EN BANC

[G.R. Nos. 69863-65. December 10, 1990.]

LINO BROCKA, BENJAMIN CERVANTES, COSME GARCIA, RODOLFO SANTOS, VALENTINO SALIPSIP, RICARDO VEGA, ERIC MARIANO, JOSE EMMANUEL OYALES, RONNIE MATTA, ALFREDO VIAJE, RUBEN EUGENIO, REYNALDO ORTIZ, ORLANDO ORTIZ, NOEL REYES, EDUARDO IMPERIAL, NESTOR SARMIENTO, FRANCO PALISOC, VIRGILIO DE GUZMAN, ALBERTO REYES, JESSIE PINILI, ROMULO AUGUIS, DOMINADOR RESURRECION III, RONNIE LAYGO, ROSAURO ROQUE, CLARENCE SORIANO, OCTAVO DEPAWA, CARLITO LA TORRE, SEVERNO ILANO, JR., DOMINGO CAJIPE, ALAN ALEGRE, RAMON MARTINEZ, MA. GILDA HERNANDEZ, EDNA P. VILLANUEVA, DOLLY S. CANU, MELQUIADES C. ATIENZA, ELIGIO P. VERA CRUZ, ROGER C. BAGAN, ABUNDIO M. CALISTE, *petitioners*, ***vs.*** **JUAN PONCE ENRILE, MAJ. GENERAL FIDEL V. RAMOS, BRIG. GENERAL PEDRO BALBANERO, COL. ABAD, COL. DAWIS, SERGIO APOSTOL, P/LT, RODOLFO M. GARCIA and JUDGE RICARDO TENSUAN**, *respondents*.

Free Legal Assistance Group for petitioners.

D E C I S I O N

MEDIALDEA, *J* :

This petition was originally filed on February 13, 1985 to secure the release of petitioners on *habeas corpus* and to permanently enjoin the City Fiscal of Quezon City from investigating charges of "Inciting to Sedition" against petitioners Lino Brocka, Benjamin Cervantes, Cosme Garcia and Rodolfo Santos, (hereafter Brocka, et al.). On learning that the corresponding informations for this offense has been filed by the City Fiscal against them on February 11, 1985, a supplemental petition was filed on February 19, 1985 (p. 51, *Rollo*) to implead the Presiding Judge, [1] and to enjoin the prosecution of Criminal Cases Nos. Q-38023, Q-38024 and Q-38025 (p. 349, *Rollo*) and the issuance of warrants for their arrests, including their arraignment. Since then President Ferdinand E. Marcos had ordered the provisional release of Brocka, et al., the issue on *habeas corpus* has become moot and academic (p. 396, *Rollo*). We shall thus focus on the question of whether or not the prosecution of the criminal cases for Inciting to Sedition may lawfully be enjoined.

Petitioners were arrested on January 28, 1985 by elements of the Northern Police District following the forcible and violent dispersal of a demonstration held in sympathy with the jeepney strike called by the Alliance of Concerned Transport Organization (ACTO). Thereafter, they were charged with Illegal Assembly in Criminal Cases Nos. 37783, 37787 and 37788 with Branch 108, Regional Trial Court, NCJR, Quezon City. [2]

Except for Brocka, et al. who were charged as leaders of the offense of Illegal Assembly and for whom no bail was recommended, the other petitioners were released on bail of

P3,000.00 each. Brocka, et al.'s provisional release was ordered only upon an urgent petition for bail for which daily hearings from February 1-7, 1985 were held.

However, despite service of the order of release on February 9, 1985, Brocka, et al. remained in detention, respondents having invoked a Preventive Detention Action (PDA) allegedly issued against them on January 28, 1985 (p. 6, *Rollo*). Neither the original, duplicate original nor certified true copy of the PDA was ever shown to them (p. 367, *Rollo*).

Brocka, et al. were subsequently charged on February 11, 1985 with Inciting to Sedition, docketed as Criminal Cases Nos. Q-38023, Q-38024 and Q-38025 (p. 349, *Rollo*), without prior notice to their counsel (p. 7, *Rollo*). The original informations filed recommended no bail (p. 349, *Rollo*). The circumstances surrounding the hasty filing of this second offense are cited by Brocka, et al. (quoting from a separate petition filed on their behalf in G.R. Nos. 69848-50 entitled "Sedfrey A. Ordoñez vs. Col. Julian Arzaga, et al."), as follows:

"xxx xxx xxx

> "6. The sham' character of the inquest examination concocted by all respondents is starkly bizarre when we consider that as early as 10:30 A.M. today, February 11, 1985, Benjamin Cervantes was able to contact undersigned petitioner by phone informing counsel that said Benjamin Cervantes and the 4 other persons who are the subjects of this petition will be brought before the Quezon City Fiscal at 2:30 for undisclosed reasons: subsequently, another phone call was received by petitioning counsel informing him that the appearance of Benjamin Cervantes et al. was to be at 2:00 P.M. When petitioning counsel arrived in the office of Assistant City Fiscal Arturo Tugonon, the complainants' affidavits had not yet been received by any of the panel of three assistant city fiscals, although the five persons under detention were already in the office of said assistant fiscal as early as 2:00 P.M. It was only at 3:00 when a representative of the military arrived bringing with him alleged statements of complainants against Lino Broka (sic) et al. for alleged inciting to sedition, whereupon undersigned counsel asked respondent Colonel Agapito Abad 'who ordered the detained persons to be brought to the office of Assistant Fiscal Arturo Tugonon since there were no charges on file;' and said Colonel Agapito Abad said aloud: 'I only received a telephone call from Colonel Arzaga about 11:00 A.M. to bring the detained persons today — I am only the custodian.' At 3:15, petitioning counsel inquired from the Records Custodian when the charges against Lino Broka (sic) had been officially received and he was informed that the said charges were never coursed through the Records Office.
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> "7. Under the facts narrated above, respondents have conspired to use the strong arm of the law and hatched the nefarious scheme to deprive Lino Broka (sic) et al. the right to bail because the utterances allegedly constituting inciting to sedition under Article 142 of the Revised Penal Code are, except for varying nuances, almost verbatim the same utterances which are the subject of Criminal Cases No. 37783, 37787 and 37788 and for which said detained persons are entitled to be released on bail as a matter of constitutional right. Among the utterances allegedly made by the accused and which the respondents claimed to be violative of Article 142 of the Revised Penal Code are: 'Makiisa sa mga drivers, "Makiisa sa aming layunin, "Digmaang bayan ang sagot sa kahirapan,' Itigil ang pakikialam ng imperyalismo sa Pilipinas,' 'Rollback ng presyo ng langis sa 95 Centavos.' (See Annex B)
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> "8. That when petitioning counsel and other members of the defense panel

> requested that they be given 7 days within which said counsel may confer with their clients — the detained persons named above, the panel of assistant fiscals demanded that said detained persons should sign a 'waiver' of their rights under Article 125 of the Revised Penal Code as a condition for the grant of said request, which is a harassing requirement considering that Lino Broka (sic) et al. were already under the detention, albeit illegally, and they could not have waived the right under Rule 125 which they did not enjoy at the time the ruling was made by the panel of assistant city fiscals." (pp. 4-6, *Rollo* in G.R. 69848-50).

They were released provisionally on February 14, 1985, on orders of then President F. E. Marcos. The circumstances of their release are narrated in Our resolution dated January 26, 1985, as quoted in the Solicitor General's Manifestation as follows:

> "G.R. Nos. 69848-50 (Sedfrey A. Ordoñez, Petitioner, vs. Col. Julian Arzaga, et al., Respondents). — Petitioner Sedfrey A. Ordoñez filed this petition for habeas corpus in behalf of Lino Brocka, Benjamin Cervantes, Cosme Garcia, Alexander Luzano, and Rodolfo Santos, who were all detained under a Preventive Detention Action (PDA) issued by then President Ferdinand E. Marcos on January 28, 1985. They were charged in three separate informations of the crime of illegal assembly under Art. 146, paragraph 3 of the Revised Penal Code, as amended by PD 1834. On February 7, 1985, the Honorable Miriam Defensor Santiago, Regional Trial Judge of Quezon City, issued a resolution in the above criminal cases, directing the release of the five accused on bail of P6,000.00 for each of them, and from which resolution the respondent fiscals took no appeal. Immediately thereafter, the accused filed their respective bail bonds. This notwithstanding, they continued to be held in detention by order of the respondent colonels; and on February 11, 1985, these same accused were 'reinvestigated,' this time on charges of 'inciting to sedition' ** under Art. 142 of the Revised Penal Code, following which corresponding cases were filed. The respondents complied with Our resolution requiring them, *inter alia*, to make a RETURN of the writ of *habeas corpus*. In their RETURN, it appeared that all the accused had already been released, four of them on February 15, 1985 and one February 8, 1985. The petitioner, nevertheless, argued that the petition has not become moot and academic because the accused continue to be in the custody of the law under an invalid charge of inciting to sedition." (p. 395, *Rollo*).

Hence, this petition.

Brocka, et al. contend that respondents' manifest bad faith and/or harassment are sufficient bases for enjoining their criminal prosecution, aside from the fact that the second offense of inciting to sedition is illegal, since it is premised on one and the same act of attending and participating in the ACTO jeepney strike. They maintain that while there may be a complex crime from a single act (Art. 48, RTC), the law does not allow the splitting of a single act into two offenses and filing two informations therefor, further, that they will be placed in double jeopardy.

The primary issue here is the legality of enjoining the criminal prosecution of a case, since the two other issues raised by Brocka, et al. are matters of defense against the sedition charge.

We rule in favor of Brocka, et al. and enjoin their criminal prosecution for the second offense of inciting to sedition.

Indeed, the general rule is that criminal prosecution may not be restrained or stayed by injunction, preliminary or final. There are however exceptions, among which are:

"a. To afford adequate protection to the constitutional rights of the accused (Hernandez vs. Albano, et al., L-19272, January 25, 1967, 19 SCRA 95);

"b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (Dimayuga, et al. vs. Fernandez, 43 Phil. 304; Hernandez vs. Albano, *supra*; Fortun vs. Labang, et al., L-38383, May 27, 1981, 104 SCRA 607);

"c. When there is a pre-judicial question which is *sub judice* (De Leon vs. Mabanag, 70 Phil. 202);

"d. When the acts of the officer are without or in excess of authority (Planas vs. Gil, 67 Phil. 62);

"e. Where the prosecution is under an invalid law, ordinance or regulation (Young vs. Rafferty, 33 Phil. 556; Yu Cong Eng vs. Trinidad, 47 Phil. 385, 389);

"f. When double jeopardy is clearly apparent (Sangalang vs. People and Avendia, 109 Phil. 1140);

"g. Where the court has no jurisdiction over the offense (Lopez vs. City Judge, L-25795, October 29, 1966, 18 SCRA 616);

"h. Where it is a case of persecution rather than prosecution (Rustia vs. Ocampo, CA-G.R. No. 4760, March 25, 1960);

"i. Where the charges are manifestly false and motivated by the lust for vengeance (Recto vs. Castelo, 18 L.J. [1953], cited in Rañoa vs. Alvendia, CA-G.R. No. 30720-R, October 8, 1962; Cf, Guingona, et al vs. City Fiscal, L-60033, April 4, 1984, 128 SCRA 577); and

"j. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied (Salonga vs. Paño, et al., L-59524, February 18, 1985, 134 SCRA 438).

"7. Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners (Rodriguez vs. Castelo, L-6374, August 1, 1958)." (cited in Regalado, Remedial Law Compendium, p. 188, 1988 Ed.)

In the petition before Us, Brocka, et al. have cited the circumstances to show that the criminal proceedings had become a case of persecution, having been undertaken by state officials in bad faith.

Respondents, on the other hand, had invoked a PDA in refusing Brocka, et al.'s release from detention (before their release on orders of then Pres. Marcos). This PDA was, however, issued on January 28, 1985, but was invoked only on February 9, 1985 (upon receipt of the trial court's order of release). Under the guidelines issued, PDAs shall be invoked within 24 hours (in Metro Manila) or 48 hours (outside Metro Manila). (*Ilagan v. Enrile*, G.R. No. 70748, October 28, 1985, 139 SCRA 349). Noteworthy also is Brocka, et al.'s claim that, despite subpoenas for its production, the prosecution merely presented a purported xerox copy of the invoked PDA (par. 4, Counter-Rejoinder, p. 367, *Rollo*).

The foregoing circumstances were not disputed by the Solicitor General's office. In fact they found petitioner's plight "deplorable" (par. 51, Manifestation, p. 396, *Rollo*).

The hasty filing of the second offense, premised on a spurious and inoperational PDA, certainly betrays respondent's bad faith and malicious intent to pursue criminal charges against Brocka, et al.

We have expressed Our view in the *Ilagan* case that "individuals against whom PDAs have been issued should be furnished with the original, and the duplicate original, and a certified true copy issued by the official having official custody of the PDA, at the time of the apprehension" (*supra*, p. 369).

We do not begrudge the zeal that may characterize a public official's prosecution of criminal offenders. We, however, believe that this should not be a license to run roughshod over a citizen's basic constitutional lights, such as due process, or manipulate the law to suit dictatorial tendencies.

We are impelled to point out a citizen's helplessness against the awesome powers of a dictatorship. Thus, while We agree with the Solicitor General's observation and/or manifestation that Brocka, et al. should have filed a motion to quash the information, We, however, believe that such a course of action would have been a futile move, considering the circumstances then prevailing. Thus, the tenacious invocation of a spurious and inoperational PDA and the sham and hasty preliminary investigation were clear signals that the prosecutors intended to keep Brocka, et al. in detention until the second offense of "Inciting to Sedition" could be facilitated and justified without need of issuing a warrant of arrest anew. As a matter of fact the corresponding informations for this second offense were hastily filed on February 11, 1985, or two days after Brocka, et al.'s release from detention was ordered by the trial judge on February 9, 1985.

Constitutional rights must be upheld at all costs, for this gesture is the true sign of democracy. These may not be set aside to satisfy perceived illusory visions of national grandeur.

In the case of *J. Salonga v. Cruz Paño*, We point out:

> "Infinitely more important than conventional adherence to general rules of criminal procedure is respect for the citizen's right to be free not only from arbitrary arrest and punishment but also from unwarranted and vexatious prosecution . . ." (G.R. No. L-59524, February 18, 1985, 134 SCRA 438-at p. 448).

We, therefore, rule that where there is manifest bad faith that accompanies the filing of criminal charges, as in the instant case where Brocka, et al. were barred from enjoying provisional release until such time that charges were filed, and where a sham preliminary investigation was hastily conducted, charges that are filed as a result should lawfully be enjoined.

ACCORDINGLY, the petition is hereby GRANTED. The trial court is PERMANENTLY ENJOINED from proceeding in any manner with the cases subject of the petition. No costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino and *Regalado, JJ.,* concur.

Feliciano, J., is on leave.

Footnotes

1. Judge Ricardo Tensuan, Branch 83, RTC, National Capital Judicial Region, Quezon City.

2. Judge Miriam D. Santiago, Presiding Judge.

** Criminal Cases Nos. 38023, 38024 and 38025, subject of the instant cases.