

DOMINGO V. AUSTRIA, PETITIONER, VS. HON. ANTONIO C. MASAQUEL, IN HIS CAPACITY AS THE PRESIDING JUDGE OF BRANCH II OF THE COURT OF FIRST INSTANCE OF PANGASINAN, RESPONDENT.

G. R. No. L-22536. August 31, 1967

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

This is a petition for a writ of certiorari to annul or set aside the order respondent Judge Antonio Masaquel, dated February 10, 1964, in Civil Case No. 13258 of the Court of First Instance of Pangasinan, declaring petitioner Domingo V. Austria guilty of contempt of court and imposing upon him a fine of P50.00

The facts that gave rise to the incident in question are not disputed. Petitioner was one of the plaintiffs in the above-mentioned Civil Case No. 13258,[1] against Pedro Bravo for the recovery of three parcels of land — one parcel being located at Bayambang and two parcels in San Carlos, in the province of Pangasinan. On April 19, 1963, after trial, respondent Judge rendered a decision declaring the plaintiffs the owners of the three parcels of land in question and ordering the defendant to vacate the lands and pay the plaintiffs damages only with respect to the land located at Bayambang. The plaintiffs filed a motion for the immediate execution of the judgment — which motion was granted by respondent Judge on May 31, 1963 — and, upon the plaintiffs' having posted a surety bond in the sum of P2,000.00, the sheriff placed them in possession of the lands located at San Carlos.

On May 23, 1963, Atty. Mariano C. Sicat, a former assistant or associate of respondent Judge when the latter was still in the practice of law before his appointment to the bench, entered his appearance as the new counsel for defendant Pedro Bravo, vice Atty. Antonio Resngit. On June 14, 1963, the defendant, through Atty. Sicat, filed a supersedeas bond to stay the execution of the judgment, and on June 20, 1963 respondent Judge granted the stay of execution, over the objection of plaintiffs, and ordered the sheriff to restore the possession of the lands in San Carlos to the defendant. The petitioner likewise had asked for the appointment of a receiver over the parcel of land located at Bayambang, which prayer was granted by respondent Judge on July 8, 1963; but upon the filing of a bond by the defendant for the non-appointment of a receiver, the order of receivership was set aside. On August 24, 1963, pending the approval of the defendant's amended record on appeal, Atty. Sicat filed a motion for new trial and to set aside the judgment and, over the vigorous objection of plaintiffs, the respondent Judge granted the said motion on November 7, 1963. The hearing on the retrial was finally set for February 10, 1964.

Before the opening of the court's session in the morning of February 10, 1964, Atty. Daniel Macaraeg, counsel for petitioner and his co-plaintiffs, saw respondent Judge in his chamber and verbally transmitted to him the request of petitioner that he (the Judge) inhibit himself from further hearing the case upon the ground that the new counsel for the defendant, Atty. Mariano C. Sicat, was his former associate. The respondent Judge, however, rejected the request because, according to him, the reason for the request of his inhibition is not one of the grounds for disqualification of a judge provided for in the Rules of Court. Thereafter, when the case was called for hearing in

open court, the following transpired, as shown by the transcript of the stenographic notes taken during said hearing:[2]

"APPEARANCE:

ATTY. DANIEL C. MACARAEG appeared in behalf of plaintiffs.

(After the case was called)

COURT:

Your client is here?

ATTY. MACARAEG:

Yes, Your Honor.

COURT:

Where is he?

ATTY. MACARAEG:

He is here, Your Honor.

COURT:

What is your name?

PLAINTIFF:

Domingo Austria, sir.

COURT:

You are one of the plaintiffs in this case?

DOMINGO AUSTRIA:

Yes, sir.

COURT:

Atty. Macaraeg approached me in chambers requesting me to disqualify myself in hearing this case. Did you authorize Atty. Macaraeg to approach me verbally to disqualify myself from hearing this case because the lawyer of the other party was my former assistant?

DOMINGO AUSTRIA:

Yes, sir.

COURT:

Is that your reason why you requested Atty. Macaraeg to approach me, requesting me to disqualify myself simply because the lawyer of the other party was my assistant?

DOMINGO AUSTRIA:

Yes, sir.

COURT:

All right. Do you doubt the integrity of the presiding Judge to decide this case fairly and impartially because the lawyer of the other party was my former assistant? Do you doubt? Just answer the question?

DOMINGO AUSTRIA:

Yes, sir.

COURT:

The Court hereby finds you guilty of contempt of Court and you are hereby ordered to pay a fine of P50.00

ATTY. MACARAEG:

With due indulgence of this Honorable Court — I have just learned, after I have conferred with you in chambers, another ground of the plaintiffs for their requesting me to ask for the disqualification of Your Honor in this case, and this ground consists of the rampant rumor coming from the defendant Pedro Bravo himself that he is boasting in San Carlos that because he has a new lawyer, that surely he is going to win this case.

COURT:

Why did you not wait until the case is finally decided and find out if that is true or not?

ATTY. MACARAEG:

And maybe, that is why the plaintiffs requested me to approach Your Honor because of that rampant rumor that Pedro Bravo is spreading.

COURT:

You mean to say because of that rumor, you are going to doubt my integrity?

ATTY. MACARAEG:

As for me, I entertain no doubt, Your Honor.

COURT:

Your client expressed openly in Court his doubts on the integrity of the Court simply based on rumors and that is a ground for contempt of court, if only to maintain the faith of the people in the courts.

ATTY. MACARAEG:

Taking into consideration that these plaintiffs are laymen and we cannot expect from them the thinking of a lawyer, I am most respectfully praying that the Order of this Court be reconsidered.

COURT:

Denied. Your client should pay a fine of P50.00. We will hear this case this afternoon.

ATTY. MACARAEG:

Yes, Your Honor."

The respondent Judge forthwith dictated the following order:[3]

"Before this Court opened its sessions this morning, Atty. Daniel C. Macaraeg, counsel for the plaintiffs, approached the presiding Judge of this Court in his chambers and manifested the desire of his clients for the Judge to disqualify himself from trying the above-entitled case for the reason that counsel for the defendant, Atty. Marciano C. Sicat was formerly an associate of the Judge of this Court while he was still engaged in the practice of law. To this manifestation of Atty. Macaraeg, the Presiding Judge informed the latter that such fact alone does not in itself constitute a legal ground to disqualify the Presiding Judge of this Court, from trying this case.

"When the above-entitled case was called for hearing, the Presiding Judge called on one of the plaintiffs who was present, namely, Domingo Austria, and inquired from the latter if it was true that he asked his lawyer Atty. Macaraeg to approach the Judge in chambers and to ask him to disqualify himself from trying this case because defendant's lawyer Atty. Sicat was formerly associated with the said Judge. To this query Domingo Austria answered in the affirmative. When he was also asked as to whether the said Domingo Austria has lost faith in the sense of fairness and justice of the Presiding Judge of this Court simply because of his former association with the defendant's lawyer, said Domingo Austria likewise answered in the affirmative.

"The Court considers the actuation of the plaintiff Domingo Austria, in the premises, as offensive, insulting and a reflection on the integrity and honesty of the Presiding Judge of this Court and shows his lack of respect to the Court. The said Domingo Austria is not justified and has no reason to entertain doubts in the fairness and integrity of the Presiding Judge of this Court, simply because of the latter's former association with defendant's counsel. For this reason and in order to maintain the people's faith and respect in their courts — the last bulwark in our democratic institutions — the Presiding Judge declared said plaintiff Domingo Austria in direct contempt of court and he was ordered to pay a fine of P50.00.

"The Court found from the manifestation of plaintiffs' counsel Atty. Macaraeg that the basis of the statement, of Domingo Austria that he has lost his faith in the Presiding Judge of this Court is the rumors being circulated by the defendant Pedro Bravo that he will surely win in the present case because of his new lawyer, Atty. Marciano C. Sicat. The Court believes that rumors of the sort do not serve as a sufficient basis or justification for the plaintiff Domingo Austria to insinuate bias and partiality, on the part of the Court and to express openly his loss of faith and confidence in the integrity, fairness and capability of the Presiding Judge of this Court to perform his sworn duty of upholding and administering justice, without fear or favor, and by reason of which this Court denied the verbal motion to reconsider filed by counsel for the plaintiff Domingo Austria, finding him guilty of contempt of court and ordering him to pay a fine of P50.00.

"SO ORDERED.

"Given in open court this 10th day of February, 1964, at Lingayen, Pangasinan."

Petitioner Domingo Austria, accordingly, paid the fine of "P50.00 under protest. Having been punished summarily for direct contempt of court, and the remedy of appeal not being available to him, petitioner filed the instant petition for certiorari before this Court.

It is the position of the petitioner that under the facts and circumstances attendant to the hearing of Civil Case No. 13250 on February 10, 1963, he had not committed an act of contempt against the court and the respondent Judge had acted in excess of his jurisdiction and with grave abuse of discretion when he declared the petitioner in direct contempt of court and imposed on him the fine of P50.00 as a penalty.

After a careful study of the record, We find merit in this petition.

The respondent Judge declared the petitioner in direct contempt of court. Our task, therefore, is to determine whether or not the petitioner was guilty of misbehavior in the presence of or so near a court or judge as to obstruct or interrupt the proceedings before the same, or had committed an act of disrespect toward the court or judge.[4]

The respondent Judge considered the actuation of the petitioner, in the premises, as offensive, insulting, and a reflection on his integrity and honesty and a showing of lack of respect to the court. The respondent Judge considered that the petitioner was not justified and had no reason to entertain doubts in his fairness and integrity simply because the defendant's counsel was his former associate.

We do not agree with the respondent Judge. It is our considered view that when the petitioner requested respondent Judge to inhibit himself from further trying the case upon the ground that the counsel for the opposite party was the former associate of the respondent Judge, petitioner did so because he was impelled by a justifiable apprehension which can occur in the mind of a litigant who sees what seems to be an advantage on the part of his adversary; and that the petitioner made his request in a manner that was not disrespectful, much less insulting or offensive to the respondent Judge or to the court.

We are in accord with the statement of respondent Judge in his memorandum that the circumstance invoked by petitioner in asking him to inhibit himself from further trying the case — that Atty. Sicat was his former associate in his practice of law — is not one of the grounds enumerated in the first paragraph of Section 1, Rule 137 of the new Rules of Court for disqualifying a judge. While it is true that respondent Judge may not be compelled to disqualify himself, the fact that Atty. Sicat, admittedly his former associate, was counsel for a party in the case being tried by him, may constitute a just or valid reason for him to voluntarily inhibit himself from hearing the case on a re-trial, if he so decides, pursuant to the provision of the second paragraph of Section 1 of the said Rule 137.[5]

The apprehension of petitioner regarding the probable bias of respondent Judge does not appear to be groundless

or entirely devoid of reason. The respondent Judge had decided the case in favor of petitioner and his co-plaintiffs, and that upon plaintiffs' timely motion and filing of bond they were already placed in possession of the lands in question pending appeal. It was when Atty. Sicat took over as new counsel for defendant that the latter was given back the properties, upon a motion to stay the execution of the judgment which was filed by said counsel and was granted by respondent Judge over the opposition of petitioner's counsel. Again, when the same counsel for defendant filed a motion for a new trial, said motion was granted by respondent Judge in spite of the vigorous objection of counsel for the petitioner and his co-plaintiffs. And then the petitioner became aware of the fact that his adversary, the defendant Pedro Bravo, had been boasting in San Carlos that he was sure to win his case because of his new lawyer.

We believe that the petitioner — the layman that he is — did not take a belligerent or arrogant attitude toward respondent Judge. What he did was to request his lawyer, Atty. Macaraeg, to approach respondent Judge in his chamber and suggest to him to refrain from hearing the case on the new trial, precisely in order that respondent Judge might not be embarrassed or exposed to public odium. There is nothing in the record which shows that when respondent Judge refused to disqualify himself, the petitioner insisted in asking for his disqualification. If the request of petitioner for respondent Judge to disqualify himself came to the knowledge of the public it was because respondent Judge himself brought up the matter in open court.

While We consider it improper for a litigant or counsel to see a judge in chambers and talk to him about a matter related to the case pending in the court of said judge, in the case now before Us we do not consider it as an act of contempt of court when petitioner asked his counsel to see respondent Judge in his chamber and request him to disqualify himself upon a ground which respondent Judge might consider just or valid. It is one thing to act not in accordance with the rules, and another thing to act in a manner which would amount to a disrespect or an affront to the dignity of the court or judge. We believe that the circumstances that led respondent Judge to declare petitioner in direct contempt of court do not indicate any deliberate design on the part of petitioner to disrespect respondent Judge or to cast aspersion against his integrity as a judge. On the contrary, it may be said that petitioner wanted to avoid cause for any one to doubt the integrity of respondent Judge. This is so because when a party litigant desires or suggests the voluntary disqualification of a judge, it is understood, without saying it in so many words, that said litigant — having knowledge of the past or present relationship of the judge with the other party or counsel — feels that no matter how upright the judge is there is peril of his being unconsciously swayed by his former connection and he may unwittingly render a biased or unfair decision. Hence, while it may be conceded that in requesting the disqualification of a judge by reason of his relation with a party or counsel there is some implication of the probability of his being partial to one side, the request can not constitute contempt of court if done honestly and in a respectful manner, as was done by petitioner in the present case. Perhaps the fault of petitioner, if at all, is his having asked his counsel to make the request to respondent Judge inside the latter's chamber.

The following observation of this Court, speaking through Mr. Justice Dizon, is relevant to the question before Us:

"Petitioner invoking the provisions of section 1, Rule 126 of the Rules of Court, argues that the case of respondent judge does not fall under any one of the grounds for the disqualification of judicial officers stated therein. Assuming *arguendo* that a literal interpretation of the legal provision relied upon justifies petitioner's contention to a certain degree, it should not be forgotten that, in construing and applying said legal provision, we cannot disregard its true intention nor the real ground for the disqualification of a judge or judicial officer, which is the impossibility of rendering an impartial judgment upon the matter before him. It has been said, in fact, that due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge (30 Am. Jun. p. 767). Moreover,

second only to the duty of rendering a just decision, is the duty of doing it in a manner that will not arouse any suspicion as to its fairness and the integrity of the Judge. Consequently, we take it to be the true intention of the law — stated in general terms — that no judge shall preside in a case in which he is not wholly free, disinterested, impartial and independent (30 Am. Jur. supra) . . ."[6] (Italic supplied)

It is in line with the above-quoted observation that this Court, in amending the Rules of Court, added the second paragraph under Section 1 of Rule 137, which provides that a judge in the exercise of his sound discretion may disqualify himself from sitting in a case for just or valid grounds other than those specifically mentioned in the first paragraph of said section.[7] "The courts should administer justice free from suspicion or bias and prejudice; otherwise, parties litigants might lost confidence in the judiciary and destroy its nobleness and decorum "[8]

Respondent Judge declared petitioner in contempt of court after the latter answered "Yes, sir" to this question of the judge; "Do you doubt the integrity of the presiding Judge to decide this case fairly and impartially because the lawyer of the other party was my former assistant? Do you doubt? Just answer the question?" We believe that petitioner had not committed an act amounting to contempt of court when he made that answer. The petitioner had not misbehaved in court, or in the presence of respondent Judge, as to obstruct or interrupt the proceedings. Neither did the petitioner act in a manner that was disrespectful to respondent Judge. When petitioner answered "Yes, sir" to the question asked by respondent Judge, petitioner simply expressed his sincere feeling under the circumstances. In order that a person may be summarily punished for direct contempt of court, it must appear that his behavior or his utterance tends to obstruct the proceedings in court, or constitutes an affront to the dignity of the court. As stated by this Court, "Contempt of court presupposes a contumacious attitude, a" flouting or arrogant belligerence, a defiance of the court . . . "[9]

We commend the zeal shown by respondent Judge in his effort to protect his own integrity and the dignity of the court. We are constrained to say, however, that he had gone a little farther than what was necessary under the circumstances. We are inclined to believe that respondent Judge felt offended when petitioner answered "Yes, sir" to the question adverted to in the preceding paragraph. But the petitioner was simply truthful and candid to the court when he gave that answer. It would have been unfair to respondent Judge had petitioner answered "No, sir," because then he would not be sincere with the court, and he would be inconsistent with the request that he made through his counsel for respondent Judge to inhibit himself from further hearing the case. When respondent Judge asked that question, he necessarily expected a truthful answer from petitioner, and indeed petitioner gave him the truthful answer. We are not persuaded that in so answering petitioner meant to be disrespectful^ offensive or insulting to respondent Judge. Nor do We consider that in so answering petitioner meant to cast reflection on the integrity and honesty of respondent Judge. We believe that in so answering the petitioner was simply manifesting the misgiving of an ordinary layman about the outcome of his case that is going to be tried by a judge who has been closely associated with the counsel for his adversary. The petitioner would never have expressed that misgiving of his had respondent Judge not asked him in open court a question that invoked that answer. A judge can not prevent any person — even a litigant or counsel in a case before him — to entertain in his mind an opinion about him as a judge. Certainly, any person is entitled to his opinion about a judge, whether that opinion is flattering to the judge, or not. It would be different if a person would deliberately and maliciously express an adverse opinion about a judge, without reason, but simply to malign and discredit the judge. In the case now before Us We believe that petitioner did not mean to malign or discredit respondent Judge in answering as he did. It can be said that petitioner was simply moved by a desire to protect his interests in the case pending before the court presided by respondent Judge. A citizen of this Republic is entitled to expect that our courts of justice are presided by judges who are free from bias and prejudice — and it should not be made a court against the citizen if he so expresses himself truthfully, sincerely, and respectfully. A judge, as a public servant, should not be so thin-skinned or sensitive as to feel hurt or offended if a citizen expresses an honest opinion about him which may

not altogether be flattering to him.[10] After all, what matters is that a judge performs his duties in accordance with the dictates of his conscience and the light that God has given him. A judge should never allow himself to be moved by pride, prejudice, passion, or pettiness in the performance of his duties. And a judge should always bear in mind that the power of the court to punish for contempt should be exercised 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.

It is worth mentioning here that numerous cases there have been where judges, and even members of this Court, were asked to inhibit themselves from trying, or from participating in the consideration of, a case, but scarcely were the movants punished for contempt even if the grounds upon which they based their motions for disqualification are not among those provided in the rules. It is only when there was direct imputation of bias or prejudice, or a stubborn insistence to disqualify the judge, done in a malicious, arrogant, belligerent and disrespectful manner, that movants were held in contempt of court. [11] And this liberal attitude of the courts is in keeping with the doctrine that "The power to punish for contempt of court should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail." [12] The power to punish for contempt, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.[13]

Wherefore, the order of respondent Judge dated February 10, 1964, in Civil Case No. 13259 of the Court of First Instance of Pangasinan, declaring petitioner in direct contempt of court and ordering him to pay a fine of P50.00, is hereby annulled and set aside; and it is ordered that the sum of P50.00, paid under protest by petitioner as a fine, be refunded to him. No costs. It is so ordered.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

[1] The other plaintiffs being his mother and brothers.

[2] Taken from the transcript, Annex "A", attached to the petition for certiorari.

[3] Attached as Annex B to the petition for certiorari.

[4] This is as provided in Section 1, Rule 71 of the new Rules of Court, which is the rule applicable because the incident took place on February 10, 1964. Under the new Rules of Court, which took effect on January 1, 1964, the phrase "to interrupt the administration of justice", found in Section 1 of Rule 64 of the old Rules of Court, has been replaced by the phrase "to obstruct or interrupt the proceedings before the same."

[5] Second paragraph of Rule 71 of the new Rules of Court provides: "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."

[6] Gutierrez vs. Santos, et al., G.R. No. L-15824, May 30, 1961.

[7] The Gutierrez case, supra, was promulgated on May 30, 1961. The revised Rules of Court took effect January 1, 1964.

[8] Castillo vs. Javelona, et al., G.R. No. L-36742, September 29, 1962.

[9] Matutina vs. Buslon, et al., 109 Phil. 140.

[10] U.S. vs. Bustos, 37 Phil., 731, 741.

[11] Lualhati vs. Albert, 57 Phil 87.

[12] Villavicencio vs. Lukban, 39 Phil., 778, 798.

[13] Victorino, et al. vs. Espiritu, G.R. No. L-17735, July 30, 1962.

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