

DELFIN LIM, PETITIONER-APPELLANT, VS. JUDGE PEDRO CALLEJO, JR., AS JUDGE OF THE MUNICIPAL COURT OF BALABAC, PALAWAN, RESPONDENT-APPELLEE.

G.R. No. L-27086. July 24, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from the order of the Court of First Instance of Palawan dated September 27, 1966, dismissing the petition for prohibition with preliminary injunction filed by the herein appellant, Delfin Lim, against the herein appellee, Judge Pedro Callejo, Jr., as Municipal Judge of Balabac, Palawan, and holding the cash bond posted by Lim (in connection with his application for preliminary injunction) answerable for whatever damages Judge Callejo may claim.

On April 12, 1966, a complaint for Illegal Possession of Dynamite and Blasting Caps was filed against Delfin Lim and two others before the Municipal Court of Balabac, Palawan, presided by Judge Pedro Callejo, Jr. The complaint was docketed as Criminal Case No. 225. The arraignment and trial of the case was set for May 30, 1966, but upon motions of the accused, the same was reset for several times, the last of which was for September 8, 1966.

Before the accused could be actually arraigned, the counsel for Delfin Lim, on September 2, 1966, sent a telegram to Judge Callejo which read:

"Judge Callejo

Balabac, Palawan

Delfin Lim filed complaint against you Department Justice Praying disqualify yourself Criminal Case 225
People versus Delfin Lim et al

Attorney Flores"

On September 5, 1966, Judge Callejo issued an order denying the telegraphic request for his disqualification, to wit:

"ORDER

"Before this Court is a telegraphic motion of the Attorney for the accused herein, praying for the disqualification of the Presiding Judge of this Court on the ground that accused Delfin Lim had filed a complaint against him with the Department of Justice.

"The Presiding Judge of this Court has not, up to the present, been officially notified of any such complaint. Neither had said Attorney apprised him of same previously. It can be safely assumed, therefore, that said complaint was filed after the institution of the above-entitled case.

"The filing of a complaint against a judge is not one of the grounds for disqualification under Section 1 of Rule 137 of the Rules of Court. However, it could be made a ground under the second paragraph thereof.

"If said complaint had been filed prior to the institution of the above-entitled case, this Court could, perhaps, inhibit himself from trying and deciding this case. But to do so in a case where same was filed subsequently, would set a dangerous precedent whereby a litigant could obstruct the administration of justice by filing complaints, however frivolous, against any judge from whom he could not be assured of a favorable judgment.

"As a matter of fact, the filing of complaints of this nature would rather be regarded as intended to obstruct, impede and degrade the administration of justice and/or embarrass, harass or intimidate the Presiding Judge, unless the contrary is proven.

"WHEREFORE, said telegraphic motion is hereby denied."

On September 7, 1966, Delfin Lim filed with the Court of First Instance of Palawan a petition for prohibition with preliminary injunction against Judge Callejo, in his official capacity as Municipal Judge of Balabac, Palawan, praying that the judge be ordered to desist from trying Criminal Case No. 225. On September 7, 1966, the Court of First Instance of Palawan issued a writ of preliminary injunction after Lim had posted a bond to answer for whatever damages the judge may sustain by reason of the issuance of said writ.

On September 12, 1966, Judge Callejo, through the Provincial Fiscal, filed a motion with the Court of First Instance of Palawan praying for the dismissal of the petition for prohibition on the grounds: (1) that the petition did not state a sufficient cause of action; (2) that the petition is not the proper remedy; and (3) that the petition is premature. At the scheduled hearing of the motion to dismiss, neither the petitioner nor his counsel appeared. On September 27, 1966, the court issued an order dismissing the petition for prohibition and holding petitioner's cash bond answerable for whatever damages the respondent may claim, to wit:

"ORDER

"Finding the motion to dismiss filed by the Provincial Fiscal, for the reasons stated therein to be meritorious and well-taken, the same is hereby granted.

"The above-entitled case is hereby dismissed, costs against the petitioner. The cash bond posted by the petitioner for his application for preliminary injunction deposited in the office of the Provincial Treasurer of Palawan under Official Receipt No. J-9491268 dated September 8, 1966 is hereby held to answer for whatever damages the respondent may claim.

"SO ORDERED. "

From the above-quoted order, Lim appealed to this Court raising the following issues: (1) whether or not the Court of First Instance of Palawan erred in dismissing the petition for prohibition; and (2) whether or not said court erred in holding petitioner's cash bond answerable for whatever damages the respondent judge may claim.

Section 2, Rule 65 of the Rules of Court provides:

"SEC. 2. PETITION FOR PROHIBITION. - When the proceedings of any tribunal, corporation, board, or person, whether exercising functions judicial or ministerial are without or in excess of its or his jurisdiction, or with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant to desist from further proceeding in the action or matter specified therein.

"The petition shall be accompanied by a certified true copy of the judgment or order subject thereof, together with copies of all pleadings and documents relevant and pertinent thereto."

It is clear from the foregoing that two requisites must concur in order that prohibition may lie to restrain the respondent judge from proceeding with Criminal Case No. 225, namely: (1) that he gravely abused his discretion in denying the telegraphic motion for disqualification; and (2) that there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law against said order of denial. Neither of these two requisites is present in the case at bar. Consequently, the Court of First Instance of Palawan correctly dismissed the petition for prohibition.

The ground relied upon by petitioner-appellant Lim in seeking the disqualification of Judge Callejo to try the criminal case was the alleged filing by the former against the latter of an administrative case with the then Department of Justice. Assuming, arguendo, that an administrative case had indeed been filed by Lim against Judge Callejo, the same could not by itself constitute a ground for the disqualification. Section 1, Rule 137 of the Rules of Court provides:

"SECTION 1. DISQUALIFICATION OF JUDGES. ? No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court where his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

"A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above."

The first paragraph of the above-quoted provision enumerates the five grounds which per se disqualify a judge or judicial officer from sitting in a case, namely: (1) when he or his wife or child is pecuniarily interested as heir, legatee, creditor or otherwise; (2) when he is related to either party within the sixth degree of consanguinity or affinity, computed according to the rules of civil law; (3) when he is related to counsel within the fourth degree of consanguinity or affinity, computed according to the rules of civil law; (4) when he has been executor, administrator, guardian, trustee or counsel; and (5) when he has presided in any inferior court where his ruling or decision is the subject of review. Present any of said grounds, the judge or judicial officer has to disqualify himself from sitting in the case unless a written consent is signed by all the parties in interest and entered upon the record. Significantly, the ground relied upon by Lim in seeking the disqualification of Judge Callejo, i.e., the filing by the former against the latter of an administrative case, is not one of the five enumerated grounds which disqualify a judge from sitting in a case. Thus, Judge Callejo was under no legal compulsion to disqualify himself from sitting in Criminal Case No. 225.

Whether or not the filing by an accused of an administrative complaint against Judge Callejo should be considered as a "just or valid reason" for him to disqualify himself from trying and deciding the criminal case under the second paragraph of Sec. 1, Rule 137 of the Rules of Court, would depend on the "exercise of his sound discretion". In his order of September 5, 1968, Judge Callejo ruled in the negative. Lim assails this ruling as a grave abuse of discretion. We cannot agree. On the contrary, We concur with the following observation of Judge Callejo in his assailed order:

"If said complaint had been filed prior to the institution of the above-entitled case, this Court could, perhaps, inhibit himself from trying and deciding this case. But to do so in a case where same was filed subsequently, would set a dangerous precedent whereby a litigant could obstruct the administration of justice by filing complaints, however frivolous, against any judge from whom he could not be assured a favorable judgment" (Underscoring supplied.)

Indeed, a contrary ruling would be fraught with dangerous implications. For to grant the same could be taken to mean that the mere filing by a party in a case of ANY administrative complaint against the judge pre-siding in the case constitutes "just or valid reason" for said judge to disqualify himself from trying and deciding the said case. In such a case the wheels of justice will come to an abrupt halt.

Aside from the fact that Judge Callejo did not commit a grave abuse of discretion in refusing to disqualify himself, Lim was not entitled to the remedy of prohibition because of Sec. 2, Rule 137 of the Rules of Court which reads:

"SECTION 2. OBJECTION THAT JUDGE DISQUALIFIED, HOW MADE AND EFFECT. - If it be claimed that an official is disqualified from sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the ground therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in the case." (Underscoring supplied.)

In the brief filed for the respondent-appellee by then Solicitor General and Assistant Solicitor General, now Associate Justices of this Court, Antonio P. Barredo and Pacifico P. de Castro, respectively, Solicitor Federico V. Sian, Provincial Fiscal Zoilo Alviar and Atty. Romeo J. Callejo (private counsel of respondent-appellee), the case of "Nacionalista Party v. Vera" (85 Phil. 126, 128) was cited. It was there ruled that -

"Under this provision, the party seeking the disqualification of a judge or a judicial officer must, in writing, file with said official his objection, stating the grounds therefor, and if the objection is denied, the remedy is an appeal to be taken after final judgment is rendered in the case. For this reason, the petition for prohibition is improper."

In the more recent case of "Paredes v. Gopengco" (G. R. No. L-23710, September 30, 1969, 29 SCRA 688), this Court, through Mr. Justice Teehankee, held:

"x x x Where, however, it is the accused in a criminal case who seeks the disqualification of the trial judge, the general restriction provided in the rule against appeal or stay of the proceedings when the judge denies the motion and rules in favor of his own competency would apply, as it does in civil cases. In such case, the accused, in the event of his conviction, could raise the correctness of the judge's ruling on his non-disqualification with his appeal from the decision on the merits; and were he to be acquitted, he would have no cause for complaint against the Judge's acquittal verdict and ruling of non-disqualification of himself from trying the case and rendering such verdict."

Finding no error in the dismissal of the petition for prohibition, the only issue left for resolution concerns that portion of the assailed order which held that the cash bond posted by Lim shall be answerable for whatever damages Judge Callejo may claim.

Judge Callejo was made respondent in the special civil action for prohibition in his official capacity as judge of the Municipal Court of Balabac and not as a private person. Consequently, any damage or expense incurred by him in connection with the case would be official in nature and for which no fund of private origin has to answer. Thus, such portion of the appealed order which held the cash bond posted by Lim answerable for whatever damages Judge Callejo may claim should be set aside.

Respondent contends that the petitioner is estopped from claiming not that the former is not entitled to damages from the bond because the latter had deposited the same with full knowledge that it would be made to answer for whatever damages the judge may suffer by reason of a wrongful issuance of the writ of preliminary injunction.

This contention is untenable since the posting of said bond should not have been ordered in the first place, as no private person would be prejudiced by the preliminary injunction.

WHEREFORE, the order appealed from is hereby affirmed insofar as it dismissed the petition for prohibition but is reversed insofar as it held the cash bond posted by the petitioner answerable for whatever damages the respondent judge may claim. No costs.

SO ORDERED.

Fernandez, Concepcion, Jr., and Melencio-Herrera, JJ., concur.

Aquino, J., (Acting Chairman), see brief concurrence.

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