

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PABLO S. RIVERA, DEFENDANT AND APPELLANT.***G.R. No. L-3646. May 26, 1952*

Ponente: LABRADOR, J.

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This is an appeal from an order of the Court of First Instance of Negros Occidental in Criminal Case No. 1810, declaring the defendant-appellant guilty of constructive contempt, brought to this Court under Section 10, Rule 64, of the Rules of Court. Case No. 1810 is also a contempt case against the defendant-appellant originating in the municipal court of Bacolod. Said case was set for hearing on July 16, 1948, defendant-appellant being notified thereof in open court. On the date set for the hearing, July 16, 1948, defendant-appellant was absent. His lawyer, however, appeared and explained in open court that defendant had gone to Manila because of a notice of hearing before the Supreme Court.

The lower court found the explanation of defendants counsel unsatisfactory, and forthwith entered an order requiring the defendant-appellant to show cause why he should not be adjudged guilty of contempt. Pursuant to this order, defendant-appellant filed his written explanation, stating that he took a plane for Manila on the morning of July 13th with the intention of returning to Bacolod on the day of the trial, but was unable to come back in time for said trial; that he had sought an audience with the President of the Philippines, but failed to see the latter on the afternoon of the 15th, and was, therefore, compelled to see him on the morning of the 16th, the date of the trial in Bacolod; that his purpose in going to Manila was to seek the advice of a lawyer as to the propriety of suing out a writ of prohibition against the presiding judge of the Court of First Instance of Negros Occidental who was trying said contempt case against him; that the advice of said lawyer was given on Wednesday morning, July 14th, and as the lawyer opined that a petition for the writ of prohibition would not prosper, defendant-appellant thought of seeking an administrative remedy, which prompted him to consult the President about the matter; that his failure to appear at the trial was not due to any intention on his part to hinder the administration of justice or to any lack of respect due the court, but because of unavoidable circumstances.

When the case was called for hearing, the defendant-appellant gave the same explanation that he had given in writing, reiterating his statement that it was not his intention to disobey the court's order, and that his failure to appear on the date set for the hearing of the criminal case against him was due to circumstances beyond his control. In the course of the hearing it became apparent that the presiding judge was somehow irked by the attempt of the defendant-appellant to prevent him from trying the case. He found defendant-appellant's explanation and protestations unsatisfactory, and declared him guilty of constructive contempt. Hence this appeal.

The Solicitor General, in a very well-reasoned brief, and after an analysis of the facts, sustains the theory that the explanation given by the defendant-appellant for his non-appearance on the date of the trial is satisfactory, and recommends that the order appealed from be reversed and the appellant exonerated. Appellant, in turn, claims that it is evident from the record that his failure to appear on the date of the trial was not due to any "willful disrespect of the court's order, or any desire to flout it," but to his desire to seek legal advice on the case against him for

contempt, with a view to securing a writ of prohibition against the trial judge, because he considered it necessary to protect his previous record as a judge of First Instance and as a lawyer, "not minding the substantial monetary sacrifice that such obligation entails."

After a careful consideration of the facts, we find that the explanation given by the defendant-appellant for his absence on the day of the trial of the criminal case is satisfactory; that his failure to appear was not motivated by a desire to disobey willfully the court's order, or to disregard or despise its authority, but was due to unavoidable circumstances arising from his desire to pursue certain legal remedies with a view to getting what he considered a more impartial judge to hear his case.

The term "disobedience," which the rules punish as constructive contempt, implies willfulness. A "contempt" is a willful disregard or disobedience. (*Saal vs. South Brooklyn Ry. Co.*, 106 N.Y.S. 996, 1000, 122 App. Div. 364; 9 Words & Phrases 57; *Narcida vs. Bowen*, 22 Phil., 365.) An inability to obey an order is a good defense to a charge of contempt, unless the person charged voluntarily and contumaciously brought the disability to himself. (*State ex rel. McLean vs. District Court*, 97 P. 841, 842, 37 Mont. 485, 15 Ann. Cas. 941.) In the case at bar, appellant left Bacolod on the morning of July 13th, expecting to be able to return on the morning of the 16th, in time to appear at the trial of his case. However, he failed to see the President on the 15th as planned, and was obliged to stay one more day in Manila to see him in the morning of the 16th. In this predicament he wired his lawyer to inform the court of his inability to attend on the day of the trial and to ask for postponement. It is apparent that his failure to appear was not willful or deliberate; it was due to circumstances not entirely of his own making. And of this inability on his part to be present on the date of the trial, he promptly advised the court through his counsel. His conduct, therefore, may not be considered disrespectful. Neither may his purpose in going to Manila to consult an attorney on his desire to have the trial judge prohibited from trying the case be considered as degrading the dignity of the court, or an act of defiance to the judge presiding it. When a litigant exhausts all the remedies which the rules allow, in order to seek an impartial adjudication of his case, the dignity of the judge is not thereby assailed or affected in the least; otherwise, all remedies allowed litigants, such as appeals from judgments, petitions for reconsideration thereof or for the disqualification of judges, or motions questioning the jurisdiction of courts, would be deemed derogatory to the respect due a judge. These remedies may be availed of by any litigant freely, without being considered guilty of an act of disrespect to the court or the judge.

We note that the procedure employed by the defendant-appellant to secure what he believed an impartial judge to try his case, apparently displeased the trial judge, and this must have influenced him in no small measure in declaring appellant in contempt. In this respect, we reiterate what this Court has held heretofore, i.e., the power to punish for contempt of court should be exercised on the preservative and not on the vindictive principle. (*Villavicencio vs. Lukban*, 39 Phil, 778.)

The order appealed from is hereby reversed, and the defendant-appellant acquitted, with costs de oficio.

Paras, C.J., Feria, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

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