

THE COLLECTOR OF CUSTOMS, PETITIONER, VS. THE HONORABLE GAVINO S. ABAYA, PRESIDING JUDGE OF BRANCH II, COURT OF FIRST INSTANCE OF MANILA AND FELIPE Y. SORIA, RESPONDENTS.

G.R. Nos. L-7403 and L-7426. May 31, 1954

Ponente: PARAS, C.J.

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PARAS, C.J.:

On December 4, 1953, a shipment of 33 cases of Christmas light bulbs arrived in Manila from Hongkong on board the SS "Fernland," consigned to Felipe Y. Soria. On December 19, 1953, in view of an alleged violation of section 1363 of the Revised Administrative Code and Executive Order No. 328, the chief appraiser of the Bureau of Customs, upon order of the Collector of Customs, filed a seizure report stating that said goods were seized. On December 22, 1953, Felipe Y. Soria filed an action for injunction (Civil Case No. 21497) in the Court of First Instance of Manila against the Collector of Customs, his agents and representatives, praying that the latter be ordered to release the light bulbs and that, pending the final termination of the case, they be directed to immediately do so. On December 23, 1953, Judge Gavino S. Abaya issued ex parte, upon the filing of a bond of P2,000, a writ of preliminary mandatory injunction, ordering the Collector of Customs his agents or representatives to immediately deliver the goods in question to Felipe Y. Soria. On December 29, 1953, a motion to dismiss and to dissolve the preliminary injunction was filed on behalf of the Collector of Customs by the Office of the Solicitor General, alleging that Judge Abaya had no jurisdiction over the subject matter of the action, with a notice that the motion would be submitted for hearing on January 9, 1954. In the meantime, or on December 28, 1953, Felipe Y. Soria filed an urgent petition, praying that the Collector of Customs be cited for contempt of court for not complying with the writ of preliminary mandatory injunction, setting the hearing of the petition for 10 o'clock in the morning of December 29. This urgent petition for contempt was not however so heard, and it appears that, upon agreement of the parties, the motion to dismiss and to dissolve the preliminary injunction filed by the Collector of Customs and the said urgent petition for contempt filed by Soria were to be heard on January 9, 1954. On January 7, 1954, the Collector of Customs received notice of an order issued by Judge Abaya, requiring him to appear on January 9, and show cause why he should not be held in contempt of court as prayed for in Soria's urgent petition. On January 8, 1954, the Collector filed an answer to the petition for contempt, calling attention to his motion to dismiss and to dissolve the preliminary injunction, still pending resolution by the court. On January 9, a joint hearing was held on said motion to dismiss and to dissolve the preliminary injunction, on the urgent petition for contempt, and on said occasion the parties, were allowed to file their respective memoranda within five days, the memorandum for the Collector of Customs having been actually filed on January 14. On January 16, the Collector received notice of the order of Judge Abaya dated January 12, 1954, denying the motion to dismiss and to dissolve the preliminary injunction, and of another order of said Judge dated January 13, 1954, directing him to comply with the writ of preliminary mandatory injunction of December 23, 1953, within 24 hours; otherwise the court would order his imprisonment. On the same date, January 16, the Collector of Customs, instituted in this court the petition for certiorari and prohibition with preliminary injunction in G. R. No. L-7403 against Judge Gavino S. Abaya and Felipe Y. Soria, for the annulment of the aforesaid orders

dated January 12 and 13. As prayed for, this Court, issued the corresponding writ of preliminary injunction against Judge Abaya. On January 23, 1954, the latter issued an order commanding Col. Jaime Velasquez, Acting Commissioner of Customs, to appear before him on January 26, at 9:00 a.m., and show cause why he should not be punished for contempt for certain publications appearing in The Manila Chronicle and The Manila Times and for a radio broadcast allegedly containing implications made by Col. Velasquez which were malicious and degrading to the court, being contrary to the facts. This order in turn gave rise to the institution in this Court by the Acting Commissioner of Customs of the petition for certiorari and prohibition, with preliminary injunction against Judge Abaya, the corresponding injunction having been issued on January 26.

During the oral argument in G. R. No. L-7403, counsel for respondent Soria manifested that he would move for the dismissal of the action in civil case No. 21497, being convinced that the Court of First Instance of Manila had no jurisdiction, and this manifestation was concurred in by Atty. Juan T. David who was allowed to appear as *amicus curiae*. Accordingly, we consider the petition therein as moot.

In G. R. No. L-7426 we note that, when the respondent Judge issued his orders of January 12 and 13, the parties in civil case No. 21497 had until January 14, within which to file their respective memoranda, the defendant Collector of Customs having in fact filed his memorandum on said date; and that January 16, when notice of said orders was received by the Collector, was Saturday. Considering that notice was served at about noon, and the Collector was given only 24 hours to comply with the writ of preliminary mandatory injunction, he was almost, if not literally, prevented from availing himself of the proper legal remedy to suspend the effects of said orders, because Government offices, needless to state, are closed in the afternoon of Saturday and the whole of Sunday. Even so, the main question to decide is whether or not the preliminary injunction issued by this Court, restraining the respondent Judge "from further taking cognizance," of civil case No. 21497, included the power of the lower court to order the Acting Commissioner of Customs to show cause why he should not be punished for contempt. We cannot countenance the dangerous proposition that, during the suspension of a judicial proceeding, a party can either indulge in the pastime of attacking the court or wage a contemptuous campaign against the judge, without as much as being compelled to account therefor in the meantime. It is not here pretended that the alleged acts for which the respondent Judge is citing the petitioner for contempt, will be affected by the question of jurisdiction raised in civil case No. 21497. Without prejudging the point on the merits, we uphold the inherent power of the respondent Judge to issue the order complained of.

Wherefore, the petitions both in G. R. No. L-7403 and in G. R. No. L-7426 are dismissed without costs. So ordered.

Pablo, Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and Concepcion, JJ., concur.

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