

**MARIO BENGZON, PETITIONER, VS. BIENVENIDO A. TAN,
RESPONDENT.***G.R. No. L-12043. May 23, 1958*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for certiorari seeking to set aside an order of respondent Judge declaring petitioner and three others guilty of direct contempt and imposing upon each of them five (5) days imprisonment and P200 fine.

In the morning of February 13, 1957, the trial of Civil Case No. 31319 of the Court of First Instance of Manila, entitled Alfonso Encarnacion, et al. vs. Prudencio Castrense, et al., was held in the sala of respondent Judge. Atty. Eusebio B. Encarnacion was appearing for plaintiffs while petitioner for defendants. Around 10:00 o'clock of the same morning, respondent Judge suspended the trial and declared a recess. During the recess, Atty. Encarnacion asked petitioner if he could admit the truth of the contents of a certain document which he wanted to submit as evidence, to which petitioner replied that he could admit the authenticity and due execution thereof but not the truth of its contents. Upon hearing this reply, Atty. Encarnacion, in a threatening voice, inquired why he could not admit the truth of the contents of said document when the same has been duly signed by his client, to which petitioner retorted saying that he could not do so because it would be contrary to the interest of his client. An exchange of hot words followed at which moment the two sons of Atty. Encarnacion came along, also in a threatening attitude, and then and there they started pushing each other and exchanging blows which resulted in the breaking of one or two chairs of the court. At this juncture, respondent Judge came out of his room and ordered the parties to stop. Because of this misbehavior, respondent Judge found petitioner and Atty. Encarnacion, as well as his son Alfonso and defendant Erudencio Castrense, guilty of direct contempt and imposed upon each a penalty of five days imprisonment and a fine of ₱200. However, because petitioner was then a Congressman and raised his parliamentary immunity from arrest, respondent Judge suspended the effects of his order in order to give him an opportunity to raise the issue in a proper case before the Supreme court. Hence, the present petition for certiorari.

The issues raised by petitioner are; (1) Under the facts of this case, has respondent Judge the power and jurisdiction to punish him for direct contempt?; and (8) In the affirmative case, has respondent Judge the power and jurisdiction to enforce a penalty of five days imprisonment imposed upon petitioner considering that he is a member of Congress?

Section 1, Rule 64, provides:

"SECTION 1. Direct contempt punished summarily; appeal from inferior court.—A person guilty of misbehavior in the presence of or so near a court or judge as to interrupt the administration of justice, including disrespect toward the court or judge, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required so to do, may be summarily adjudged in contempt by such court or judge and punished by fine not exceeding two hundred pesos or imprisonment not exceeding ten days, or both, if it be a superior court, or a judge thereof, or by fine not

exceeding ten pesos or imprisonment not exceeding one day, or both, if it be an inferior court."

From the above-quoted provision it is clear that in order that a person may be adjudged guilty of direct contempt he must commit a "misbehavior in the presence of or so near a court or judge as to interrupt the administration of justice, including disrespect toward the court or judge." In other words, the misbehavior should be committed either in the presence of or so near a court, while in session, or in the presence of the judge, even if not in session, in connection with the administration of justice. "What characterizes direct contempt is the act of disrespect to the court or to the judge who is performing an official function. There are no authorities in this jurisdiction actually interpreting the extent and scope of direct contempt, but there are authorities in the United States, among which we may cite the following:

"A direct contempt of court is a contempt committed in the presence of the court while it is in session. (People vs. Anderson, 13 N.E. 2d 690, 294 111. App. 109) There a statute so provides, a contempt in the presence of the judge at chambers may be a direct contempt, (Cal.-Lapique vs. Superior Court of Los Angeles County, 229 P. 1010, 68 Cal. App. 407), but it is not such a contempt under a statute defining it as disorderly, contemptuous, or insolent conduct toward a judge while holding court." (Or.State vs. Dirscoll, 50 P. 2d 581, 151 Or. 363; 17 C.J.S., p. 6)

In the light of the foregoing authorities, does the misbehavior committed by petitioner in the courtroom of respondent Judge during recess partake of the nature of direct contempt?

We are inclined to answer the question in the negative considering the fact that the act was committed at a time when the court was not in session and the judge has already retired to his room. There is nothing in the record to indicate the particular act or work which the judge was then attending to or in which he was engaged. There is no showing that he was then performing an official duty. The circumstances during which the alleged misbehavior was committed developed in connection with a case that was then being tried and if some hot words were exchanged between the counsel of both parties, they were so uttered with no intention to obstruct the administration of justice but simply as a result of the heated argument that ensued in connection with a certain document which was to be introduced as evidence. It cannot therefore be said that petitioner acted with intent to interrupt the administration of justice or offend the dignity of the court or of the judge. And it has been held that "A doubt as to whether a contemnor has been guilty of a direct or a constructive contempt should be resolved in favor of constructive contempt." (Ex parte Redmond, 132 So. 328, 159 Miss. 449.)

The most that can be said against petitioner and his companions is that they committed an act of misbehavior which may be considered a constructive contempt. Thus, their act may be considered either as a "Misbehavior of an officer of a court in the performance of his official duties or in his official transactions" (section 3 (a), Rule 64), or as an "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice" (Section 3 (d), Rule 64). But in order that they may be held liable, it is necessary that a charge in writing be first filed against them, and in that event, they should be given an opportunity to be heard personally or by counsel, such however is not the case here, for they were dealt with summarily by respondent Judge. We are therefore constrained to hold that respondent Judge exceeded his jurisdiction in finding petitioner guilty of direct contempt and in convicting him accordingly.

Having reached the foregoing conclusion, we do not deem it necessary to pass upon the second issue.

Wherefore, petition is granted. The order subject matter of the petition is hereby set aside. No costs.

Paras, C.J., Bengzon, Montemayor, Reyes A., Labrador, Concepcion, Reyes, J.B.L., Edencia, and Felix, JJ. concur.

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