G.R. No. 227635 (*LEILA M. DE LIMA v. RODRIGO ROA DUTERTE, IN HIS CAPACITY AS PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES*)

Promulgated:
October 15, 2019

x ---------- x

SEPARATE CONCURRING OPINION

REYES, A., JR., *J.*:

In the main, the Court is tasked to resolve the issue of whether the respondent, an incumbent President of the Philippines, may be the subject of a Petition for the issuance of a writ of *habeas data*.

Petitioner submits that the instant case is beyond the ambit of presidential immunity on two points: *first,* as it involves the actions and statements made by the respondent not in pursuance of his functions as Chief Executive; and *second,* because a petition for the issuance of a writ of *habeas data* does not involve the determination of administrative, civil, or criminal liability but only seeks to enjoin respondent from committing the act or acts complained of.

I disagree on both points.

On the first, I join the opinion of Chief Justice Lucas P. Bersamin, that the concept of presidential immunity is absolute and all-encompassing during the period of incumbency of the President. Simply, presidential immunity extends even to petitions for the issuance of the special prerogative writs of *amparo* and *habeas data*, brought before the court during the President's tenure.

Then, even assuming that the instant petition for the issuance of *habeas data* may be entertained by the Court, the same should still be dismissed on account of substantial and procedural deficiencies.

An incumbent President is absolutely immune from any suit, legal

proceeding or judicial process during his tenure.

No less than the Constitution guarantees the President, as head of the executive department, immunity from suit during his period of incumbency. Jurisprudence on the subject matter later clarified that presidential immunity covers any suit, legal proceeding or judicial process.

The nature and scope of the immunity of the President during his tenure is absolute. After his tenure, such immunity will only extend to official acts done by him during his tenure. The rationale for this is simple, as elucidated by the Court in *Prof. David v. Pres. Macapagal-Arroyo*:[1]

> Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.[2]

It is my submission that Presidential immunity extends even to the issuance of the prerogative **writ of *habeas data*. While the Court has yet to rule on this particular issue, analogous cases supports the foregoing conclusion.**

In the case of *In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Rodriguez*,[3] which involved the filing of a petition for the issuance of a writ of *amparo* and *habeas data* in favor of Noriel H. Rodriguez (Rodriguez), former President Gloria Macapagal-Arroyo (President Arroyo) was named as one of therein respondents. The Court of Appeals (CA), in its Decision[4] dated April 12, 2010, found therein respondents – with the exception of Calog, Palacpac or Harry – to be accountable for the violations of Rodriguez's right to life, liberty and security. The CA, however, dismissed the petition with respect to former President Arroyo on account of her presidential immunity from suit; explaining that, at the time of the filing of the petition and

---

1 522 Phil. 705 (2006).
2 Id. at 795.
3 676 Phil. 84 (2011).
4 Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Normandie B. Pizarro and Florito S. Macalino; *rollo* (G.R. No. 191805), pp. 29-74;

promulgation of the CA decision, she was the incumbent president of the Philippines.

When the case was elevated to this Court through a Petition for Partial Review on *Certiorari*, the case, docketed as G.R. No. 191805[5] was brought before the Court *En Banc,* which ruled in this wise:

> It bears stressing that since there is no determination of administrative, civil or criminal liability in amparo and habeas data proceedings, courts can only go as far as ascertaining responsibility or accountability for the enforced disappearance or extrajudicial killing. As we held in *Razon v. Tagitis*:
>
> > It does not determine guilt nor pinpoint criminal culpability for the disappearance; rather, it determines responsibility, or at least accountability, for the enforced disappearance for purposes of imposing the appropriate remedies to address the disappearance. *Responsibility* refers to the extent the actors have been established by substantial evidence to have *participated* in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. *Accountability*, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited *involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge* relating to the enforced disappearance and who carry the burden of disclosure; or those who *carry, but have failed to discharge, the burden of extraordinary diligence in the investigation* of the enforced disappearance. In all these cases, the issuance of the Writ of *Amparo* is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.
>
> Thus, in the case at bar, the Court of Appeals, in its Decision found respondents in G.R. No. 191805 — with the exception of Calog, Palacpac or Harry – to be accountable for the violations of Rodriguez's right to life, liberty and security committed by the 17th Infantry Battalion, 5th Infantry Division of the Philippine Army. **The Court of Appeals dismissed the petition with respect to former President Arroyo on account of her presidential immunity from suit. Rodriguez contends, though, that she should remain a respondent in this case to enable the courts to determine whether she is responsible or accountable therefor. In this regard, it must be clarified that the Court of Appeals' rationale for dropping her from the list of respondents no longer stands since her presidential immunity is limited only to her incumbency.**[6] (Citations omitted, emphasis and underscoring ours)

---

5 *In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Rodriguez*, supra note 3.

6 Id. at 105-106.

Meyer

Confronted with the issue of whether or not then respondent former President Arroyo should remain as one of the respondents in the case for writ of *amparo,* the Court in effect agreed with the CA when the latter dismissed the petition with respect to former President Arroyo on account of her presidential immunity from *any and all* suit during her incumbency. This was likewise bolstered by the Court's clarificatory statement that the CA's rationale for dropping President Arroyo from the list of respondents no longer stood since at that time, President Arroyo was no longer the President of the Philippines.

Having thus settled that herein respondent Rodrigo Roa Duterte, as the incumbent President of the Philippines, is immune from all suit during his tenure, and as such may not be haled before the Court even for the limited purpose of a writ of *habeas data*, in view of the attendant circumstances, I believe that it is equally important to revisit A.M. No. 08-1-16-SC, or the Rule on the Writ of *Habeas Data*, so as to prevent erroneous filing of the same in the future.

In this regard, I submit that the even setting the concept of presidential immunity aside, the petition must still be denied.

Petitioner filed the present petition before this Court alleging that the respondent has been gathering **private and personal information** about her, intruding into her **private life**, and publicizing her **private affairs** outside the realm of legitimate public concern in violation of her right to privacy in life, liberty and security. According to petitioner, the repeated crude and personal attacks on her by the respondent should be viewed as a continuing threat to her life, liberty and privacy that can be prevented and protected should the present petition for the issuance of a writ of *habeas data* be granted.

The petition for the issuance of a Writ of Habeas Data has been improperly lodged directly before this Court.

The 2nd paragraph of Section 3 of A.M. No. 08-1-16-SC expressly provides that the petition may only be filed directly with the Supreme Court, the CA or the *Sandiganbayan* if the action concerns **public data files** of government offices. In all other cases, it must be filed with the Regional Trial Court (RTC), *viz.*:

> **SEC. 3. Where to File.** - The petition may be filed with the Regional Trial Court where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner.

Meyer

> **The petition may also be filed with the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices.** (Emphasis ours)

Clearly, as worded, the option of filing directly with the Supreme Court cannot be exercised when the data or pieces of information gathered, collected, or stored deal with matters that are private in nature, as in the case at bar. In such event, the law requires that the petition be filed before the RTC where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner.

Moreover, although the Court has original and concurrent jurisdiction with the CA and the *Sandiganbayan* in the issuance of a Writ of *Habeas Data*, strict adherence to the doctrine of hierarchy of courts must still be observed. This doctrine was exhaustively discussed in the case of *GIOS-SAMAR, Inc. v. Department of Transportation and Communications and Civil Aviation Authority of the Philippines*,[7] whereby it was defined as a "filtering mechanism" designed to enable the Court to focus on the more fundamental and essential tasks assigned to it by the highest law of the land, *viz.*:

> In fine, while this Court has original and concurrent jurisdiction with the RTC and the CA in the issuance of writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus (extraordinary writs), direct recourse to this Court is proper only to seek resolution of questions of law. Save for the single specific instance provided by the Constitution under Section 18, Article VII, cases the resolution of which depends on the determination of questions of fact cannot be brought directly before the Court because we are not a trier of facts. We are not equipped, either by structure or rule, to receive and evaluate evidence in the first instance; these are the primary functions of the lower courts or regulatory agencies. This is the raison d'etre behind the doctrine of hierarchy of courts. It operates as a constitutional filtering mechanism designed to enable this Court to focus on the more fundamental tasks assigned to it by the Constitution. It is a brightline rule which cannot be brushed aside by an invocation of the transcendental importance or constitutional dimension of the issue or cause raised.[8]

In the said case, the Court opined that the doctrine of hierarchy of courts serves as a guide to litigants as to the proper venue of appeals and/or the appropriate forum for the issuance of extraordinary writs and that failure to observe compliance may cause the dismissal of their petitions, *viz.*:

---

7 G.R. No. 217158, March 12, 2019.

8 Id.

> Thus, although this Court, the CA, and the RTC have concurrent original jurisdiction over petitions for *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus*, parties are directed, as a rule, to file their petitions before the lower-ranked court. Failure to comply is sufficient cause for the dismissal of the petition.[9]

Here, petitioner herself submits, the allegations centered on private and personal information which the respondent has allegedly been gathering to humiliate and attack her. There is, thus, merit to the contention of the Office of the Solicitor General that the present petition was erroneously filed before this Court.

The allegations in the petition are not supported by substantial evidence.

Assuming for the sake of argument that the petition was properly lodged before the Court, the petition must still be dismissed for failure to substantiate the petition through the required quantum of proof for the issuance of a writ of *habeas data*.

Section 1 of the Rule on the Writ of *Habeas Data* explicitly provides:

> **Section 1.** *Habeas Data.* - The writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

Therefore, in order for a petition for the issuance of the writ of *habeas data* to prosper, the following elements must be present: *first,* that a person has right to informational privacy;[10] *second,* that there is a violation or a threat to violate such right which affects a person's right to life, liberty and security; *third*, that the act is done through unlawful means in order to achieve unlawful ends; *fourth*, that the act is committed by a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information; *fifth*, that the information gathered, collected or stored pertained to the person, family, home and correspondence of the aggrieved party; and *sixth*, that the petition was lodged before the proper court.[11]

---

9 Id.

10 *Vivares, et al. v. St. Theresa's College, et al.*, 744 Phil. 451, 463 (2014).

11 *The Rule on the Writ of Habeas Data*, A.M. No. 08-1-16-SC, January 22, 2008.

Jurisprudence clarified that a writ of *habeas data* will not issue "on the basis merely of an alleged unauthorized access to information about a person."[12] The petitioner must show an actionable entitlement to informational privacy by establishing a nexus between the right of privacy on the one hand, and the right to life, liberty, or security on the other. The privilege of the writ may be extended only upon proof, by substantial evidence, of the "manner" or "means" in which the right to privacy is violated or threatened.[13]

In the case of *Dr. Lee v. P/Supt. Ilagan*,[14] the Court made the following discussion as regards sufficiency of a petition for the issuance of the Writ of *Habeas Data*, to wit:

> Thus, in order to support a petition for the issuance of such writ, Section 6 of the *Habeas Data* Rule essentially requires that the petition sufficiently alleges, among others, "**[t]he manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party**." In other words, the petition must adequately show that **there exists a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other. Corollarily, the allegations in the petition must be supported by substantial evidence** showing an actual or threatened violation of the right to privacy in life, liberty or security of the victim. In this relation, it bears pointing out that the writ of *habeas data* will not issue to protect purely property or commercial concerns nor when the grounds invoked in support of the petitions therefor are vague and doubtful.[15] (Emphasis and underlining supplied)

As to what constitutes substantial evidence for the purpose of determining the sufficiency of the allegations in the petition, the Court, in *Miro v. Vda. de Erederos, et al.*,[16] defined it as more than a mere scintilla or modicum of evidence, *viz.*:

> Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[17]

A thorough review of the petition reveals nothing more but bare assertions that there has been a violation of her rights. There was no showing that she was in the first place, entitled to informational privacy as to matters subject of the petition, and of how the same poses an imminent and continuing

---

12 *Vivares, et al. v. St. Theresa's College, et al.*, supra note 10.
13 Id.
14 745 Phil. 196 (2014).
15 Id. at 201.
16 721 Phil. 772 (2013).
17 Id. at 787.

threat to her life, liberty and security sufficient, identifying in this regard the particular unlawful means utilized by the respondent. The petition contains vague assertions and nothing more, this falls short of the required quantum of proof.

I find it apropos to highlight the Court's discussion *In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Rodriguez*[18] where it was clarified that a petition for the issuance of the writ of *habeas data* need not only state that there was a violation or a continuing threat to violate a person's right to privacy in life, liberty or security but, more importantly, must allege and prove through substantial evidence that the information regarding the person, family, home and correspondence of the aggrieved party is being gathered or collected by the respondent through unlawful means in order to achieve unlawful ends, to wit:

> At the outset, it must be emphasized that the writs of *amparo* and *habeas data* were promulgated to ensure the protection of the people's rights to life, liberty and security. The rules on these writs were issued in light of the alarming prevalence of extrajudicial killings and enforced disappearances. The Rule on the Writ of *Amparo* took effect on 24 October 2007, and the Rule on the Writ of *Habeas Data* on 2 February 2008.
>
> x x x x
>
> Meanwhile, the writ of habeas data provides a judicial remedy to protect a person's right to control information regarding oneself, particularly in instances where such information is being collected **through unlawful means in order to achieve unlawful ends.** As an independent and summary remedy to protect the right to privacy – especially the right to informational privacy – the proceedings for the issuance of the writ of habeas data does not entail any finding of criminal, civil or administrative culpability. If the allegations in the petition are proven through **substantial evidence**, then the Court may (a) grant access to the database or information; (b) enjoin the act complained of; or (c) in case the database or information contains erroneous data or information, order its deletion, destruction or rectification.[19] (Emphasis ours and citations omitted)

Here, the allegations made by petitioner fell short of the required quantum of proof necessary for the issuance of the writ of *habeas data*. As correctly pointed out by the Office of the Solicitor General in its Memorandum[20] dated November 21, 2016, the petitioner *failed* to identify any unlawful means through which private information about her life, liberty, and security were obtained. A general allegation or sweeping accusation, unsupported by substantial evidence, deserves scant or no consideration at all. The reliance of petitioner on statements uttered by the respondent in the course

---

18 Supra note 3.
19 Id. at 102-103.
20 *Rollo*, pp. 121-152.

of the on-going probe on her perceived involvement in illegal drugs trade and her inappropriate conduct as a public official is insufficient to warrant the issuance of the writ.

The petitioner must be reminded that the burden of proof fell on her shoulders which obviously she could not bear to carry. Allegations are not evidence and without evidence, bare allegations do not prove facts.[21] The writ will not issue on the basis merely of an alleged unauthorized access to information about a person. Necessarily, the present petition must fail.

The President has the right to exercise Freedom of Expression.

Finally, it is well to remind petitioner that one of the cherished liberties enshrined and protected by the Constitution is the freedom of expression which covers the right to freedom of speech. In *Chavez v. Gonzales, et al.*,[22] the Court held that the scope of this freedom is so broad and covers myriad matters of public interest or concern and should not be confined solely to the expression of conventional ideas, *viz.*:

> The scope of freedom of expression is so broad that it extends protection to nearly all forms of communication. It protects speech, print and assembly regarding secular as well as political causes, and is not confined to any particular field of human interest. The protection covers myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period. The constitutional protection assures the broadest possible exercise of free speech and free press for religious, political, economic, scientific, news, or informational ends, inasmuch as the Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas that are conventional or shared by a majority.[23]

The President, being a citizen of this country, is also entitled to the free exercise of this right more so when the exercise of the same is in aid of or in furtherance of justice and directed against improper conduct of public officials who, at all times, must uphold public interest over personal interest.

A remark made in a fit of anger and as an expression of one's frustration over the conduct of another falls within the ambit of freedom of expression and does not automatically make one legally accountable lest we deprive the speaker of his right to speak.

---

21 *Sabellina v. Buray, et al.*, 768 Phil. 224, 238 (2015).
22 569 Phil. 155 (2008).
23 Id. at 198.

In the case of *Davao City Water District v. Aranjuez, et al.*,[24] the Court held that the constitutional right to freedom of expression is not relinquished by those who enter government service solely on account of their employment in the public sector, *viz.*:

> It is correct to conclude that those who enter government service are subjected to a different degree of limitation on their freedom to speak their mind; however, it is not tantamount to the relinquishment of their constitutional right of expression otherwise enjoyed by citizens just by reason of their employment. Unarguably, a citizen who accepts public employment "must accept certain limitations on his or her freedom." But there are some rights and freedoms so fundamental to liberty that they cannot be bargained away in a contract for public employment. It is the Court's responsibility to ensure that citizens are not deprived of these fundamental rights by virtue of working for the government.[25]

In the same vein, election to public office by the President is not tantamount to the relinquishment of his right to speak his mind or to express himself. As correctly pointed out by the Solicitor General, the statements made were in relation to petitioner's qualifications to hold public office and her perceived involvement in illegal drugs. Clearly, these are matters of public concern subject to public scrutiny- even scrutiny by the President himself.

Public office destines one to live a very public life and with that level of exposure, public scrutiny is inevitable.

Accordingly, I vote to **DISMISS** the petition.

ANDRES B. REYES, JR.
Associate Justice

---

24 760 Phil. 254 (2015).
25 Id. at 279.