

FR. ROMELITO GUILLEN, COMPLAINANT, VS. JUDGE ANTONIO K. CAÑON, RESPONDENT.*A.M. No. MTJ-01-1381 (Formerly OCA IPI No. 97-426-MTJ). January 14, 2002*

Ponente: MELO, J.

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In Civil Case No. 185-H entitled, “Barangay Lacasa, Hinatuan, Surigao del Sur, as represented by Bebiana Sayson, Barangay Captain vs. Eloy Ampis, et al.,” Barangay Lacasa sought the eviction of 40 residents for illegally and unlawfully occupying a 1- hectare land they claimed to own. In order to prevent said residents from making repairs, improvements, or construction within the 1-hectare land, Judge Antonio K. Cañon, Presiding Judge of the 7th Municipal Circuit Trial Court of Hinatuan-Tagbina, Surigao del Sur, issued a writ of preliminary mandatory injunction on December 27, 1996. The residents allegedly continued to disobey said order, thereby prompting the court to issue three separate orders of arrest all dated September 5, 1997, against 11 individuals for direct contempt. These arrest orders became the seed of the present case.

In a sworn letter-complaint dated September 9, 1997, complainant Fr. Romelito Guillen, parish priest of San Agustin, Barangay Poblacion, Hinatuan, Surigao del Sur, in his capacity as representative of the Social Action Center of the Diocese of Tandag, Surigao del Sur, charged respondent Judge Antonio K. Cañon with issuing unjust orders of arrest and with gross ignorance of the law relative to the ejectment case. Complainant asserted that the orders of arrest against the 11 individuals, whose affidavits were included in his letter-complaint, were defective since: 1) the 11 affiants, except for Abon Lebeste, were not among the 40 defendants in Civil Case No. 185-H; 2) the orders were issued without any motion to cite affiants in contempt of court and were issued solely at the court’s instance; 3) the orders were issued without giving affiants notice that they violated the court’s orders and did not give them a chance to explain and defend their actions; and 4) affiants merely initiated repairs on their nipa huts without disturbing the status quo sought to be preserved by respondent. Complainant further contended that respondent acted in an arbitrary and despotic manner in causing the arrest of affiants who, as of the writing of the letter-complaint, were still detained at the Municipal Jail of Hinatuan. Finally, complainant averred that respondent is no longer physically and mentally fit to sit as presiding judge since he is almost completely paralyzed, unable to write, speak, or walk unaided.

In his comment dated February 28, 1998, respondent admitted having issued a writ of preliminary mandatory injunction on December 27, 1996 and the three separate orders of arrest all dated September 5, 1997. He alleged that through an affidavit filed by the Lacasa Barangay Council on September 5, 1997, he found that defendants Julie Lisayan and Abon Lebeste had violated said writ of preliminary mandatory injunction, the former for having made major repairs and improvements on her house, and the latter for having constructed a concrete or hollow-block toilet. The Barangay kagawads, at their examination following the filing of their joint affidavit, reported that Abet Antonio, Lino Costan, Ely Engalan, Eme Suan, Maning Davenes, Celso Davenes, Ronnie Capunong, Bellie Morales and Carlos Munion had also violated the aforementioned order upon the prodding and inducement of Lisayan and Lebeste.

Respondent claimed that these surrounding events were enough reasons for affiants to be brought to court and to show cause why they should not be held for contempt. He contended that since Civil Case 185-H is covered by the Rules on Summary Procedure, the summary issuance of the warrants by virtue of the affidavit filed by the Lacasa Barangay Council and the aforementioned circumstances was justified and not unjust, arbitrary, or despotic. Respondent further claimed that summary hearings were held in his chambers, and after the parties had given their explanations on why they should not be held in contempt, he concluded that only Lisayan and Lebeste had indeed defied the writ of preliminary mandatory injunction and not the 9 other affiants. Respondent subsequently lifted the orders of arrest against these 9 individuals, while Lisayan and Lebeste were committed at the municipal jail for 3 days as a punitive lesson for their defiance. Respondent also alleged that the imputation made by complainant that affiants were all detained as of September 9, 1997 is absolutely bereft of truth. In fact, the 9 individuals were not even arrested despite the orders of arrest as seen in the indorsement warrant of arrest issued by the warrant officer of the Office of the Chief of Police of Hinatuan-PNP and duly confirmed by a certification from the officer-in-charge of the same office.

Lastly, respondent disputed complainant's allegation that he is no longer physically and mentally fit to maintain his position, claiming that he has been regularly attending to his official duties in his station in Hinatuan every Wednesday and Thursday, in his sub-station at Tagbina which is 27 kilometers from Hinatuan, every Friday, and as judge-designate of the 8[th] MCTC of Bislig-Lingap at Bislig which is approximately 55 kilometers from Hinatuan, every Monday and Tuesday. Respondent claimed that he shuttles through the poor third-class gravel road which is tattered with potholes riding in passenger jeeps, or at times, even only on two-wheel motorcycles. Respondent argued that this weekly travel through long distances cannot be made by one who is said to be almost completely paralyzed.

Both complainant and respondent were required by the Court on February 21, 2000 to manifest whether they were willing to submit the case for resolution on the basis of the pleadings filed, but no response was made by them despite proper service of notice. Further arguments were, therefore, deemed waived.

In the report and recommendation dated January 19, 2000 submitted by then Court Administrator Alfredo L. Benipayo, it was pertinently observed that respondent is liable for issuing unjust orders of arrest and of gross ignorance of the law.

We agree.

Respondent is liable for issuing unjust orders of arrest in that he failed to observe the proper procedure laid down in the Rules of Civil procedure, specifically the provisions on contempt. It must be noted that affiants were charged with direct contempt for having violated the writ of preliminary mandatory injunction issued by respondent. This is contrary to Section 1, rule 71 of the Rules of Court which defines direct contempt as, "misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same x x x."

Clearly, the supposed contemptuous acts of affiants fall under the definition of indirect contempt as explained in the case of *Industrial & Transport Equipment, Inc. vs. National Labor Relations Commission* (284 SCRA 144 [1998]), that:

There is no question that disobedience to a lawful writ, process, order, judgment or command of a court or injunction granted by a court or judge constitutes indirect contempt punishable under Rule 71 of the Rules of Court.

Moreover, respondent almost simultaneously issued the orders of arrest after the members of the Barangay Kagawad filed their joint affidavit and gave their oral report that the persons later disobeyed the writ of

preliminary mandatory injunction. This is in direct violation of Section 3, Rule 71 of the Rules of Civil Procedure which provides:

After a charge in writing has been filed and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt....

The records of the case makes no mention of the fact that prior to the issuance of the orders of arrest, affiants were given the opportunity to comment on the charge.

Respondent tried to justify his actions by claiming that affiants were not deprived of due process since a summary hearing was conducted in his chambers wherein the individuals were given the chance to be heard on their positions and justifications on why they should not be held in contempt. What respondent fails to realize is that for indirect contempt charges, a different procedure is laid down by the law. According to Section 4, Rule 71:

If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

In the instant case, no docketing was done by respondent nor was a formal hearing conducted as required. Veritably, assuming for the sake of argument that a proper charge in writing accusing the affiants with committing acts constituting indirect contempt was filed, this fact will not cure the proceedings of the taint of irregularity because the record shows that no previous hearing was afforded to petitioner. To restate what was pointed out earlier, in cases of indirect contempt, the contemnor “may be punished only after a charge in writing is filed and an opportunity given to the accused to be heard by himself or counsel”, and without a hearing, an order citing a person in contempt violates the person’s right to due process (*Salome D. Cañas vs. Lerio C. Castigador*, G.R. No. 139844, December 15, 2000).

Respondent’s actions also visibly indicate his lack of sufficient grasp of the law. No less than the Code of Judicial Conduct mandates that a judge shall be faithful to the laws and maintain professional competence (Canon 3, Rule 3.01, Code of Judicial Conduct). Indeed, competence is a mark of a good judge. When a judge displays an utter lack of familiarity with the rules, he erodes the public’s confidence in the competence of our courts. Such is gross ignorance of the law. Having accepted the exalted position of a judge, he owes the public and the court the duty to be proficient in the law. Unfamiliarity with the Rules of Court is a sign of incompetence. Basic rules must be at the palm of his hands. A judge must be acquainted with legal norms and precepts as well as with procedural rules (*Jovenal Oporto, Jr. vs. Judge Eddie P. Monserate*, A.M. No. MTJ-96-1109, April 16, 2001). Thus, this court has consistently held that:

A judge is presumed to know the law and when the law is so elementary, not to be aware of it constitutes gross ignorance of the law (*Agunday vs. Tresvalles*, 319 SCRA 134 [1999]).

Verily, failure to follow basic legal commands embodied in the law and the Rules constitutes gross ignorance of the law, from which no one is excused, and surely not a judge (*De Austria vs. Beltran*, 313 SCRA 443 [1999]).

However, with regard to the question of whether respondent caused the detention of the 11 affiants as claimed by complainant, the Court finds for respondent who has indubitably shown that 9 of 11 individuals were not even arrested. Indeed, it can be plainly seen through the indorsement on the warrant issued by the office of the chief of police of Hinatuan-PNP on September 8, 1997 that the 9 individuals were not arrested. This fact is further bolstered by the certification given by the officer-in-charge of the Hinatuan-PNP on February 25, 1998 to the effect that the 9 individuals were never arrested or detained.

As regards respondent's physical condition, inasmuch as both complainant and respondent failed to present medical evidence to support their respective claims, this Court finds it unnecessary to discuss the same.

Lastly, it is worthy to note that aside from the instant complaint, respondent has six other administrative complaints currently pending before the Office of the Court Administrator.

WHEREFORE, Judge Antonio K. Cañon is hereby found guilty of issuing unjust orders and of gross of ignorance of the law. He is ordered to pay a fine in the amount of Ten Thousand Pesos (P10,000.00) with a stern warning that a repetition of the same or similar act would be dealt with more severely.

SO ORDERED.

Vitug, Panganiban, Sandoval-Gutierrez, and Carpio, JJ., concur.

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