

PABLO S. RIVERA, PETITIONER, VS. FRANCISCO ARELLANO, JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, RESPONDENT.*G.R. No. L-2382. May 27, 1949*

Ponente: TUASON, J.

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This is a combined petition for certiorari and mandamus. The object of the first is to review and set aside the actuaciones of Judge Arellano of the Court of First Instance of Negros Occidental in an appealed case for contempt of court originating in the municipal court of Bacolod City. Mandamus is sought to compel the same judge to allow the appeal filed by the petitioner from another sentence of conviction for contempt of court imposed by Judge Arellano himself.

It appears that on June 3, 1948, in the course of the trial of a criminal case in the municipal court of Bacolod City for less serious physical injuries, the private prosecutors asked the court to require the defense counsel, the petitioner herein, to furnish the prosecution with a list of witnesses for the defense. This petition was granted with the warnings that if such list were not submitted no witnesses for the defense would be allowed to testify. The counsel for the defense did not consider the procedure lawful and refused to comply; and in order to prepare the ground for a writ of mandamus in the event the trial judge should make good his warning and threat, he filed a writing excepting to the order which he said required him to furnish the prosecution with a list of his witnesses. Right then and there Judge Amante, of the municipal court, remarked that the list of witnesses was being required for his information and not for the benefit of the prosecution, and ordered that the wording of the exception be changed accordingly, a change which the attorney refused to make. An incident of a personal nature occurred after this refusal resulting in the sentencing of the defense attorney by the court for contempt. He was condemned to imprisonment for 24 hours and to pay a fine of P10. From this sentence the attorney appealed to the Court of First Instance.

In the latter court, the provincial fiscal filed information charging the petitioner with "the crime of direct con-tempt." It was alleged that the accused, "having been ordered by the presiding judge (of the municipal court) to submit a list of defense witnesses for the information of the court the day previous, did, then and there, willfully, unlawfully and feloniously, refuse and disobey to comply with said order and in a written exception on record made it appear that the court required the defense counsel to furnish the prosecution with the names of defense witnesses, which is a distortion of the fact and a flagrant disrespect toward the court and by his arrogant and defiant attitude during the proceedings towards the court, impeded, obstructed and degraded the administration of justice." Afterward, on July 7, 1948, Judge Arellano, in the midst of the trial of two criminal cases ordered the setting of the contempt case for the 16th, an order of which the petitioner was advised through a formal notice on July 12.

On July 13, the petitioner emplaned for Manila to engage, according to him, legal assistance and was not on hand

on the 16th when his case was called for trial. However, on the previous day he had sent his law partner a telegram from Manila requesting the latter to move for the postponement of his case to a later date for the reasons above mentioned. Not satisfied with the reasons stated in the telegram, Judge Arellano, on the same date and in open court dictated an order for the forfeiture of the defendant's bond and his arrest. On the 17th, however, through the intercession of other lawyers, Judge Arellano changed the tenor of his order by merely requiring the defendant to appear before the court on July 24 and to show cause why he should not be held for contempt of court. On the last mentioned date, the petitioner personally appeared and explained to the court why he did not show up on the 16th. It was after this hearing that the judgment in question was pronounced, sentencing the accused attorney to pay a fine of P50. After a motion for reconsideration was denied the petitioner filed a formal notice of appeal and requested that the execution of the judgment be suspended offering to file a bond in an amount to be determined by the court. Judge Arellano refused to approve the appeal holding that the contempt committed by the accused was direct contempt and that there was no appeal from decisions for direct contempt.

On the application for certiorari our opinion is that this relief does not lie. The petitioner has a complete and adequate remedy by appeal. The prescribed procedure is to file a motion to quash and, failing in that, to plead and appeal from an adverse decision that might be handed down on the merits. This Court is reluctant to interfere with the course of a criminal proceeding unless the court below is clearly without jurisdiction of the offense charged or of the person of the defendant, or the officer filing the information has no authority to do so. It is important to note in this connection that, quite apart from the petitioners alleged refusal to furnish the municipal judge with a list of defense witnesses, a refusal which the judge regarded as "a flagrant disrespect toward the court," the petitioner is charged with "arrogant and defiant attitude during the proceedings towards the court," by which he allegedly "impeded, obstructed and degraded the administration of justice." The latter charge is one of the acts of contempt specified in section 1 of Rule 64. Obviously, this charge involves a question of fact and its legality and sufficiency could not be judged in advance of the presentation of evidence.

But on the question of the right of the petitioner to appeal from Judge Arellano's condemnatory decision, the petition for mandamus is in order. The alleged contempt of which the petitioner has been found guilty is indirect contempt and conviction therefore is appealable. Section 1 of Rule 64 defines direct contempts which are punishable summarily. Broadly they consist of misbehavior in the presence of or so near a court or judge as to interrupt the administration of justice. This section was substantially taken from section 231 of the former Code of Civil Procedure which provided for the punishment of direct contempts by Courts of First Instance. Indirect contempts, or contempts punished after charge and hearing, are enumerated in section 3, paragraph (b) of which mentions "disobedience of or resistance to a lawful writ, process order, judgment, or command of a court, or injunction granted by a court or judge." Sections 3 to 10 of Rule 64 correspond to sections 232 to 240 of the former Code which denominated the acts enumerated therein. (*Nacida vs. Bowen*, 22 Phil., 365.) For the rest, failure or refusal of an accused or of his attorney to appear for trial comes closer to the definition of indirect contempt in paragraph (b) of section 3 than to a misbehavior in the presence of or near the court contemplated in section 1.

"In *State vs. Winthrop*, 148 Wash., 526, p. 793; 59 A.L.R., 1265, it was held that the unexcused absence of an attorney from the court when a case in which he was attorney of record for one of the parties was called for trial is not a contempt occurring in the presence or view of the court so as to be summarily punishable, but contempt therein, if any occurred, away from, and out of, the presence of the court, and he is not subject to discipline and punishment, other than by a charge being first made against him substantially as required by statute." (Footnote, 12 Am. Jur. Sec. 11, p. 396.)

In *Finnick vs. Peterson*, 6 Phil., 172, this Court said: "A witness who fails or refuses to comply with a subpoena

duces tecum is guilty of contempt. Such contempt is not committed in the presence of the court, even though, upon appearance of the witness, the court should make a verbal order commanding him to comply with the terms of the subpoena. Such a witness can not be punished summarily. He is entitled to the hearing provided for under sections 232-240 of the Code of Procedure in Civil Actions."

The petition is denied as to the prayer for the issuance of a writ of certiorari and granted as to the prayer for mandamus. The respondent judge is directed to give due course to the petitioner's appeal, without costs.

Moran, C. J., Ozaeta, Paras, Feria, Pablo, Perfecto, Bengzon, and Montemayor, JJ., concur.

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