

**AMELITO R. MUTUC, PETITIONER, VS. COURT OF APPEALS, GEN.
MANUEL T. YAN & BRIG. GEN. VICENTE RAVAL, RESPONDENTS.**

G.R. No. L-48108. September 26, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari and prohibition with preliminary injunction praying that the resolutions of respondent court in CA-G.R. No. 42658-R of June 21, 1969*, October 24, 1977**, January 26, 1978 and March 28, 1978, requiring petitioner to show cause why he should not be held liable and dealt with for contempt of court and be suspended from the practice of law be declared null and void and to make permanent the writ of preliminary injunction.

The pertinent facts of the case as summarized in the June 21, 1969 resolution of the Court of Appeals, are as follows:

On March 13, 1969, the Fourth Division of the Court of Appeals promulgated a resolution fixing at P5,000.00 the amount of the bond for the provisional release of Fortunato Medina, petitioner-appellee in CA--G.R. No. 42658-R, pending appeal by the respondents to said court, such bond being required by the provisions of Section 20, Rule 41 of the Rules of Court.

On April 16, 1969, the said Division required the Solicitor General to answer the motion for reconsideration filed by the petitioner-appellee on March 28, 1969.

On May 2, 1969, the Solicitor General filed an opposition thereto in Manila, when the Fourth Division was holding session in Baguio City, which was actually received in Baguio City on May 20, 1969.

On June 10, 1969, the petitioner-appellee's motion for reconsideration of March 28, 1969 was denied for lack of merit, the requirement of the bond for his release being mandatory and indispensable.

But before the Court of Appeals could act on petitioner's motion for reconsideration the following news article attributed to Atty. Amelito Mutuc, counsel of record of petitioner-appellee, appeared in the May 8, 1969 issue of the Manila Times, pages 1 and 22-A thereof:

"Mutuc Hits Appeals Court Ruling"

"A division of the Court of Appeals was denounced by former Ambassador Amelito R. Mutuc yesterday for he said, 'knowingly abetting the perpetration of a gross and rank injustice' on a dissident suspect.

"Mutuc spoke of the case of Fortunato Medina, a Filipino worker who was arrested by armed forces intelligence officers in Saigon last year and forcibly flown to Manila. Since his arrest last November 23, Medina has been detained without any criminal case filed in court against him. He is now at the Arayat Municipal Jail.

"The case in the Court of Appeals arose from a petition for habeas corpus filed by Mutuc with the Supreme

Court. The high court had given due course to the case and made the writ returnable to the Quezon City Court of First Instance.

"Detention Illegal"

"The lower court later ruled that Medina's detention was illegal since there was no pending criminal case against him. The court ordered his immediate release. But the Solicitor General's office appealed the ruling to the Court of Appeals.

"Mutuc then filed an urgent motion before the Court of Appeals for Medina's release without posting bail on the basis of the lower court's findings and the fact that the man is a pauper.

"Mutuc said the Court of Appeals Fourth Division denied this motion and ordered Medina post a P5,000.00 bail bond for his provisional liberty.

"Reconsideration"

"Arguing that Medina's detention is illegal, Mutuc sought the reconsideration of the Court of Appeals order. The Solicitor General's office opposed this latest motion, and this is now pending before the Court of Appeals.

"Mutuc said in his statement

'It is unthinkable, deplorable and shocking to see in our midst - in a country which has prided itself as being a proud example of a vibrant democracy and a firm adherent to the rule of law - this sad spectacle of a man kept illegally for 165 days without any criminal complaint pending against him.'

"Extremely Dubious"

"Mutuc said the appeal of the Solicitor General was filed under 'extremely dubious circumstances' because the notice of appeal was filed even before the copy of the decision of the lower court was mailed to him."

On May 9, 1969, the issue of the Manila Times, pages 1 and 14-A, carried the news item that petitioner-appellee Fortunato Medina escaped from confinement upon the advice of his counsel, Atty. Amelito Mutuc. Contacted by newspaper reporters for comment thereon, Atty. Mutuc issued the following statement which was published on page 14-A of the Manila Times issue abovementioned:

"I have advised him (Medina) to escape. After all, his detention is illegal. It is the only way to regain his freedom."

On May 10, 1969, the Manila Times issue, on page 1 and 18-A, carried the news report that Solicitor General Felix V. Makasiar and Solicitor Dominador Quiroz, counsel for the respondents, were studying the feasibility of asking the Court of Appeals to cite Atty. Amelito Mutuc for contempt and of instituting disbarment proceedings against him if it was really true that he advised petitioner-appellee Medina to escape from prison.

On May 11, 1969, Atty. Amelito Mutuc, reacting to the proposed action of the Solicitor General, and apparently taking pride in having advised Fortunato Medina to escape from jail, issued the following statement:

"I am ready and willing to be imprisoned or stripped of my privilege as a lawyer if the Supreme Court so decrees that my cause is not just and that I am in error."

Considering the statements attributed to Atty. Mutuc as grossly defiant, offensive and derogatory to the dignity and integrity of the members of the Fourth Division of the Court of Appeals, the latter required Atty. Mutuc to show cause why he should not be held liable and dealt with for contempt and suspended from the practice of law as member of the Philippine Bar (Rollo, pp. 35-40).

Hence, a petition for certiorari, prohibition and mandamus with preliminary injunction was filed with the Supreme Court and docketed as G. R. No. L-30978 entitled "Fortunato Medina v. Gen. Manuel T. Yan, Brig. Gen. Vicente Raval and the Court of Appeals" seeking to annul the aforementioned resolution of the Court of Appeals and all other pertinent orders, and resolutions of said Court and prohibit it from proceeding further with the case and to compel it to certify said case to this Court on the ground that it has no jurisdiction to entertain the appeal, (Rollo, p. 47) In a decision promulgated on September 30, 1974, the Supreme Court denied the petition and authorized respondent Appellate Court to proceed with the appealed case and all incidents thereof. The restraining order dated September 4, 1969 issued by the Supreme Court against the respondent court was lifted. (Rollo, p. 52)

After remand of the case by the Supreme Court, the Court of Appeals, promulgated a decision on October 24, 1977 in CA - G.R. No. 42658-R reiterating its June 21, 1969 resolution requiring Atty. Mutuc to show cause why he should not be held liable and dealt with contempt and suspended from the practice of law. (Rollo, p. 75).

On November 22, 1977, petitioner filed a motion to disqualify the members of the respondent court "on the ground of bias and prejudice and that they had prejudged the case against him" (Rollo, p. 22) which was denied in a resolution dated January 26, 1978 and which again directed petitioner to show cause why he should not be held liable for contempt of court and suspended from the practice of law. (Rollo, pp. 89-90)

A motion for reconsideration, filed on February 14, 1978 was denied on March 28, 1978 on the ground that the June 21, 1969 resolution of the former Special Fourth Division was merely a prima facie findings, not a positive premature determination of petitioner's guilt. (Rollo, pp. 93-94)

And so, for the second time, this case was elevated to this Court in a petition for certiorari and prohibition with preliminary injunction on June 9, 1978, docketed as G.R. No. 48108 entitled "Amelito R. Mutuc v. Court of Appeals et al". The Second Division of this Court required the respondents to file an answer and issued a Temporary Restraining Order, enjoining respondent court from proceeding with the proceeding for contempt of court against petitioner in CA- G.R. No. 42658-R, (Rollo, pp. 115-117)

The parties were required to submit their respective memoranda. Respondents filed their memorandum on September 27, 1978 (Rollo, p. 148) while petitioner filed his memorandum on October 11, 1978. (Rollo, p. 173)

The main issue in this case is whether or not petitioner was deprived of due process by the resolution of the Court of Appeals in question.

Petitioner argued that in ordering him to "show cause why he should not be dealt with for contempt of court and be suspended from the practice of law after, not before, finding him guilty of contempt of court and of having violated his lawyer's oath and in refusing to disqualify themselves from proceeding further, the Court of Appeals has deprived petitioner of his right to due process of law". (Rollo, p. 183) He further alleged that he has been deprived of his right to a hearing before being found guilty of contempt of court and of having given ground for suspension from the practice of law which is in violation of his right to due process of law. (Rollo, p. 185)

Respondents, on the other hand, pointed out that the disputed resolution of the respondent court substantially followed a standard form of citations for contempt and that the questioned resolution of June 21, 1969 is a prima facie finding as a basis for requiring petitioner to show cause why he should not be proceeded against for making the statements attributed to him in the newspaper. Without such findings, there would be no basis for ordering petitioner to answer. (Rollo, p. 161)

There is no question that the "essence of due process is a hearing before conviction and 'before an impartial and disinterested tribunal'" (Rollo, p. 173) but due process as a constitutional precept does not, always and in all situations, require a trial-type proceeding (Zaldivar vs. Gonzales, 166 SCRA 316 [1988] citing the ruling in

Torres vs. Gonzales, 152 SCRA 272 [1987]). The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense (Tajonera vs. Lamaroza, 110 SCRA 438 [1981] and Richards vs. Asoy, 152 SCRA 45 [1987]). "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process (Juanita Yap Say vs. IAC, G.R. No. 73451, March 28, 1988).

What the law prohibits is not the absence of previous notice but the absolute absence thereof and the lack of opportunity to be heard. (Tajonera v. Lamoroza, 110 SCRA 438 [1981])

Petitioner cannot allege lack of due process since in all the four (4) questioned resolutions, he was given ample time to explain why he should not be held in contempt of court and suspended from the practice of law. What due process contemplates is freedom from arbitrariness and what it requires is fairness or justice, the substance rather than the form being paramount (Maglasang vs. Ople, 63 SCRA 511 [1975]).

PREMISES CONSIDERED, the petition is hereby DENIED and this case is hereby remanded to the Court of Appeals for further proceedings. The Temporary Restraining Order issued on June 9, 1978 is hereby LIFTED.

SO ORDERED.

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

* Penned by Associate Justice Salvador V. Esguerra and concurred in by Associate Justices Magno S. Gatmaitan and Edilberto Soriano.

** Penned by Associate Justice Mariano Serrano and concurred in by the then Acting Presiding Justice Andres Reyes and Associate Justice Hugo E. Gutierrez, Jr.

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