

RAUL H. SESBREÑO, COMPLAINANT, VS. JUDGE PEDRO T. GARCIA, RESPONDENT.*A.M. No. RTJ-88-272. February 06, 1990*

Ponente: GRIÑO-AQUINO, J.

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This administrative complaint against respondent Judge Pedro Garcia is the culmination of the complainant's frustrations with Branch 20 of the Regional Trial Court of Cebu where in 1985 or five (5) years ago, he filed a criminal case for estafa against millionaire Ricardo Silverio, Sr. and Hermilo Rodis of the notorious Philfinance caper. Up to this time, Silverio has not been arraigned allegedly because his heart condition will not permit him to fly to Cebu to be arraigned, although he has flown in and out of the country and is still out now.

For some cause not shown in the records of this administrative case, even before the defendant was arraigned, Criminal Case No. CU-10568 reached the Court of Appeals (CA-G.R. SP No. 04445) which rendered a decision on October 14, 1986 directing the Presiding Judge of Branch 20 (then Judge Exaltacion A. Navarro) to set the arraignment and trial of Silverio, Sr. "as soon as possible" (p. 145, Rollo). Instead of complying with the Appellate Court's directive, Judge Navarro dismissed the case. On January 30, 1988, complainant filed a motion for reconsideration of the court's order, and numerous other pleadings. However, on April 16, 1988, Judge Navarro retired without acting on his motion for reconsideration.

On June 6, 1988, respondent Judge Pedro T. Garcia was appointed to the position vacated by Judge Navarro. According to complainant, respondent Judge Garcia also refused to act on his motion for reconsideration and on his other pleadings in the Silverio case praying for the immediate arraignment and trial of Silverio.

Finally on August 15, 1988, Judge Garcia issued an order for the arrest of Silverio and set his arraignment on October 18, 1988.

The accused filed a motion for postponement which the complainant opposed. Nevertheless, Judge Garcia granted Silverio's motion, and made it appear in his order that there had been no objection by the complainant. The latter filed two manifestations and memoranda objecting to the judge's statement in the order of October 18, 1988.

On November 29, 1988, respondent Judge issued an order chastising Attorney Sesbreño for the insolent, disrespectful, and contemptuous language of his pleadings and for imputing that he (respondent Judge) granted Silverio's motion for postponement without his (Atty. Sesbreño's) knowledge and consent.

Attorney Raul H. Sesbreño has charged respondent Judge Pedro T. Garcia with the following misfeasances:

1. Neglect of duty — for delay in acting on the complainant's pleadings praying for the arrest and arraignment of Silverio;
2. Dishonesty or serious misconduct — if the respondent Judge misrepresented in his Certificates of Service for the months of May or June, 1988 that there were no motions pending resolution in his sala, so he could collect his

salary for that period;

3. Oppression — for warning the complainant in his Order of November 29, 1988 that the complainant would be declared in contempt of court if he repeats the allegedly offensive language he used in his two Manifestations/Memoranda dated October 19, 1988, without giving complainant an opportunity to explain that the language in his pleadings was not insolent, disrespectful, nor contemptuous; and

4. Acts of impropriety or intemperance — for accusing the complainant, without factual basis, of making a veiled threat that he would file administrative charges against Judge Garcia should the latter decide Criminal Case No. CU-10568 in favor of Silverio.

Complainant explained that he opposed the accused's motion for postponement of the October 18, 1988 hearing because four (4) long years have already elapsed since Criminal Case No. CU-10568 was filed in 1985, but due to the many postponements granted by the court to the accused, the latter has yet to be arraigned. While he was agreeable to the postponement of the October 18, 1988 hearing, complainant wanted the court to limit the delay to only one month, or not later than November 18, 1988. However, respondent Judge reset Silverio's arraignment on December 7, 1988 although the accused was also scheduled to appear in Branch 9 on that date, and that respondent Judge would by then have gone on leave of absence. As it happened later, Silverio did not appear in both salas of the court.

In his comment on the verified complaint, respondent Judge explained that when he assumed the position of Presiding Judge of Branch 20 on June 6, 1988, his predecessor had previously issued an Order on March 30, 1988, deferring action on all motions and pleadings in the case "pending on whatever action the Court of Appeals may take on the Motion for Reconsideration filed by the private respondent." (p. 30, Rollo.) On June 20, 1988, he called complainant's attention to that order of Judge Navarro. He explained that the delay in resolving complainant's motions could not be helped because "the entire records of the above-entitled case is still with the Court of Appeals in Manila" (Annex A of Respondent's Answer).

In his order dated June 27, 1988, respondent Judge remarked that the complainant's Urgent Motion dated June 26, 1988 was "highly litigious," meaning hostile and provocative (p. 54, Rollo).

Upon receipt of the records from the Court of Appeals, Judge Garcia issued on August 15, 1988 a warrant for the arrest of Silverio and his co-defendant (Exh. E, Respondent's Answer).

Silverio posted bail. The case was set for arraignment on October 18, 1988. Instead of appearing in court on the scheduled date, Silverio, through his counsel, Atty. Reyes, asked for postponement on account of his heart condition.

The transcript of the stenographic notes of the hearing on October 18, 1988 records the following exchanges on the defendant's motion for postponement:

"ATTY. REYES:

"We pray that the arraignment be postponed to another date, your Honor.

"ATTY. SESBREÑO:

"The prosecution, your Honor, has filed the opposition to that motion today, October 18, and in that opposition, we aver that up to today, I have not been furnished with a copy of said motion, so that the 3-day prior notice as required in Rule 15 of the Rules of Court has not been complied, and therefore, that motion is just a mere scrap of paper, and should be denied for failure to comply with the requirements. It is very clear in the medical certificate that accused Silverio is not confined in a hospital, and he is a walking patient. Considering that he is a walking patient, there is no reason, no valid reason, for him why he cannot attend to this arraignment, your Honor. He can come to court just to listen to the reading of the information, which activity is not strenuous. It will not strain him physically. There is no record that he is hospitalized. He can walk and can move around, and there is no impossibility to attend the arraignment. As stated in our opposition, your honor, accused Silverio has filed cases against the PNB for the recovery of his Delta Motors Corporation and also against the Securities and Exchange Commission and a bank for the rehabilitation of Philfinance. In all these cases, he never complained that he is sick. Only in this case, your Honor, that he complained that he is sick, and this case has been filed in 1985 yet, or more than three (3) years ago, and he has not been arraigned yet. So, this is another dilatory tactic, your Honor.

"COURT: (to Atty. Reyes)

"By the way, the doctor who issued the medical certificate, is he a government physician?

"ATTY. REYES:

"Your Honor, please. He is a very prominent heart specialist at the Philippine Heart Center. And there is no reason, your Honor, to doubt his professional competence. I would not like to take responsibility of advising my client to come to Cebu at the risk of exposing him to a heart attack. His heart condition is not an ordinary illness, your Honor.

"COURT:

"In the interest of justice, at least to give the accused reasonable time to come, only for purposes of arraignment.

"ATTY. REYES:

"Yes, your Honor, if he gets clearance from his doctor.

"COURT:

"If he gets clearance? If that is the condition, we have no way of knowing when will that be?

"ATTY. REYES:

"Well, at any rate, we can have the next setting on another date, your Honor.

"ATTY. SESBREÑO:

"If that is the condition that the accused can only come if he gets clearance from his doctor, then there is no assurance, your Honor, that we can have the arraignment.

"COURT:

"Yes, but in the meanwhile, we give the benefit of the doubt for the sickness of the accused in this case. In the sense of fairness and good judgment, we will give him the chance to recuperate at least, if he is really sick. It will be unchristian to order him to come here if he is really sick. He might die on the way.

"xxx xxx xxx

"ATTY. SESBREÑO:

"May I suggest, your Honor, that during the next setting, if it is possible, just to have the arraignment of this case. Anyway, we could have the trial ex-parte later on without the presence of the accused. The accused, your Honor, is a walking patient and he should be required to attend even in the company of his physician, so that if he is really having a heart ailment, as what was said he had a heart attack, a physician should attend to him, because if the accused says that he will attend the arraignment only if he gets clearance from his doctor (unfinished)

"COURT: (butted in)

"The image of the Court will be placed in a predicament, as it will appear that this is a one-way traffic affair, if we allow that condition. It is a matter of public knowledge that the accused here is a multi-millionaire. He might think his is an exceptional case. That is why I am asking the cooperation of Atty. Reyes. For purposes of the arraignment, to satisfy also Atty. Sesbreño, because this is his personal case. He is the plaintiff himself, and you know, Atty. Sesbreño is very brave. He is one of the fightingest lawyer here in Cebu. He fights for his right, even to the extent of filing cases after cases against Judges. In other words, the Court would decide this case on the level and would be impartial and fair in handling this case, in accordance with law, as his conscience may dictate.

"ATTY. SESBREÑO:

"I would like to make it of record, that if only the medical certificate shows that the accused Silverio is confined in a hospital, I could not have interposed my objection, but he is not confined and he is a walking patient.

"COURT:

"Millionaires, usually do not want to be confined in a hospital. They dislike that. They just want to stay in their luxurious homes, and they can afford to call any specialist they want. They can have the best services of any specialist if they want to. So, I think that the accused in this case do the same. I know the old man, the late Durano. He avoided staying in hospitals if possible. He even sent his personal physician to the United states to fetch the best doctor when he had the coronary ailment, the heart attack.

"The Court do not look with favor to the accused in this case, but because according to the words of Atty. Reyes that he is not taking responsibility of advising his client to come for the arraignment, so we will just give him at least the chance to appear for the arraignment.

"So, when shall be the most reasonable time? Will it be next month? For purposes of arraignment.

"ATTY. SESBREÑO:

"I suggest within one (1) month, your Honor.

"COURT:

"Yes, within one month. We will do that.

"xxx xxx xxx

"ATTY. REYES:

"May I suggest, your Honor, because we have another case, an arraignment on December 7, 1988. May I suggest that date?

"COURT:

"Here?

"ATTY. REYES:

"In Branch 9, your Honor, before Judge Gaviola.

"ATTY. SESBREÑO:

"I think there might be some hitches, because the accused there in that case has not been arrested, your Honor.

"COURT:

"Who?

"ATTY. SESBREÑO: .

"Accused Silverio has not been arrested in that case

"COURT:

"Oh, Atty. Reyes?

"ATTY. REYES:

"He is bonded, your Honor.

"ATTY. SESBREÑO:

"But the bond has expired. The 30-day period has expired and the bonding company was ordered to produce the accused and to explain why the bond should not be confiscated.

"COURT:

"The problem of the Court now is whether on December 7 he can be here. Well, inasmuch as the accused has another case in another sala on December 7, we might as well set the arraignment here on said date, to coincide with the date of the arraignment of the accused in Branch 9, so that the accused will travel only in one instance.

"ATTY. SESBREÑO:

"May I suggest within one month, your Honor, the arraignment be set within one month, to conform wit the rules.

"COURT:

"Make it one month, but due to the exceptional predicament of the accused, we will just reset this to December 7, 1988 at 8:30 in the morning, to give the accused the chance.

"ATTY. SESBREÑO:

"In view of the suggestion of the Court, I may accede." (pp. 3-12, t.s.n., October 18, 1988; pp. 74-83, Rollo; italics supplied.)

The order of the Court dated October 18, 1988 reads as follows:

"On the suggestion of Atty. Edwin Reyes, counsel for the accused Ricardo Silverio, to reset the arraignment and pre-trial to December 7, 1988 at 8:30 in the morning, considering that the accused Silverio is also appearing in Branch 9 of this Court on said date and without objection on the part of Atty. Raul Sesbreño, the court is constrained to defer the arraignment of the accused on said date and time. On suggestion also of Atty. Sesbreño, Atty. Reyes is hereby directed to handcarry the subpoena for his client and also the bondsmen to appear before this Court on December 7, 1988 at 8:30 in the morning." (p. 61, Rollo.)

Postponements are left to the sound discretion of the court. The fact that the postponement exceeded one month from October 18, 1988 was not such a grave abuse of discretion as to call for disciplinary action against respondent Judge, it appearing that there was a good reason for resetting the arraignment of the accused on December 7, 1988 because he (Silverio) would be appearing in another sala on that date. He would have to make only one trip to Cebu for the two cases. The postponement of less than two months was a reasonable period.

Complainant's allegation that respondent Judge neglected to resolve with reasonable dispatch complainant's pleadings, urging the immediate arrest and arraignment of Silverio, Sr. is not supported by the records of the case.

Indeed, more than four (4) long years have elapsed since Criminal Case No. CU-10568 was filed in 1985, but that delay may not be laid at respondent Judge's doorstep for he assumed office as Presiding Judge of Branch 20 on June 6, 1988 only. However, respondent Judge erroneously believed that the records of the case were still in the Court of Appeals. The fact is that the records were returned by the Court of Appeals to the lower court on January 9, 1987 yet.

On August 15, 1988, or two months after Judge Garcia took over from Judge Navarro, he issued a warrant for the arrest of Silverio. He clearly acted with reasonable promptitude, but since the accused has not been arraigned up to this time, there is reason for Attorney Sesbreño's complaint that the court has not acted with determination and resourcefulness to foil the dilatory maneuvers of the accused and his lawyers.

The charge of dishonesty or serious misconduct against Judge Garcia is not worth considering as it is hypothetical, i.e., if respondent Judge stated in his certificates of service for the months of May and/or June, 1988 that no motions were pending resolution in his sala. Complainant did not even attempt to present a shred of evidence to prove this charge.

Complainant's charges of oppression and acts of impropriety or intemperance refer to respondent Judge's Order of November 29, 1988 which reads in part as follows:

"A cursory reading of the above-mentioned facts will ineluctably show that the court had traversed on the middle ground of the road in order to satisfy both parties. As to why Atty. Raul Sesbreño filed two (2) manifestations/memoranda using insolent, disrespectful and contemptuous language impressing the court that the latter opted in favor of the postponement of this case, without his knowledge and consent and that he was just compelled to accept because the Court, in effect, handled the postponement in arbitrary manner is beyond the comprehension of the Court.

"Parenthetically, the offended party made mentioned to place on records his reaction to postpone the arraignment, which was not reflected in the transcript of the stenographic notes, especially his veiled threat, which is covertly contumacious when he said in the two (2) manifestations/memoranda that the same are filed for: (1) for record purposes; and (2) for reference use in the future in the appropriate opportuned time. The Court is not naive to understand that should this case be adverse to him, he would use this incident as a means to vindicate or retaliate against the Presiding Judge. It is already a matter of public knowledge that movant counsel is in the habit of filing cases against any government officials before whom the investigation or hearing are conducted whenever the orders or decisions are adverse to him.

"Let it be known that neither pressure nor threat/influence of any material considerations whatsoever can dissuade the court from properly exercising and dispensing the administration of justice.

"To think that one has the absolute monopoly of legal knowledge and virtue is downright officious and a pretension of the highest magnitude. They say, in heaven one can not find a saint who was never humble here on earth.

"xxx xxx xxx.

"Without further digging into the intricacies and insolent words, which are self-evident and self-explanatory, the Court hereby warns him not to repeat using words of the same import and meaning, otherwise the Court will be constrained to cite him for contempt of court in order to protect and enforce its dignity and honor as well as the majesty of the law." (pp. 23 & 23-A, Rollo.)

We have read the two manifestations/memoranda (Annexes C & D) of Attorney Sesbreño, and find nothing therein which can be described as "insolent, disrespectful and contemptuous" or "covertly contumacious" or resembling a "veiled threat" against respondent Judge to warrant a warning that he may be cited for contempt of

court if he should repeat words of the same import.

More than once in the past, we had occasion to admonish judges not to be onion-skinned when confronted by dissatisfied lawyers or litigants. Their power to punish for contempt is not a bludgeon to be used for the purpose of exacting silent submission to their rulings and orders however questionable or unjust they may be. It should be used only to protect and vindicate the dignity and authority of the court (*Slade Perkins vs. Director of Prisons*, 58 Phil. 271). Courts should exercise their power to punish for contempt on the preservative and not on the vindictive principle, on the corrective and not on the retaliatory idea of punishment (*Villavicencio vs. Lukban*, 39 Phil. 778; *People vs. Alarcon*, 69 Phil. 265; *Gamboa vs. Teodoro*, L-4893, May 13, 1952; *People vs. Rivera*, L-364, May 26, 1952; *In re Lozano*, 54 Phil. 801).

WHEREFORE, respondent Judge Pedro Garcia is admonished to abstain from intemperate and abrasive language in his orders. He is further urged to be decisive and resourceful in implementing the processes and orders of his court. He should dispose of his cases with equal dispatch, whether the parties be menials or millionaires, so that the aggrieved party will have no reason to complain that justice is only for the rich and influential and that the poor must await the rich man's pleasure.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., no part; related to respondent and complainant is his former employee.

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