

408 Phil. 102

## THIRD DIVISION

[ G.R. No. 141938, April 02, 2001 ]

**TUNG CHIN HUI, PETITIONER, VS. RUFUS B. RODRIGUEZ,  
COMMISSIONER OF IMMIGRATION AND THE BOARD OF  
COMMISSIONERS, BUREAU OF IMMIGRATION AND DEPORTATION,  
RESPONDENTS.**

### DECISION

#### PANGANIBAN, J.:

The writ of *habeas corpus* cannot be issued in cases in which the Bureau of Immigration has duly ordered the deportation of undocumented aliens, specifically those found guilty of illegally entering the Philippines with the use of a tampered and previously cancelled passports.

#### The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the July 30, 1999 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-GR SP No. 51723. The dispositive portion of the CA Decision reads as follows:

"WHEREFORE, premises considered, the appeal is hereby **GRANTED**. The petition for habeas corpus is hereby **DISMISSED**. No pronouncement as to costs.

"SO ORDERED."<sup>[2]</sup>

The CA reversed the January 7, 1999 Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Manila, which disposed as follows:

"WHEREFORE, premises considered, judgment is hereby rendered GRANTING the petition, and as such, public respondent, Hon. Rufus Rodriguez, Commissioner, Bureau of Immigration and Deportation, is hereby ordered to immediately release the person of petitioner, Tung Chin Hui, from his official custody, upon receipt of this Decision."<sup>[4]</sup>

Also challenged by petitioner is the February 4, 2000 CA Resolution<sup>[5]</sup> denying his Motion for Reconsideration.

#### The Facts

Petitioner, a "Taiwanese national,"<sup>[6]</sup> arrived in this country on November 5, 1998, as a

temporary visitor. A few days later, he was arrested by several policemen, who turned him over to the Bureau of Immigration and Deportation (BID).

Petitioner was duly charged. In due course, the BID Board of Commissioners issued a Summary Deportation Order dated November 25, 1998, finding him guilty of possessing a tampered passport earlier cancelled by Taiwanese authorities.

On December 11, 1998, petitioner filed before the Regional Trial Court (RTC) of Manila a Petition for *Habeas Corpus* on the ground that his detention was illegal. In their Return of Writ, respondents denied petitioner's claim. In a Decision dated January 7, 1999, the trial court granted his Petition and ordered his release. In its January 29, 1999 Order, it denied respondents' Motion for Reconsideration.

Respondents, who received the trial court's January 29, 1999 Order on February 11, 1999, then filed a Notice of Appeal on February 16, 1999. In an Order dated February 18, 1999, the RTC rejected petitioner's Opposition and granted due course to the Notice of Appeal.

Subsequently, the appellate court rendered its July 30, 1999 Decision, which as earlier mentioned reversed the trial court.

Meanwhile, during the pendency of the proceedings before the CA, petitioner filed a Petition for *Certiorari*<sup>[7]</sup> before this Court, docketed as GR No. 137571, contending that the RTC should have rejected the appeal for allegedly being filed late -- beyond the 48-hour period provided under the pre-1997 Rules of Court. In its September 21, 2000 Decision which became final on October 31, 2000,<sup>[8]</sup> this Court denied the Petition.

### **Ruling of the Court of Appeals**

The appellate court held that petitioner was not entitled to the writ of *habeas corpus*, because the BID Board of Commissioners had found him guilty of violating Section 37 (a) of the Philippine Immigration Act of 1940, as amended. Citing documents from the Taiwan Economic and Cultural Offices (TECO), the CA found that petitioner's passport had been cancelled by the Republic of China on the ground that its holder was not the real Tung Chin Hui, but a fugitive from justice who had tampered the passport. The CA also held that the TECO documents, being public in nature, need not be testified to by the persons who had issued them.

Hence, this Petition.<sup>[9]</sup>

### **The Issues**

In his Memorandum, petitioner submits the following issues for the consideration of this Court:<sup>[10]</sup>

#### **"A. PRINCIPAL ISSUES:**

- (1) Is the reglementary period within which to appeal in habeas

corpus cases forty-eight hours from notice of the Decision appealed from? (as petitioner contends); or is it 15 days similar to other cases, from notice of the Decision? (as contended by the respondents);

- (2) Was the appeal taken by the respondents from the Order of the Regional Trial Court of Manila, Branch 26, denying respondents' Motion for Reconsideration, proper? (as postulated by the respondents) or improper and not allowable being violative of Sec. 1 (a), Rule 41, of the 1997 Rules of Civil Procedure? (as comprehended by the petitioner)

A. SECONDARY ISSUES:

- (1) Should the Court of Appeals give weight to findings of fact arrived at by the Regional Trial Court of Manila, Branch 26, based on the evidence presented or adduced during the trial of the case, in keeping with established precedents?
- (2) May the Honorable Court of Appeals consider extraneous facts brought out by the respondents in their memorandum but are not supported by the evidence presented, identified and admitted by the trial court during the hearing of the case?
- (3) Did the Court of Appeals acquire jurisdiction over the case when the appeal was filed out of time and the Order appealed from is not appealable?"

In the main, this Court will resolve the propriety of issuing a writ of *habeas corpus*. As a preliminary matter, the Court will also consider the propriety of the appeal before the CA.

The Court's Ruling

The Petition is not meritorious.

**Preliminary Matter:**  
**Propriety of the Appeal**

Petitioner contends that the appeal from the trial court to the CA was improper for two reasons: (1) it was filed beyond the reglementary 48-hour period provided under the pre-1997 Rules of Court; and (2) it assailed not a judgment but a resolution denying a motion for reconsideration, contrary to Section 1<sup>[11]</sup> of Rule 41.<sup>[12]</sup>

This Court already rejected the same arguments in its earlier Decision in GR No. 137571,<sup>[13]</sup> which debunked petitioner's challenge to the propriety of the appeal. Pertinent portions of that Decision are reproduced below:

"Clearly then, the reglementary period for filing an appeal in a habeas corpus case is now similar to that in ordinary civil actions and is governed by

Section 3, Rule 41 of the 1997 Rules, which provides:

SEC. 3. *Period of ordinary appeal.* -- The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.'

In this light, the appeal was seasonably filed within the 15-day reglementary period.

x x x x x x x x

We agree with respondents. In referring to the trial court's 'judgment,' respondents were clearly appealing the January 7, 1999 Decision. Had they thought otherwise, they would have referred to the 'Order.' Indeed, 'judgment' is normally synonymous with 'decision.'

Furthermore, the wrong date of the appealed judgment may be attributed merely to inadvertence. Such error should not, by itself, deprive respondents of their right to appeal. x x x."

**Main Issue:**

**Propriety of the Writ of Habeas Corpus**

Habeas corpus is a writ directed to a person detaining another, commanding the former to produce the body of the latter at a designated time and place.<sup>[14]</sup> Section 1, Rule 102 of the Rules of Court provides that "the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto." The objective of the writ is to determine whether the confinement or detention is valid or lawful.<sup>[15]</sup> If it is, the writ cannot be issued.

In the present case, petitioner's confinement is in accord with Section 37 (a) of the Philippine Immigration Act of 1940, as amended, which reads as follows:

"Section 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of another officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

x x x x x x x x

(7) Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a non-immigrant;

x x x x x x x x."

One such condition for the admission of aliens is found in Section 10 of the same law, which requires them to "present for admission into the Philippines unexpired passports or official documents in the nature of passports issued by the governments of the countries to which they owe allegiance or other travel documents showing their origins and identity as prescribed by regulations, x x x."

Herein petitioner was properly charged before the Bureau of Immigration for illegally entering the Philippines with the use of a passport issued to another person and cancelled by the Taiwanese government in 1995. The Charge Sheet reads as follows:

#### "CHARGE SHEET

The undersigned Special Prosecutor charges for deportation CHEN KUAN-YUAN @ TUNG, CHIN-HUI @ DONG TUNG, Taiwanese national for violation of Section 37 (a) (7) of the Philippine Immigration Act of 1940, as amended, committed as follows:

`that on November 21, 1998, respondent was turned over by the Western Police District to immigration authorities and upon investigation, it was found out that respondent [was] an undocumented alien it appearing that respondent [was] in possession of a tampered Taiwanese passport which was cancelled by the Taiwanese Ministry of Foreign Affairs on July 19, 1995, in violation of Sec. 37 (a) (7) of the Philippine Immigration Act of 1940, as amended."

Subsequently, on November 25, 1998, the BID Board of Commissioners issued the Summary Deportation Order, which is reproduced in full as follows:

#### "SUMMARY DEPORTATION ORDER

Records show that on November 21, 1998, respondent was turned over by the WESTERN POLICE DISTRICT to immigration authorities and upon investigation, it was found out that respondent [was] an undocumented alien, it appearing that he [was] in possession of a tampered Taiwanese Passport which was cancelled by the Taiwanese Ministry of Foreign Affairs on July 10, 1995.

Accordingly, on November 25, 1998, deportation charges were filed against respondent with the Board of Commissioners for violation of Sec. 37 (a) (7) of the Philippine Immigration Act of 1940, as amended.

After a careful examination of the records, we determine that respondent has violated the above-cited provision.

WHEREFORE, premises considered, the Board of Commissioners hereby orders that summary deportation of respondent, CHEN KUAN-YUAN @ TUNG CHIN-HUI @ DONG TUNG to his country of origin subject to the submission of the usual clearances.

Include his name in the Blacklist upon implementation of this Order.

The Chief of the Civil Security Unit is hereby directed to implement this Order within three (3) days from receipt hereof.

Give respondent a copy of this Order.

SO ORDERED."

Echoing the holding of the RTC, herein petitioner argues that no evidence was presented to prove that he was an "undocumented alien"; that is, that he tampered with a passport that had already been cancelled by the Taiwanese government. He further contends that he was in fact allowed to enter the Philippines seventeen times from 1995 to 1998, notwithstanding the alleged cancellation of his passport in 1995. [16]

These contentions are not meritorious. The Return of the Writ submitted by respondents before the trial court clearly shows that petitioner had lawfully been charged and ordered deported for being an undocumented alien. Section 13, Rule 102 of the Rules of Court specifically provides that "the return [of the writ] shall be considered *prima facie* evidence of the cause of the restraint; x x x."

Moreover, attached to the Return of the Writ were copies of official letters of the Taiwan Economic and Cultural Offices. These documents show that petitioner, whose real name is Chen Kuan-Yuan, was using a passport that had already been cancelled by the Taiwanese government in 1995 and previously issued to a man named Tung Chin Hui. The two letters are reproduced in full hereunder:

"November 24, 1998

Honorable Rufus B. Rodriguez  
Commissioner  
Bureau of Immigration  
Magallanes Drive, Intramuros  
Manila

Attention: Chief, Intelligence Division

Sir:

In behalf of the Bureau of Immigration of the Republic of China, I would like to inform your good office that Taiwanese fugitive MR. CHEN, KUAN-YUAN (D.O.B. October 12, 1956) tampered Republic of China passport number M

9534820, issued to MR. TUNG, CHIN-HUI (D.O.B. November 26, 1956). The said passport was cancelled by the Republic of China Ministry of Foreign Affairs on July 19, 1995.

Very truly yours,

KUO, KUANG-KWO  
Senior Assistant

Encl. Fingerprint of Mr. Tung, Chin-Hui"

"November 19, 1998

Honorable Rufus B. Rodriguez  
Commissioner  
Bureau of Immigration  
Magallanes Drive, Intramuros  
Manila

Attention: Chief, Intelligence Division

Sir:

In behalf of the Bureau of Immigration of the Republic of China, I have the honor to seek your kind assistance to deport MR. CHEN, KUAN-YUAN (D.O.B. 12 October 1956). Mr. Chen was sentenced to 8 years and 2 months imprisonment for drug trafficking and violation of controlling guns, ammunition and knives law. Mr. Chen was arrested by the Western Police District Command last November 16, 1998 through the request of the Republic of China International Police. According to the travel record of the said fugitive he has no record of leaving Taiwan.

Your immediate action and assistance in this matter will be highly appreciated.

Very truly yours,

KUO, KUANG-KWO  
Senior Assistant"

The above-quoted official letters demonstrate the speciousness of petitioner's contention that his passport could not have been cancelled in 1995, inasmuch as he was allowed to enter the country as late as 1998. The letters show that the Philippine government was informed about the cancellation only in 1998.

Furthermore, the foregoing letters of the official representative of the Taiwanese government belie petitioner's submission that there was no evidence to prove the findings of the CA and the Board of Commissioners.<sup>[17]</sup> Verily, these documents constitute sufficient justification for his deportation. As the Court held in the landmark

case *Forbes v. Chuoco Tiaco*,<sup>[18]</sup> "[t]he mere fact that a citizen or subject is out of the territory of his country does not relieve him from that allegiance which he owes to his government, and his government may, under certain conditions, properly and legally request his return."<sup>[19]</sup>

### ***Alleged Lack of Notice***

We likewise reject petitioner's reliance on the ruling of the trial court that "[w]hile it may be true that there is a Summary Deportation Order against the petitioner allegedly for being [an] undocumented alien, having used a passport which had already been cancelled, there is no showing that he was informed about it."<sup>[20]</sup>

Other than petitioner's bare allegations, however, we find no sufficient basis to overturn the presumption that the Bureau of Immigration conducted its proceedings in accordance with law.<sup>[21]</sup>

In any event, when petitioner filed the Petition for *Habeas Corpus* before the RTC, he was afforded ample opportunity to air his side and to assail the legal and factual bases of the Board of Commissioners' Summary Deportation Order. Moreover, he could have raised the same points in the proceedings before the CA and even before this Court. Indeed, an alien has the burden of proof to show that he entered the Philippines lawfully.<sup>[22]</sup> Petitioner has not discharged this burden. He has not controverted -- either before the RTC, the CA or this Court - the Board of Commissioners' ruling that he was in fact Chen Kuan-Yuan, who was "sentenced to 8 years and 2 months imprisonment for drug trafficking and violation of controlling guns, ammunition and knives law" and was holding a passport cancelled by the Republic of China in 1995.

Just as unmeritorious is petitioner's contention that "at the time of his detention, there was no deportation charge filed against him."<sup>[23]</sup> Assuming *arguendo* that his arrest was illegal, supervening events bar his subsequent release.<sup>[24]</sup> In this case, when the Petition for *Habeas Corpus* was filed, petitioner had already been charged and ordered deported by the Board of Commissioners.

In sum, we hold that petitioner's confinement was not illegal; hence, there is no justification for the issuance of a writ of *habeas corpus*. Moreover, he has not shown any cogent reason to warrant the nullification of the Board of Commissioners' Summary Deportation Order.

WHEREFORE, the Petition is ***DENIED***, and the assailed Decision ***AFFIRMED***. Costs against petitioner.

SO ORDERED.

*Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.*



- [1] *Rollo*, pp. 19-29. Penned by Justice Mariano M. Umali, with the concurrence of Justices Quirino D. Abad Santos Jr. (Division chairman) and Romeo S. Callejo Sr.
- [2] CA Decision, p. 11; *rollo*, p. 29.
- [3] Written by Judge Guillermo L. Loja Sr.
- [4] *Rollo*, pp. 70 and 116.
- [5] *Rollo*, pp. 61-63.
- [6] Petition, p. 1; *rollo*, p. 3.
- [7] Entitled *Tung Chin Hui v. Rufus Rodriguez and BID Board of Commissioners* and docketed as GR No. 137571.
- [8] Entry of Judgment; *rollo* (GR No. 137571), p. 175.
- [9] The case was deemed submitted for resolution on October 4, 2000, upon receipt by this Court of petitioner's Memorandum signed by Atty. Marciano J. Cagatan. Filed earlier was respondents' Memorandum, signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Magdangal M. de Leon and Solicitor Renan E. Ramos.
- [10] Petitioner's Memorandum, pp. 4-5; *rollo*, pp. 117-118.
- [11] It provides that "[n]o appeal may be taken from: (a) an order denying a motion for new trial or reconsideration; x x x."
- [12] Petitioner's Memorandum, pp. 5-7; *rollo*, pp. 118-120.
- [13] *Tung Chin Hui v. Rodriguez*, GR No. 137571, September 21, 2000, per Panganiban, J. Citations omitted.
- [14] *Ilusorio v. CA*, GR No. 139808, May 12, 2000; citing Moran, *Comments on the Rules of Court*, Vol. III, 1997 ed., p. 780.
- [15] See *Sombong v. CA*, 252 SCRA 663, January 31, 1996; *Ordonez v. Vinarao*, 239 SCRA 114, December 8, 1994.
- [16] Petitioner's Memorandum, pp. 8-9; *rollo*, pp. 121-122.
- [17] Indeed, Section 13 of Rule 102 provides as follows "If it appears that the prisoner is in custody under a warrant of commitment in pursuance of law, the return shall be considered prima facie evidence of the cause of the restraint; x x x."

[18] 16 Phil. 534, 571-572 [1910], per Johnson, J.

[19] Under Law Instruction No. 31 issued on June 8, 1988, by Hon. Miriam Defensor Santiago, then Commissioner of Immigration, "if the foreign embassy cancels the passport of the alien, he loses the privilege to enter or remain in the country. The automatic loss of the privilege obviates deportation proceedings under the Immigration Act, Section 37; or the Administrative Code, Section 69." In such case, "the Board of Commissioners may issue a summary judgment of deportation, which is immediately executory." See also Office Memorandum Order No. 34 dated August 21, 1989, issued by Acting Immigration Commissioner Bienvenido P. Alano Jr.

[20] Petitioner's Memorandum, p. 7; rollo, p. 120.

[21] Section 3 (m), Rule 131, Rules of Court.

[22] Section 37 (d), Philippine Immigration Act of 1940, as amended.

[23] Petitioner's Memorandum, p. 9; rollo, p. 122.

[24] See *Velasco v. CA*, 245 SCRA 677, July 7, 1995; *Paredes v. Sandiganbayan*, 193 SCRA 464, January 28, 1991; *Cruz v. Montoya*, 62 SCRA 543, February 25, 1975; *Matsura v. Director of Prisons*, 77 Phil. 1050 [1947].



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