City Mayor of Davao and she the Chairperson of the Commission on Human Rights investigating the existence of the so-called "Davao Death Squad".^[13]

Sen. De Lima concludes that taking all the public statements of the President into consideration the issuance of the writ of *habeas data* is warranted because there

was a violation of her rights to privacy, life, liberty, and security, and there is a continuous threat to violate her said rights in view of President Duterte's declaration that he had been "listening to them, with the help of another country."^[14]

Also, the petition argues that President Duterte is not entitled to immunity from suit, especially from the petition for the issuance of the writ of *habeas data* because his actions and statements were unlawful or made outside of his official conduct; that based on the pronouncements in *Rodriguez v. Macapagal-Arroyo*^[15] and *Clinton v. Jones*,^[16] the immunity of the President from suit covers only the official acts of the Chief Executive; that his statements constituted violations of various laws, particularly Republic Act No. 6713,^[17] and Republic Act No. 9710,^[18] and, as such, were not to be considered the official acts of the President worthy of protection by presidential immunity from suit; and that because the *habeas data* proceeding does not involve the determination of civil or criminal liability, his acts and statements should not be considered as warranting the protective shield of presidential immunity from suit.

Sen. De Lima seeks the following reliefs:

WHEREFORE, the petitioner respectfully prays the Honorable Court that judgment be rendered:

[1] Granting a Writ of Habeas Data –

- a. Enjoining respondent and any of his representatives, agents, assigns, officers, or employees from collecting information about petitioner's private life outside the realm of legitimate public concern;
- b. Disclosing to the petitioner the name of the foreign country who, according to respondent, "helped him" listen in on petitioner, the manner and means by which he listened in on petitioner, and the sources of his information or where the data about petitioner's private life and alleged private affairs came from;
- c. Ordering the deletion, destruction or rectification of such data or information; and
- d. Enjoining the respondent from making public statements that (i) malign her as a woman and degrade her dignity as a human being; (ii) sexually discriminate against her; (iii) describe or publicize her alleged sexual conduct; (iv) constitute psychological violence against her; and (v) otherwise violate her rights or are contrary to law, good morals, good customs, public policy, and/or public interest; and

[2] Conceding unto petitioner such further and other reliefs this Honorable Court may deem just and equitable in the premises.^[19]

An important constitutional hurdle must first be surmounted before the Court considers taking full cognizance of the petition for the issuance of a writ of *habeas data*. Is the President entitled to immunity from suit warranting the immediate dismissal of the petition considering that he is the sole respondent in this action?

In the resolution promulgated on November 8, 2016, the Court has directed Sen. De Lima and the Office of the Solicitor General (OSG) to present their respective sides on the issue of whether or not President Duterte is immune from this particular suit.

[20]

In compliance, Sen. De Lima insists in her memorandum that the President is not immune from this particular suit because his actions and statements were clearly made outside of his office as Chief Executive as to constitute unofficial conduct not covered by presidential immunity; that to consider and determine the issue of whether or not the President is immune from suit is premature considering that President Duterte has yet to invoke the same in his verified return; that until and unless President Duterte invokes the immunity himself, the issue may not even be considered; that the immunity of the President does not automatically attach every time he is sued; that in the United States of America (USA), proper balancing of interest – on the one hand, the private interest to be served, and, on the other, the danger of intrusion unto the authority and function of the Executive Branch – must first be made; that allowing the petition will not violate the principle of separation of powers; that on the basis of the pronouncement in *Clinton*, the doctrine of separation of powers does not require the courts to stay all private actions against the President until he leaves office; that the reason behind the immunity is not present in this case; that suing the President herein will not degrade the office of the President nor cause harassment or distraction; and that she is an aggrieved party by virtue of the President's actions, and thus deserves a judicial remedy.

On its part, the OSG seeks the immediate dismissal of the suit. It submits that the immunity of the sitting President is absolute, and it extends to all suits including petitions for the writ of *amparo* and writ of *habeas data*; that despite the non-inclusion of presidential immunity in Section 17, Article VII of the 1973 Constitution from the 1987 Constitution, the framers intended such immunity to attach to the incumbent President; that the present suit is the distraction that the immunity seeks to prevent because it will surely distract the President from discharging his duties as the Chief Executive; that based on the ruling in *David v. Macapagal-Arroyo*,^[21] the President is immune from any civil or criminal case during his tenure and the only way to make him accountable to the people is through impeachment; that such absolute immunity established by jurisprudence is based on public policy considerations, and Sen. De Lima has not provided compelling reasons to warrant the reversal or modification of the doctrine; and that, accordingly, the doctrine of *stare decisis* must be respected.

The OSG argues that even assuming that the immunity only covers official acts of the President, the statements made were still covered because they were made pursuant to the exercise of his power to faithfully execute the laws under Section 17, Article VII of the Constitution; that the President's statements revolved around the involvement of Sen. De Lima in the illegal drugs trade; that any mention of her relationship with Ronnie Dayan was incidental because their romantic relationship

was intertwined with the relationship as principal and accomplice in her involvement in the illegal drugs trade; that the statements of the President were made while the House of Representatives was conducting an investigation regarding the illegal drug trade in the National Penitentiary wherein Sen. De Lima was implicated; and that the petition should be dismissed because it was erroneously filed with this Court following Section 3 of the *Rule on the Writ of Habeas Data* (A.M. No. 08-1-16-SC) due to the petition not involving public data files of government offices.

On November 29, 2016,^[22] the Court required Sen. De Lima and the OSG to traverse each other's submissions in their respective memoranda.

In her compliance, Sen. De Lima points out that the doctrine of presidential immunity from suit is not absolute, but entertains exceptions; that under *Clinton*, the immunity only covers the official acts of the President; that the judicial pronouncements on the absoluteness of the doctrine were doubtful because the only rulings cited in support of absoluteness (*Forbes v. Chuoco Tiaco*^[23] and *Nixon v. Fitzgerald*^[24]), being issued prior to the promulgation of the 1987 Constitution, were inconclusive as to whether or not the immunity of the incumbent President was absolute.

Sen. De Lima downplays the effects of the petition, and states that her suit will not distract President Duterte from the discharge of his duties as the Chief Executive considering that he has the OSG to handle the suit in his behalf; that the statements in question were not made in the performance of his duties, but were personal attacks rooted in their past encounters as the Chairperson of the Commission on Human Rights and as Mayor of the City of Davao; and that her immediate resort to the Court was proper because the President has been collecting data on her, and the data thus collected are being stored in his office.

The OSG counters that the doctrine of presidential immunity absolutely applied; that Sen. De Lima improperly invokes the jurisprudence of the USA to support her stance despite such jurisprudence being non-binding in this jurisdiction; and that although *Estrada v. Desierto*^[25] cited *Clinton* and *Fitzgerald*, the Court did so only for the limited purpose of determining the suability of the non-sitting President, which was the issue presented and considered in *Estrada*, not the suability of the incumbent President as presented herein.

According to the OSG, the Court has been clear in *Lozada v. Macapagal Arroyo*^[26] about the immunity automatically attaching to the office, and about not needing the President to invoke the immunity in order to enjoy the same. The OSG assures that any suit, including this one, necessarily distracts the President from discharging his duties considering that he is the *sole* embodiment of the Executive Branch, unlike the Judiciary and the Congress that are either collegial bodies or comprised by several individuals.

Anent the need for proper balancing before the immunity attaches, the OSG posits that national interest – the fight against illegal drugs – prevails over the supposed incessant intrusions on the rights of Sen. De Lima; that the statements of the President were made in furtherance of his constitutional duty to faithfully execute the laws; and that the Court must respect established precedents to the effect that absolute immunity pertains to the Chief Executive if no compelling arguments are