

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO PERALTA, JR., ACCUSED, SOTERO NAVARRO,
RESPONDENT-APPELLANT.**

G.R. No. L-36506. April 28, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the judgment dated August 8, 1968 of the Court of First Instance of Cebu, the dispositive portion of which was modified in an order, dated January 4, 1969, as follows:

"IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, the Court hereby finds and declares the Provincial Warden, Sotero Navarro, guilty of contempt of court, and hereby sentences him to pay a fine of P250.00; and since one of his acts which the Court finds to be contemptuous consists in the refusal to appear before this Court to explain why the prisoner Francisco Peralta, Jr., instead of being in jail, was actually at the Majestic Restaurant at 7:00 o'clock in the evening of July 23, 1968, and such an omission to do an act ordered by this Court is still in his power to perform, the Court hereby orders that the said Provincial Warden pay a fine of P5.00 for each day that he fails to comply with the order of the Court."

Records show that at about 7:00 in the evening of July 23, 1968, Francisco Peralta, Jr., alias Boy Peralta, who has been found guilty and sentenced to reclusion perpetua in a judgment promulgated on June 21, 1968 in Criminal Case No. V-12729, was seen at the Majestic Restaurant with some companions in civilian clothes. When this matter was reported to CFI Judge Amador E. Gomez, he issued an order requiring the Provincial Warden, Major Sotero Navarro, to appear before his sala on July 26, 1968, at 8:30 in the morning, for examination under oath with respect to that incident.

Quoting from the brief of the Solicitor General, the following transpired:

"On July 26, 1968, at 8:15 in the morning, Major Navarro called up Judge Amador Gomez and requested that he be allowed to give an explanation to the court by telephone (p. 7, rec.). Judge Amador Gomez, however, did not accede to his request as the matter involved public interest (p. 7, rec.). Major Navarro then informed Judge Gomez of the Provincial Governor's instructions that he should submit to the latter to an investigation first before going to the Court (p. 8, rec.). Judge Gomez warned Major Navarro that his failure to appear on the scheduled examination would result to an order for his arrest for contempt of court (p. 8, rec.). Major Navarro, however, declared that he was submitting a written manifestation, whereupon the Judge told him that the order was for his appearance in court and not for the submission of a manifestation (p. 8, rec.).

"In his manifestation submitted on the same date, July 26, 1968, Major Navarro questioned the jurisdiction of the court to issue the Order, but expressed willingness to cooperate in any matter relating to his functions if the judge requested it in an unofficial capacity (p. 10, rec.).

"Accordingly, for failure of Major Navarro to appear in accordance with the order, the court declared him in contempt of court and his arrest was immediately ordered (p. 9, rec.). The order of arrest, incidentally, remained unserved as Major Navarro warned the servers that if they insisted on serving the order of arrest they

would face charges of illegal arrest (p. 24, rec.).

"In a motion, dated July 26, 1968, Major Navarro sought to set aside the questioned Order, and to quash the warrant of arrest against him, alleging that the lower court acted without jurisdiction. His motion was set for consideration on July 31, 1968 (p. 22, rec.). Major Navarro and several amicus curiae were duly notified (p. 23, rec.). On the scheduled date of hearing, however, Major Navarro refused to appear in court as he claimed he had already adequately discussed the merits of his motion (p. 47, rec.)."

In his appeal, Major Navarro alleged that the Court a quo erred (1) in issuing the order dated July 24, 1968 requiring the appellant warden to appear before it in a case which had been terminated and an appeal for which had been perfected and where the appellant was not involved in any manner whatsoever; and (2) in declaring the appellant in contempt without having filed a formal charge for contempt against the latter and giving him a chance to defend himself or by counsel.

With respect to the first assigned error, respondent-appellant claims that there are only two instances or cases when the appearance of a party may be compelled by the courts. They are: (1) when a person is accused of a grave crime and made to answer for a charge and to defend himself; and (2) when he is a material witness to a case. Outside of these, respondent claims a person may not and cannot be compelled to appear before it. Relative to the second assigned error he argues that no charge has been filed against him and yet he was adjudged guilty even without giving him an opportunity to defend himself; that Judge Gomez "took it upon himself to play the roles of complainant, investigator, prosecutor and judge all rolled into one."

The power to punish for contempt is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings and to the enforcement of judgment, orders and mandates of the courts, and consequently, to the due administration of justice (*Perkins vs. Director of Prison*, 58 Phil. 271). The reason behind this power to punish for contempt is that respect of the court guarantees the stability of its institution. (*Salcedo vs. Hernandez*, 61 Phil. 724). Without such guarantees, said institution would be resting on a very shaky foundation. (*Cornejo vs. Tan*, 85 Phil. 772).

Under the Rules of Court, contempt is classified into direct and indirect contempt. Direct contempt is committed in the presence of or so near a court or judge and can be punished summarily without hearing. Indirect contempt is not committed in the presence of the court and can be punished only after hearing.

The Rules of Court enumerates the acts which constitute indirect contempt for which there must be a charge and a hearing. Section 3 of Rule 71 provides:

"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:

.....

"(b) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court. . . ."

and, Section 5, Rule 135 provides among others that "every court shall have power: (d) to control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto."

The appearance of appellant Major Sotero Navarro in court was ordered in his capacity as the provincial warden, the custodial officer of the convict-prisoner Francisco Peralta, Jr.. While it is true that the trial in the case of *People vs. Peralta* had already been terminated and was appealed, the trial court, pursuant to Section 9, Rule 41 of the Rules of Court, has jurisdiction "to issue orders for the protection and preservation of the rights of the parties

which do not involve any matter litigated by the appeal."

Subject order of Judge Gomez was obviously intended for the protection of complainant and witnesses. Appellant was required in an order to appear in court on July 26, 1968 "in order that he may be examined under oath since the incident was a matter of public interest, and, if true, puts in serious jeopardy the personal safety and security of the witnesses who have testified against the herein accused (Francisco Peralta, Jr.) at the trial of this case, as well as the prosecuting fiscals, and disturbs the mind of the Presiding Judge of this court who tried the case and sentenced him to life imprisonment."

The acts of Major Navarro appear to involve not only disobedience of or resistance to a court's lawful orders and commands but deliberate acts tending to belittle, degrade, or embarrass the court. However, the appellant should have been given fuller opportunity for a day in court. If process servers could not serve arrest orders as they were themselves warned that they would face charges of illegal arrest, the court could have sought the aid of military authorities.

Upon his failure to appear in court despite service of the order for his appearance, Judge Gomez should have pursued the order for the arrest of herein appellant. The court should have directed the Provincial Commander of the Philippine Constabulary or the Chief of Police of Cebu City to effect his arrest instead of immediately finding him guilty of indirect contempt and sentencing him accordingly. Briefly, the procedure for the punishment of a person alleged to have committed an act amounting to indirect contempt is as follows:

- A charge must be filed and a copy thereof furnished the person who must be given the opportunity to answer and be heard;
- The charge shall be filed with the court or judge against whom the alleged contemptuous act was committed; provided that if the contempt was committed against an inferior court or judge, the charge may be filed with the Court of First Instance of the province or city in which the inferior court is situated;
- The accused may be released on bail pending the hearing of the charge;
- On the date of the hearing, the court shall proceed to investigate the charge and consider the answer or testimony which the accused may make or offer; and
- If found guilty of contempt, he shall be punished accordingly.

In the case at bar, the herein appellant was sentenced without a hearing because he failed to appear when cited to give his explanation regarding the incident.

ACCORDINGLY, the judgment dated August 8, 1968, which was modified in an Order dated January 4, 1969, is hereby SET ASIDE.

SO ORDERED.

Melencio-Herrera, Plana, Vasquez and Gutierrez, Jr., JJ., concur.
Teehankee (Chairman), J., took no part.

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