

CAPT. CONRADO M. CABAGUI, PETITIONER, VS. HON. COURT OF APPEALS, THIRD DIVISION, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS, EUGENIO M. MILLADO, RESPONDENT.*G.R. No. L-38377. October 15, 1975*

Ponente: TEEHANKEE, J.

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The Court finds respondent, Attorney Eugenio M. Millado, guilty of gross negligence in not having complied with a "show-cause" resolution and of abusing the right of recourse to the Court by filing multiple petitions for the same cause in the false expectation of getting favorable action from one division as against the adverse action of the other division. The Court deems his suspension from the practice of law since February, 1975 as sufficient penalty and now lifts his suspension with the warning that the commission in the future by respondent of the same or other infractions shall be dealt with severely.

Under its Resolution of November 20, 1974, the Court, acting on a third petition for review of a Court of Appeals decision affirming petitioner's conviction of the crime of malversation of public funds, as filed on November 13, 1974 by his attorney, Eugenio M. Millado, with address at Koronadal, South Cotabato, ordered that said petition be expunged from the records and required "Atty. Eugenio Millado to SHOW CAUSE within ten (10) days from notice hereof why disciplinary action should not be taken against him for trifling with the Court by filing this third petition despite previous resolutions of this Court."

In its previous Resolution of May 8, 1974 referring to the first two petitions filed by respondent Millado on behalf of the same petitioner,[1] the Court had dismissed the second petition (filed on March 18, 1974) by respondent Millado in the guise of a new petition for certiorari with preliminary injunction but which merely raised again the same questions in his first petition (filed on January 9, 1974) seeking to set aside petitioner's conviction for malversation of public funds, by decision of the court of first instance of Misamis Oriental dated June 20, 1963 as affirmed with modification by the Court of Appeals' decision dated June 8, 1973, for alleged lack of jurisdiction and praying for reversal of the conviction or for a reduction of his criminal liability by finding appellant-petitioner guilty of technical malversation only for the amount of P1,161.65. Said first petition had been denied on January 15, 1974 by virtue of the petition having been filed late by 4 months and 25 days beyond the last date for filing which fell due since August 15, 1973. The Court therein reiterated its warning to litigants and counsels against the filing of multiple petitions for the same cause in the false expectation of getting favorable action from one division as against the adverse action of the other division, since "such conduct would tend to trifle with the Court and impede, obstruct and degrade the administration of justice," as follows:

"In a similar case (L-37411, Teodoro Fojas vs. CA), the Court per its resolution of March 20, 1974 admonished that '(L)itigants and their counsels are warned under pain of contempt and disciplinary action that a party who has already failed to have a decision of the Court of Appeals set aside through a petition for review by certiorari with the denial of his petition (by the First Division to which such petitions for review are assigned under the Court's standing resolution of November 15, 1973) should not under the guise of a special

civil action file a second petition for the same purpose of setting aside the same Court of Appeals' decision to be acted upon by the Second Division (to which special civil actions are assigned under the Court's resolution of November 15, 1973), and vice-versa, for such conduct would tend to trifle with the Court and impede, obstruct and degrade the administration of justice." [2]

For failure on the part of respondent to submit the explanation required under the Court's Resolution of November 20, 1974, notwithstanding the lapse on January 3, 1975 of the period therein given him, the Court per its Resolution of February 7, 1975 resolved to suspend respondent from the practice of law effective immediately and until further action in the premises.

On April 14, 1975, respondent filed his "Petition for Relief from Resolutions and Compliance" pleading inter alia "mistake and/or excusable negligence" for his failure to take note of and attend to the filing of the explanation required in the Court's Resolution of November 20, 1974 and that he was seeking to render "optimum legal service" to petitioner and "to exhaust all remaining legal remedies." He added with reference to the third petition that "if, however, there is any portion thereof that can suggest that its filing trifles with this Honorable Court, he respectfully begs the indulgence and tolerance thereof, and he condescendingly (sic) APOLOGIZES therefor, respectfully assuring that he will be more cautious hereafter." [3]

The Court set the petition for relief for hearing on June 2, 1975 on which date it heard respondent and further granted him time to submit his memorandum.

In respondent's memorandum filed on June 27, 1975, he again urges that either of his three petitions be given due course, notwithstanding that he well knows that the Court's Resolutions denying and dismissing the first two petitions have long become final and entries of judgment made since March 12, 1974 and May 13, 1974, respectively, and that his third petition was ordered expunged from the records, i.e. stricken from the records and therefore considered non-existent. Respondent's interjection of the same irrelevant matter here denotes either a stubborn refusal to comprehend or abide by the Court's injunction that he cannot be filing one petition after another for the same cause or worse a deliberate attempt to drag out the case and impede the execution of the judgment of conviction against his client which had become final and executory since August 15, 1973, date of finality of the Court of Appeals' decision of June 8, 1973 affirming the conviction. Such misconduct on the part of a member of the bar cannot be tolerated.

The Court thus finds that respondent was grossly negligent, to say the least, in failing to comply within the required period with the Court's Resolution requiring him to show cause why disciplinary action should not be taken against him for filing multiple petitions for the same cause notwithstanding the Court's previous adverse resolutions. His original period to file the required explanation expired on January 3, 1975 and more than a month elapsed thereafter without his having done anything until the Court took note thereof on February 7, 1975 and ordered his suspension. As already indicated, the Court also finds respondent's explanation for his having filed multiple petitions one after the other to be unsatisfactory and untenable.

Considering, however, that respondent has been under suspension since the Court's Resolution of February 7, 1975, since after respondent filed his belated compliance, the Court as per its Resolution of April 21, 1975 ordered that respondent remain under suspension until it could hear the matter on the merits, the Court is inclined to view with liberality respondent's plea that "he has been sufficiently punished" and that "his suspension . . . is substantial enough as to make him improve his professional service to his client and duties to the bench . . ." The Court will thus consider the suspension so far served by respondent as sufficient penalty for the serious infractions committed by him.

ACCORDINGLY, respondent's suspension from the practice of law is lifted effective as of the promulgation of

this Resolution with the warning that the commission in the future by respondent of the same infractions or other violations of his duties as a lawyer shall be dealt with severely.

Let a copy of this Resolution be circularized to all the courts and entered in respondent's personal record.

Makasiar, Muñoz Palma, Aquino, and Martin, JJ., concur.

Esguerra, J., on official leave.

[1] Case L-38027 (Capt. Conrado M. Cabagui vs. People of the Phil.) and L-38337 (Capt. Conrado M. Cabagui vs. Honorable Court of Appeals and People).

[2] Emphasis supplied.

[3] Rollo, p. 79.

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