

**COMMISSIONER OF IMMIGRATION, PETITIONER, VS. HON. GAUDENCIO CLORIBEL, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH VI, MERCEDES TOBIANO CO, JOSE TOBIANO AND JUSTO T...**

*G.R. No. L-24139. August 31, 1967*

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**PER CURIAM:**

On motion of the Solicitor General to declare respondent judge in contempt of court. Respondent judge filed his return thereto. The motion was heard on oral arguments, submitted for resolution. The facts from which the contempt proceedings stemmed are now to be related.

On September 27, 1962, a decision was rendered by the Board of Commissioners of Immigration, excluding respondent Mercedes Tobiano Co and her alleged children, including respondents Jose Tobiano and Justo Tobiano, as aliens not properly documented for admission, and directing their return to the port from whence they came or to the country of which they are nationals. A warrant of exclusion was issued. Jose Tobiano and Justo Tobiano were there-upon arrested.

Offshoots of the decision and warrant just mentioned are two cases before the Court of First Instance of Manila, both entitled "Mercedes Tobiano Co., et al. vs. Martiniano P. Vivo, et al.", brought primarily against the Acting Commissioner of Immigration. The first, Civil Case No. 58624, is for certiorari lodged by private respondents and others[1] to annul said decision of the Board of Commissioners; the second is Civil Case No. 58782, for a writ of habeas corpus filed by Mercedes Tobiano Co, on behalf of her sons, respondents Jose Tobiano and Justo Tobiano.

In Case 58782, private respondents moved for the grant of bail to Jose Tobiano and Justo Tobiano. On February 5, 1965, respondent judge granted their motion and directed their release upon approval of a P5,000.00-bond for each. On the same day, pursuant to a surety bond in the amount of P10,000.00 (P5,000.00 for each), respondent judge directed the Commissioner of Immigration or the officer in charge of the Immigration Detention Station to promptly release Jose Tobiano and Justo Tobiano.

The next day, February 6, 1965, the Commissioner of Immigration came to this Court in the present proceedings on certiorari to annul respondent judge's orders of February 5, 1965 in Case 58782; and on injunction - preliminary and perpetual - to prevent enforcement thereof, and to restrain the judge from otherwise taking cognizance of, conducting further proceedings in, or in any other manner assuming jurisdiction over, said case.

On February 10, 1965, this Court issued a writ of preliminary injunction against the respondent judge, thus:

"NOW, THEREFORE, until further orders from this Court, You, your agents, your representatives and/or any person or persons acting in your behalf are hereby enjoined from enforcing or implementing the order dated February 5, 1965 and the Order of Release dated February 5, 1965, and otherwise taking cognizance of or in any manner assuming jurisdiction or [conducting] further proceedings [in] the case No. 58782 (Mercedes Tobiano Co., etc. vs. Martiniano P. Vivo, etc., et al.) of the Court of First Instance of Manila, Branch VI."

Following a precedent,[2] this Court, on August 27, 1965, amended the preceding injunctive order of February 10, 1965 -

"in the sense of permitting respondent judge to grant bail to Jose Tobiano and Justo Tobiano (P25,000 each) subject to conditions similar to those granted by the Court of Appeals in the suit referred to in L-22696. Such release on bail shall be subject to the decision to be promulgated in this litigation."

The foregoing injunction notwithstanding, respondent judge, on January 6, 1967, promulgated a joint decision in Cases 58624 and 58782 earlier mentioned, the dispositive portion of which reads:

"IN CONSIDERATION OF ALL THE FORE-GOING, the Court finds the decision of reversal of respondent Board of Commissioners, as well as the warrant of exclusion issued by respondent Commissioner of Immigration, both on the same date, September 27, 1962, null and void, and the decision of the Board of Special Inquiry #1 dated October 3, 1961, as final. This Court therefore holds that the petitioners, MERCEDES TOBIANO CO, SUSANA TOBIANO, JOSE TOBIANO, JUAN TOBIANO, JULIO TOBIANO, JUSTO TOBIANO, and PABLO TOBIANO, are entitled to remain in the Philippines as citizens thereof, in accordance with the decision of the Board of Special Inquiry #1 of the Bureau of Immigration. No pronouncement as to costs."

The foregoing judgment triggered the present contempt proceedings.

1. Respondent judge's main defense, distilled into a few words, is this: Since this Court, by resolution of August 27, 1965, granted bail to petitioners Jose Tobiano and Justo Tobiano, the injunctive order of February 10, 1965 has lost its prohibitory effect and was reduced to *functus officio*. The lack of validity of this pose is at once apparent.

The import of the injunctive order of February 10, 1965 need not be essayed. The terms employed therein are clear; the mandate, brief and authoritative. Two separate and distinct acts are there forbidden: first, respondent judge was enjoined from enforcing his orders of February 5, 1965 (granting the motion to release Jose Tobiano and Justo Tobiano upon approval of the bond fixed; and directing release upon bond filed); and second, respondent judge was prohibited from "otherwise taking cognizance of or in any manner assuming jurisdiction or [conducting] further proceedings [in] the case No. 58782 (Mercedes Tobiano Co, etc. vs. Hon. Martiniano P. Vivo, etc., et al.)."

Unquestionably, all that respondent judge was allowed to do by the amendatory resolution of August 27, 1965 was to grant bail, in a considerably increased amount. This is no license for the judge to decide that Jose Tobiano and Justo Tobiano may remain in the Philippines as citizens thereof. The import of his decision is to render ineffective the bond requirement for stay. For, a citizen needs no bond just to remain in his own country. The second portion of the writ of February 10, 1965 remained as unaffected by said amendatory resolution of August 27, 1965. That specific portion is intact, undiminished in its peremptory command. It is too much of a wrench to say that simply because our August 27, 1965 resolution allowing release on bail is in line with respondent judge's similar order of February 5, 1965 in Case 58782, said judge was at liberty to decide the case aforesaid. Respondent judge cannot brush aside as innocuous the fact that the resolution of August 27, 1965 made it abundantly clear that "[s]uch release on bail shall be subject to the decision to be promulgated in this litigation." [3] Nor could an inference be justifiably drawn that the resolution of August 27, 1965 was in the nature of a dismissal of the certiorari petition before this Court. It is not. The petition herein still stands. The case here remains pending. And, the proscription against further proceeding with Case No. 58782 subsists.

Clearly then, the joint decision rendered by respondent judge in Cases 58624 and 58782 is an open defiance of the directive of this Court. It violates the injunction.

2. As we pierce the shard of respondent judge's plea of lack of intention to defy or disobey, we perceive a subtle attempt on his part to sidetrack the injunction. We note that in his answer to the motion for contempt, he deftly avoided any mention of the contents of the injunction of February 10, 1965. And then, as he decided Case 58782 for habeas corpus jointly with Case 58624 for certiorari, he refrained from reciting in the dispositive part any mention of Case 58782, apparently in an effort to justify a semblance of lack of disobedience to the injunctive order. And this, upon his claim that, after all, "there is no injunctive order from this Honorable Court" insofar as the other case - Case 58624 - is concerned. But, no amount of judicial legerdemain will bring about a conclusion other than that Case 58782, by the terms of the joint judgment, is also decided therein. For, the judge declared that the two Tobianos are entitled to remain in the Philippines as citizens thereof. And, perforce, the petition for habeas corpus in Case 58782 was there granted; the Tobianos were automatically released; they can no longer be arrested for deportation. It is well to remember that "[v]iolation of a court order by subterfuge is as much contempt of court as violation by more direct action." [4]

3. As early as 1903, *Weigall vs. Shuster*, 11 Phil. 340, 354, has reminded us that "maintenance of public order and the existence of the commonwealth itself, depend upon the enforcement of the mandates of the courts and require prompt obedience to them, not only by private citizens, but in a special manner by the Government officers who are particularly charged with a knowledge of the law and with the duty of obeying it." Respondent is a judge of a superior court. But his official character will not insulate him from punishment for insubordination of an order of the highest Tribunal of the land. When he took his oath of office as a judge, he swore that he would "obey the laws, legal orders, and decrees promulgated by the duly constituted authorities." Canon 22 of the Canons of Judicial Ethics should have reminded him that "[t]he judge should be studiously careful himself to avoid even the slightest infraction of the law, lest it be a demoral-izing example to others." As Mr. Justice Malcolm once said: "It would seem hardly necessary to add that judges should respect the orders and decisions of an appellate court." [5] A fundamental principle in our democratic system of government is that no official, no matter how high, is above the law. [6] It is in this context that we say that respondent judge is accountable for the contempt committed by him. [7]

4. Courts are inherently empowered to punish for contempt to the end that they may enforce their authority, preserve their integrity, maintain their dignity, and insure the effectiveness of the administration of justice. [8]

Indirect contempt - as is the case here - is provided in Section 3, Rule 71, Rules of Court, viz:

"SEC. 3. Indirect contempts to be punished after charge and hearing. - 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:

x x x

(b) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge, x x x."

The disobedience which the law punishes as constructive contempt implies wilfulness. For, at bottom, contempt is a willful disregard or disobedience. [9] The act of respondent judge complained of comes easily within the coverage of this rule.

In assessing the penalty, however, we are to be guided by the salutary rule that the power to punish for contempt should be exercised on the preservative, not vindictive, principle. [10]

WHEREFORE, finding respondent Judge Gaudencio Cloribel guilty of indirect contempt, we hereby sentence him to pay a fine of One Hundred Pesos (P100.00).

Let a copy of this resolution be forwarded to the Honorable, The Secretary of Justice.

**SO ORDERED.**

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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[1] Included as petitioners in that suit (Case 58624) were the other alleged children of Mercedes Tobiano Co., namely: Susana Tobiano, Juan Tobiano, Julio Tobiano, Pablo Tobiano.

[2] Commissioner of Immigration vs. Hernandez (Resolution), L-22696, August 10, 1965.

[3] Underscoring supplied.

[4] 17 C.J.S., p. 30. See: Glover vs. Malloska, 217 N.W. 896, 897, citing 6 R.C.L. 503; Craig vs. Kelley, 18 N.W. 2d 413, 417; State vs. Koon, 201 S.W. 2d 446, 455, citing 12 Am. Jur., p. 406; Hobbs vs. Poteet, 207 S.W. 2d 501, 503.

"The law abhors subterfuges. It lays aside the covering and looks to the actual facts beneath. x x x "The law is not to be hoodwinked by colorable pretenses; it looks at truth and reality through whatever disguise it may assume." Lohse Patent Door Co. vs. Fuelle, 114 S.W. 997, 1005-1006.

[5] Malcolm, Legal and Judicial Ethics, 1949 ed., p. 209.

[6] Villavicencio vs. Lukban, 39 Phil. 778, 787.

[7] Valenzuela vs. Revilla and Carlos, 41 Phil. 4, 6-7; In re Quirino, 76 Phil. 630, 636-637. See: 17 C.J.S., p. 96.

[8] Sec. 5 (c), Rule 135, Rules of Court; In re Kelly, 35 Phil. 944, 950; Borromeo vs. Mariano, 41 Phil. 322, 332; Perkins vs. Director of Prisons, 58 Phil. 271, 274; Cabansag vs. Fernandez, 102 Phil. 152, 159. See: 17 C.J.S., pp. 109-110.

[9] Narcida vs. Bowen, 22 Phil. 365, 369; People vs. Rivera, 91 Phil. 354, 357, citing authorities; Ferrer vs. Rodriguez, L-17507, August 6, 1962.

[10] Lualhati vs. Albert, 57 Phil. 86, 90; Villavicencio vs. Lukban, supra, at p. 798; In re Quirino, supra, at p. 636; People vs. Rivera, supra, at p. 358.

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