

REGINO GABRIEL AND JAIME TAPEL, PETITIONERS, VS. THE HON. COURT OF APPEALS, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS. IN RE: CONTEMPT CITATION AGAINST ATTY. CORNELIO M. ...

G.R. Nos. L-43757-58. July 30, 1976

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In the Court's Resolution of June 11, 1976, the petition (filed on May 31, 1976) in the cases at bar for review of the Court of Appeals' decision of November 28, 1975 which affirmed in toto the Manila court of first instance's judgment of September 27, 1968 convicting, after joint trial, the two petitioners-accused of the crime of theft, was denied for lack of merit. The Court further noted therein that a first petition for the same purpose filed through another lawyer on March 6, 1976 had been previously denied and final judgment entered on May 10, 1976, and cited Atty. Cornelio M. Orteza who filed the second petition at bar for contempt and/or for disciplinary action, as follows:

*** Considering the allegations, issues and arguments adduced in the petition for review on certiorari of the decision of the Court of Appeals, the Court Resolved to DENY the petition for lack of merit, a previous petition for review of the same decision docketed as G.R. Nos. L-43113-14 having filed by petitioners on March 6, 1976 thru Atty. Rodolfo D. Mapile and denied as per resolution of March 15, 1976 and entry of final judgment having been made on May 10, 1976. Atty. Cornelio M. Orteza is here-by required to SHOW CAUSE why he should not be held in contempt and/or disciplinarily dealt with for filing a second petition on behalf of the same petitioners for review of the same decision of the Court of Appeals which was already previously denied with finality within ten (10) days from notice hereof."

Respondent Atty. Orteza still filed without leave of court on July 6, 1976 a motion for reconsideration of the Court's above-quoted resolution denying his petition for re-view and after having secured for the purpose an extension (on the ground of pressure of work) filed on July 12, 1976 his explanation.

The burden of both pleadings is that the first petition to set aside the Court of Appeals' affirmance of petitioners' conviction was a special civil action of certiorari under Rule 65, while the second petition was one for review under Rule 5.[1]

The explanation is manifestly unsatisfactory. However zealous may be counsel's concern and belief in the alleged innocence of the petitioners, it is elementary that counsel may not split their appeal into one to set aside the appellate court's denial of petitioners-appellants' motion for reconsideration of its decision affirming the trial court's judgment of conviction and/or for new trial (the first petition) and into another to set aside the appellate court's decision itself, which affirmed the trial court's conviction of the petitioners-appellants (the second petition).

Such filing of multiple petitions constitutes abuse of the Court's processes and improper conduct that tends to

impede, obstruct and degrade the administration of justice and will be punished as contempt of court.[2] Needless to add, the lawyer who files such multiple or repetitious petitions (which obviously delays the execution of a final and executory judgment) subjects himself to disciplinary action for incompetence (for not knowing any better) or for willful violation of his duties as an attorney to act with all good fidelity to the courts and to maintain only such actions as appear to him to be just and are consistent with truth and honor.[3]

Thus in several instances in the past, the Court has admonished that "(L)itigants and their counsels are warned under pain of contempt and disciplinary action that a party who has already failed to have a decision of the Court of Appeals set aside through a petition for review by certiorari with the denial of his petition (by the First Division to which such petitions for review are assigned under the Court's standing resolution of November 15, 1973) should not under the guise of a special civil action file a second petition for the same purpose of setting aside the same Court of Appeals' decision to be acted upon by the Second Division (to which special civil actions are assigned under the Court's resolution of November 15, 1973), and vice-versa, for such conduct would tend to trifle with the Court and impede, obstruct and degrade the administration of justice".[4]

Respondent Atty. Orteza is therefore adjudged guilty of contempt of court and is ordered to pay a fine of Five Hundred (P500.00) pesos within ten (10) days from notice hereof failing which, he shall be imprisoned for a period of fifty (50) days. While further administrative action against him is herewith forborne, he is hereby warned that a future repetition of the same or similar incident will be dealt with more severely.

Petitioners' purported motion for reconsideration of the Court's resolution of June 11, 1976 denying their second petition is ordered expunged from the records as a sham motion, (as is the second petition itself), since the decision sought to be reviewed has long become final and executory with the entry on May 10, 1976 of final judgment of denial of the first petition.

Let copies hereof be furnished the Integrated Bar of the Philippines and attached to his personal record. SO ORDERED.

Makasiar, Muñoz Palma, Aquino, and Martin, JJ., concur.

[1] More precisely, such petitions for review are under the Supreme Court's certiorari jurisdiction under Rep. Act No. 5440; in their motion for reconsideration at page 2, petitioners claim that their second petition was under Rep. Act No. 6031 which has no application or relevance (since the Act involves actions originating in city and municipal courts.

[2] Rule 71, sec. 3(c) and (d).

[3] Rule 138, sec. 20 (c) and (d).

[4] Cabagui vs. People, L-38027, Res. of May 8, 1974, citing Fojas vs. Court of Appeals, L-37411, Res. of March 20, 1974. In all these cases as well as in the cases at bar, the multiple petitions (whether styled as a special civil action or a petition for review) were all referred to and acted upon by the First Division to which they properly pertained as petitions for review or proposed appeals from the Court of Appeals' decision on the merits affirming in whole or in part the trial court's judgments of conviction.

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