JOSE B. TIONGCO, COMPLAINANT, VS. JUDGE EVELYN E. SALAO, REGIONAL TRIAL COURT, BRANCH 25, ILOILO CITY, RESPONDENT.

A.M. NO. RTJ-06-2009 (Formerly OCA IPI No. 03-1760-RTJ). July 27, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Complainant Jose B. Tiongco charges respondent Judge Evelyn E. Salao, of the Regional Trial Court (RTC), Branch 25, Iloilo City, with gross ignorance of the law, gross incompetence, grave abuse of judicial power amounting to vindictiveness and unlawful imprisonment, arising from the respondent Judge's Order dated 17 March 2003, citing him in direct contempt, sentencing him to ten (10) days imprisonment, and ordering the police to place him in prison immediately.

Complainant is a lawyer engaged in the practice of law. He is the counsel for the accused in Criminal Cases No. 02-56371, No. 02-56587, No. 02-55344, and No. 01-53440. On 17 March 2003, he appeared in the court of the respondent Judge. For hearing on that day were motions of the accused in Criminal Case No. 53440, a motion to suppress evidence and to quash Search Warrant No. 26-2001 issued by the respondent Judge on 17 April 2001, while the latter was still Presiding Judge of Branch 4, Municipal Trial Court in Cities, Iloilo City, on the ground that the warrant was issued without examining in writing and under oath the applicant and his witness in the form of searching questions and answers; motion to dismiss and motion for bail in Criminal Case No. 02-56387; motion to dismiss Criminal Case No. 02-56571; and motion to dismiss Criminal Case No. 02-55344.

Complainant alleged that after the prosecutor had argued against the motions, he stood up to argue in support of the same, but he was prevented because the respondent Judge declared the motions submitted for resolution. When he vehemently objected to the respondent Judge's order and protested his being prevented from speaking, the respondent Judge cited him for direct contempt, thus:

ORDER

> Atty. Jose Tiongco having been found guilty of misbehaving during the hearing thus interrupting and disrespecting the proceedings of this Court and displaying disrespect to the court by uttering offensive personalities (sic) towards the Court, he is hereby declared in direct contempt of court and is hereby sentenced to ten (10) days imprisonment.

The police officers are ordered to place Atty. Tiongco in prison immediately.

SO ORDERED.

City of Iloilo, Philippines, March 17, 2003.

(SGD) EVELYN E. SALAO
EVELYN E. SALAO

Judge[1]

He further stated that while he was frantically manifesting his readiness to post a bond and to appeal the order by certiorari to stay its execution, the respondent Judge suddenly left the courtroom, entered her chambers and locked herself up. Thus, the policemen present had no choice but to immediately execute the order by placing him in jail where he stayed for 10 days. And while his 10-day sentence was to expire on 27 March 2003, the respondent Judge directed the jail warden to release him from jail at 11:30 p.m. of 26 March 2003 which the jail warden did not follow.

Aggrieved by the order of contempt and his immediate imprisonment, complainant initiated the instant complaint.

In her Comment,[2] respondent Judge denied she prevented the complainant from expressing his arguments in support of his motions. She averred that complainant had been talking in support of his motions for at least five minutes before she suggested to submit his motions for resolution. Complainant refused to stop talking and continued arguing for a couple of minutes. Again, the respondent Judge suggested to have the motions submitted for resolution as there were at least 10 other cases in the calendar still to be called. The complainant shouted "No" and continued talking. The respondent Judge again ordered him to stop talking as the court will just issue its resolution, but this time the complainant shouted even louder in a defiant manner uttering derogatory remarks. That was the time respondent Judge declared him in contempt, but the latter continued shouting at the top of his voice threatening to file an administrative case against the former. For his contemptuous gross disrespect to the court and affront to the person of the respondent Judge, he was sentenced to 10 days imprisonment for direct contempt of court.

The respondent Judge denied she directed the jail warden to release the complainant from prison at 11:30 in the evening of 26 March 2003. She said she knew that the complainant was due for release at 9:30 in the morning of 27 March 2003, but when she was consulted by the jail guard, she pointed out that although the sentence was to expire on 27 March 2003, for the sake of liberality, she would not object if the complainant was released on 26 March 2003 at 11:30 in the evening as that would be nearing the end of the ten-day period and there were plenty of taxicabs which could take him home if he wished.

As to the search warrant which the complainant was seeking to quash in his motion set for hearing on 17 March 2003, she averred that she conducted a searching question-and-answer examination before she issued the warrant. The searching questions and answers were not only transcribed but were also tape recorded.

On 1 June 2005, the Office of the Court Administrator (OCA) submitted its Report[3] recommending that:

> - The instant case be REDOCKETED as a regular administrative case;
>
> - The respondent Judge Evelyn E. Salao, RTC, Branch 25, Iloilo City be FINED in the amount of Ten Thousand Pesos (P10,000.00) and WARNED that repetition of the same or similar offense shall be more severely dealt with; and
>
> - Atty. Jose B. Tiongco, be REMINDED of his professional duty as a member of the bar to observe proper decorum both in language and behavior in his dealings with the courts and the Judges thereof.[4]

The issues to be resolved are: (1) whether complainant is guilty of direct contempt of court; and (2) whether the Order finding complainant guilty of direct contempt is immediately executory.

On the issue of whether complainant's actuations constitute direct contempt, we are unable to determine whether the acts and words uttered by complainant are contemptuous because of the unavailability of the transcript which would contain the verbal exchanges between the complainant and respondent Judge and the description of the behavior of the complainant during such exchanges.

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While it may be true that complainant committed direct contempt by his disrespectful behavior in arguing his point in court, respondent Judge erred in directing the police officers to place the complainant "in prison immediately."

This brings to the fore the question of whether an order of direct contempt is immediately executory.

Rule 71, Section 2, of the Rules of Court provides that -

> SEC. 2. Remedy therefrom. - The person adjudged in direct contempt by any court may not appeal therefrom, but may avail himself of the remedies of certiorari or prohibition. The execution of the judgment shall be suspended pending resolution of such petition, provided such person files a bond fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him. (Underscoring supplied.)

As may be gleaned from the above-quoted provision, an order of direct contempt is not immediately executory. Squarely applicable is the case of Oclarit v. Paderanga,[5] when we ruled that -

> [A]n order of direct contempt is not immediately executory or enforceable. The contemner must be afforded a reasonable remedy to extricate or purge himself of the contempt. Thus, in the 1997 Rules of Procedure, as amended, the Court introduced a new provision granting a remedy to a person adjudged in direct contempt by any court. Such person may not appeal therefrom, but may avail himself of certiorari or prohibition. In such case, the execution of the judgment shall be suspended pending resolution of such petition provided the contemner files a bond fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him.[6] (Underscoring supplied.)

Evidently, respondent Judge erred in ordering the immediate imprisonment of the complainant after declaring him in direct contempt of court. She should have given complainant the opportunity to avail himself of the remedies provided by law. Complainant cannot be faulted for not availing the remedies of posting of a bond and filing a certiorari case questioning respondent Judge's order of contempt, as he was immediately arrested by the policemen and placed in jail thereafter despite complainant's plea for time to question the order of contempt and manifestation of willingness to post bail during the pendency of the appeal. Due regard must also be given to the fact that complainant is of advanced age. At 83, he cannot be expected to be as vigilant in asserting his rights under the law, such that, when placed under such circumstance, the respondent Judge should have given complainant sufficient leeway to avail himself the fullest extent of the remedy afforded him by law.

Respondent Judge, by locking herself in her chambers after issuing the order of contempt and coming out only after being informed that complainant was transported to the Iloilo City Jail, left the policemen without recourse but to immediately arrest and detain the complainant in jail. By doing so, she gave an impression that her personal feelings were not kept under control. She should have displayed a greater sense of professional maturity to avoid acts of impropriety that greatly embarrass the administration of justice. A display of petulance and impatience in the conduct of trial is a norm of behavior incompatible with the needful attitude and sobriety of a good judge.[7]

We cannot simply shrug off respondent Judge's failure to exercise that degree of care and temperance required of a judge in the correct and prompt administration of justice; more so in this case where the exercise of the power of contempt resulted in complainant's detention and deprivation of liberty. Respondent Judge's conduct amounts to grave abuse of authority and gross ignorance of the law.

Respondent Judge's actions also visibly indicate her lack of sufficient grasp of the law. No less than the Code of Judicial Conduct mandates that a Judge shall be faithful to the laws and maintain professional competence.[8] Indeed, competence is a mark of a good judge. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of the courts. Such is gross ignorance of the law. Having

accepted the exalted position of a judge, he owes the public and the court the duty to be proficient in the law. Unfamiliarity with the Rules of Court is a sign of incompetence. Basic rules must be at the palm of his hands. A judge must be acquainted with legal norms and precepts as well as with procedural rules.[9] Thus, this Court has consistently held that a judge is presumed to know the law and when the law is so elementary, not to be aware of it constitutes gross ignorance of the law.[10] Verily, failure to follow basic legal commands embodied in the law and the rules constitutes gross ignorance of the law, from which no one is excused, and surely not a judge.[11]

Regarding the alleged order of the respondent Judge to the jail guard to release the complainant from his detention at 11:30 in the evening of 26 March 2003, when the 10-day sentence was to expire at 9:30 a.m. of 27 March 2003 yet, we find nothing wrong in respondent Judge's explanation that she only expressed her lack of objection to the jail guard's query if he could release the complainant from prison at that time of the night of 26 March 2003.

The charge that respondent Judge issued Search Warrant No. 26-2001 without observing the legal imperative of subjecting the applicant and his witnesses to searching examination in writing and under oath is not established. Respondent Judge vehemently asserted that she did conduct the examination, that the examination was duly transcribed and even tape recorded. In administrative proceedings, complainants have the burden of proving by substantial evidence the allegations in the complaint.[12] The complainant, who has the burden to prove his charge, failed to contradict the respondent Judge's assertion.

Thus, the carelessness and lack of circumspection on respondent Judge's part, to say the least, in peremptorily ordering the arrest and detention of complainant, warrant the imposition of a penalty on respondent Judge as a corrective measure, so that she and others may be properly warned about carelessness in the application of the proper law and undue severity in ordering the detention of complainant immediately and depriving him of the opportunity to seek recourse from higher courts against the summary penalty of imprisonment imposed by respondent Judge.

It is also well-settled that the power to declare a person in contempt is inherent in all courts so as to preserve order in judicial proceedings and to uphold the administration of justice. Judges, however, are enjoined to exercise such power judiciously and sparingly, with utmost restraint, and with the end view of utilizing the same for correction and preservation of the dignity of the court, and not for retaliation or vindication.[13] The salutary rule is that the power to punish for contempt must be exercised on the preservative, not vindictive principle, and on the corrective and not retaliatory idea of punishment. The courts must exercise the power to punish for contempt for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.[14] Only occasionally should the court invoke the inherent power in order to retain that respect without which the administration of justice must falter or fail.[15]

We have repeatedly reminded members of the judiciary to be irreproachable in conduct and to be free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties, but also in their daily life. For no position exacts a greater demand for moral righteousness and uprightness of an individual than a seat in the judiciary.[16] The imperative and sacred duty of each and everyone in the judiciary is to maintain its good name and standing as a temple of justice. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability or tend to diminish the faith of the people in the judiciary,[17] like in the case at bar.

WHEREFORE, the foregoing premises considered, we find Judge Evelyn E. Salao GUILTY of gross ignorance of the law and grave abuse of authority and a fine of TEN THOUSAND (P10,000.00) PESOS is hereby IMPOSED upon her, with a STERN WARNING that a repetition of the same or similar acts in the future will be dealt with

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more severely. Atty. Jose B. Tiongco is also REMINDED of his professional duty as a member of the bar to observe proper decorum both in language and behavior in his dealings with the courts and the Judges thereof.
SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] Rollo, p. 4.

[2] Id. at 16-17.

[3] Id. at 68-72.

[4] Id. at 72.

[5] G.R. No. 139519, 24 January 2001, 350 SCRA 260.

[6] Id. at 263-264.

[7] Torres v. Judge Villanueva, 387 Phil. 516, 524 (2000).

[8] Canon 3, Rule 3.01, Code of Judicial Conduct.

[9] Oporto, Jr. v. Monserate, A.M. No. MTJ-96-1109, 16 April 2001, 356 SCRA 443, 450.

[10] Agunday v. Judge Tresvalles, 377 Phil. 141, 154-155 (1999).

[11] De Austria v. Judge Beltran, 372 Phil. 310, 321 (1999).

[12] Araos v. Judge Luna-Pison, 428 Phil. 290, 295 (2002).

[13] Esmeralda-Baroy v. Peralta, 350 Phil. 431, 447-448 (1998).

[14] Oclarit v. Paderanga, supra note 5 at 265.

[15] Panado v. Court of Appeals, 358 Phil. 593, 603 (1998).

[16] Sy v. Judge Fineza, 459 Phil. 780, 793 (2003).

[17] Mataga v. Rosete, A.M. No. MTJ-03-1488, 13 October 2004, 440 SCRA 217, 223-224.

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