

WILLELMO C. FORTUN, PETITIONER, VS. RUFINO O. LABANG, IN HIS CAPACITY AS CITY FISCAL OF PAGADIAN CITY; ATTORNEY MARTIN VERA CRUZ; AND ATTORNEYS ANDRES BERSALES, PABLITO PIELAGO,...

G.R. No. L-38383. May 27, 1981

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The decisive issue in this prohibition and certiorari proceeding, filed on March 20, 1974 by Judge Willelmo C. Fortun, then the incumbent District Judge of the Court of First Instance of Zamboanga del Sur and Pagadian City, Branch III, is the applicability of the basic principle that while this Tribunal in the exercise of its equitable powers will not restrain any action taken in the enforcement of a criminal statute, an exception is made, and prohibition lies, as set forth in the leading case of *Dimayuga and Fajardo v. Fernandez*,^[1] "where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions."^[2] As was pointed out in the opinion, this doctrine is traceable to the earlier decision of *Kwong Sing v. City of Manila*,^[3] with Justice Malcolm as ponente. In brief, petitioner Judge was accused by a member of the bar^[4] and a former employee^[5] in a letter-complaint of a possible irregularity in his claim for gasoline allowance, originally considered by them sufficing to hold him liable administratively. Five of the nine members of the Board of Directors of the provincial chapter of the Integrated Bar endorsed such administrative charge to the Board of Governors of the Integrated Bar of the Philippines, retired Justice J. B. L. Reyes being the President at that time. After four months, such letter-complaint with the affidavit was endorsed to the City Fiscal, respondent Rufino O. Labang.^[6] Then came these crucial allegations: "10. On February 16, 1974, respondent City Fiscal, acting with precipitate haste and without exercising the utmost care and prudence which the case required, considering the seriousness of the charge and the sensitive nature of petitioner's office, and without bothering to comply with the mandatory provisions of Section 1 (a) of Presidential Decree No. 77, dated December 6, 1972, namely, that the statement of the complainant or his witnesses should be sworn to before him as investigating fiscal, and without taking into account Paragraphs 2 and 6 of Executive Order No. 264, dated October 6, 1970 in conjunction with Rule 140 of the Revised Rules of Court, which require that complaints against CFI Judges should be filed with the Supreme Court, peremptorily gave due course to said complaint and its supporting papers by immediately issuing a subpoena (I.S. Nos. 392-403-74) requiring petitioner to file and serve his answer or counter-affidavits and other supporting papers thereto. 11. On the morning of February 18, 1974, just as petitioner was about to ascend the rostrum to start the first session in his Court, after 6 months absence therefrom due to his detail as CFI Judge of Tarlac, Branch I, said subpoena was served upon him in a jam-packed courtroom, filled with practitioners and spectators who were not there for any case but to witness the reaction of petitioner to the service of said subpoena, in further disregard of the spirit behind Section 6 of Rule 140, Revised Rules of Court, on the confidentiality of proceedings against judges."^[7] Petitioner Judge contested the legality of the issuance of said subpoena and asked for the dismissal of the complaint, but he was unsuccessful. Hence, this petition before this Tribunal.

The petition on its face being indicative of a possible harassment to which Judge Fortun was subjected by reason of his official action, the letter-complaint coming from a member of the bar who had lost six of the nine cases in petitioner's sala^[8] and the supporting affidavit coming from a disgruntled former employee,^[9] this Court issued a temporary restraining order, and, in the same resolution of March 25, 1974, required comment from the respondents. Only respondent City Fiscal filed a comment on May 6, 1974. There was no explicit denial of certain allegations indicative of the hostility manifested towards petitioner Judge. Instead, the ten-page comment relied on what was considered to be applicable decisions. There was no effort to refute the allegation that there was a failure to abide by the requirements of Presidential Decree No. 77, but, it was argued that there was substantial compliance. Also, there was a misreading of the opinion of this Court in *Tecson v. Salas*,^[10] concerning the broad scope of the power of the President over executive officials. It certainly lacks the necessary persuasiveness to justify the lifting of the restraining order. Petitioner Judge saw the opportunity to file a reply, and on June 27, 1974, did so. After noting that the other private respondents failed to contest the petition, the reply stressed that the pattern of harassment was quite obvious. Thus: "Under date of September 17th, 1973, Atty. Martin Vera Cruz, a disgruntled barrister who lost 6 out of the 9 cases he filed before petitioner's sala, sent a letter, not to the City Fiscal, but to Atty. Andres Bersales, President of the Zamboanga del Sur Chapter of the Integrated Bar, asking, in effect, that administrative charges be initiated against petitioner for alleged misuse of this travel allowances. What did Atty. Bersales do? He convened the Board of Directors of the local IBP chapter and out of its 9-man membership, 5 attended, as follows: 1) Atty. Andres Bersales, its President and the Provincial Board Secretary, who lost all his cases before petitioner's sala. 2) Atty. Pablito Pielago, who works with Atty. Bersales in the Governor's Office. 3) Atty. Glicerio Carpio, who works also with Atty. Bersales in the Governor's Office. 4) Atty. Santiago Eisma - Provincial Treasurer who, in the first place, officially approved in such capacity payment of all the disbursements of petitioner now being questioned. 5) Atty. Leonardo Zulueta, who lost all except one of the cases he handles before petitioner's sala. The five of them, without the concurrence or attendance of the remaining 4 members of the 9-man Board of Directors of the Integrated Bar Chapter of Zamboanga del Sur on so important a subject, peremptorily passed resolution no. 7 resolving to file not only administrative but criminal charges against petitioner. The resolution discloses 2 things: first, it is not reflective of the collective will of the IBP Chapter concerned because it was a divided Board that acted on it and, second, the five members who voted for it without the participation of the 4 others have 'axes to grind' against petitioner. Two of them, Atty. Bersales and Zulueta, invariably lost their cases before petitioner's sala while Atty. Pielago and Carpio are subordinates of Atty. Bersales in the Governor's Office."^[11]

To indicate that the complaint was filed as a manifestation of vindictiveness and for the humiliation of petitioner judge, the reply characterized the resolution of the Integrated Bar of the Philippines chapter as having been "railroaded," petitioner not having been given a chance to explain his side contrary to procedural due process. He strengthened his petition by quoting the full text of the answer of retired Justice J. B. L. Reyes, then President of the Integrated Bar of the Philippines rejecting the plea of such chapter to support the criminal case filed with the respondent City Fiscal.^[12] Such letter of Justice J. B. L. Reyes should be quoted in full: "We have just received copy of Resolution No. 10 of your Chapter, recommending that administrative and criminal charges be filed against Judge Willelmo Fortun of the Court of First Instance of Zamboanga del Sur and Pagadian City and requesting the preventive suspension of said Judge. One thing that immediately attracted our attention is that nowhere in the resolution is there any indication that the respondent Judge was informed of the charges studied by the Grievance Committee, nor does it appear that said respondent was given an opportunity to present his side before the Grievance Committee or the Board of Officers adopted said Resolution No. 10. It is thus manifest that the action of the Chapter officers violated the cardinal principles of fairness and due process that underlie the Rule of Law. Not only this, but the Chapter's action in this case has disregarded the fact that the integration of the Bar sought to make it possible not only to protect lawyers and litigants and to discipline and/or remove incompetent

and unworthy judges, but also to '(4) Shield the judiciary which traditionally cannot defend itself except within its own forum, from the assaults that politics and self-interest may level at it, and assist it to maintain its integrity, impartiality and independence.' * * * The unseemly haste with which the Chapter appears to have acted, referring the charges to the City Fiscal's office, without notice to the respondent nor giving him opportunity to present his side before taking action, precludes this national office from supporting the aforesaid Resolution No. 10. Not only this, but in the absence of adequate explanation for such one-sided action on the part of your Chapter, it will become the unavoidable duty of this Office to oppose the suspension asked for. It is unfortunate that lawyers who have taken an oath to support and defend the law and the Constitution should choose to ignore the fundamental principle of due process. It is therefore requested that you remit to this Office a full report of the proceedings of the Grievance Committee and the adoption of its recommendations by the Board of Officers, as soon as possible. Pending receipt thereof, we have asked the Honorable Supreme Court to withhold action on your Chapter's request for preventive suspension. The Board of Governors of the Integrated Bar is due to meet on March 23, 1974. It would be best if your report is received by this Office before said date." [13]

No effort was made either by respondent City Fiscal or any of the private respondents to dispel in any way the grave doubts raised as to the bona fides in the filing of this complaint against petitioner. A memorandum was submitted by petitioner. Respondents maintained their silence. The only explanation appears to be their realization that the petition is meritorious.

So we find. Prohibition lies.

1. At the outset, reference was made to the invocation by petitioner-Judge of the leading Dimayuga decision. Seven years after its promulgation, in 1930 to be precise, it was relied upon in *Tong v. Santamaria & Standard Oil Co.* [14] Justice Villamor as ponente stressed that "the remedy of prohibition is somewhat sui-generis, and is one more or less of legal discretion, and is intended to prevent the oppressive exercise of legal authority." [15] Such categorical enunciation of one of the most highly valued principles of equity ought to have cautioned respondent City Fiscal against, in the language of then President of the Integrated Bar of the Philippines, retired Justice J. B. L. Reyes, acting with "unseemly haste." This is one occasion then that calls for the exercise of the equitable powers of this Court to repudiate what was clearly an "oppressive exercise of legal authority." It only remains to be added that Dimayuga has been cited with approval in a number of cases subsequent to *Tong v. Santamaria*. [16]

2. The sad and lamentable spectacle that this case presents, a judge being subjected to harassment and humiliation, fortunately is not typical. It can diminish public confidence in the courts. At the very least, it minimizes the respect properly owing an occupant of the bench. Whatever be the motive of respondent City Fiscal, the impression yielded is that such excessive zeal was not prompted solely by obedience to his oath of office. The appearance, hopefully not the reality, could only be that of sheer vindictiveness or oppressive exercise of state authority. He was oblivious of the fact that the judiciary and the prosecution service are both essential agencies in the enforcement of penal statutes, not antagonists. At times it has been said, and with reason, that the rights of an accused person could be emasculated, even rendered nugatory, if a judge and the prosecuting fiscal are on the most amicable terms. Respondent City Fiscal in this case erred on the other extreme. He was the first to lend himself to a scheme that could have no other purpose than to place petitioner-Judge in contempt and disrepute. Such conduct calls for vigorous condemnation. The Constitution cannot be any more explicit: "Public office is a public trust." [17] A public official must keep uppermost in his mind that the sole guide in the performance of his duties is the paramount need of the public service.

3. The petition made reference to an Executive Order outlining the procedure on complaints charging government officials and employees with commission of irregularities. [18] It is therein provided that complaints against presidential appointees, and judges are included among them, "shall be filed with the Office of the President or

the Department Head having direct supervision or control over the official involved." [19] At present, the department head is the Supreme Court, the Constitution having expressly vested the power of supervision over all courts to this Tribunal. [20] The removal of such power in the Department of Justice in 1973, now the Ministry of Justice, is a recognition of the need to preserve unimpaired the independence of the judiciary, especially so at present, where to all intents and purposes, there is a fusion between the executive and the legislative branches. Many are the ways by which such independence could be eroded. While the present instance is a rare aberration, it could happen again. When such a case occurs, this Court must act - and promptly to set matters right. This is what the Court did in its resolution immediately issuing a temporary restraining order upon the petition being filed. It cannot be too strongly emphasized that a judge of an inferior court is deserving of the full protection of this Tribunal against any form of vexation, inconvenience, or harassment, the more so when, as is quite evident, haste and recklessness marked the conduct of respondent City Fiscal. Let there be no misunderstanding. Our ruling does not signify that this Tribunal is averse to a judge facing charges against him, if presented in the manner provided for by law and with bona fides. The power of administrative supervision precisely has been granted to this Court to assure that malefactors on the bench suffer for their misdeeds. Conversely, however, when, as did happen here, a complaint was utilized to embarrass and humiliate a member of the judiciary, it is broad enough to include such remedial action in aid of a judge, who, to all the appearances, is the victim of a deliberate attempt to impugn his good name and reputation. The judicial power constitutionally granted to this Court, independently of the grant of supervisory authority, justifies the intervention of this Court in a case like the present.

4. The characterization by retired Justice J. B. L. Reyes, then President of the Integrated Bar of the Philippines, of the "unseemly haste" that marked the actuation of respondent members of the Board of Directors of the Integrated Bar Chapter of Zamboanga del Sur, Pagadian City Chapter, appears to be rather mild - all things considered. He pointed out that there was a violation of the cardinal principles of fairness and due process that underlie the Rule of Law. Petitioner-Judge was not heard; he was denied the opportunity to defend himself against the accusation. There was, on the part of private respondents then, a failure to abide by a Resolution of the Integrated Bar stressing that precisely integration could shield "the judiciary which traditionally cannot defend itself except within its own forum, from the assaults that politics and self-interest may level at it, and assist it to maintain its integrity, impartiality and independence." [21] A greater sense of responsibility, not to say a more adequate grasp of the cardinal requirements of due process as well as of the applicable procedural rules, ought to have been displayed by private respondents. Moreover, they did not even make any effort to dispute the accuracy of the imputation of being disgruntled members of the bar with a record of losing cases. That apparently was the motive for their accusation. They paid no attention to the norm of conduct that lawyers should observe as officers of the Court. The then officers of the Integrated Bar, included as private respondents, have an even greater responsibility. Clearly, they were recreant to the trust reposed on them. The penalty of censure is imposed on each and everyone of the private respondents.

WHEREFORE, the writ of prohibition is granted restraining respondent City Fiscal or any one acting in his place from enforcing the subpoena dated February 16, 1974 in I.S. Nos. 392-403-74 and from proceeding with the preliminary investigation based on the letter-complaint of respondent Martin Vera Cruz to the President of the Integrated Bar of the Philippines of Zamboanga del Sur Chapter and Pagadian City. The writ of certiorari is likewise granted annulling the order of February 22, 1974 issued by respondent City Fiscal denying the motion to dismiss filed by petitioner. The complaint against petitioner is dismissed. The restraining order is hereby made permanent. Let a copy of this decision be spread on the record of private respondents Martin Vera Cruz, Andres Bersales, Pablito Pielago, Glicerio Carpio, Santiago Eisma and Leonardo Zulueta. This decision is without prejudice to a bona fide investigation of the charges against petitioner, Judge Willelmo C. Fortun, who has since

then been appointed to the Court of First Instance of Lingayen, Branch I. Let a copy of this decision be furnished the Ministry of Justice and the Tanodbayan. Costs against respondents.

Barredo, Aquino, Guerrero, Abad Santos, and De Castro, JJ., concur.

[1] 43 Phil. 304 (1922).

[2] Ibid, 307.

[3] 41 Phil. 103 (1920).

[4] Respondent Martin Vera Cruz.

[5] Modesto Radaza was not named respondent.

[6] The other private respondents are: Attorneys Martin Vera Cruz, Andres Bersales, Pablito Pielago, Glicerio Carpio, Santiago Eisma and Leonardo Zulueta.

[7] Petition, pars. 10 and 11, 3-4.

[8] Ibid, par. 5, 2.

[9] Ibid, par. 6, 2.

[10] L-27525, 34 SCRA 275.

[11] Reply, par. 3, 2-3.

[12] Ibid, par. 4, 3-5.

[13] Memorandum of petitioner, citing Bar Integration Resolution of January 9, 1973, 4-5.

[14] 54 Phil. 371 (1930).

[15] Ibid, 376.

[16] Cf. Yu Cong Eng v. Trinidad, 47 Phil. 385 (1925); Aglipay v. Ruiz, 64 Phil. 201 (1937); People v. Vera, 65 Phil. 56 (1937); Planas v. Gil, 67 Phil. 62 (1939); People v. Zulueta, 89 Phil. 751 (1951); University of the Philippines v. City Fiscal of Quezon City, 112 Phil. 880 (1961).

[17] Article XIII, Section 1, opening sentence.

[18] Executive Order No. 264 (1970).

[19] Ibid, Section 2.

[20] According to Article X, Section 6 of the Constitution: "The Supreme Court shall have administrative supervision over all courts and the personnel thereof."

[21] Memorandum of petitioner, citing Bar Integration Resolution of January 9, 1973, 4-5.

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