

**ATTY. TEODORO V. CABILAN & ALEJANDRO A. PARALISAN,
PETITIONERS, VS. HON. JUDGE JOSE R. RAMOLETE &
PROVINCIAL/CITY JAIL WARDEN OF CEBU CITY, RESPONDENTS.**

G.R. No. L-43491. December 26, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari and prohibition with preliminary injunction seeking the annulment of the April 2, 1976 Judgment of Hon. Jose R. Ramolete in Criminal Case No. CU-1388 declaring herein petitioners guilty of direct contempt of court sentencing them to suffer the penalty of ten (10) days imprisonment.

Herein respondent judge is the presiding judge in Criminal Case No. CU-1388, and herein petitioner Atty. Teodoro V. Cabilan is the private prosecutor. Petitioner Alejandro A. Paralisan is the husband of Norma Yap Paralisan, one of the prosecution witnesses who was ordered arrested by respondent judge for failure to attend the scheduled hearing of the said case. Mrs. Paralisan wrote a letter to respondent judge, explaining her failure and attached an unverified medical certificate.

At the hearing of March 29, 1976, the prosecution presented an illegible xerox copy of a supposed Deed of Sale of a truck executed by the complainant in favor of the accused. Consequently, petitioner Cabilan, as private prosecutor, moved for the production of the original which is being kept in the same building. Respondent judge granted the motion and ordered a ten minute recess. The prosecuting fiscal, petitioners and Mrs. Paralisan went to the Notarial Division to search for the original of the document. Thereafter, upon instruction of the fiscal, petitioner Paralisan returned to the courtroom to watch their exhibits. Shortly thereafter, respondent judge allegedly approached him and a heated exchange of words transpired between them, the details of which are contained in an affidavit Annex"A" filed later on March 30, by petitioner Cabilan attached to a motion to disqualify respondent judge from further hearing the case. The pertinent portions of the said affidavit, read:

"4. The Honorable Presiding Judge, upon seeing the affiant sitting on the bench walked back and forth towards said affiant and then, with a pointed finger directed to affiant said, 'you, you where is your wife? I will have her arrested, I do not accept that kind of medical certificate she submitted. I will order the Sheriff right now to detain your wife,' in a voice so loud as if affiant were his notorious enemy. Drowned by extreme humiliation, shame and amazed by the violent attitude of said judge, the affiant rushed up to the Judge and in a loud voice also asked, 'Judge, do you have personal grudge against my wife and my family and why? Why do you shout at me? I am not a party to the case. Your show of partiality is conduct unbecoming of a Judge. Are you interested personally in this case? I have not seen a Judge acting like this.' I further told him that his partiality is very apparent. 'Since the start of the trial in this case, you have been threatening witnesses for the prosecution.' After uttering those words, I left out of the court room and the Honorable Presiding Judge followed me and threatened me with arrest and called the Sheriffs available in the vicinity.

"5. Since the start of the trial of this case almost a year ago, I noticed suspicious behavior of the Honorable Presiding Judge like allowing counsel for the accused and even the accused himself to enter his chambers

without the presence of the Fiscal and/or private prosecutor.

"6. Personally, I have no intention of intervening or appearing as witness in this case although I know the fact hereof. I also know the questionable acts of accused especially Romeo Ceniza. But after reading in the papers that the Honorable Presiding Judge is fond of issuing illegal orders like that Tanhu Case as enunciated by our Supreme Court, I got interested in said Judge because my wife was also ordered arrested by her failure to attend the hearing of this case as a mere witness. I believed that the order of arrest is another illegal order because I believe that my wife's failure to attend a trial as a witness is NOT direct contempt but an indirect one instead of arrest, she should merely be cited for contempt.

"7. In my observation, by the conduct of the Honorable Presiding Judge which he demonstrated to me as above-stated, he is not only fond of issuing illegal order but is tyrannical, oppressive, whimsical and capricious when he feels like tilting the scales of justice in favor of a party in the case adverted to under trial.

"8. I feel that taxpayers of this province wherein the Honorable Presiding Judge is sitting should at least be respected in their rights. We tax payers expect fairness in the dispensation of justice." (Rollo, p. 13)

Respondent judge, finding the allegations in the said affidavit contemptuous, prepared the herein questioned judgment, but on April 2, 1976, the same was promulgated only to petitioner Paralisan because petitioner Cabilan was then in Ozamis City. Petitioner Paralisan was escorted to the City Jail and had already served the sentence.

On April 7, 1976, petitioners filed the instant petition in this Court, and on the same date, the Second Division of this Court resolved to issue a temporary restraining order, and to order the immediate release of the petitioners (Ibid., p. 36-A).

The sole issue in this case is whether or not respondent judge erred in declaring herein petitioners guilty of direct contempt of court and sentencing them to suffer the penalty of ten (10) days imprisonment.

The answer is in the negative.

It is the contention of the petitioners that respondent judge gravely abused his discretion in ordering the incarceration of the petitioners without preferred charges, considering that respondent judge implied in his order that the charges of the petitioners were unsubstantiated (Par. 2, Judgment, Annex "E"); that it may be that the contempt contemplated by respondent judge was an indirect contempt; that it was next to impossible to substantiate the charges in the motion for disqualification because petitioner Paralisan was immediately placed under arrest and sentenced to jail without charges; and that the acts of respondent judge were highly arbitrary and derogatory to his oath to hear before he condemns and to render justice to anyone regardless of his station in life.

Petitioners' contention is untenable.

At the outset, it should be stated that this Court has repeatedly declared that the power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice (*Halili vs. Court of Industrial Relations*, 136 SCRA 112, 135 [1985], citing the cases of *Slade Perkins vs. Director of Prisons*, 58 Phil. 271; *In re Kelly*, 35 Phil. 944; *Commissioner of Immigration vs. Cloribel*, 20 SCRA 1241; and *Montalban vs. Canonoy*, 38 SCRA 1). Under the Rules of Court, contempt is classified into direct and indirect contempt. Direct contempt is committed in the presence of or so near a court or judge and can be punished summarily without hearing. Indirect contempt is not committed in the presence of the court and can be punished only after hearing (*People v. Navarro*, 121 SCRA 707, 710 [1983]). In the case of *Ang vs. Castro* (136 SCRA 453, 458 [1985]), this Court ruled that if the pleading containing derogatory, offensive or malicious statements is submitted in the same court or judge in which the proceedings are pending, it is direct contempt because it is

equivalent to a misbehaviour committed in the presence of or so near a court or judge as to interrupt the administration of justice. This ruling was reiterated in the case of *Ante vs. Pascua* (162 SCRA 780 [1988]), where it was held that contemptuous statements made in the pleadings filed with the court constitute direct contempt.

In the instant case, the basis of the judgment for contempt of court is petitioner Paralisan's affidavit which was attached and made as an integral part of the motion for disqualification filed by petitioner Cabilan which therefore falls squarely under the above ruling.

As to the claim of petitioner Cabilan that the affidavit was modified by petitioner Paralisan and that he discovered the insertion of the derogatory remarks only upon his return to Cebu City from Ozamis City, suffice it to say that aside from the arguments presented by respondent judge to the contrary, petitioner Cabilan, as counsel of record, has control of the proceedings. Whatever steps his client takes should be within his knowledge and responsibility (*Surigao Mineral Reservation Board vs. Cloribel*, 31 SCRA 1, 23 [1970]).

Nevertheless, considering that petitioner Cabilan has been practicing for nineteen (19) years and this is the first time that he is charged with contempt of court, and considering that the power to punish contempt should be exercised on the preservative and not on the vindictive principle with the corrective rather than the retaliatory idea of punishment (*Baja vs. Macandog*, 158 SCRA 391 [1988]), imposition of a fine of P500.00 without imprisonment would be enough (*Caniza vs. Sebastian*, 130 SCRA 295 [1984]).

On the other hand, petitioner Paralisan having already served his sentence, this case is moot and academic insofar as he is concerned.

PREMISES CONSIDERED, the instant petition is hereby DISMISSED, but the questioned judgment of April 2, 1976 is MODIFIED by changing the sentence of ten (10) days imprisonment to a fine of P200.00 without imprisonment.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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