

SECOND DIVISION

[G.R. No. 140520, December 18, 2000]

JUSTICE SERAFIN R. CUEVAS, SUBSTITUTED BY ARTEMIO G. TUQUERO IN HIS CAPACITY AS SECRETARY OF JUSTICE, PETITIONER, VS. JUAN ANTONIO MUÑOZ, RESPONDENT.

D E C I S I O N

DE LEON, JR., J.:

Before us is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals, dated November 9, 1999, directing the immediate release of respondent Juan Antonio Muñoz from the custody of law upon finding the Order^[2] of provisional arrest dated September 20, 1999 issued by Branch 19 of the Regional Trial Court of Manila to be null and void.

The antecedent facts:

On August 23, 1997, the Hong Kong Magistrate's Court at Eastern Magistracy issued a warrant for the arrest of respondent for seven (7) counts of accepting an advantage as an agent contrary to Section 9(1)(a) of the Prevention of Bribery Ordinance, Cap. 201 of Hong Kong, and seven (7) counts of conspiracy to defraud, contrary to the common law of Hong Kong.^[3] Said warrant remains in full force and effect up to the present time.^[4]

On September 13, 1999, the Philippine Department of Justice (hereafter, "Philippine DOJ") received a request for the provisional arrest of the respondent from the Mutual Legal Assistance Unit, International Law Division of the Hong Kong Department of Justice (hereafter, "Hong Kong DOJ")^[5] pursuant to Article 11(1) of the "Agreement Between The Government Of The Republic Of The Philippines And The Government Of Hong Kong For The Surrender Of Accused And Convicted Persons" (hereafter, "RP-Hong Kong Extradition Agreement").^[6] The Philippine DOJ forwarded the request for provisional arrest to the Anti-Graft Division of the National Bureau of Investigation (NBI).

On September 17, 1999, for and in behalf of the government of Hong Kong, the NBI filed an application for the provisional arrest of respondent with the Regional Trial Court (RTC) of Manila.

On September 20, 1999, Branch 19 of the RTC of Manila issued an Order granting the application for provisional arrest and issuing the corresponding Order of Arrest.^[7]

On September 23, 1999, respondent was arrested pursuant to the said order, and is currently detained at the NBI detention cell.^[8]

On October 14, 1999, respondent filed with the Court of Appeals, a petition for *certiorari*, prohibition and mandamus with application for preliminary mandatory injunction and/or writ of *habeas corpus* assailing the validity of the Order of Arrest. The Court of Appeals rendered a decision declaring the Order of Arrest null and void on the following grounds:

- (1) that there was no urgency to warrant the request for provisional arrest under Article 11(1) of the RP-Hong Kong Extradition Agreement;^[9]
- (2) that the request for provisional arrest and the accompanying warrant of arrest and summary of facts were unauthenticated and mere facsimile copies which are insufficient to form a basis for the issuance of the Order of Arrest;^[10]
- (3) that the twenty (20) day period for provisional arrest under Section 20(d) of Presidential Decree No. 1069 otherwise known as the Philippine Extradition Law, was not amended by Article 11(3) of the RP-Hong Kong Extradition Agreement which provides for a forty-five (45) day period for provisional arrest;^[11]
- (4) that the Order of Arrest was issued without the Judge having personally determined the existence of probable cause;^[12] and
- (5) that the requirement of dual criminality under Section 3(a) of P.D. No. 1069 has not been satisfied as the crimes for which respondent is wanted in Hong Kong, namely accepting an advantage as an agent and conspiracy to commit fraud, are not punishable by Philippine laws.^[13]

Thus, petitioner Justice Serafin R. Cuevas, in his capacity as the Secretary of the Department of Justice, lost no time in filing the instant petition.^[14]

On November 17, 1999, respondent filed an Urgent Motion For Release Pending Appeal. He primarily contended that, since Section 20(d) of P.D. No. 1069 sets the maximum period of provisional arrest at twenty (20) days, and he has been detained beyond the said period, without both a request for extradition having been received by the Philippine DOJ and the corresponding petition for extradition having been filed in the proper RTC, he should be released from detention.^[15]

On December 16, 1999, petitioner filed a Manifestation with this Court stressing the fact that as early as November 5, 1999, the Philippine DOJ had already received from the Hong Kong DOJ, a formal request for the surrender of respondent. Petitioner also informed this Court that pursuant to the said request for extradition, the Philippine DOJ, representing the Government of Hong Kong, filed on November 22, 1999, a verified petition for the extradition of respondent docketed as Case No. 99-95733 and currently pending in Branch 10 of the RTC of Manila.^[16]

Petitioner submits that the Court of Appeals erred in nullifying the Order of

provisional arrest against respondent.

Petitioner imputes the following errors in the subject Decision of the Court of Appeals, to wit:

I

The Court of Appeals gravely erred in holding that:

- A. there was no urgency for the provisional arrest of respondent;
- B. the municipal law (P.D. No. 1069) subordinates an international agreement (RP-Hongkong Agreement);
- C. the supporting documents for a request for provisional arrest have to be authenticated;
- D. there was lack of factual and legal bases in the determination of probable cause; and
- E. the offense of accepting an advantage as an agent is not an offense under the Anti-Graft and Corrupt Practices Act, as amended.

II

The Court of Appeals seriously erred in declaring as null and void the trial court's Order of Arrest dated September 20, 1999 despite that (sic) respondent waived the right to assail the order of arrest by filing in the trial court a motion for release on recognizance, that (sic) the issue of legality of the order of arrest was being determined by the trial court, and respondent mocked the established rules of procedure intended for an orderly administration of justice.^[17]

Petitioner takes exception to the finding of the Court of Appeals that the offense of accepting an advantage as an agent is not punishable under Republic Act (R.A.) No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act, thus, obviating the application of P.D. No. 1069^[18] that requires the offense to be punishable under the laws both of the requesting state or government and the Republic of the Philippines.^[19]

However, the issue of whether or not the rule of double criminality applies was not for the Court of Appeals to decide in the first place. The trial court in which the petition for extradition is filed is vested with jurisdiction to determine whether or not the offenses mentioned in the petition are extraditable based on the application of the dual criminality rule and other conditions mentioned in the applicable treaty. In this case, the presiding Judge of Branch 10 of the RTC of Manila has yet to rule on the extraditability of the offenses for which the respondent is wanted in Hong Kong. Therefore, respondent has prematurely raised this issue before the Court of Appeals and now, before this Court.

Petitioner's other arguments, however, are impressed with merit.

First. There was urgency for the provisional arrest of the respondent.

Section 20(a) of P.D. No. 1069 reads as follows:

Provisional Arrest. - (a) In case of urgency, the requesting state may, pursuant to the relevant treaty or convention and while the same remains in force, request for the provisional arrest of the accused, pending receipt of the request for extradition made in accordance with Section 4 of this Decree;

and Article 11 of the Extradition Agreement between the Philippines and Hong Kong provides in part that:

(1) In urgent cases, the person sought may, in accordance with the law of the requested Party, be provisionally arrested on the application of the requesting Party. x x x.

Nothing in existing treaties or Philippine legislation defines the meaning of "urgency" as used in the context of a request for provisional arrest. Using reasonable standards of interpretation, however, we believe that "urgency" connotes such conditions relating to the nature of the offense charged and the personality of the prospective extraditee which would make him susceptible to the inclination to flee or escape from the jurisdiction if he were to learn about the impending request for his extradition and/or likely to destroy the evidence pertinent to the said request or his eventual prosecution and without which the latter could not proceed.^[20]

We find that such conditions exist in respondent's case.

First. It should be noted that at the time the request for provisional arrest was made, respondent's pending application for the discharge of a restraint order over certain assets held in relation to the offenses with which he is being charged, was set to be heard by the Court of First Instance of Hong Kong on September 17, 1999. The Hong Kong DOJ was concerned that the pending request for the extradition of the respondent would be disclosed to the latter during the said proceedings, and would motivate respondent to flee the Philippines before the request for extradition could be made.^[21]

There is also the fact that respondent is charged with seven (7) counts of accepting an advantage as an agent and seven (7) counts of conspiracy to defraud, for each count of which, if found guilty, he may be punished with seven (7) and fourteen (14) years imprisonment, respectively. Undoubtedly, the gravity of the imposable penalty upon an accused is a factor to consider in determining the likelihood that the accused will abscond if allowed provisional liberty. It is, after all, but human to fear a lengthy, if not a lifetime, incarceration. Furthermore, it has also not escaped the attention of this Court that respondent appears to be affluent and possessed of sufficient resources to facilitate an escape from this jurisdiction.^[22]

The arguments raised by the respondent in support of his allegation that he is not a flight risk, are, to wit:

- a) He did not flee or hide when the Central Bank and the NBI investigated the matter alleged in the request for extradition

of the Hongkong Government during the second half of 1994; he has since been cleared by the Central Bank;

- b) He did not flee or hide when the Hongkong Government's Independent Commission Against Corruption (ICAC) issued a warrant for his arrest in August 1997; he has in fact filed a case in Hongkong against the Hongkong Government for the release of his frozen assets;
- c) He never changed his address nor his identity, and has sought vindication of his rights before the courts in Hongkong and in the Philippines;
- d) He has never evaded arrest by any lawful authority, and certainly will never fly away now that his mother is on her death bed.^[23]

do not convince this Court. That respondent did not flee despite the investigation conducted by the Central Bank and the NBI way back in 1994, nor when the warrant for his arrest was issued by the Hong Kong ICAC in August 1997, is not a guarantee that he will not flee now that proceedings for his extradition are well on the way. Respondent is about to leave the protective sanctuary of his mother state to face criminal charges in another jurisdiction. It cannot be denied that this is sufficient impetus for him to flee the country as soon as the opportunity to do so arises.

Respondent also avers that his mother's impending death makes it impossible for him to leave the country. However, by respondent's own admission, his mother finally expired at the Cardinal Santos Hospital in Mandaluyong City last December 5, 1999.^[24]

Second. Twelve (12) days after respondent was provisionally arrested, the Philippine DOJ received from the Hong Kong DOJ, a request for the surrender or extradition of respondent.

On one hand, Section 20(d) of P.D. No. 1069 reads as follows:

- (d) If within a period of twenty (20) days after the provisional arrest the Secretary of Foreign Affairs has not received the request for extradition and the documents mentioned in Section 4 of this Decree, the accused shall be released from custody.

On the other hand, Article 11(3) of the RP-Hong Kong Extradition Agreement provides that:

- (3) The provisional arrest of the person sought shall be terminated upon the expiration of forty-five days from the date of arrest if the request for surrender has not been received, unless the requesting Party can justify continued provisional arrest of the person sought in which case the period of provisional arrest shall be terminated upon the expiration of a reasonable time not being more than a further fifteen days. This provision shall not prevent the re-arrest or surrender of the person sought if the request for the person's surrender is received subsequently.