

ATTY. FABIAN GARDONES, COMPLAINANT, VS. MUNICIPAL JUDGE ANDRES MA. DELGADO, RESPONDENT.

A.M. No. 120-MJ. July 23, 1974

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Charges were filed against respondent municipal judge Andres Ma. Delgado of Don Carlos, Bukidnon, by Atty. Fabian Gardones and by the Department of Justice.

I

Atty. Gardones charges the respondent with gross ignorance of the law and grave abuse of official authority in that the respondent municipal judge caused his arrest for an alleged direct contempt without hearing, by reason of which he was confined in the municipal jail of Don Carlos from 6:30 in the evening of September 8, 1969 until 11:00 o'clock in the morning of September 9, 1969.

It appears that complainant Atty. Gardones failed to obey the subpoena issued by the respondent requiring him to appear in the morning of September 8, 1969 as a witness in the preliminary examination of a criminal case of homicide through reckless imprudence, which subpoena was duly received by complainant; and that during the said preliminary examination complainant repeatedly drove his jeepney back and forth along the road fronting the court session hall between the hours of 10:00 and 11:00 in the morning of September 8, 1969, and repeatedly blew its horn, interrupting for at least three times the preliminary examination then being conducted by the respondent. In his order dated September 8, 1969, respondent judge found complainant Gardones guilty of direct contempt for: (1) having failed to obey the subpoena directing him to appear in court; and (2) having driven his jeep to and fro along the highway fronting the municipal building which tended "directly to impede, obstruct and delay the administration of justice" (Exh. D attached to complaint).

The failure to obey subpoena constitutes indirect, not direct, contempt, for which the complainant could not be adjudged guilty without hearing him or without due process of law. The respondent judge therefore gravely erred in so ordering the arrest of the complainant for such indirect contempt without giving him his day in court, which is grave abuse of authority and gross ignorance of the law. While it is true that the complainant committed direct contempt for having disturbed the preliminary examination then being conducted by the respondent judge by repeatedly driving his jeep and honking its horn in the vicinity of the court session hall, for which the complainant was ordered arrested and confined in jail, the respondent should have issued a separate order for such direct contempt, and another order requiring complainant to show cause why he should not be punished for disobedience to its process, to give the complainant a chance to explain his failure to appear as witness.

II

The other charge against the respondent is embodied in the letter of then Undersecretary of Justice Efren I. Plana, dated September 4, 1972 addressed to the respondent which reads thus:

"Before us are two orders issued by you on January 7, 1972 and November 18, 1970, respectively, in Criminal

Case No. 207, entitled 'People of the Philippines vs. Abelardo Uba--ub,' for illegal possession of counterfeit bills, and Criminal Case No. 137, captioned 'People of the Philippines vs. Sebastian Baina, Leoncio Genesi, Juanito Parcon and Cirilo Cuenza,' for estafa. The orders aforesaid, handed down after you had conducted the second stage of the preliminary investigation required by the Rules of Court, decreed the dismissal, with costs de oficio, of the criminal cases in question and the immediate release of the accused therein, if in custody, supposedly upon the ground that the prosecution had failed to establish the guilt of the accused beyond reasonable doubt.

"It must be noted at the outset that, as charged in the complaint filed by Chief of Police Amancio P. Tira, which complaint was copied and adverted to in your order of dismissal, the accused Abelardo Uba-ub in Criminal Case No. 207, was indicted for illegal possession of counterfeit bills. It must be observed, too, that as found by you in your order of dismissal, the said accused was, in fact, caught in possession of the subject counterfeit bills. In the context of these circumstances, we are at a loss as to how you could have seen your way clear into dismissing the case against accused Uba-ub supposedly on the ground that the prosecution had failed to establish beyond reasonable doubt that Uba-ub did pass or utter the counterfeit bills in question.

"Considering the above circumstances, and considering moreover that the dismissal of both criminal cases, with costs de oficio, for alleged failure of the prosecution to establish its case beyond reasonable doubt could only have been ordered after trial on the merits, and the preliminary investigation conducted by you was not a trial on the merits, as in fact it was not even a part of it, you are hereby directed to explain, within five (5) days from receipt of this communication, why you dismissed the case against accused Uba-ub for lack of evidence that he passed or circulated the counterfeit bills, when the charge against him was for illegal possession of counterfeit bills and he was in fact caught in possession of said bills, and why you dismissed the said two cases with costs de oficio allegedly on the ground that the prosecution had failed to establish its case beyond reasonable doubt despite the fact that you had not tried both cases on the merits. Failure on your part to so explain within the period allotted will constrain us to take administrative action against you."

The questioned order in Criminal Case No. 207 issued by respondent judge on January 7, 1972 explains why this criminal case for illegal possession of counterfeit bills was dismissed by him for failure of the prosecution "to establish the guilt of the accused beyond reasonable doubt," after conducting only the second stage of the preliminary investigation which is not a trial on the merits. Therein, respondent stated that, from the testimony of two policemen as prosecution witnesses, the accused was responsible for the distribution of ten-peso counterfeit paper hills to his co-members of the Kibatang Farmers Union in payment of his account; that this was reported to the chief of police by the barrio captain of Barrio Kibatang; that the two policemen went to Barrio Kibatang and succeeded in confiscating ten-peso counterfeit paper bills from the persons to whom the accused paid said bills; that upon being informed by the policemen that the paper bills he paid to his co-members in the Kibatang Farmers Union and those still in his possession were counterfeit, the accused told the policemen that that was the first time he came to know that the paper bills were fake; that the accused voluntarily surrendered all the paper bills in his possession, stating that he had no knowledge that the paper bills were fake when the said paper bills were paid to him by his friend, one Manuel of Cagayan de Oro City; that the accused likewise recovered the other paper bills he paid to his co-members of the Kibatang Farmers Union and surrendered the same to the policemen; and that the testimony of the two policemen corroborated the statement of the accused himself. As a consequence, respondent opined that the accused believed in good faith that the paper bills paid to him were genuine and that he had no intention to circulate counterfeit bills when he paid the same to his co-members in the Kibatang Farmers Union. WE have no reason to disagree with the conclusion of respondent judge that the accused in said Criminal Case No. 207 possessed the counterfeit bills in good faith without knowing that they were counterfeit and without the least intention of circulating the same as such counterfeit bills.

Respondent's statement in his order dated January 7, 1972 in Criminal Case No. 207 and in his order dated

November 18, 1970 in Criminal Case No. 137 for estafa that "the prosecution failed to establish the guilt of the accused beyond reasonable doubt," for which reason he dismissed the two cases, should be considered as meaning that the prosecution failed to establish a prima facie case against the accused in both cases, since the proceeding he conducted in the two cases was merely the second stage of the preliminary investigation and not a trial on the merits. The use of imprecise language should not be taken against respondent when the meaning intended thereby is clear.

The violation by respondent of the constitutional right to due process of law of complainant Atty. Gardones as heretofore stated is at once gross ignorance of the law and a grave abuse of official authority, for which the penalty of suspension from office should be meted out to respondent, considering that the right transgressed is basic in our constitutional system.

WHEREFORE, respondent Andres Ma. Delgado, Municipal Judge of Don Carlos, Bukidnon, is hereby suspended from office for six months.

Makalintal, C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Antonio, Esguerra, Fernandez, Muñoz Palma, and Aquino, JJ., concur.

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