

## FIRST DIVISION

[ G.R. NO. 158763, March 31, 2006 ]

**JOSE C. MIRANDA, ALBERTO P. DALMACIO, AND ROMEO B. OCON, PETITIONERS, VS. VIRGILIO M. TULIAO, RESPONDENT.**

### DECISION

**CHICO-NAZARIO, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the 18 December 2002 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 67770 and its 12 June 2003 Resolution denying petitioners' Motion for Reconsideration. The dispositive portion of the assailed decision reads as follows:

WHEREFORE, finding public respondent Judge Anastacio D. Anghad to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Orders, the instant petition for certiorari, mandamus and prohibition is hereby GRANTED and GIVEN DUE COURSE, and it is hereby ordered:

1. The assailed Joint Order dated August 17, 2001, Order dated September 21, 2001, Joint Order dated October 16, 2001 and Joint Order dated November 14, 2001 dismissing the two (2) Informations for Murder, all issued by public respondent Judge Anastacio D. Anghad in Criminal Cases Nos. 36-3523 and 36-3524 are hereby REVERSED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction, and another entered UPHOLDING, AFFIRMING[,] and REINSTATING the Order dated June 25, 2001 and Joint Order dated July 6, 2001 issued by the then acting Presiding Judge Wilfredo Tumaliuan;
2. Criminal Cases Nos. 36-3523 and 36-3524 are hereby ordered REINSTATED in the docket of active criminal cases of Branch 36 of the Regional Trial Court of Santiago City, Isabela; and
3. Public respondent Judge Anastacio D. Anghad is DIRECTED to ISSUE forthwith Warrants of Arrest for the apprehension of private respondents Jose "Pempe" Miranda, SPO3 Alberto P. Dalmacio, PO3 Romeo B. Ocon and accused Rodel T. Maderal in said Criminal Cases Nos. 36-3523 and 36-3524.<sup>[2]</sup>

The factual and procedural antecedents of the case are as follows:

On 8 March 1996, two burnt cadavers were discovered in Purok Nibulan, Ramon, Isabela, which were later identified as the dead bodies of Vicente Bauzon and Elizer Tuliao, son of private respondent Virgilio Tuliao who is now under the witness protection program.

Two informations for murder were filed against SPO1 Wilfredo Leaño, SPO1 Ferdinand Marzan, SPO1 Ruben B. Agustin, SPO2 Alexander Micu, SPO2 Rodel Maderal, and SPO4 Emilio Ramirez in the Regional Trial Court (RTC) of Santiago City.

The venue was later transferred to Manila. On 22 April 1999, the RTC of Manila convicted all of the accused and sentenced them to two counts of *reclusion perpetua* except SPO2 Maderal who was yet to be arraigned at that time, being at large. The case was appealed to this Court on automatic review where we, on 9 October 2001, acquitted the accused therein on the ground of reasonable doubt.

Sometime in September 1999, SPO2 Maderal was arrested. On 27 April 2001, he executed a sworn confession and identified petitioners Jose C. Miranda, PO3 Romeo B. Ocon, and SPO3 Alberto P. Dalmacio, a certain Boyet dela Cruz and Amado Doe, as the persons responsible for the deaths of Vicente Bauzon and Elizer Tuliao.

Respondent Tuliao filed a criminal complaint for murder against petitioners, Boyet dela Cruz, and Amado Doe, and submitted the sworn confession of SPO2 Maderal. On 25 June 2001, Acting Presiding Judge Wilfredo Tumaliuan issued warrants of arrest against petitioners and SPO2 Maderal.

On 29 June 2001, petitioners filed an urgent motion to complete preliminary investigation, to reinvestigate, and to recall and/or quash the warrants of arrest.

In the hearing of the urgent motion on 6 July 2001, Judge Tumaliuan noted the absence of petitioners and issued a Joint Order denying said urgent motion on the ground that, since the court did not acquire jurisdiction over their persons, the motion cannot be properly heard by the court. In the meantime, petitioners appealed the resolution of State Prosecutor Leo T. Reyes to the Department of Justice.

On 17 August 2001, the new Presiding Judge Anastacio D. Anghad took over the case and issued a Joint Order reversing the Joint Order of Judge Tumaliuan. Consequently, he ordered the cancellation of the warrant of arrest issued against petitioner Miranda. He likewise applied this Order to petitioners Ocon and Dalmacio in an Order dated 21 September 2001. State Prosecutor Leo S. Reyes and respondent Tuliao moved for the reconsideration of the said Joint Order and prayed for the inhibition of Judge Anghad, but the motion for reconsideration was denied in a Joint Order dated 16 October 2001 and the prayer for inhibition was denied in a Joint Order dated 22 October 2001.

On 25 October 2001, respondent Tuliao filed a petition for *certiorari*, *mandamus* and prohibition with this Court, with prayer for a Temporary Restraining Order, seeking to enjoin Judge Anghad from further proceeding with the case, and seeking to nullify the Orders and Joint Orders of Judge Anghad dated 17 August 2001, 21 September 2001, 16 October 2001, and 22 October 2001.

On 12 November 2001, this Court issued a Resolution resolving to grant the prayer for a temporary restraining order against Judge Anghad from further proceeding with the criminal cases. Shortly after the aforesaid resolution, Judge Anghad issued a Joint Order dated 14 November 2001 dismissing the two Informations for murder against petitioners. On 19 November 2001, this Court took note of respondent's cash bond evidenced by O.R. No. 15924532 dated 15 November 2001, and issued

the temporary restraining order while referring the petition to the Court of Appeals for adjudication on the merits.

Respondent Tuliao filed with this Court a Motion to Cite Public Respondent in Contempt, alleging that Judge Anghad "deliberately and willfully committed contempt of court when he issued on 15 November 2001 the Order dated 14 November 2001 dismissing the informations for murder." On 21 November 2001, we referred said motion to the Court of Appeals in view of the previous referral to it of respondent's petition for *certiorari*, prohibition and *mandamus*.

On 18 December 2002, the Court of Appeals rendered the assailed decision granting the petition and ordering the reinstatement of the criminal cases in the RTC of Santiago City, as well as the issuance of warrants of arrest against petitioners and SPO2 Maderal. Petitioners moved for a reconsideration of this Decision, but the same was denied in a Resolution dated 12 June 2003.

Hence, this petition.

The facts of the case being undisputed, petitioners bring forth to this Court the following assignments of error:

#### **FIRST ASSIGNMENT OF ERROR**

With all due respect, the Honorable Court of Appeals gravely erred in reversing and setting aside the Joint Order of Judge Anastacio D. Anghad dated August 17, 2001, September 21, 2001, October 16, 2001 and November 14, 2001 issued in criminal cases numbered 36-3523 and 36-3524; and, erred in upholding, affirming and reinstating the Order dated July 6, 2001 issued by then Acting Presiding Judge Wilfredo Tumaliuan, on the alleged rule that an accused cannot seek any judicial relief if he does not submit his person to the jurisdiction of the court.

#### **SECOND ASSIGNMENT OF ERROR**

With all due respect, the Honorable Court of Appeals gravely erred in directing the reinstatement of Criminal Cases No. 36-3523 and 36-3524 in the docket of Active Criminal Cases of Branch 36 of the Regional Trial Court of Santiago City, Philippines, and in ordering the public respondent to re-issue the warrants of arrest against herein petitioners.

#### **THIRD ASSIGNMENT OF ERROR**

Wit all due respect, the Honorable Court of Appeals committed a reversible error in ordering the reinstatement of Criminal Cases No. 36-3523 and No. 36-3524 in the docket of active criminal cases of Branch 36 of the regional trial court of Santiago City, Philippines, and in ordering the public respondent to issue warrants of arrest against herein petitioners, the order of dismissal issued therein having become final and executory.

**Adjudication of a motion to quash a warrant of arrest requires neither jurisdiction over the person of the accused, nor custody of law over the body of the accused.**

The first assignment of error brought forth by the petitioner deals with the Court of Appeals' ruling that:

[A]n accused cannot seek any judicial relief if he does not submit his person to the jurisdiction of the court. Jurisdiction over the person of the accused may be acquired either through compulsory process, such as warrant of arrest, or through his voluntary appearance, such as when he surrenders to the police or to the court. It is only when the court has already acquired jurisdiction over his person that an accused may invoke the processes of the court (*Pete M. Pico vs. Alfonso V. Combing, Jr.*, A.M. No. RTJ-91-764, November 6, 1992). Thus, an accused must first be placed in the custody of the law before the court may validly act on his petition for judicial reliefs.<sup>[3]</sup>

Proceeding from this premise, the Court of Appeals ruled that petitioners Miranda, Ocon and Dalmacio cannot seek any judicial relief since they were not yet arrested or otherwise deprived of their liberty at the time they filed their "Urgent Motion to complete preliminary investigation; to reinvestigate; to recall and/or quash warrants of arrest."<sup>[4]</sup>

Petitioners counter the finding of the Court of Appeals by arguing that jurisdiction over the person of the accused is required only in applications for bail. Furthermore, petitioners argue, assuming that such jurisdiction over their person is required before the court can act on their motion to quash the warrant for their arrest, such jurisdiction over their person was already acquired by the court by their filing of the above Urgent Motion.

In arguing that jurisdiction over the person is required only in the adjudication of applications for bail, petitioners quote Retired Court of Appeals Justice Oscar Herrera:

Except in applications for bail, it is not necessary for the court to first acquire jurisdiction over the person of the accused to dismiss the case or grant other relief. The outright dismissal of the case even before the court acquires jurisdiction over the person of the accused is authorized under Section 6(a), Rule 112 of the Revised Rules of Criminal Procedure and the Revised Rules on Summary Procedure (Sec. 12a). In ***Allado vs. Diokno*** (232 SCRA 192), the case was dismissed on motion of the accused for lack of probable cause without the accused having been arrested. In ***Paul Roberts vs. Court of Appeals*** (254 SCRA 307), the Court was ordered to hold the issuance of a warrant of arrest in abeyance pending review by the Secretary of Justice. And in ***Lacson vs. Executive Secretary (301 SCRA 102)***<sup>[5]</sup>, the Court ordered the case transferred from the Sandiganbayan to the RTC which eventually ordered the dismissal of the case for lack of probable cause.<sup>[6]</sup>

In arguing, on the other hand, that jurisdiction over their person was already acquired by their filing of the above Urgent Motion, petitioners invoke our pronouncement, through Justice Florenz D. Regalado, in *Santiago v. Vasquez*:<sup>[7]</sup>

The voluntary appearance of the accused, whereby the court acquires jurisdiction over his person, is accomplished either by his pleading to the

merits (such as by filing a motion to quash or other pleadings requiring the exercise of the court's jurisdiction thereover, appearing for arraignment, entering trial) or by filing bail. On the matter of bail, since the same is intended to obtain the provisional liberty of the accused, as a rule the same cannot be posted before custody of the accused has been acquired by the judicial authorities either by his arrest or voluntary surrender.

Our pronouncement in *Santiago* shows a distinction between *custody of the law* and *jurisdiction over the person*. Custody of the law is required before the court can act upon the application for bail, but is not required for the adjudication of other reliefs sought by the defendant where the mere application therefor constitutes a waiver of the defense of lack of jurisdiction over the person of the accused.<sup>[8]</sup> Custody of the law is accomplished either by arrest or voluntary surrender,<sup>[9]</sup> while jurisdiction over the person of the accused is acquired upon his arrest or voluntary appearance.<sup>[10]</sup> One can be under the custody of the law but not yet subject to the jurisdiction of the court over his person, such as when a person arrested by virtue of a warrant files a motion before arraignment to quash the warrant. On the other hand, one can be subject to the jurisdiction of the court over his person, and yet not be in the custody of the law, such as when an accused escapes custody after his trial has commenced.<sup>[11]</sup> Being in the custody of the law signifies restraint on the person, who is thereby deprived of his own will and liberty, binding him to become obedient to the will of the law.<sup>[12]</sup> Custody of the law is literally custody over the body of the accused. It includes, but is not limited to, detention.

The statement in *Pico v. Judge Combong, Jr.*,<sup>[13]</sup> cited by the Court of Appeals should not have been separated from the issue in that case, which is the application for admission to bail of someone not yet in the custody of the law. The entire paragraph of our pronouncement in *Pico* reads:

A person applying for admission to bail must be in the custody of the law or otherwise deprived of his liberty. A person who has not submitted himself to the jurisdiction of the court has no right to invoke the processes of that court. Respondent Judge should have diligently ascertained the whereabouts of the applicant and that he indeed had jurisdiction over the body of the accused before considering the application for bail.<sup>[14]</sup>

While we stand by our above pronouncement in *Pico* insofar as it concerns bail, we clarify that, as a general rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court.<sup>[14]</sup> As we held in the aforecited case of *Santiago*, seeking an affirmative relief in court, whether in civil or criminal proceedings, constitutes voluntary appearance.

*Pico* deals with an application for bail, where there is the special requirement of the applicant being in the custody of the law. In *Feliciano v. Pasicolan*,<sup>[16]</sup> we held that "[t]he purpose of bail is to secure one's release and it would be incongruous to grant bail to one who is free. Thus, 'bail is the security required and given for the release of a person who is in the custody of law.'" The rationale behind this special rule on bail is that it discourages and prevents resort to the former pernicious practice wherein the accused could just send another in his stead to post his bail, without