

**EUGENIO SURIA, PETITIONER, VS. HON. JUDGE FILEMON O. JUNTREAL, PRESIDING JUDGE OF BRANCH V, COURT OF FIRST INSTANCE OF QUEZON, ROQUE CALVARIO, AND ATTY. GILBERT CAMALIGAN, RESP...**

*G.R. No. L-38695. July 01, 1978*

Ponente: FERNANDO, Acting C.J.

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FERNANDO, Acting C.J.:

A trial judge conscious of the need to assure the smooth flow of what usually is an overcrowded docket is expected to look with disfavor on pleas for postponements, especially so if based on inability of counsel for one of the parties to be present. If thereafter, upon the case being reset, counsel fails once again to attend a hearing or conference, it is understandable if his patience is sorely tried. Respondent Judge[1] in this certiorari proceeding must have been laboring under such a state of mind when he declared petitioner Eugenio Suria in contempt of court and ordered his arrest.[2] It is the contention of petitioner that as there was not even a previous charge for such alleged contumacious conduct, and consequently no prior hearing, such orders should be nullified and set aside for being a denial of procedural due process. In this proceeding, two previous orders requiring petitioner to reimburse private respondent for expenses incurred in attending the sessions scheduled but thereafter cancelled in view of the absence of counsel for petitioner were likewise challenged for having been issued with grave abuse of discretion.[3] A perusal of the records of the case, in the light of applicable doctrines, clearly indicates that the petition possesses merit, as far as the contempt incident is concerned. It must be stated in fairness to respondent Judge that the realization of the gravity of the error incurred must have dawned on him for he did issue an order, about a week before the petition was filed, to remedy matters. He sought to accomplish this purpose by charging petitioner in such order with indirect contempt and setting the case for hearing on June 4, 1974.[4] His grasp of the law on the subject appeared to be inadequate for he explicitly referred therein to one of the assailed orders which already found petitioner in contempt, one manifestly violative of the due process requirement. No grave abuse of discretion is apparent in the other challenged orders. They have, moreover, in their favor their conformity with the dictates of equity, for as disclosed in the pleadings, petitioner did agree previously to such reimbursement. Nothing could be fairer as it was the repeated absence of counsel of petitioner that gave occasion for respondent Judge acting as he did. So we rule.

The first order challenged dated February 22, 1974, self-explanatory in character, in a pending case where private respondent Calvario was plaintiff and petitioner Suria was defendant, reads as follows: "In view of the fact that the Motion to Transfer Date of Hearing filed by Atty. Ofelia Garcia, counsel for the heirs of Julio Suria, was not filed in accordance with the Rules of Court and, considering that the grounds stated therein are merely personal and not professional in nature, and upon petition of counsel for Roque Calvario, Atty. Gilbert Camaligan, said motion is hereby denied. But since the hearing cannot proceed without the presence of the other counsel and party, counsel for Roque Calvario prayed instead that the previous proceedings had before the Commissioner when said counsel was absent be set aside which the Court hereby approves. Eugenio Suria is also ordered to pay

the companions of Roque Calvario the reasonable expenses incurred by them in coming to Court for today's hearing which has been estimated at P154.55. Said amount should be given to the Clerk of Court within thirty (30) days upon receipt hereof. Set this case for pre-trial on March 25, 1974, at 8:30 in the morning. So ordered."[5] The amendatory order likewise sought to be set aside dated April 29, 1974, reads as follows: "In Civil Case No. 0153-M, Eugenio Suria is ordered to pay Atty. Gilbert Camaligan the amount of P154.55 as per Order, dated February 22, 1974 and P200.00 in coming over in today's hearing. Said amount should be delivered to the Clerk of Court. Reset the pre-trial of these cases on June 4, 1974, at 8:30 in the morning at Mauban, Quezon."[6] Then came the order declaring petitioner Suria in contempt, which reads as follows: "For contumaciously failing to report for conference in accordance with the Order of the Court in the above-entitled case, dated April 29, 1974, Eugenio Suria is declared in contempt of Court. Let a warrant of arrest be issued against said Eugenio Suria."[7] After which respondent Judge reiterated such order, impugning the conduct of petitioner in language even more categorical: "For defiantly refusing to comply with the Orders of February 22, 1974 and April 29, 1974, notwithstanding the fact that he promised to pay the amount subject of the same Order of May 7, 1974, Eugenio Suria is hereby declared in contempt of Court. Let a warrant of arrest be issued against him and he shall not be released until he complies with the Orders of April 29, 1974 and May 7, 1974."[8] It was pointed out in the petition that there was never a charge for contempt for the alleged failure to obey a court order and that petitioner was "never given his day in court, contrary to the law and the authorities."[9]

Insofar as the orders finding petitioner in contempt, it may be stated anew that he has the law on his side. What was done by respondent Judge constituted, at the very least, a grave abuse of discretion. As was mentioned in the first part of this opinion, there was an amendatory order charging petitioner with indirect contempt and specifying the date for hearing. Respondent Judge, however, instead of setting aside the assailed orders that found petitioner in contempt without affording him his day in court failed to do so. What was worse, he expressly referred to one of them, thus yielding the impression that for him, it was still valid and subsisting. There is need, therefore, to purge this proceeding of any infirmity that both orders declaring petitioner to be in contempt, issued contrary to the due process mandate, be nullified. Certiorari lies.

1. The Rules of Court cannot be any clearer. The appropriate section is quite explicit: "After charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt: \* \* \* (b) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, \* \* \*." [10] In the first order assailed, petitioner was held in contempt for "contumaciously failing to report for conference in accordance with the order of the Court \* \* \*." [11] In the other order complained of, petitioner was accused of "defiantly refusing to comply" with what was required of him by the Court. [12] Clearly, the contemptuous conduct imputed to him, disobedience, called for his being given the opportunity to meet such a charge. Failure to accord such a hearing amounts to a denial of due process. In cases of indirect contempt, as was pointed out in *Gardones v. Delgado*, [13] the party proceeded against "could not be adjudged guilty without hearing him or without due process of law." [14] Such a doctrine goes back to *Finnick v. Peterson*, [15] a 1906 decision, where this Court considered a failure to comply with a subpoena duces tecum as constituting an indirect contempt and therefore one sought to be held liable is entitled to the hearing or trial "then provided by the appropriate sections of the Civil Code of Procedure" [16] and at present by the above section of the Rules of Court. Respondent Judge, to say the least, acted hastily in issuing the challenged orders. The grievance complained of, the denial of procedural due process, is quite apparent. So the cases have held with an impressive uniformity. [17] Respondent Judge tried to make amends, by a later order referred to, but even then, he did not quite succeed for he still considered subsisting the contempt order issued without a hearing.

2. As indicated at the outset, the two previous orders requiring petitioner to reimburse private respondent for the expenses incurred could not be the basis of a certiorari proceeding. There would be no legal justification for a

judge being taken to task when there was previous consent on the part of private respondent to the imposition of such obligation on him. The conclusive evidence of such conformity is supplied by the memorandum of petitioner. There was this express admission that respondent Judge "acceded to petitioner's request for postponement on condition that petitioner would reimburse private respondent Roque Calvario the expenses incurred by him in bringing his lawyer to court." [18] Private respondent was agreeable to such an arrangement. How then could he expect such an actuation to be the basis of a certiorari proceeding? In *Panaligan v. Adolfo*, [19] there was a reiteration of the well-settled doctrine governing the availability of this extraordinary remedy in these words: "For certiorari to lie, there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions. That invariably has been the tenor of our decisions." [20]

3. The legal issues raised are thus resolved. That is all that is required, except for a reminder to the counsel for petitioner, Attorney Ofelia C. Garcia. Insofar as she displayed great interest and zeal in the defense of her client's rights, she is to be commended. She has more than justified her being in the panel of the lawyers of the Citizens Legal Aid Society of the Philippines. This on the one hand. What is regrettable, on the other hand, was her failure to be present at the scheduled pre-trial hearings. If such were not the case, then there would have been no need for this petition. It may be granted that there could be reasons, considered by her personal in character, that precluded her attendance, but the propensity to ask for repeated postponements certainly cannot be calculated to win favor in the eyes of a judge determined to decide promptly the cases before him. It could be due to her assumption that only through her efforts could petitioner extricate himself from his troubles. The result belied expectations. Now he has to face an indirect contempt charge as well. That could have been avoided. After all, he had three counsels of record: Attorneys Fernando A. Gaite, Nicomedes Garcia and Ofelia C. Garcia. [21] Under such circumstances, she should not have taken upon herself to assume sole responsibility. As it turned out, her standing as an officer of the court cannot be said to be unblemished. She may have acted with the best of intentions. Nonetheless, without her desiring it, she was responsible for one more unnecessary petition being added to the already crowded docket of this Court.

WHEREFORE, the orders of April 29, 1974, as well as of May 7, 1974 of respondent Judge, since then deceased, are nullified and set aside for having been issued with grave abuse of discretion. No costs.

Barredo, Antonio, Aquino, and Santos, JJ., concur.

Concepcion, Jr., J., on leave.

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[1] Respondent Judge Filemon O. Juntereal, up to the date of his death on July 27, 1975, was the Presiding Judge of Branch V, Court of First Instance of Quezon. In this opinion, the deceased will still be referred to as the respondent Judge. The private respondents are Roque Calvario, the plaintiff in Civil Case No. 0153-M, out of which the incidents leading to this proceeding arose, and his counsel, Atty. Gilbert Camaligan.

[2] Petition, Annex E and H.

[3] Ibid, Annex B and D.

[4] Addendum to Answer.

[5] Petition, Annex B.

[6] Ibid, Annex D.

[7] Ibid, Annex E.

[8] Ibid, Annex H.

[9] Ibid, par. 12.

[10] Rule 71, Sec. 3 of the Rules of Court.

[11] Petition, Annex E.

[12] Ibid, Annex H.

[13] A.M. No. 120-MJ, July 23, 1974, 58 SCRA 58.

[14] Ibid, 60.

[15] 6 Phil. 172.

[16] Act 190 (1901).

[17] Cf. Lee Yick Hon v. Collector of Customs, 41 Phil. 548 (1921); Slade Perkins v. Director of Prisons, 58 Phil. 271 (1933); Rivera v. Arellano, 91 Phil. 354 (1952); People v. Gagui, 112 Phil. 648 (1961); Tinagan v. Perlas, L-23965, Jan. 30, 1968, 22 SCRA 394; Manila Railroad Co. v. Yatco, L-23056, May 27, 1968, 23 SCRA 735; Reliance Procoma v. Phil. Asian Tobacco Corporation, L-37656, May 31, 1974, 57 SCRA 370; De Midgely v. Ferandos, L-34314, May 13, 1975, 64 SCRA 23.

[18] Memorandum for Petitioner, 12.

[19] L-24100, September 30, 1975, 67 SCRA 176.

[20] Ibid, 180. These cases were cited: Tavera-Luna, Inc. v. Nable, 67 Phil. 340 (1939); Abad Santos v. Province of Tarlac, 67 Phil. 480 (1939); Alafriz v. Nable, 72 Phil. 278 (1941).

[21] Answer, 4.

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