

**GIL GEÑORGA, COMPLAINANT, VS. HON. PEDRO C. QUITAIN,
DISTRICT JUDGE OF THE COURT OF FIRST INSTANCE OF MASBATE,
BRANCH II, MASBATE, MASBATE, RESPONDENT.**

Adm. Mat. No. 981-CFI. July 29, 1977

Ponente: FERNANDO, J.

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FERNANDO, J.:

It was the issuance of a warrant of arrest against complainant Dr. Gil Geñorga, the former municipal health officer of Claveria, Masbate, thereafter assigned to Tayasan, Negros Oriental, for his failure to appear as government medico-legal witness in a pending murder case before respondent Judge Pedro C. Quitain of the Court of First Instance of Masbate, that started the train of events leading to this administrative complaint for grave abuse of authority and conduct unbecoming a judge. The excuse offered for such nonappearance was the fact that he had previously sent a telegram to respondent Judge seeking information as to whether he would be reimbursed for the traveling expenses to be incurred and that he had received no reply. As a result thereof, he "terribly suffered from the humiliation of having been arrested and confined in the headquarters of the Philippine Constabulary as if [he] were a criminal, from May 9, 1975 to May 14, 1975 when, upon [his] repeated pleas that [he] was not going to escape, the Provincial Commander of Negros Oriental, allowed [him] to proceed to Masbate alone at [his] own expense." [1] That he did, and he was able to testify. Respondent Judge then dictated in open court the order for his release. Thereafter, in the chambers of the latter, when he sought to explain why he failed to appear, he complained that he was ignored and treated with discourtesy. That was the basis for his charge of conduct unbecoming a district judge.

Respondent Judge was required to comment on such complaint. He submitted an eight-page explanation, the relevant portion of which follows: "Clearly, this charge stemmed from the order of arrest issued by the undersigned against the complainant for his failure to appear in Court on March 5, 1975, in spite of a subpoena duly served upon him as a government witness in the case hereinabove mentioned. True, the complainant addressed a telegram to the undersigned, in exact words, to wit: '[Advice undersigned a grave (sic) party Masbate Masbate Province shoulder traveling expenses per diem appear government witness Azanares case March 5 . . . Dr. Geñorga].' True, the undersigned did not make any reply because it was the honest conviction of the undersigned that he is not duty bound to make any inquiry for the complainant, much less advice the complainant in any manner, not to mention the fact that the telegram carried the tone of an order. It lacked the element of courtesy since the telegram did not sound as a request. It is also true that the complainant did not appear in Court on March 5, 1975 that he might testify as the last witness for the prosecution. Hence, on March 5, 1975, the undersigned, on motion of the Fiscal, ordered the complainant arrested * * *. There is no doubt that the complainant received the subpoena issued by the undersigned requiring him to appear on March 5, 1975 so he could not testify for the government. This is borne out by the records of the case." [2] Further: "In passing, may it be said that as a national employee, the complainant knows that he is entitled to traveling expenses, per diems and official time, every time he complies with a subpoena. This must be the reason why he secured from the Clerk of

Court a Certificate of Appearance which was accordingly issued to him. * * * May it be said further, that if in the past the complainant had not been reimbursed his expenses which he had incurred in similar instances, the reason could only be that the claim for reimbursement had not been legally and vigorously pursued."[3] As to the allegation that his conduct in chambers when complainant was explaining his inability to appear was unbecoming a judge, respondent Judge stated the following: "In fairness to the complainant, the undersigned does not hesitate to state that the complainant was very courteous when he was talking to the undersigned in chambers. Certainly, the undersigned had no reason to be discourteous, as he was not in fact so, to the complainant. On the contrary, after hearing the complainant's explanation, the undersigned told the complainant that the respondent, while sympathizing with the complainant for the latter's experiences (sic) of having spent his own funds for trips made as a witness in criminal cases, there was no way out of the predicament except to obey the subpoena. And after considering the complainant's explanation, the undersigned issued an order in chambers accepting the explanation as satisfactory and ordering at the same time the immediate release of the complainant, * * *. The issuance of the said order is inconsistent with the claim of complainant that his explanation made in chambers was ignored by the undersigned."[4]

The matter was then referred to the Acting Assistant Judicial Consultant Lorenzo Relova of the Court of Appeals for study, report and recommendation. In a memorandum submitted to the Court dated June 29, 1977, after setting forth the above facts and in the light of *People v. Montejo*,[5] he recommended that the charges be dismissed. He explained why: "It is submitted, therefore, that Respondent cannot be administratively held liable. To hold otherwise would be allowing a [disregard] of the coercive power of the courts to compel attendance in court of cited witnesses. (Section 5(e) of Rule 135 of the Rules of Court). This is not to mention the very satisfactory explanation of the Respondent on all the charges imputed against him. Furthermore, Complainant was furnished a copy of the comment/explanation of Respondent as early as July 15, 1975 * * *, but up to now, no reply was ever received by the Court from Complainant. It would seem that Complainant is satisfied of the explanation of respondent Judge."[6]

This Court accepts such recommendation. The afore-cited case of *People v. Montejo* is in point. The decisive question therein raised is whether a court of first instance hearing a criminal case may compel by subpoena the attendance of a witness in his sala in Zamboanga City, when the known address of such witness is at Montalban, Rizal. It was argued that under the Rules of Court,[7] a witness is not bound to attend a hearing if held outside the province he resides unless the distance be less than 50 kilometers from his residence to the place of trial. Such contention did not command the assent of this Court. Thus: "It is loathe to clip what undoubtedly is the inherent power of the Court to compel the attendance of persons to testify in a case pending therein. Section 9 of Rule 23 is thus interpreted to apply solely to civil cases. A recognition of such power in a court of first instance conducting the trial of an accused may be gleaned from principle that justifies it when satisfied 'by proof or oath, that there is reason to believe that a material witness for the prosecution will not appear and testify when required,' to order that he 'give bail in sum as [it] may deem proper for such appearance. Upon refusal to give bail, the court must commit him to prison until he complies or is legally discharged.' Under the circumstances, in view of the serious handicap to which the prosecution would thus be subjected in proving its case, the order of respondent judge denying the motion for an order of arrest or a citation for contempt in the alternative, based on a clear misapprehension of the Rules of Court, could be viewed as amounting to grave abuse of discretion. It would follow then that respondent Judge should decide said motion without taking into consideration Section 9 of Rule 23."[8] What was done by Judge Quitain was, therefore, within his discretion. There was no grave abuse of authority. Nor can the accusation of conduct unbecoming a judge be taken seriously. In *Bartolome v. De Borja*,[9] it was held: "As far as the behavior of a trial judge is concerned, however, it is not realistic to assume, considering the nature and the burden laid on his shoulders, that he will at all times personify equanimity."[10] Even if his

conduct in chambers did not live up fully then to the demands of politeness and courtesy, disciplinary action does not lie. Moreover, as shown in the memorandum of Acting Judicial Consultant, the fact that he did not even bother to refute the allegation of respondent Judge that he behaved as a gentleman should during their talk in chambers may justifiably lead to the inference that complainant, on calmer reflection with his resentment diminishing with the passage of time, may have decided not to press this particular accusation anymore.

WHEREFORE, this administrative complaint against respondent Judge Pedro C. Quitain is dismissed for lack of merit.

Barredo, Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] Administrative Complaint, 1.

[2] Comment of Respondent Judge, 1-3.

[3] Ibid, 5.

[4] Ibid, 6.

[5] L-24154, October 31, 1967, 21 SCRA 722.

[6] Memorandum of Acting Assistant Judicial Consultant Lorenzo Relova, 3.

[7] Cf. Rule 23, Section 9.

[8] 21 SCRA 722, 728.

[9] Adm. Matter No. 1096-CFI, May 31, 1976, 71 SCRA 153.

[10] Ibid, 164.

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