

94 Phil. 749

[G.R. No. L-6525. April 12, 1954]

MARTA BANCLOS DE ESPARAGOZA ET AL., PETITIONERS, VS. BIENVENIDO TAN, ETC. ET AL., RESPONDENTS.

D E C I S I O N

BAUTISTA ANGELO, J.:

This is a petition for certiorari with preliminary injunction seeking to set aside certain orders of respondent Judge which direct the immediate arrest of petitioners for their failure to appear to show cause why they should not be punished for contempt, and to set aside the decision rendered by the Court of Appeals dated November 17, 1952, sustaining and giving effect to the aforesaid orders.

The orders herein referred to had arisen in a case instituted in the Court of First Instance of Rizal by the Judge Advocate General of the Armed Forces of the Philippines against Marta Banclos de Esparagoza, et al., in connection with the disposition of the amount of \$1,190.83 accruing to one Aniceto Esparagoza, deceased, as pay in arrears due the said deceased (Civil Case No. 877). The case was instituted in order that it may be determined who among the different claimants as heirs of the deceased is entitled to the amount in question. After due hearing, the court found that Marta Banclos, the widow, is the only person entitled to receive the benefits of the estate, and, accordingly, it ordered that the amount of \$1,190.83 be paid to her. However, as the widow, and her lawyer, in a gesture of nobility, agreed to give one-half of said amount to the four illegitimate children of the deceased, the court also included in the decision an injunction that the widow deposit with the Philippine National Bank said one-half, or the sum of \$595.41, in the name of the four minor children, in equal

shares, to be disposed of in accordance with law.

Two months after the money was received by the widow as directed in the decision, Angela Fernandez, mother of the four minor children, demanded that the money be given to her instead of being deposited in the bank alleging as reason that if it be so deposited, she would encounter difficulties in withdrawing the money for the benefit of the children. The widow refused to agree to the request unless the mother secure from the court an order authorizing her to receive the money in line with her request. The mother failed to do so, nor was she able to disclose the whereabouts of the children, and instead the widow came to know that the children were no longer living with their mother but had been given away to well-to-do couples who promised to bring them up and take care of them, and so, upon advice of Atty. Pio L. Pestano, her counsel, the widow declined to give the money either to the mother or to the children. The result was that, on March 28, 1952, Angela Fernandez, the mother, instituted contempt proceedings against the herein petitioners in view of their failure to deliver the money as ordered by the court in its decision in Civil Case No. 877.

The petition for contempt was set for hearing, and after the widow and her counsel were duly heard, the court found the petition without merit, and denied the same. Six months thereafter, a similar petition for contempt was filed by Angela Fernandez wherein she reiterated the same acts of dereliction of duty on the part of herein petitioners, copy of which was never served on the petitioners. However, the same was acted upon *ex parte* by the court who, on October 18, 1952, issued an order directing them to appear and show cause why they should not be punished for contempt for having disobeyed the order of the court. Copy of this order was served on petitioner Pestano on October 22, 1952, and on October 25, the latter submitted to the court a written statement explaining the circumstances why he could not show cause as directed among which was the failure of the movant to serve on him a copy of the petition containing the charges for contempt. In said written manifestation, petitioner Pestano made the special request that the order requiring his appearance be held in abeyance until after he shall have been served with copy of the petition for contempt as

required by the rules, and that no action thereon be taken until after he shall have been given an opportunity to answer said motion. Instead of acceding to this request, the court, on October 25, 1952, issued an order directing his immediate arrest and that of his client Marta Banclos de Esparagoza. They sought to set aside order by bringing the matter to the Court of Appeals by way of certiorari, but their petition was dismissed for lack of merit.

The only issue to be determined is whether respondent Judge has exceeded his jurisdiction or acted with grave abuse of discretion in issuing his order of October 25, 1952, directing the immediate arrest of petitioners herein in view of their failure to appear and show cause why they should not be punished for contempt for having disobeyed the order of the court. The determination of this issue would depend upon an examination of the facts leading to the issuance of the disputed order.

It should be recalled that because of the refusal of Marta Banclos de Esparagoza, following the advice of her counsel and co-petitioner, Pio L. Pestano, to deposit the money belonging to the four minor children with the Philippine National Bank, or to deliver it to their mother, Angela Fernandez, as demanded by the latter, Angela Fernandez filed a petition for contempt in the main case praying that the two be ordered to show cause why they should not be punished for contempt for their failure to obey the decision of the court. This petition was acted upon by the court *ex parte*, and because petitioners therein never received copy of the petition for contempt, they, submitted a written manifestation to the court praying that action thereon be held in abeyance and that they be not required to appear until after they shall have been given an opportunity to answer as required by the rules of court. This special request was disregarded by the court and considering their failure to appear as a defiance, the court ordered their immediate arrest. Is this attitude of the court justifiable under this rules?

Section 3, Rule 64, of the Rules of Court provides:

“SEC. 3. *Contempt punished after charge and hearing.*—After charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt:

* * * * *

“(b) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge;

* * * * *

“But nothing in this, section shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings.”

As may be seen, a contempt proceeding as a rule is initiated by filing a charge in writing with the court, and after the charge is filed, an opportunity should be given the accused to be heard, by himself or counsel, before action could be taken against him. Here, it is true, a written charge was filed against petitioners, but no copy thereof has been served on them, nor have they been given an opportunity to be heard. The petitioners asked for this opportunity, but it was denied them. Instead, their arrest was immediately ordered. It is true that, under the same rule, “nothing * * * shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings”, but such drastic step can only be taken if good reasons exist justifying it. Apparently, this reason does not exist. Petitioners not having received copy of the written charge, they asked that they be given one. They also asked that they be given an opportunity to answer said charge before action is taken against them. Both pleas were disregarded. Such action, in our opinion, is tantamount

to a denial of due process, which may be considered as a grave abuse of discretion. As this court has aptly said: "Courts should be slow in jailing people for non-compliance with their orders. Only in cases of clear and contumacious refusal to obey should the power be exercised. A *bona fide* misunderstanding of the terms of the order or of the procedural rules should not immediately cause the institution of contempt proceedings." (Gamboa vs. Teodoro, 91 Phil., 270.)

Wherefore, the orders of respondent Judge dated October 18, 1952 and October 25, 1952, are hereby set aside and it is hereby ordered that before action be taken on the motion for contempt, petitioners herein be given an opportunity to answer said motion as prayed for in their written explanation dated October 24, 1952, without costs.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Labrador, Concepcion, and Diokno, JJ., concur.
