

EN BANC

[G.R. NO. 170924, July 04, 2007]

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF
CEZARI GONZALES AND JULIUS MESA ROBERTO RAFAEL
PULIDO, PETITIONER, VS. GEN. EFREN ABU, AS CHIEF OF STAFF
OF THE ARMED FORCES OF THE PHILIPPINES AND ALL PERSONS
ACTING IN HIS STEAD AND UNDER HIS AUTHORITY, AND GEN.
ERNESTO DE LEON, IN HIS CAPACITY AS THE FLAG OFFICER IN
COMMAND OF THE PHILIPPINE NAVY, AND ALL PERSONS
ACTING IN HIS STEAD AND UNDER HIS AUTHORITY,
RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals in CA- G.R. SP No. 90546 which dismissed the Petition for *Habeas Corpus* filed by petitioner Roberto Rafael Pulido (Pulido) in behalf of Cezari Gonzales and Julius Mesa, and imposed on petitioner the penalty of censure, and its Resolution^[2] dated 6 January 2006 denying his motion for reconsideration.

The facts are not disputed.

At around one o'clock in the morning of 27 July 2003, three hundred twenty-one (321) junior officers and enlisted personnel of the Armed Forces of the Philippines (AFP) entered and took over the premises of the Oakwood Premiere Luxury Apartments (Oakwood) located at the Glorietta Complex, Ayala Avenue, Makati City. They disarmed the security guards of said establishment and planted explosives in its immediate surroundings.

The soldiers publicly announced that they went to Oakwood to air their grievances against the administration of President Gloria Macapagal Arroyo (President Arroyo). They declared their withdrawal of support from the Commander-in-Chief of the AFP "President Arroyo " and demanded her resignation and that of the members of her cabinet and top officers of both the AFP and the Philippine National Police (PNP).

At about one o'clock in the afternoon, President Arroyo issued Proclamation No. 427 declaring the country to be under a "state of rebellion." Consequently, she issued General Order No. 4 directing the AFP and the PNP to carry out all reasonable measures, giving due regard to constitutional rights, to suppress and quell the "rebellion."

After a series of negotiations between the soldiers and the government negotiators, the former agreed to return to barracks, thus ending the occupation of Oakwood.

Among those involved in the occupation of Oakwood were Cezari Gonzales and Julius Mesa, both enlisted personnel of the Philippine Navy. It is in their behalf that the Petition for *Habeas Corpus* was filed before the Court of Appeals.

On 2 August 2003, then AFP Chief of Staff Narciso L. Abaya issued a directive^[3] to all Major Service Commanders and to the Chief of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) regarding the Custody of Military Personnel Involved in the 27 July 2003 Mutiny. On the strength thereof, Gonzales and Mesa were taken into custody by their Service Commander.

Gonzales and Mesa were not charged before a court martial with violation of the Articles of War. They were, however, among the soldiers charged before Branch 61 of the Regional Trial Court (RTC) of Makati City, with the crime of *Coup D'etat* as defined under Article 134-A of the Revised Penal Code. Said case entitled, "*People v. Capt. Milo D. Maestrecampo, et al.*" was docketed as Criminal Case No. 03-2784. On 18 November 2003, a Commitment Order was issued by the RTC committing custody of the persons of Gonzales and Mesa to the Commanding Officer of Fort San Felipe Naval Base, Cavite City.^[4]

On 8 December 2003, Gonzales and Mesa were discharged^[5] from military service.

On 16 December 2003, per order of the RTC, Criminal Case No. 03-2784 was consolidated with Criminal Case No. 03-2678 entitled, "*People v. Ramon B. Cardenas*" pending before Branch 148 of the RTC of Makati City, on the ground that the cases are founded on the same facts and/or formed part of a series of offenses of similar character.^[6]

In a Manifestation and Motion dated 3 March 2004, Commodore Normando Naval, Commander of Naval Base Cavite, asked the Makati RTC, Branch 148, to relieve him of his duty as custodian of Gonzales and Mesa and that the latter be transferred to the Makati City Jail.^[7] In an Order dated 29 April 2004, the RTC relieved him of his duty but ordered the transfer of Gonzales and Mesa from the Naval Base Cavite in Sangley Point, Cavite City, to the Philippine Marine Brigade Headquarters, Philippine Marine, Fort Bonifacio, Taguig, Metro Manila, under the custody of the Commander of the Marine Brigade of the Philippine Marines, Fort Bonifacio, Taguig, Metro Manila.^[8]

In an Order dated 8 July 2004, the RTC resolved the petitions for bail filed by the accused- soldiers. It admitted Gonzales and Mesa, and twenty-five other co-accused to bail pegging the amount thereof at P100,000.00 each.^[9]

On 19 July 2004, both Gonzales and Mesa posted bail.^[10] On 20 July 2004, the RTC issued orders directing the Commanding Officer of Philippine Marine Corps, Fort Bonifacio, Makati City, to release Gonzales and Mesa from his custody.^[11] Despite said orders and their service to the marines, Gonzales and Mesa were not released.

On 21 July 2004, the People of the Philippines moved for partial reconsideration^[12] of the order granting bail. Prior to the resolution of said motion, Jovencito R. Zuño, Chief State Prosecutor, advised Brig. Gen. Manuel F. Llana, Judge Advocate General,

to defer action on the provisional release of Gonzales and Mesa "until the Motion for Reconsideration shall have been resolved and attained finality."^[13] On 26 October 2004, the RTC denied the motion for partial reconsideration.

With the denial of the Motion for Partial Reconsideration, the People filed with the Court of Appeals on 4 February 2005 a special civil action for *certiorari* under Rule 65 of the Rules of Court with urgent prayer for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction, asking for the nullification and setting aside of the orders dated 8 July 2004 and 26 October 2004 of Judge Oscar B. Pimentel for having been issued without jurisdiction and/or grave abuse of discretion amounting to lack or excess of jurisdiction. The Petition for *Certiorari* was raffled to the Seventh Division and was docketed as CA-G.R. SP No. 88440 entitled, "*People of the Philippines v. Hon. Oscar B. Pimentel, Presiding Judge of the Regional Trial Court of Makati City, Branch 148.*" The Court of Appeals (Seventh Division) did not issue a TRO and/or preliminary injunction.

Since Gonzales and Mesa continued to be in detention, a Petition for *Habeas Corpus*^[14] was filed by petitioner Pulido on their behalf on 22 July 2005. The case was docketed as CA-G.R. SP No. 90546 and raffled to the Third Division. In support thereof, it was argued that since Gonzales and Mesa are no longer subject to Military Law as they had been discharged from the service on 8 December 2003, and since they are not charged before a court martial, the military authorities have no jurisdiction to detain them, and there is no legal ground to detain them further because a court order for their release had already been issued.

On 10 August 2005, the Court of Appeals (3rd Division) issued a Writ of *Habeas Corpus* directing respondents Gen. Efren Abu, Chief of Staff of the Armed Forces of the Philippines, and all persons acting in his stead and under his authority, and Gen. Ernesto de Leon, Flag Officer in Command of the Philippine Navy, and all persons acting in his stead and under his authority, to produce the bodies of Gonzales and Mesa before the Court and to appear and show the cause and validity of their detention.^[15]

On 18 August 2005, a return of the Writ of *Habeas Corpus* was made.^[16] Respondents prayed that the Petition for *Habeas Corpus* be dismissed primarily on two grounds: (1) the continued detention of Gonzales and Mesa is justified because of the pendency of the Petition for *Certiorari* questioning the order dated 8 July 2004 of the RTC granting bail to Gonzales and Mesa before the 7th Division of the Court of Appeals, docketed as CA-G.R. SP No. 88440; and (2) petitioner is guilty of forum shopping because of his failure to state in the petition that the order granting bail has been elevated to the Court of Appeals and pending before its 7th Division.

On 9 September 2005, the Court of Appeals (7th Division) rendered its decision in CA-G.R. SP No. 88440 dismissing the petition that questioned the propriety of the granting of bail to Gonzales, Mesa, and twenty-five of their co-accused.^[17]

On 12 September 2005, the Court of Appeals (3rd Division) dismissed the Petition for *Habeas Corpus* for violation of Section 5, Rule 7 of the Rules of Court. It ratiocinated:

A reading of the parties' submissions reveals a threshold issue - the charge of forum shopping and the related falsity in the certification supporting the petition. We must initially resolve these issues because a finding that the petitioner violated Section 5, Rule 7 of the Rules of Court can lead to the outright dismissal of the present petition. x x x

x x x x

The records show that the present petition contained the following certificate of non- forum shopping:

"I, ROBERTO RAFAEL PULIDO, with office address at Unit 1601, 16th Floor 139 Corporate Center Valero Street, Makati City, after having been duly sworn in accordance with law, do hereby state that:

1. I am the petitioner in the above-captioned case;
2. I have read the Petition and caused it to be prepared. All the contents thereof are true to my own personal knowledge and the record;
3. I have not heretofore commenced any action or proceeding involving the same issues, in the Supreme Court, the Court of Appeals, or any other tribunal or agency and to the best of my knowledge, no action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency; except for the related cases of "*Eugene Gonzales et al. vs. Gen. Narciso Abaya, et al.*", G.R. No. 164007 and "*Humabono Adaza et al., vs. Gen. Pedro Cabuay et al.*", G.R. No. 160792, both awaiting the resolution of the Supreme Court.
5. (sic, should be 4) If I should learn of any similar action or proceeding filed or is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency, I undertake to report such fact within five (5) days therefrom to this Court.

The present petition and its accompanying certification likewise show that the petitioner never mentioned the pendency before the Seventh Division of this Court of the certiorari case, SP 88440, for the annulment of the lower court's order granting the soldiers-accused's petition for bail, when this same lower court order is cited as basis for the immediate release of Gonzales and Mesa in the present petition. All that the certification mentioned were the related cases pending before the Honorable Supreme Court. Neither did the petitioner comply with his undertaking under his certification to inform this Court within five (5) days of the pendency of any similar action or proceeding filed or is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency, as in fact the certiorari case was already pending with this Court when the present petition was filed. The certiorari case was only brought to our attention after the respondents filed their Return of the Writ.

To be sure, the petitioner, who is also the counsel for the accused Gonzales and Mesa in the criminal case before Branch 148 RTC Makati

City and who represents Gonzales and Mesa as private respondents in CA-G.R. SP No. 88440, cannot feign ignorance of the pendency of the certiorari case. Why he deliberately kept the pendency of the certiorari case hidden from us, has not been sufficiently explained. We have no doubt, however, that his deliberate act of withholding information on a material fact directly required to be disclosed by the Rules of Court cannot but have legal consequences.

The primary basis of the present petition is the bail granted to and posted by Gonzales and Mesa. This is very clear from the petitioner's argument that "The continued detention of the enlisted personnel constitutes violation of the lawful orders of the civilian court." He cited in support of this argument the grant and the posting of the bail, and the issuance of the release orders by the lower court. He did not disclose, however, what subsequently happened to the order granting bail. He deliberately omitted in his narration the fact that the People moved to reconsider this order. Thus, he gave the impression that the order granting bail immediately became enforceable and that Gonzales" and Mesa's continued detention is illegal because their constitutional rights to bail, which have received judicial imprimatur, were continuously being violated by the respondents.

The petitioner next omitted the fact that after the denial of its motion for reconsideration of the order granting bail, the People filed the certiorari case before this Court, seeking to annul the lower court's order. While we are aware of the rule that "*the mere pendency of a petition for certiorari will not prevent the implementation of the assailed order unless the court where the petition was filed issues either a temporary restraining order or a writ or preliminary injunction*" the filing of a petition for habeas corpus while the order granting bail is being questioned on a petition for certiorari raises issues beyond the immediate execution of the lower court's bail and release orders. They raise questions on the propriety of filing the habeas corpus petition to seek the release of persons under detention, at the same time that a petition regarding their continued detention and release are pending. Apparently, the petitioner wanted to avoid these questions, prompting him to actively conceal the subsequent motion for reconsideration of the bail order and the petition for certiorari directly questioning this same order. ***In short, the petitioner conveniently omitted in his narration of facts the material factual antecedents detrimental to his cause; he chose to narrate only the factual antecedents favorable to his cause.***

That the present petition has direct and intimate links with the certiorari case is beyond doubt as they involve two sides of the same coin. The certiorari case filed by the People seeks to prevent the release of Gonzales and Mesa by annulling the lower court's grant of bail. The present petition, on the other hand, was filed in behalf of Gonzales and Mesa to secure their immediate release because the order granting bail is already executory. In effect, the petitioner seeks to implement through a petition for habeas corpus the provisional release from detention that the lower court has ordered. The question this immediately raises is: can this be done through a petition for habeas corpus when the validity of the