

IN THE MATTER OF CONTEMPT PROCEEDINGS AGAINST RAFAEL MISON, JR., ABELARDO SUBIDO, COMMISSIONER OF CIVIL SERVICE, PETITIONER.

G.R. No. L-27704. May 28, 1970

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

An appeal from the decision of the Court of instance of Manila, in Civil Cass No. 65332, denying the petition to declare respondent Rafael Mison, Jr., in contempt for failure to comply with petitioner's subpoena.

The records of the case show that petitioner issued a subpoena in his capacity as Commissioner of Civil Service for respondent, an elective councilor of Quezon City, to appear at the former's office at 10:00 o'clock A. M. on 27 April 1966. Respondent refused to receive the subpoena, which was served in the afternoon of the previous day, on the grounds, among others, that the issuance of the same was actuated with improper motives, and that, being an elective official, he falls under "exempt service", pursuant to the last sentence of Section 3, Republic Act No. 2260 (otherwise known as the Civil Service Law of 1959),^[1] in relation to Section 6^[2] of the same law. Respondent contended that as such elective official, he could not be compelled to comply with the subpoena issued by petitioner. Petitioner sent another subpoena to respondent for the latter to appear at his office on 29 April 1966, but again respondent refused to comply on the same grounds.

The subject matter of both subpoenas was the Civil service Memorandum. Circular No. 45, s. 1964, regarding "Temporary assignment of personnel in the government offices", which, in this particular case, involved the detail of Quezon City policemen to guard members of the City Council.

Petitioner, on the other hand, based his power to issue the sub-poena upon Section 16 (g)^[3] of the above Civil Service Law. Petitioner claimed that this authority to issue the subpoena is operative in conjunction with certain powers and duties reposed in him by law, which is specifically Section 16 (f) and (j) of Republic Act No. 2260.^[4] Petitioner prayed that respondent be punished for contempt in view of his repeated refusal to obey the subpoena. Section 580 of the Revised Administrative Code^[5] is invoked.

The lower court exonerated respondent from the contempt charge; hence this appeal.

It has been held that a "contempt proceeding" is not a "civil action" but is a separate proceeding of a criminal nature and of summary character in which the court exercises but limited jurisdiction.^[6] A charge for contempt of court partakes of the nature of a criminal action^[7] even when the act complained of is an incident of a civil action.^[8] As such, the mode of procedure and rules of evidence in contempt proceedings are assimilated as far as practicable to those adapted to criminal prosecutions.^[9] Therefore, a judgment in contempt proceedings is subject to review only in the manner provided for review of Judgments in criminal cases.^[10] In fact, Section 10 of the Rules of Court provides that the appeal in contempt proceedings may be taken as in criminal cases. Hence, as in criminal proceedings, an appeal would not lie from the order of dismissal of, or an exoneration from, a charge of contempt of court.^[11]

As already seen in Section 580 of the Revised Administrative Code, supra, "..... any one who, without lawful excuse, fails to appear upon summons issued shall be subject to discipline as in case of contempt of court " Former Chief Justice Moran, in his Commentaries on the Rules of Court,[12] and citing the case of Villanueva vs. Lim, supra said that "In cases of criminal contempt, punished by law with imprisonment or fine, or both, there is no doubt that if the alleged condemner was acquitted of the charge, no appeal lies from such acquittal, the proceedings being of a penal nature". Rule 71, specifically its Section 6,[13] in relation to Section 3,[14] of the Rules of Court punishes indirect contempt such as the one charged in this case with imprisonment or fine, or both.

It has thus become unnecessary to examine the merits of appellant's assignments of error.

IN VIEW OF THE FOREGOING, the herein appeal is dismissed. Without costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Barredo, and Villamor, JJ., concur.

Ruiz Castro, and Teehankee, JJ., took no part.

[1] "Sec. 3. Positions Embraced in the Civil Service. – x x x x Positions included in the civil service fall into three categories; namely, competitive or classified service, non-competitive or unclassified service and exempt service. The exempt service does not fall within the scope of this law."

[2] "Sec. 6. The Exempt Service. - The exempt service shall consist of the following:

(a) Elective officers; x x x x x x . “

[3] "Sec. 16. Powers and Duties of the Commissioner of Civil Service. –

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(g) To issue subpoena and subpoena duces tecum requiring the appearance of witnesses and the production of books and papers per-tinent to the investigation and inquiries thereby authorized, and to exam-ine them and such books and papers as it shall need in relation to any matter it is required to investigate."

[4] "Sec. 16. x x x x x x x x x x x x x x x x . –

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(f) To make investigations and special reports upon all matters relating to the enforcement of the Civil Service Law and rules; to inspect and audit the agencies' personnel work programs to determine compliance with the Civil Service Law, rules, standards and other requirements; and to take corrective measures when unsatisfactory situations are found;

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(j) To hear and determine appeals instituted by any person be-lieving himself aggrieved by an action or determination of any appointing authority contrary to the provisions of the Civil Service Law and rules, and to provide rules and regulations governing such appeals, arid may matte such investigations or inquiries into the facts relating to the action or de-termination appealed from as may be deemed advisable and may affirm, review or modify such action or determination and the decision of the Commissioner shall be final x x x x x."

[5] "Sec. 58. Powers incidental to taking of testimony. - When authority to take testimony or evidence is conferred upon an administra-tive officer or upon any non-judicial person x x x x x such authority shall be understood to comprehend the right to administer oaths and summon nesses and shall include authority to require the production

of documents under a subpoena duces tecum or otherwise, subject in all respects to the same restrictions and qualifications as apply in judicial proceedings of a similar character.

x x x x any one who, without lawful excuse, fails to appear upon summons issued under the authority of the preceding paragraph or who, appearing before any individual or body exercising the power therein defined, refuses to make oath, give testimony, or produce documents for inspection when thereunto lawfully required, shall be subject to discipline as in case of contempt of court and upon application of the individual or body exercising the power in question shall be dealt with by the judge of first instance having jurisdiction of the case in the manner provided by law."

[6] *Wilde v. Superior Court of San Diego County*, 127 P. 2d 560, 565, 53 Cal. App. 2d 168.

[7] *Villanueva vs. Lim*, 69 Phil. 654.

[8] *Benedicto vs. Cañada*, G.R. No. L-20292, 27 November 1967, 21 SCRA 1066.

[9] *Lee Yick Hon vs. Collector of Customs*, 41 Phil. 548, 552.

[10] *Slade Perkins vs. Director of Prisons*, 58 Phil, 271, 278.

[11] *Pajao vs. Provincial Board of Canvassers of Leyte*, 88 Phil. 588, 591 See also Editorial Note in *Tinagan vs. Perlas, Jr.*, 22 SCRA 399.

[12] Vol. II, 3rd. Ed., page 125, quoted with approval in *Pajao vs. Provincial Board of Canvassers of Leyte*, supra.

[13] "Sec. 6. Punishment if found guilty. - If the accused is there-upon adjudged guilty of contempt committed against a superior court or judge, he may be fined not exceeding one thousand pesos or imprisoned not more than six (6) months, or both x x x x."

[14] 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:

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(f) Failure to obey a subpoena duly served; "

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