

FRED M. HARDEN, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. L-2349. October 22, 1948

Ponente: TUASON, J.

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TUASON, J.:

The petitioner, Fred M. Harden, is being, confined in prison for contempt of court by virtue of an order of the following tenor:

"It appearing that the defendant Fred M. Harden has not up to this date complied with the orders of this court of October 7, 1947 and March 27, 1948;

"As prayed for the court orders the arrest of the defendant Fred M. Harden as well as his confinement at the New Bilibid Prisons, Muntinlupa, Rizal, until he complies with the aforementioned orders."

The proceeding for contempt arose in a civil case between Mrs. Harden as plaintiff and the petitioner and another person as defendants, commenced on July 12, 1941, and involving the administration of a conjugal partnership, payment of alimony, and accounting. In that case, a receiver was appointed and a preliminary injunction was issued restraining Fred M. Harden and his codefendant, Jose Salumbides, from transferring or alienating, except for a valuable consideration and with the consent of the Court first had and obtained, moneys, shares of stock, and other properties and assets, real or personal, belonging to the aforesaid partnership, and which might be found in the names of said defendants or either of them.

On various dates in 1946, Fred M. Harden transferred to the Hongkong & Shanghai Banking Corporation and the Chartered Bank of India, Australia & China, both in Hongkong, over P1,000,000.00 in drafts or cash; to Virginia Recreation Center, Long Beach, California, P20,196.80, and to an unknown person, P50,000.00.

On September 9, 1947, Mrs. Harden moved the court to order Harden to return all these amounts and to redeposit them with the Manila branch of the Chartered Bank of India, Australia & China. On October 7, 1947, Judge Peña granted the motion in an order worded as follows:

"Wherefore, finding the motion of the plaintiff of September 9, 1947, to be well founded, for the purpose of preserving the status quo and in order that the amounts above referred to may stand ready to answer for any legitimate claims of the Government in the form of taxes, the aforementioned motion is hereby Granted and defendant Fred M. Harden is hereby ordered to return, within a period of fifteen (15) days from the receipt of a copy hereof, the amount of P1,000,608.66 to the Philippines and to redeposit the same with the accounts of the Plaza Lunch at the Manila Branch of the Chartered Bank of India, Australia and China, with the understanding that upon failure to comply with this order he will be declared in contempt of court."

After a petition for certiorari was instituted by Harden in the Supreme Court and decided, and after various motions were filed and heard, Judge Pena, on March 27, 1948, entered an order, which was a modification of that of October 7, 1947, directing Harden "to deposit with the Manila Branch of the Chartered Bank of India, Australia & China within five days from receipt of a copy of this order the money and drafts that he has actually in

Hongkong, without prejudice to passing upon later on the different amounts that the defendants has spent according to his attorney, after he has submitted to the court an itemized account of those expenses."

In the same order there was this decree:

"With respect to the plaintiff's motion filed on March 16, 1948 praying that Fred M. Harden be ordered to deliver the certificate covering the 368,553 Balatoc Mining Company shares either to the Clerk of this Court or to the receiver in this case for safekeeping after his compliance with the order of January 17, 1948, the Court, after considering the different pleadings filed, denies defendant's motion for extension of time to register the said certificate of stock, thereby maintaining its order of January 17, 1948. The said defendant is further ordered, after the registration of the said certificate, to deposit the same with the Manila Branch of the Chartered Bank of India, Australia and China."

The last part of the order was the culmination of another series of motions with their corresponding hearings. The facts taken from the pleadings were in brief as follows:

In a motion dated May 28, 1947, the receiver appointed in the main case prayed that the certificates of stock of the conjugal partnership, among them 368,553 shares of the Balatoc Mining Co., alleged to be in the possession of defendant Harden, be ordered turned over to him (receiver) so that he might have them registered in pursuance of the provisions of Republic Act No. 62. On June 7, 1947, the court "authorized" Harden "to register not later than June 30, 1947 the stock certificates in his possession, notifying the court afterwards of such action."

On July 28, 1947, Mrs. Harden complained that her husband had failed to comply with the above order and prayed that he be ordered to show cause why he should not be declared in contempt. On August 1, 1947, Harden filed a perfunctory compliance, and in an order dated August 2, 1947, he was retired to "make a detailed report of the stock certificates which have been duly registered in accordance with Republic Act No. 62." In his "compliance" dated August 7, 1947; Harden stated that he had been granted an extension until December 31, 1947, within which to register the Balatoc Mining Co. shares under Republic Act No. 62.

In a motion dated January 7, 1948, the receiver informed the court that, notwithstanding the expiration on December 31, 1947, of Harden's extended time to comply with Republic Act No. 62, the records of the Balatoc Mining Co. showed that the certificates had not been registered as of January 7, 1948; and upon his request, an order dated January 17, 1948, was issued giving Harden "an extension until March 31, 1948 within which to comply with the Order dated June 7, 1947."

In a motion dated March 15, 1948, Mrs. Harden prayed, for the reasons therein stated, that defendant Harden "be ordered to deliver the certificates covering the 368,553 Balatoc Mining Co. shares either to the Clerk of this Court or to the Receiver herein for safekeeping, immediately after registering them pursuant to Republic Act No. 62." On March 24, 1948, Harden filed a motion stating that the registration of shares of stock under Republic Act No. 62 had been extended until June 30, 1948, and prayed that he "be allowed to register the stock certificates in question within such period as by law or regulations is or may be provided."

It was at this stage of the case that the present petitioner was committed to jail.

Broadly speaking, the grounds for relief by habeas corpus are only (1) deprivation of any fundamental or constitutional rights, (2) lack of jurisdiction of the court to impose the sentence, or (3) excessive penalty. (Santiago et al. vs. Director of Prisons,[1] L-1083, Jan. 30, 1947, 44 Off. Gaz., 1231.)

The fact that the property is in a foreign country is said to deprive the court of jurisdiction, the remedy in such case being, it is contended, ancillary receivership. We can not agree with this view. While a court can not give its receiver authority to act in another state without the assistance of the courts thereof (53 C. J., 390-391), yet it may

act directly upon the parties before it with respect to property beyond the territorial limits of its jurisdiction, and hold them in contempt if they resist the court's orders with reference to its custody or disposition (Id. 118).

Whether the property was removed before or after the appointment of the receiver is likewise immaterial.

In *Sercomb vs. Catlin*, 21 NE. 606, 606-608, the Supreme Court of Illinois said:

"It is true that the property attached is beyond the jurisdiction of the courts of this state, but the appellant, who caused it to be attached, is in this state, and within the jurisdiction of its courts. If the superior court had no power to reach the goods in Newton's hands, it had the power to reach appellant, who sought to prevent its receiver from getting possession of the goods. It makes no difference that the property was in a foreign jurisdiction."

The facts of that case as stated in the decision were as follows:

"On April 14, 1887, in the case of *Ada S. Havens et al. vs. Caleb Clapp et al.*, then pending in said superior court, the appellee was appointed receiver of all the property and effects, real and personal, of the defendants therein, Caleb Clapp and Thomas Davies. Prior to that date Clapp and Davies had forwarded, on consignment, to Elijah E. Newton, an auctioneer and commission merchant in Washington city, in the District of Columbia, a lot of jewelry, watches and silverware, to be by him disposed of for their benefit. So far as appears to the contrary, the goods so consigned were still in the possession of Newton at Washington when the order was entered on April 7, 1888, for the commitment of appellant for contempt. Within a week or 10 days after his appointment as receiver, appellee gave notice of such appointment to Newton, and demanded a return of the goods. On May 18, 1887, the Meriden Britannia Company, a corporation organized under the laws of the state of Connecticut, being a creditor of Clapp & Davies, commenced an attachment suit against them for the amount of its claim in the Supreme court of the District of Columbia, and attached the goods in the hands of Newton."

The penalty complained of is neither cruel, unjust nor excessive. In *Ex-parte Kemmler*, 136 U. S., V 36, the United States Supreme Court said that "punishments are cruel when they involve torture or a lingering death, but the punishment of death is not cruel, within the meaning of that word as used in the constitution. It implies there something inhuman and barbarous, something more than the mere extinguishment of life."

The punishment meted out to the petitioner is not excessive. It is suitable and adapted to its objective; and it accords with Section 7, Rule 64, of the Rules of Court which provides that "when the contempt consists in the omission to do an act which is yet in the power of the accused to perform, he may be imprisoned by order of a superior court until he performs it."

If the term of imprisonment in this case is indefinite and might last through the natural life of the petitioner, yet by the terms of the sentence the way is left open for him to avoid serving any part of it by complying with the orders of the court, and in this manner put an end to his incarceration. In these circumstances, the judgment can not be said to be excessive or unjust. (*Davis vs. Murphy*, [1947] 188 P., 2nd. 229-231.). As stated in a more recent case (*De Wees*, [1948], 210 S. W., 2d. 145-147), "to order that one be imprisoned for an indefinite period in a civil contempt is purely a remedial measure. Its purpose is to coerce the contemner to do an act within his or her power to perform. He must have the means by which he may purge himself of the contempt." The latter decision cites *Staley vs. South Jersey Realty Co.*, 83 N. J. Eq., 300, 90 A., 1042, 1043, in which the theory is expressed in this language:

"In a 'civil contempt' the proceeding is remedial, it is a step in the case the object of which is to coerce one party for the benefit of the other party to do or to refrain from doing some act specified in the order of the court. Hence, if imprisonment be ordered, it is remedial in purpose and coercive in character, and to that end must relate to something to be done by the defendant by the doing of which he may discharge himself." As

quaintly expressed, the imprisoned man "carries the keys to his prison in his own pocket."

The failure of the order of commitment to state that the acts which the contemner fails to do are still in his power to perform, does not void the order of imprisonment. Section 7 of Rule 6k does not require such finding to appear in the order, unlike Section 1219 of the Code of Civil Procedure of California on which the petitioner's contention is rested. Petitioner is in error in saying that Section 237 of the former Philippine Code of Civil Procedure, from which Section 7 of Rule 64, *supra* has been copied, was of California origin. Former Justice Fisher is authority for the statement that Section 237 of Act No. 190 was borrowed from Section 1456 of the Ohio Code of Civil Procedure. (Fisher's Code of Civil Procedure, 3rd Ed., p, 136). The exact similarity in substance though not in language between the two provisions is a confirmation of this statement.

At any rate, the order of commitment contains the alleged missing element if it is taken, as it should be taken, in connection with the orders of October 7, 1947 and March 27, 1948, and with the charges for contempt. It expressly gives non-compliance with the two last mentioned orders as the grounds for the warrant of commitment, and thus by reference makes them part of it. The orders of October 7, 1947 and March 27, 1948, in turn clearly specify the acts which the petitioner was commanded to fulfill. It is equally clear from these orders that in the opinion of the court the petitioner is in a position to bring back to the Philippines from Hongkong part of the cash and the Balatoc shares he had remitted to that colony.

Whether or not in truth the court's findings are supported by sufficient evidence is a different matter it is a matter of fact which can not be reviewed by habeas corpus.

In a long line of decisions, this Court has steadfastly held that habeas corpus does not lie to correct errors of fact or law. (Slade Perkins vs. Director of Prisons, 58 Phil. 271; Quintos vs. Director of Prisons, 55 Phil. 304; Trono Felipe et al. vs.

Director of Prisons, 24 Phil. 121; Gutierrez Repide vs. Peterson, 3 Phil. 276; Santiago vs. Director of Prisons, et al., G. R. No. L-1083; [1] McMicking vs. Schields, 238 U. S. 99, 41 Phil. 971; Tinsley vs. Anderson, 43 Law. ed., 91). When a court has jurisdiction of the offense charged and of the party who is so charged, its judgment, order or decree is not subject to collateral attack by habeas corpus. The writ of habeas corpus can not be made to perform the function of a writ of error; and this holds true even if the judgment, order or decree was erroneous, provided it is within the jurisdiction of the court which rendered such judgment or issued such an order or decree. (Slade Perkins vs. Director of Prisons, *supra*; Santiago vs. Director of Prisons, *supra*.) So whether the act charged has been committed or can still be performed is conclusively determined by the order or judgment of the trial court in the proceeding wherein the petitioner for habeas corpus is adjudged in contempt. (Ex-parte Fisher, 206 S. W. 2d. 1000.)

The petition is denied with costs.

Moran, C. J., Ozaeta, Paras, Feria, Pablo, Bengzon, Briones, and Montemayor, JJ., concur.

[1] 77 Phil., 927

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DISSENTING

PERFECTO, J.:

Since May 4, 1948, Fred M. Harden has been placed under arrest and confined at the Bilibid Prisons, Muntinlupa, under the charge of the Director of Prisons.

Respondent's authority for confining petitioner is based, on the order of Judge Emilio Peña, of the Court of First Instance of Manila, issued on April 28, 1948, which reads as follows:

"It appearing that the defendant Fred M. Harden has not up to this date complied with the orders of this court of October 7, 1947, and March 27, 1948;

"As prayed for, the court orders the arrest of the defendant Fred M. Harden as well as his confinement at, the New Bilibid Prisons, Muntinlupa, Rizal, until he complies with the aforementioned orders."

The order of October 7, 1947, requires Harden to return from abroad within a period of 15 days, the amount of P1,000,608.66 to the Philippines and to redeposit the same with the accounts of the Plaza Lunch of the Manila branch of the Chartered Bank of India, Australia and China.

The order of March 27, 1948, requires Harden to deposit with the same bank the money and drafts that he has actually in Hongkong and the certificate covering 368,553 Balatok Mining Company shares, after registering them, as required in the order of January 18, 1948.

The trial court ordered petitioner's confinement for an indefinite period of time which means that it may last until his death, in virtue of the provisions of Section 7 of Rule 64 which reads as follows:

"SEC. 7. Imprisonment until order obeyed.-When the contempt consists in the omission to do an act which is yet in the power of the accused to perform, he may be imprisoned by order of a superior court until he performs it."

The reglementary provision is null and void per se and, therefore, should be denied compliance. Perhaps, there is no other provision in our statute books more revolting to conscience, more shocking to the most elemental sense of justice, and not unreasonably Draconian.

The provision is characterized by such an extreme of arbitrariness that is comprehensible only under a dictatorial system of government.

Petitioner has been and is claiming that he has no means of complying with the orders for non-compliance of which he is committed to imprisonment for an indefinite period of time. The trial court does not believe him, and we presume that said court was justified by evidence.

But our presumption cannot take the place of absolute infallibility. When there are conflicting claims as to facts, courts decide the issue sometimes on a mere preponderance of evidence and sometimes, as in criminal cases, on evidence carrying conviction beyond all reasonable doubt.

A decision based on a preponderance of evidence does not carry absolute certainty. A decision based on a conclusion of fact beyond all reasonable doubt is stronger, yet no one is too crazy to believe that it carries absolute certainty or the mark of infallibility. Judicial history is full of bloody pages about many individuals who have been burned, decapitated by guillotine, hanged or shot, killed by garrote or electrocuted, because tribunals found them guilty beyond all reasonable doubt, but later on found to be absolutely innocent. Some of them have been and are loved and enshrined as martyrs, heroes, and among them are counted the greatest moral figures humanity has ever produced.

Because in petitioner's case the lower court had to act only and must have acted on a mere preponderance of evidence, the possibility of error is greater in criminal cases where conviction beyond all reasonable doubt is required. Therefore, although the preponderance of evidence may militate against petitioner, such legal situation does not preclude the possibility that truth, as an absolute, may after all support petitioner's claim. In such case, unless a miracle should supervene to rescue him from his plight, he will remain confined for the rest of his days, an imprisonment more perpetual than reclusion perpetua, the longest imprisonment allowed by law for the worst criminals, kidnapers, robbers, parricides, traitors.

Should petitioner have embezzled or stolen the money and certificate of shares required of him to deposit in a bank he can be punished with years of imprisonment but not nearing even reclusion perpetua. There is no offense or crime for sere disobedience that is punished by reclusion perpetua or by many years of imprisonment.

But petitioner for a mere disobedience, which ultimately may not be disobedience at all, is exposed to suffer imprisonment for life. This, certainly, is a flagrant violation of the constitutional inhibition that no cruel and unusual punishment shall be inflicted. (Sec. 1 [19], Art. III of the Constitution.) This is also a denial to petitioner of the equal protection of the laws which is the first guarantee in our Bill of Rights. (Sec. 1 [1] Art. III of the Constitution.)

The authors of the rules could not have conceived or imagined any contempt of court of such perversity that would require a heavier punishment than a fine of P1,000 and six months imprisonment, the maximum penalty provided by Section 6 of Rule 64. In the present case, petitioner has already suffered the maximum imprisonment of six months, and is exposed to remain in prison for many more years. Is there a conscience too callous to fail to see the unbearable discrimination of the law against petitioner?

Punishments are cruel when they involve torture or a lingering death or when they empty something inhuman or barbarous, as stated in the *Kemmler* case (136 U. S. 436), an authority invoked in the majority decision. But is there anything more inhuman, barbarous, more torturing, giving the feeling of lingering death, than to compel a person to unjustly endure an indefinite number of years of imprisonment, when the only offense that he has committed is that of contempt and the most serious case of contempt cannot be punished with imprisonment longer than six months? We have to be blind to fail to see this.

The argument that the incarceration is not cruel because the sentence left the doors open for petitioner to avoid serving any part of it by complying with the orders of the court has absolutely no merit, because there is absolutely no reasonable ground in the philosophy of law that would leave to the offender's discretion the length of his imprisonment or the measures of his punishment. Aside from the unscientific view revealed by the argument, it has the short-sightedness of failing to see the possibilities of error of judgment on the question as to whether the accused is yet in a position to actually perform the acts ordered.

The allegation that the imprisonment or an indefinite period is purely a remedial measure which assumes that the offender must have the means by which he may purge himself with the contempt is pure rhetoric that has no ground in fact as can be seen by any reasonable man. It fails to understand the true situation of a simple disobedience punished with imprisonment that has no possible and except death.

We hold that the lower court erred in issuing the order of April 28, 1948, in so far as it orders that petitioner be confined for an indefinite period of time.

We disagree with the pronouncements in the majority opinion, limiting the scope of the writ of habeas corpus and in issuing in favor of the lower court the patent of infallibility on the question of whether the act ordered to be performed is still or not in the hands of petitioner to perform. Such pronouncements are not supported by law

nor by any principle of substantial justice. Regardless of the length of the chain of erroneous decisions supporting such pronouncements, the errors shall continue to be errors. The length of the chain may only emphasize the amount of injustices perpetrated under such pronouncements.

Assuming that the lower court found petitioner guilty of contempt, it could have punished petitioner up to the maximum penalties provided by Section 6 of Rule 64 but never more. Considering that petitioner has already undergone the maximum of six months imprisonment, even on the assumption that he is guilty, he is entitled to be released from confinement.

We vote to grant the petition and to immediately release Fred M. Harden from confinement and from the custody of respondent Director of Prisons.

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