

EDILBERTO DELIMA, NENITA DACILLO, AND ATTY. QUIRINO N. ORIEL, PETITIONERS, VS. HONORABLE PEDRO P. GALLARDO, IN HIS CAPACITY AS JUDGE OF THE CIRCUIT CRIMINAL COURT OF 13TH JUDICI...*G.R. Nos. L-41281-82. May 31, 1977*

Ponente: MARTIN, J.

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Petition for certiorari and prohibition with preliminary injunction to review the order of respondent Hon. Pedro P. Gallardo, then Judge of the Circuit Criminal Court of the 13th Judicial District, Tacloban City, dated August 8, 1975, denying petitioners' motion to inhibit respondent Judge from further hearing Criminal Cases Nos. CCC-XIII-12 and 13-L s. '75 and his order dated August 12, 1975, in the same criminal cases, declaring petitioner Atty. Quirino N. Oriel in contempt of court, and sentencing him to pay a fine of Two Hundred Pesos (P200.00) and an imprisonment of twenty (20) days.

After a temporary restraining order was issued by this Court's (2nd Division) resolution of September 3, 1975, and after respondent Judge has filed his comment on the petition, this case was referred to the First Division (resolution of October 24, 1975), and was given due course on March 29, 1976. Both parties submitted the case for decision without briefs.

Petitioner Edilberto Delima is the incumbent Barrio Treasurer of Zone I, Poblacion, Capoocan, Leyte; petitioner Nenita Dacillo was a former high school teacher of the Capoocan Community High School, who during her incumbency was assigned by District Supervisor Mabini Madriaga as teacher-collector to collect dues from students of the Capoocan High School.

Sometime in 1973, Barrio Council of Zone I, Poblacion, Capoocan, Leyte, promulgated Resolution No. 6, requiring District Supervisor Mabini Madriaga and his wife, Elementary School Principal Angeles Madriaga, both of the Capoocan Elementary School, to deposit all collections and funds pertaining to the Capoocan Community High School, and to render an accounting of all collections, funds and expenditures, purchases and disbursements made by said spouses. Because of the failure of the Madriaga couple to comply with Resolution No. 6, the Barrio Council of Zone I, through its Barrio Captain, Jesus Near, filed with the Provincial Fiscal of Leyte a complaint against them for malversation of public funds. Edilberto Delima testified against them.

After conducting the necessary preliminary investigation, the Provincial Fiscal of Leyte filed a complaint for malversation of public funds against the Madriaga couple and against petitioners Edilberto Delima and Nenita Dacillo. (Criminal Cases Nos. 500 and 501, originally filed with the Court of First Instance of Leyte, Branch VI, Carigara).

On February 4, 1975, Executive Judge Jesus N. Borromeo issued an order transferring said Criminal Cases Nos. 500 and 501 to the Circuit Criminal Court of the 13th Judicial District (Tacloban, Leyte), presided by respondent

Judge Pedro P. Gallardo. Criminal Case No. 500 was designated CCC-XIII-12-L s. '75 and Criminal Case No. 501 as CCC-XIII-13-L s. '75.

Accused spouses Mabini Madriaga and Angeles Madriaga were arraigned on March 7, 1975, while petitioners, Edilberto Delima and Nenita Dacillo were arraigned on March 10, 1975. All the accused pleaded not guilty to the charge.

Without much ado, the respondent Judge dismissed the criminal cases for malversation of public funds against Mabini Madriaga and Angeles Madriaga but not against petitioners Edilberto Delima and Nenita Dacillo. After the cases against the Madriaga couple were dismissed Barrio Captain Jesus Near, upon being assured by the Provincial Fiscal of Leyte that the two criminal cases against the Madriaga couple could no longer be revived because of double jeopardy, filed a complaint action against respondent Judge for knowingly rendering an unjust decision. Said complaint was given due course by the Chief Prosecutor of the Department of Justice (1st Indorsement, dated June 20, 1975). The Provincial Fiscal of Leyte was instructed by the Chief Prosecutor to endorse the case to the Fiscal of Tacloban City who has jurisdiction over the case. Barrio Captain Jesus Near also filed an administrative complaint for "partiality" against respondent Judge before this Court on July 7, 1975, which complaint was given due course.

During the pendency of the criminal complaint and the administrative complaint against respondent Judge, he called for hearing Criminal Cases Nos. CCC-XIII-12 and 13-L s. '75 with respect to petitioners Edilberto Delima and Nenita Dacillo, whose charge for malversation of funds remained pending. It was during said hearing when petitioners Edilberto Delima and Nenita Dacillo, thru their counsel, petitioner Atty. Quirino N. Oriel, filed a motion to inhibit respondent Judge from further hearing the two criminal cases against them on the ground that:

"the accused Edilberto Delima being principal witness of a complaint of Jesus Near in a criminal case now pending for appropriate action by the City Fiscal of Tacloban against the Honorable Presiding Judge of this Honorable Court, and having executed supporting affidavit in the same case, it is honestly believed that prejudice against him has already been developed in the mind of the Honorable Presiding Judge and hence he cannot be expected to decide this case with strictest objectivity and with dispassion."

After reading the verified motion for inhibition, the respondent Judge issued in open court an order dated August 8, 1975, denying the same and ordering petitioner Atty. Quirino N. Oriel to submit a written explanation within a period of three days from August 8, 1975, why he should not be dealt with for direct contempt of court.

On August 9, 1975, petitioner Atty. Quirino N. Oriel filed an urgent motion for the respondent Judge to reconsider his order of August 8, 1975, so that the 3-day period given to him to submit his written explanation would commence from the day he received said order, that is, from August 11, 1975. However, said motion was summarily denied on the very day it was filed.

On August 11, 1975, petitioner Atty. Quirino N. Oriel filed a manifestation stating that the contents of his motion for inhibition are not contumacious and therefore he cannot be held liable for direct contempt but respondent Judge, in his order dated August 12, 1975, declared Atty. Quirino N. Oriel guilty of direct contempt and sentenced him to pay a fine of P200.00 and an imprisonment of 20 days. Said order was, however, modified later by reducing the imprisonment to 10 days, instead of 20 days.

There are two (2) main issues to be resolved in this petition. The first refers to the question of whether respondent Judge should inhibit himself from continuing to try the aforementioned criminal cases against petitioners Edilberto Delima and Nenita Dacillo and the second to the question as to whether the motion to inhibit respondent Judge filed by petitioner Atty. Quirino N. Oriel is contumacious as to make him liable for direct contempt.

As far as the first issue is concerned, the question is now moot and academic because respondent Judge has ceased to be a judge of the Criminal Circuit Judge of the 13th Judicial District with office at Tacloban, Leyte when his resignation was accepted by the President of the Philippines on September 15, 1975.

Anent the second issue there is nothing in the motion for inhibition of the respondent Judge that will cast disrepute, disrespect or contempt against the respondent Judge. Petitioner Atty. Quirino N. Oriel in a respectful manner, simply stated in his motion for inhibition that the accused Edilberto Delima being a principal witness of Jesus Near in the criminal case filed against respondent Judge pending appropriate action by the City Fiscal of Tacloban he honestly believed that respondent Judge would be prejudiced against him and therefore cannot be expected to decide the case with "objectivity and dispassion." Contempt of court may be either direct or constructive. It is direct when committed in the presence of or so near a court or judge as to obstruct or interrupt proceedings before the same (Section 1, Rule 71, Rules of Court) and constructive or indirect contempt is one committed out or not in the presence of court (Narcida vs. Bowen, 22 Phil. 365). It is an act done in a distance which tends to belittle, degrade, obstruct, interrupt or embarrass the court and justice (70 C.J.S. 6). It is tantamount to a misbehavior in the presence of or so near a court or judge as to interrupt the administration of justice (De Joya vs. CFI, 52 O.G. 6150). In the motion for inhibition filed by petitioner Atty. Quirino N. Oriel, We find no disrespectful language or phrase containing offensive personalities against the respondent Judge. What is stated in the motion is simply a motion of the petitioner for the judge to inhibit himself from further trying the aforementioned criminal cases because he believed that the judge could no longer decide the case with impartiality because of a criminal complaint Jesus Near filed against respondent Judge. In the case of Austria vs. Masaquel, G.R. No. L-22536, August 31, 1967, the Supreme Court ruled that when a person impelled by justifiable apprehension and acting in a respectful manner, asks a judge to inhibit himself from hearing his case, is not guilty of contempt. Petitioner Atty. Quirino N. Oriel is similarly situated.

IN VIEW OF THE FOREGOING, the order of respondent Judge finding petitioner Atty. Quirino N. Oriel guilty of direct contempt and sentencing him to pay a fine of P200.00 and to imprisonment of ten (10) days, is hereby set aside. The restraining order issued by this Court to restrain respondent Judge from trying Criminal Cases CCC-XIII-12 and 13-L s. '75 being no longer necessary, is hereby lifted.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Antonio, and Muñoz Palma, JJ., concur.

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