

ROSITA M. BARRETE, COMPLAINANT, VS. JUDGE VENANCIO J. AMILA, RESPONDENT.

A.M. No. MTJ-92-733. February 23, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

This is an administrative complaint dated 4 August 1992, filed by Rosita M. Barrete against Municipal Circuit Trial Court ("MCTC") Judge Venancio J. Amila, for grave abuse of power and authority relative to Civil Case No. 313 for unlawful detainer, entitled "Juanita Bungabong vs. Rosita Barrete."

The instant complaint originated from the decision rendered by respondent Judge Amila in Civil Case No. 313, in favor of plaintiff Juanita Bungabong, which ordered defendant Rosita Barrete, herein complainant, to vacate the house owned by plaintiff which was occupied by complainant.

A writ of execution was subsequently issued by respondent Judge in an Order dated 3 January 1992. However, on 16 January 1992, pursuant to complainant's request, the Sheriff gave her until the end of the month to vacate the subject premises. As of 6 July 1992, Barrete had not vacated; hence, an alias writ of execution was issued. Again, complainant was given an extension of two (2) days to pack up and leave. On 8 July 1992, the Sheriff went back to the premises and although he did not find complainant there, it was clear that she had not vacated because her furniture and other belongings were still in the house. Upon inquiry, the Sheriff learned that complainant had gone to Tacloban City and was due to return anytime. The Sheriff then put a padlock on the door of the house occupied by complainant.[1]

On 22 July 1992, plaintiff Bungabong's counsel filed a Motion to Declare Rosita Barrete in Contempt of Court.

On 23 July 1992, respondent Judge issued an Order for the arrest of Rosita Barrete. Complainant was arrested in the subject premises on 25 July 1992, a Saturday. A motion to quash the order of arrest and to release Rosita Barrete was filed, but complainant Barrete and her three (3) children remained in detention until 28 July 1992, a Tuesday (the Judge being absent from office Monday, 27 July 1992) after she had been brought before respondent Judge and had promised that she would vacate the house and lot she had been occupying.[2]

In her administrative complaint, Rosita Barrete alleged that she had requested the Provincial Deputy Sheriff to give her up to the end of July to pack her things and look for a new place, for her and her three (3) children, to stay in.

Complainant then left for Tagbilaran City. Meanwhile, on 8 July 1992, the Sheriff locked up the subject house with Barrete's things still in it.

Upon her return on 23 July 1992, complainant entered said house by passing through two (2) wooden jalousie blades, to continue packing her things.

It was in the early morning of 25 July 1992 that complainant was arrested in the subject house and with her three

(3) minor children, was detained at the Municipal Jail of Batuan, Bohol, until 28 July 1992.

Before this Court, complainant avers that her arrest and detention without according her a day in court constituted a flagrant violation of her right to due process.[3]

For his part, respondent Judge in his comment, alleges that after the motion to declare Rosita Barrete in contempt was filed, he conducted an ocular inspection of the subject house on 23 July 1992, only to find out that complainant had indeed not vacated the same. For complainant's disobedience, he issued an Order on 23 July 1992, for her arrest. However, respondent Judge ordered her release on 28 July 1992, right after complainant promised to vacate the premises.

Respondent Judge argues that complainant's acts constituted direct contempt and the order for her arrest was made to save Juanita Bungabong from further irreparable harm and to protect the image of the Court from degradation. Judge Amila further maintains that if complainant were charged with indirect contempt, she would have been imprisoned for not more than one (1) month, which would be more burdensome on her. Therefore, his questioned order was beneficial to plaintiff Bungabong and herein complainant Barrete.[4]

After respondent's comment and complainant's reply were filed, the Court referred the matter to Executive Judge Antonio Bautista of the Regional Trial Court, Branch 1, Tagbilaran, Bohol, for investigation, report and recommendation. In his Report of 20 November 1993, Judge Bautista recommended that Judge Amila be exonerated from the charges made by complainant upon a finding that he had not been motivated by malice nor any evil purpose in ordering the arrest of complainant. The Court, however, is unable to accept this recommendation.

After carefully examining the pertinent pleadings and reports filed, the Court considers that respondent Judge Amila acted arbitrarily and with disregard for complainant's rights when he ordered her incarceration on the ground of contempt for her failure to comply voluntarily with the final judgment and the writs of execution ordering evacuation from the premises and the delivery of possession of the property to plaintiff.

The records show that at the time complainant was arrested, no delivery of possession of the subject premises had been made to the plaintiff; the writ of execution had not yet been implemented.

The mere refusal or unwillingness on the part of complainant to vacate said property did not constitute contempt. The contumacious act punishable under Rule 71 is:

"Sec. 3 (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, including the act of a person who after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto."
(Underscoring supplied)

The writ of possession was directed not to complainant, but to the Sheriff, who was to deliver the properties to plaintiff Bungabong. As the writ did not command the complainant to do anything, complainant could not be held guilty of disobedience of or resistance to a lawful writ, process, order, judgment or command of a court.[5] Moreover, complainant could not be punished for contempt under paragraph (b) of Section 3, Rule 71, for disobedience of or resistance to the judgment of the trial court because said judgment was not a special judgment enforceable under Section 9, Rule 39, Rules of Court, which reads as follows:

"Sec. 9. Writ of execution of special judgment. -- When a judgment requires the performance of any other act than the payment of money, or the sale or delivery of real or personal property, a certified copy of the

judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he obeys such judgment." (Underscoring supplied)

When the judgment requires the delivery of real property, it must be executed in accordance with Section 8(d) of Rule 39, and any contempt proceeding arising therefrom must be based on the second part of Section 3(b) of Rule 71 (see underlined portion of Section 3(b), Rule 71 above) and not on "the disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge" in relation to Section 9 of Rule 39.[6]

Neither can Judge Amila's contention that complainant's acts constituted direct contempt be accepted. To constitute direct contempt, the alleged misbehavior must have been committed in the presence of or so near a court or judge as to obstruct or interrupt proceedings before the court.[7] Complainant was not guilty of such misbehavior.

In the instant case, complainant was arrested and detained for failure to comply with the judgment of eviction, on the mistaken belief of respondent judge that she was thereby guilty of direct contempt of court and thus could be summarily punished with imprisonment. To make matters worse, complainant's three (3) minor children, who had no idea whatsoever about the controversy, were dragged into it when they were incarcerated with their mother.

Since complainant was not guilty of the alleged contempt, the order for her arrest had no legal basis. Even if complainant had been guilty of contempt, the method employed by respondent Judge to compel compliance from her was not justified because the same is not sanctioned by the Rules. In the case of *U.S. vs. Ramayrat*,^[8] the Court ruled that for execution of the final judgment, the Sheriff could have availed himself of the public force (i.e., assistance of the police authorities), had it been necessary to resort thereto. It was not up to respondent Judge to ensure execution of the judgment by ordering the arrest of complainant. In the instant case, respondent Judge acted with grave abuse of authority and misconduct in office in ordering the arrest of complainant.^[9]

ACCORDINGLY, in view of the foregoing, the Court Resolved to REQUIRE respondent Judge Venancio Amila pay a fine equivalent to Two Thousand Pesos (P2,000.00) with a WARNING that repetition of the same or similar offense will be met with a more severe penalty.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] Sheriff Melchor A. Solon's Testimony, TSN pp. 24-27 Rollo 164-167.

[2] Report and Recommendation by Exec. Judge Antonio H. Bautista, 20 November 1993, pp. 1 & 2; Rollo, pp. 71 & 72.

[3] Complaint, pp. 1 & 2; Rollo, pp. 42 & 43.

[4] Comment, pp. 1-4; Rollo pp. 4-8.

[5] *Pascua vs. Heirs of Segundo Simeon*, 161 SCRA 1 (1988).

[6] *Chinese Commercial Property Co. vs. Martinez*, 6 SCRA 848 (1962).

[7] Section 1, Rule 71, Revised Rules of Court.

[8] 22 Phil. 183 (1912).

[9] See, generally, *Felizmena v. Galano*, 131 SCRA 165 (1984); *Calauag v. Pecson*, 82 Phil. 8 (1948).

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