

**FLOREÑA TINAGAN, PETITIONER, VS. JOSE PERLAS, JR., WARDEN,
PROVINCIAL JAIL OF ILOILO, RESPONDENT.***G.R. No. L-23965. January 30, 1968*

Ponente: ANGELES, J.

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This is a petition for habeas corpus to secure the discharge from detention of petitioner, Floreña Tinagan, who was arrested and put to prison by the respondent provincial warden in the provincial jail of Iloilo. Upon the commencement of these proceedings in this Court, the petitioner was allowed provisional liberty upon the filing of a bond in the amount of P200.00.

The disputed confinement of petitioner was effected in pursuance of an order of the Court of First Instance of Iloilo, dated December 22, 1964, in Special Proceedings No. 1588 of that court, to wit:

"Floreña Tinagan, former mistress of Jaime Sisson, Sr. was appointed co-administrator in the estate of Jaime Sison who, with his wife, Loreto Juaneza, was survived by his children, namely, Jaime, Jr., Eduardo, Fely and Alfredo, all surnamed Sison. The only estate of the deceased is a house, according to the inventory submitted by the administrator on September 25, 1963. Not a portion of the claims of the creditors which have been allowed by the court have been paid. Upon petition of the creditors, the Court ordered the sale of the house by public auction, where the Chinese Commercial High School was the highest bidder. On September 26, 1964, the court ordered Floreña Tinagan, in her capacity as co-administrator of the estate, to deliver the house in her possession to the Iloilo Chinese Commercial High School on or before October 24, 1964. After the expiration of October 24, 1964, the Iloilo Chinese Commercial High School informed the Court that Floreña Tinagan as administrator of the estate had not yet delivered the said house and she refused to deliver the same. So on October 27, 1964, this Court ordered the Sheriff to eject Floreña Tinagan from said house and deliver the possession of the house to the Iloilo Chinese Commercial High School. The administrator, Floreña Tinagan, refused to obey the order of the Court after she was duly apprised by the Court of her duties and obligations as administratrix. So on November 4, 1964, this court ordered for her arrest. She escaped arrest. When brought to the Court and asked if she was willing to comply with the order of the court to deliver the house to the Iloilo Chinese Commercial High School, she told the Court that she did not want and she does not want to obey the order and would refuse to obey the order of the Court.

"WHEREFORE, in accordance with Section 7, Rule 71 of the Rules of Court, the co-administrator, Floreña Tinagan, is hereby ordered committed to the Iloilo Provincial Jail for refusing to obey the order of the Court and to remain confined therein until such time when she signifies her willingness to obey the order of the court and will in effect obey the said order of the court.

"The petition for bail is denied."

It is claimed that it is error for the court to order petitioner's immediate arrest and commitment to prison since the acts allegedly committed merely constitute indirect or constructive contempt, in which case, before petitioner may be punished therefor, a charge in writing should be filed and opportunity to be heard be given her, citing Section 3, Rule 71 of the Rules of Court. The respondent counters with the argument that the petitioner is guilty of

direct contempt under section 1 of the same Rule, which may be punished summarily, since the misbehavior was committed in the presence of the court or judge.

The pertinent provisions of Rule 71 are hereunder quoted:

"Section 1. Direct content punished summarily. - A person guilty of misbehavior in the presence of or so near a court or judge as to obstruct or interrupt the proceedings before the same, including disrespect toward the court or judge, of-fensive personalities toward others, or refusal to be sworn or to answer a witness, or to subscribe an affidavit or de-position when lawfully required so to do, may be summarily adjudged in contempt by such court or judge and punished by fine not exceeding two hundred pesos or imprisonment not exceeding ten days, or both, if it be an inferior court."

"Section 3. Indirect contempts to be punished after charge and hearing. - After charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel, a person guilty of any of the following acts may be pun-ished for contempt:

"(a) Misbehavior of an offi-cer of a court in the performance of his official duties or in his official transactions;

"(b) Disobedience of or resist-ance 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 dis-possessed or ejected from any real property the judgment or process of any court of competent juris-diction, enters or attempts or in-duces another to enter into or upon such real property, for the purpose of executing acts of owner-ship or possession, or in any man-ner disturbs the possession given to the person adjudged to be enti-tled thereto;

x x x x x

"But nothing in this section shall be construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings."

The issue, therefore, is whether or not the alleged misbehavior of the petitioner would fall under one or the other class of contempt of court. If under the first, called direct contempt, the process of the immediate arrest of petitioner was proper; if under the se-cond, called indirect contempt, there must be a writ-ten charge and hearing before petitioner could be punished.

The alleged contemptuous conduct of petitioner consists in her refusal to obey an order of the court, after she was duly apprised of her duties and obliga-tions as administratrix, to deliver the house to the Iloilo Chinese Commercial High School, the subject mat-ter of the order.

Respondent contends that the act of petitioner in answering the judge that "she did not want and she does not want to obey the order and would refuse to obey the order of the court" constituted misbehavior in the presence of the court and/or disrespect toward the court or judge.

While petitioner's answer might be construed as a challenge to the court's authority to enforce its lawful orders, We are of the opinion, however, that under the circumstances, petitioner's conduct does not amount to a direct contempt, considering that peti-tioner would not have had the occasion to give such an answer "in the presence of or so near a court or judge" were she not arrested and brought to court. In the predicament the petitioner was placed - a rested and brought before the Judge, and then was asked "if she was willing to comply with the order of the court to deliver the house", having in mind an earlier petition[1] filed by her for "Certiorari, Mandamus and Prohibition with Preliminary Injunction," praying to annul, for being premature, the court's order issued on July 27, 1964, directing the public auction of the building occupied by her - petitioner merely manifested to the court what she believed to be the correct answer to the question of the court. She had her own valid reasons for resisting

obedience to the court's order because her petition for certiorari and prohibition before this Court had not yet been resolved. Instead of giving the petitioner an opportunity to explain her refusal to comply with the order, the Judge, in violation of petitioner's constitutional right to due process, immediately ordered her confinement.

The power to punish for contempt should be used sparingly, with caution, deliberation and with due regard to the provisions of the law and the constitutional rights of the individual.[2] Courts should be slow in jailing people for non-compliance with their orders. Only in cases of clear and contumacious refusal to obey should said power be exercised.[3]

In the case of *Austria v. Masaquel*, G.R. L-22356, August 31, 1967, We held that giving of an affirmative answer, in the courtroom, to the question of the judge, "Do you doubt the integrity of the pre-siding Judge to decide this case fairly and impartially because the lawyer of the other party was my former assistant? Do you doubt?" is not an act amounting to contempt of court. Said this Court in elucidation:

"When petitioner answered 'Yes, sir' to the question asked by respondent Judge, petitioner simply expressed his sincere feeling under the circumstances. x x x

"x x x 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.

PREMISES CONSIDERED, the petition is hereby granted. The bond posted by the petitioner is hereby declared cancelled. No costs.

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

[1] G.R. No. L-23555, *Floreña Tinagan, Petitioner v. Hon. Valerio V. Rovira*, Judge of the Court of First Instance of Iloilo, *Tan Chuy Ho, Rosario Geralde, Adelina Juan S. Loa & Ester H. Jamora*, Respondents.

[2] *U.S. Federal Trade Commission v. Fairfood Products Co.* 94 F. 3d. 844; 17 C.J.S. 19, note 34.

[3] *Gamboa v. Teodoro*, L-4893, May 13, 1952; *De Esparagosa v. Tan*, L-6525, April 12, 1954.

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