

Republic of the Philippines  
**COURT OF APPEALS**  
Manila

**SPECIAL FIRST DIVISION**

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**RONEO S. CLAMOR, LEONILO  
DOLORICON, OFELIA B.  
BALLETA, RAYMUNDO L.  
APUHIN, MARGIE M. OCASLA,  
REYNAN A. GABAN, MA.  
LUCRECIA QUINAWAYAN,  
ROY S. MONTES, MARIA  
CHRISTINA S. MACABENTA,  
EDGARDO GONZALES and  
COMMUNITY MEDICINE  
DEVELOPMENT FOUNDATION  
(COMMED), represented by its  
Secretary Dr. JULIE P.  
CAGUIAT,**

**CA-G.R. SP NO. 112695**

**Members:**

**HORMACHUELOS,  
Chairman  
PIZARRO, &  
ACOSTA, F. P., JJ.**

*Petitioners,*

**-versus-**

**GEN. VICTOR S. IBRADO, AFP  
CHIEF OF STAFF, GEN.  
DELFIN N. BANGIT,  
COMMANDING GENERAL,  
PHILIPPINE ARMY; COL.  
AURELIO BALADAD,  
COMMANDER OF THE 202<sup>nd</sup>  
INFANTRY BRIGADE,  
PHILIPPINE ARMY;  
PHILIPPINE NATIONAL  
POLICE DIRECTOR GENERAL  
JESUS A. VERZOSA; AND  
P/SUPT. MARION  
BALONGLONG, RIZAL  
PHILIPPINE NATIONAL**

POLICE,

*Respondents,*

Promulgated:

MAR 09 2010

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DISSENTING OPINION ~~FILED~~ TRUE COPY

ACOSTA, F. P., J.:

Atty. Marie Claire Victoria Mabutas-Soriano  
Division Clerk of Court  
Court of Appeals  
Manila

Director

***“... the Constitution, particularly the Bill of Rights, defines the limits beyond which lie unsanctioned state actions. But on occasion, for one reason or another, the State transcends this parameter. In consequence, individual liberty unnecessarily suffers. The case before us, if uncurbed, can be illustrative of a dismal trend. Needless injury of the sort inflicted by government agents is not reflective of responsible government.” - Allado vs. Diokno<sup>1</sup>***

On the premise that “We are a government of laws and not of men”, I regret I cannot join the Honorable Ponente in her opinion. It is my humble submission that this Court, sitting as a Habeas Corpus court, has the power to inquire into the legality of every aspect of the detention, despite the subsequent filing of the several informations against the 43 detainees. In other words, this Court is duty-bound **not** to take on its face the fact that informations have been filed against the detainees, and consider them as a **cure** to whatever

<sup>1</sup> G.R. 113630, 5 May 1994

violations the law enforcers may have committed against the basic constitutional rights of the detainees. Indeed, a re-examination of the doctrines cited in the *ponencia* is respectfully suggested. It becomes apparent that the doctrine in *Ilagan vs. Enrile*, which notably was decided during the Martial Law regime, has been used as a shield by law enforcers to escape from the court's claws of judicial inquiry. And it is precisely pursuant to that doctrine that the courts' hands are tied thereby preventing Us to pass judgment on the very reason why the Petitioners instituted the instant case. To quote the words of Justice SARMIENTO in his dissenting opinion in *Umil vs. Ramos*, "*in my considered opinion, Ilagan vs. Enrile does not rightfully belong in the volumes of Philippine jurisprudence*".

Correspondingly. We have to be reminded that this Court should always stand as a guarantor of the basic constitutional and human rights and It has the bounden duty to see to it that these rights are respected and enforced.

The following are my staunch submissions in the matter before this Court:

***The Search Warrant is not valid; The resultant arrest is likewise void.***

A scrutiny of the subject search warrant dated 5 February 2010 reveals that it blatantly failed to particularly specify the exact address where the search was supposed to be conducted. In essence, the subject search warrant is a "*general warrant*", one which has always been declared unconstitutional for failure to state with sufficient particularity the place or person to be searched or things to be seized. Notably, the search warrant in this case only indicated the name of the person to be searched, namely, MARIO CONDE, the barangay and the municipality where he is supposed to be found, obviously omitting the house number and street name, thereby rendering the address incomplete so as to enable the law enforcers to properly undertake the search

The 1987 Constitution mandates that there be a particular description of "the place to be searched and the persons or things to be seized."<sup>2</sup>

On several occasions, the Supreme Court did not hesitate striking down a warrant which, on its face, failed to specifically comply with the aforementioned constitutional requirement. In *People vs. Simbahon*<sup>3</sup>, the Supreme Court expressly emphasized the requirement of the particularity of the description of the place where

<sup>2</sup> Section 2, Article III, 1987 Constitution

<sup>3</sup> GR No. 132371, 9 April 2003

**Dissenting Opinion**

the search is to be conducted, to wit:

**xxx the warrant failed to describe the place to be searched with sufficient particularity. The rule is that a description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended. The constitutional requirement is a description which particularly points to a definitely ascertainable place, so as to exclude all others. xxx The Constitution and the Rules of Court limit the place to be searched only to those described in the warrant. The absence of a particular description in the search warrant renders the same void.**

Thus, considering that the search warrant is not valid, the search conducted pursuant to said warrant is necessarily rendered to be invalid. It is then as if there was no search warrant at all. Accordingly, the articles seized pursuant thereto are deemed to be the "*fruits of the poisonous tree*", thus, inadmissible as evidence. Definitely, the case against the detainees for illegal possession of firearms will not prosper for want of evidence. In *People vs. Aminnudin*<sup>4</sup>, the Supreme Court, speaking through Justice ISAGANI CRUZ, emphatically ruled:

**That evidence cannot be admitted, and should never have been considered by the trial court for the simple fact is that the marijuana was seized illegally. It is the *fruit of the poisonous tree*, to use**

<sup>4</sup> GR No. 74869, 6 July 1988

**Justice Holmes' felicitous phrase. The search was not an incident of a lawful arrest because there was no warrant of arrest and the warrantless arrest did not come under the exceptions allowed by the Rules of Court. Hence, the warrantless search was also illegal and the evidence obtained thereby was inadmissible.**

Consequently, the subsequent warrantless arrest undertaken cannot be legally justified. There must first be a lawful arrest before a search can be made and this process cannot at all be reversed. This was enunciated by the Supreme Court in *People vs. Chua Ho San*<sup>5</sup>, viz:

**xxx While a contemporaneous search of a person arrested may be effected to deliver dangerous weapons or proofs or implements used in the commission of the crime and which search may extend to the area within his immediate control where he might gain possession of a weapon or evidence he can destroy, a valid arrest must precede the search. The process cannot be reversed.**

**In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, e.g., whether an arrest was merely used as a pretext for conducting a search. In this instance, the law requires that there be first a lawful arrest before a search can be made - the process cannot be reversed. (underscoring supplied for emphasis)**

<sup>5</sup> GR No. 128222, 17 June 1999

**Dissenting Opinion**

The law enforcers cannot just indiscriminately intrude into the abode of Dr. MELECIA VELMONTE and claim that the Petitioners found congregating therein were committing an offense or have just committed an offense considering that they were not legally armed with the authority to barge into the premises. This is, fundamentally, the very act which is abhorred by Section 2, Article III of the Constitution.

Still, even if it is conceded that the search warrant was valid, the simple act of the Petitioners congregating in the subject premises is not tantamount to the commission of the alleged offense. Mere presence of persons at the crime scene, without more, is inadequate to support the conclusion that they committed the crime.<sup>6</sup>

Stated differently, none of the grounds for warrantless arrest enumerated under Section 5, Rule 113 of the Rules of Court was present when the arrest was done. Again, it cannot be gainsaid that at the time of the search, none of the Petitioners was actually committing or has just committed an offense. Besides, the records reveal that the basis for the application of the search warrant was an incident which happened on 3 January 2010, allegedly involving a certain MARIO CONDE, who was brandishing a firearm. Notably, CONDE was not in the subject premises when the search was

<sup>6</sup> People vs. Lapavie, GR No. 130209, 14 March 2001

conducted. Such was the purported reason why the search warrant was in the first place issued. However, the acts carried out by the arresting officers are hardly in consonance with the said reasons which they themselves provided the court to issue the warrant.

***The inquest proceedings conducted thereafter is not valid.***

Section 14, Article III of the 1987 Constitution provides, *inter alia*, that in all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel. Pursuant thereof, Republic Act No. 7438 or AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF was enacted, which provides among others that:

**Section 1. Statement of Policy. - It is the policy of the State to value the dignity of every human being and guarantee full respect for human rights.**

**Section 2. Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers. -**

**(a) Any person arrested detained or under custodial investigation shall at all times be assisted by counsel.**

**Section 3. Assisting Counsel – xxx**

**In the absence of a lawyer, no custodial investigation shall be conducted and the suspected person can only be detained by the investigating officer in accordance with the provisions of Article 125 of the Revised Penal Code.**

Surprisingly in the present case, when the inquest proceedings were conducted upon the persons of the Petitioners, they were not allowed to be assisted by their counsels. Evidently, in view of the apparent illegality of the proceedings, the same should be deemed to be invalid, thus, it is as if the Respondents never conducted inquest proceedings on the Petitioners

In essence, a preliminary investigation, or inquest like in the instant case, is a judicial inquiry. It is subject to the requirements of both substantive and procedural due process.<sup>7</sup> Stated differently, preliminary investigation or inquest is a component part of due process in criminal justice.<sup>8</sup> Hence, it goes to the very heart of the Bill of Rights provisions of the constitution. In effect, to deny an accused of any of his rights during the conduct of an inquest proceedings would be to deprive him of his right to due process, thereby invalidating the entire proceedings. The subsequent filing of the information based on a defective proceedings would just put at

<sup>7</sup> Uy vs. Ombudsman, GR Nos. 156399-400, 27 June 2008

<sup>8</sup> Duterte vs. Sandiganbayan, GR No. 130191, 27 April 1998

naught the most cherished right in all civilized nations. We might as well relegate the right to liberty from its prime position among the protected rights in our fundamental law to just some obscure crevice not worth revisiting.

Any action on Our part upholding the detention bodes ill for this Court and the entire nation. It is a desertion of our most solemn duty as the guardian of civil liberties, instead of continuously bearing, mighty and proud, the torch of freedom to illuminate the nooks and crannies of our democratic country.

***The information filed before the Regional Trial Court is null and void. Hence, the RTC has no jurisdiction over the case.***

Considering that the inquest proceeding, which was the basis of the filing of the information before the RTC, is invalid, the said information therefore should likewise be invalid. Necessarily, the RTC does not have jurisdiction to hear the case, much less the power to issue the commitment order to justify the continued detention of the Petitioners.

Section 4, Rule 102 of the Rules of Court provides that the issuance of the writ of habeas corpus may not be allowed when the

alleged restraint of the Petitioners' liberty is by virtue of a process of a court which had jurisdiction to issue the same. However, in the instant case, it is my stand that the privilege of the writ of habeas corpus should be **granted** considering that the RTC's lack of jurisdiction over the case renders the *commitment order* issued to be invalid. Simply put, the continued detention of the Petitioners is, at the very least, highly irregular

The pronouncement of the Supreme Court in *Calvan vs. Court of Appeals*<sup>9</sup>, through Justice JOSE VITUG, is in point

**The inquiry on a writ of habeas corpus is addressed, not to errors committed by a court within its jurisdiction, but to the question of whether the proceeding or judgment under which the person has been restrained is a complete nullity. The probe may thus proceed to check on the power and authority, itself an equivalent test of jurisdiction, of the court or the judge to render the order that so serves as the basis of imprisonment or detention. Keeping in mind the limitation that in habeas corpus the concern is not merely whether an error has been committed in ordering or holding the petitioner in custody, but whether such error is sufficient to render void the judgment, order, or process, an inquiry into the validity of the proceedings or process can be crucial in safeguarding the constitutional right of a potential accused against an obvious and clear misjudgment. The intrinsic right of the State to prosecute and detain perceived transgressors of the law must be balanced with its duty to protect**

9 GR No. 140823, 3 October 2000

**the innate value of individual liberty.**

**xxx**

**While it is true that the usual remedy to an irregular preliminary investigation is to ask for a new preliminary or a reinvestigation, such normal remedy would not be adequate to free petitioner from the warrant of arrest which stemmed from that irregular investigation. xxx**

In this case, it is noteworthy that the authorities were trying to cure everything by filing the criminal informations against the detainees on 11 February 2010, the day after the Supreme Court issued the writ of Habeas Corpus directing the Respondents to produce the bodies of the 43 detainees before this Court. Apparently, it was only on 12 February 2010 that the commitment orders were issued by the RTC of Morong, Rizal, Branch 78, the day the Respondents were required to produce the 43 detainees before Us. Such that on even date, during the hearing, the Respondents failed to comply with the order of the Supreme Court on the flimsy excuse that they do not have logistics to secure the presentation of the 43 detainees while they are in fact the biggest military establishment in this country. Interestingly, it was only on 15 February 2010 that the 43 detainees were presented before this Court. Indeed, the undue delay employed by the Respondents in the presentation of the detainees reeks of bad faith which should never be condoned.

Moreover, one could not help but wince on the thought that 40

of the 43 informations filed against the subject detainees pertain to illegal possession of explosives under Republic Act No. 9516, an offense punishable by *Reclusion Perpetua*, hence, generally not bailable. Obviously, these informations were intended to ensure their continued incarceration. Certainly, in view of the grave violations posed upon the detainees, passing the burden of resolving the validity of the subject procedures to the lower court cannot be tolerated. It would then be a useless roundabout which will serve no practical purpose other than to prolong the violations of Petitioners' constitutional rights. Resultantly, passing the issues at hand to the lower court would give an impression that this Court is washing its hands on a matter which necessitates an extremely urgent resolution and attention.

Once and for all, We must free ourselves from the shackles of "curative informations" if We are to protect our cherished constitutional rights. If We continue to adhere blindly to the rule that once an information is filed, the Writ of Habeas Corpus is unavailable without due regard to the procedural orderliness of the antecedent proceedings that gave "life" to such an information, We would then be sanctioning lawlessness on the part of authorities who have once taken the oath to uphold the law. Allowing curative informations to justify illegal searches, arrests and detentions would definitely make every habeas corpus proceeding an exercise in futility, similar to a salt that had lost its taste. This is absolutely repugnant to the basic

and primordial constitutional right to due process of law.

I therefore vote to grant the privilege of the writ of habeas corpus to the Petitioners.

**ORIGINAL SIGNED**  
**FRANCISCO P. ACOSTA**

Associate Justice