FLAVIANO B. CORTES, COMPLAINANT, VS. JUDGE FELINO BANGALAN, MCTC, APARRI, CALAYAN, CAGAYAN, RESPONDENTS.

A.Ml No. MTJ-97-1129. January 19, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Complainant is one of the accused in Criminal Case No. 8016 entitled "People vs. Merlyn Chua, et al." for Adultery, which was raffled to respondent Judge Felino Bangalan of the Municipal Circuit Trial Court of Aparri-Calayan, Cagayan. Complainant moved[1] for the voluntary inhibition of respondent judge on the ground that the latter could not be impartial over the criminal case since complainant had previously filed on August 9, 1996 a letter-complaint addressed to Deputy Court Administrator Reynaldo L. Suarez.[2] It appears that the letter-complaint was filed with the Judicial and Bar Council opposing the nomination of respondent judge for RTC judge.[3]

In the Order dated August 27, 1996, complainant was declared guilty of direct contempt of court and sentenced to suffer imprisonment of one (1) day and a fine of P10.00. The respondent judge opined that complainant, in filing the letter with the enclosed administrative letter-complaint, has filed a pleading containing derogatory, offensive or malicious statements "equivalent to misbehavior committed in the presence of or so near a court or judge as to interrupt the proceedings before the same within the meaning of Rule 71". Respondent judge further stated that the letter contained condemnable allegations which are "absolutely false, baseless and licentious, as in fact based on rumors".

Complainant filed a notice of appeal from the Order of August 27, 1996[4] which was given due course by the respondent judge, in his Order of September 9, 1996 but ordered complainant to submit a record on appeal.[5] For failure of complainant to submit the record on appeal, respondent judge, in his Order of September 30, 1996, denied the notice of appeal and ordered that a warrant of arrest be issued against complainant for the service of the sentence for direct contempt.[6] Complainant was arrested on October 1, 1996 and stayed in jail for one (1) day and paid a fine of ten (P10.00) pesos.[7]

Complainant charges respondent judge with gross ignorance of the law, oppressive conduct and abuse of authority when the latter held him in contempt of court on account of the statements he made in his letter-complaint which statements, complainant insists, are absolutely privileged in nature. Complainant further alleges that he filed a notice of appeal from the order of contempt but respondent directed him to submit a record on appeal despite the fact that the same is not required under the rules.

In his Comment,[8] respondent judge avers that the statements contained in the letter-complaint were not absolutely privileged in nature. He contends that whenever a pleading filed contains derogatory, offensive or malicious statements, the same can be likened to a misbehavior committed in the presence of or so near a court or judge as to interrupt the proceedings before it. He further avers that the contempt order was necessitated under the circumstances to protect and maintain the dignity and integrity of the court against condemnable allegations

which are absolutely baseless as they were based on rumors. Respondent judge further insists that a record on appeal is required to perfect an appeal from a contempt order.

Complainant filed a Reply to Comment,[9] alleging that the letter-complaint filed against respondent judge before the Office of the Court Administrator was not a pleading filed before the sala of the respondent judge; that the supposed offensive language was not directed to the court but to the Supreme Court before which the complaint was lodged. Complainant contends that respondent judge retaliated using the contempt powers of the court in an abusive and oppressive manner. He further avers that respondent judge is grossly ignorant of the elementary rule requiring a record on appeal in multiple appeals.

Both parties manifested that they are willing to submit the case on the basis of the pleadings on file.[10]

The Court Administrator recommended that respondent judge be fined in an amount equivalent to his two (2) months salary with a warning that a repetition, of the same or similar acts in the future will be dealt with more severely.

We agree with the recommendation, but we believe that the recommended penalty is to harsh and should be reduced.

While it is true that the complainant attached the administrative letter-complaint in his letter for respondent judge to inhibit in the criminal case, it was used merely to support his contention in his motion for inhibition. A judge is bound never to consider lightly a motion for his inhibition that questions or puts to doubt, however insignificant, his supposed predilection to a case pending before him.[11] the alleged offensive and contemptuous language contained in the letter-complaint was not directed to the respondent court. As observed by the Court Administrator, "what respondent should have done in this particular case is that he should have given the Court (Supreme Court) the opportunity to rule on the complaint and not simply acted precipitately in citing complainant in contempt of court in a manner which obviously smacks of retaliation rather than the upholding of a court's honor."

A judge may not hold a party in contempt of court for expressing concern on his impartiality even if the judge may have been insulted therein.[12] While the power to punish in contempt is inherent in all courts so as to preserve order in judicial proceedings and to uphold the due administration of justice, judges, however, should exercise their contempt powers judiciously and sparingly, with utmost restraint, and with the end in view of utilizing their contempt powers for correction and preservation not for retaliation or vindication.[13]

Anent the charge of gross ignorance of the law in requiring complainant to submit a record on appeal, we find the respondent judge's order to be not it accord with the established rule on the matter. Section 39 of B.P. 129[14] is explicit in that no record on appeal is required to take an appeal except in cases of multiple appeals. In the case of Roman Catholic Archbishop of Manila vs. Court of Appeals,[15] multiple appeals are allowed in special proceedings, "in actions for recovery of property with accounting, in the special civil action of eminent domain and foreclosure of mortgage"; contempt proceedings is not one of those instances where a record on appeal is required to perfect an appeal. Thus, when the law is elementary, so elementary, not to know it constitutes gross ignorance of the law.[16]

WHEREFORE, respondent Judge Felino Bangalan is hereby ordered to pay a FINE equivalent to his one (1) month salary, with a WARNING that a repetition of the same or similar acts in the future will be dealt with more severely by this Court.

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SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Letter dated August 26, 1996, Annex "A" of respondent's Comment, p. 17, Rollo.

[2] Annex II A-1" of respondent's Comment, p. 18, Rollo. This letter-comp1aint was attached to the letter for inhibition of respondent judge.

[3] p. 1, Supplemental Administrative Complaint, p. 7 Rollo.

[4] Annex "C", p. 21, Ibid.

[5] Annex "D", p. 22, Ibid.

[6] Annex "G". p. 25, Ibid.

[7] par. 5, Supplemental Administrative Complaint, p. 7, Ibid.

[8] pp. 10-17, Ibid.

[9] pp. 30-3, Ibid.

[10] SC Resolutions of June 9, 1999 and August 2, 1999, pp. 89 & 91, respectively, Ibid.

[11] Albos vs. Alaba, 231 SCRA 68.

[12] Felongco vs. Dictado, 223 SCRA 696.

[13] Castaños vs. Escaño, Jr.,251 SCRA 174.

[14] SECTION 39, Appeals. -The period of appeal from final orders, resolutions, awards, judgments, or decision of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from: Provided, however, that in habeas corpus cases, the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from.

No record on appeal shall be required to take an appeal. In lieu thereof, the entire record shall be transmitted with all the pages prominently numbered consecutively, together with an index of the contents thereof.

This Section shall not apply in appeals in special proceedings and in other cases wherein multiple appeals are allowed under the applicable provisions of the Rules of Court.

[15] 285 SCRA 186.

[16] Agcaoili vs. Ramos, 229 SCRA 705.

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