

CONCEPCION FONACIER-ABAÑO, PETITIONER, VS. JUDGE CONSTANTE A. ANCHETA, RESPONDENT.

Adm. Matter No. 1938-CFI. September 11, 1981

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Without prejudice to the filing of extended opinions, the Court has Resolved to order the separation from the service of respondent Judge Constante A. Ancheta, presiding judge of Branch III at Daet of the Court of First Instance of Camarines Norte effective immediately.

The extensive 47-page single space Report of the Honorable Investigator Associate Justice Oscar R. Victoriano of the Court of Appeals submitted the following findings:

"(1) While Charge No. I on consorting with litigants and receiving gifts and favors as a whole was not made out, still there is credible evidence that he had been seen in public with litigants Ong and Legarto. Telesforo Mendoza saw respondent in the cockpit of Vinzons in the afternoon of September 28, 1978 with Gil Ramores and Tony Salamat. This investigator does not believe the claim that respondent publicly asked Ong for P200.00; but respondent admitted his presence in the cockpit on this occasion, and this is confirmed by Dr. Perfecto Pajarillo. The presence of litigant Ong could not have been coincidental. Complainant also saw respondent going to Sonia's place on one occasion with Ong. Strangely, respondent did not bother to present Ong to refute this particular charge.

Respondent also admits his presence at the Millionaire's Club in Daet allegedly upon invitation of Atty. Santiago Turingan whose guest was a lawyer from the Meat Inspection Commission in Manila. He admits Legarto was in the group.

Although these isolated instances of having been seen in public with litigants Legarto and Ong shown by the evidence may not amount to consorting, which implies frequent association or sharing of interests, still as a Judge before whom Legarto and Ong had pending cases he should have scrupulously avoided their company in public to avoid unwarranted misconceptions or erroneous impressions in the public mind, particularly in that of the adverse parties. Similarly, in the case of Legarto, it is obvious that respondent's Court Interpreter Ernesto Pajares, had taken it upon himself to fill respondent's order for pork to buy it from Legarto in the hope of obtaining a discounted price. But considering that Legarto was a litigant in his Sala, it was most improper, to say the least, to have allowed Pajares to get the supply from him. There is likelihood that respondent knew or was chargeable with knowledge that the pork came from Legarto. There is no showing that when respondent subsequently learned that Pajares got the pork from Legarto, Pajares was reprimanded or his attention called with injunction to avoid repetition of the same act.

x x x

(2) The ancillary charge of threatening a female court employee whom he had suspected of gossiping about his alleged acts of immorality under main Charge No. IV is established by the evidence.

(3) Charge No. V-A on having caused his deputy clerk to issue a certification that he had deposited with the

Court a box containing a wine decanter falsely alleged to have been given as a gift also appears established by the evidence." (Rollo, at pages 1026-1027)

The details of the proven charge of respondent's having threatened a female court employee are thus stated in the Investigator's Report:

"Regarding the charge of having threatened a female Court employee, Edisa Vasquez, employed as stitcher in Branch II, CFI, Camarines Norte, testified that once respondent seeing her in branch III, presided over by Judge Isidro Vera, asked why she was there. When she replied that she was looking for someone, he asked, 'Why are you talking things against me? (Bakit mo ako chinichis-mis?)'. She asked, 'What is that?'. Respondent then went inside his room and she followed. While standing in front of his table while she sat on the chair, respondent asked her again, 'Why are you making chismis (gossiping)?'. When she asked what kind of gossip was that, respondent opened the drawer of his table, pulled out a gun and said, 'Putang ina mo, I will kill you'. She thought at first he was merely joking but when she realized he was serious, she felt like urinating (naihi ako) proceeding to the comfort room for personal necessity. As she went out, she told respondent, 'Judge, I think we cannot understand each other because you are drunk, so I better leave.'

This witness admits she never had, before this time, any untoward incident with respondent whom she considered as good. While she never complained formally, she mentioned it to her boss, Judge Isidro Vera, and when Fiscal Adanzo asked her about it she told him not to mind the incident any further.

Respondent merely denied this charge, claiming he had no reason to threaten her as she was close to him. She used to frequent his office and ask his help, and he claims that complainant practically offered her money to testify. Apparently, this witness had no motive to falsely testify against respondent who could easily have refuted her assertions by presenting Judge Vera on rebuttal. This he failed to do. And if she is admittedly close to him and he had no reason to threaten her with a gun, this precisely serves to confirm her testimony that respondent must have been under the influence of liquor at the time. This particular charge is deemed duly proved." (Rollo, at page 1002)

The proven charge of respondent's having resorted to fabrication of evidence with his branch clerk of court for use in his defense in the investigation of this very case is thus related in the Investigator's Report:

"B. Fabrication of Evidence - Respondent Caused His Deputy Clerk of Court to Issue Certification that He had Deposited with the Court a Box Containing a Musical Wine Decanter Alleged to Have Been Given Him by Complainant as a Gift.

Respondent in his Answer dated August 21, 1978 alleged that complainant had given him a wine decanter which he caused to be deposited in court. He testified that some-time after December 22, 1977 Atty. De Lara, Complainant's counsel, called him up in his house, saying, 'Judge, I have something for you from my client, Mrs. Abaño'. He told Atty. De Lara not to bother as his client had a pending case. But Atty. De Lara replied that it was nothing, just a sort of Christmas gift. On his arrival in Manila sometime on January 13 or 14, 1978 he was informed by his daughter that Vivencio Abaño, driving a white Volkswagen car, came and delivered a box (Exh. 5) containing a wine decanter (Exh. 5-B), with a calling card (Exh. 5-A) attached to the box. He brought it to Daet with the intention to return it. Upon advice, however, of Executive Judge Vera, he desisted, as complainant was reputedly fond of insulting when displeased. The calling card appears torn because before he deposited the box with the Deputy Clerk of Court it was left in his chamber without any cover and it may have been eaten by cockroaches. As a way of disposing of the gift with-out insulting complainant but at the same time avoiding liability for accepting gifts in violation of an existing presidential decree, he decided to deposit it with his Deputy Clerk of Court, Atty. Norberto Dating, on February 1, 1978 who issued the certification of even date reading:

"This is to certify that on this date, Feb. 1, 1978, Judge Constante A. Ancheta delivered to the undersigned for

deposit and safekeeping a box containing musical wine decanter, appearing to have come from Concepcion F. Abaño.'

Complainant denies having given the wine decanter as a gift to respondent, branding it as fabricated evidence. The circumstances on record would seem to sustain the claim of complainant.

If it is true that after December 22 Atty. De Lara called respondent to inform him of his client's intention to give him a gift and he expressed unwillingness to receive it because the giver had a pending case before him, in all likelihood Atty. De Lara would have communicated to his client about respondent's reaction, in which case ordinarily complainant would have desisted from her original intent to send the gift. It seems therefore difficult to believe that complainant should have still caused her son, Vivencio, to deliver the box containing the wine decanter to respondent's Quezon City residence. Besides, this is roundly denied by Vivencio Abaño who proved through photographs (Exhs. VVV and VVV-1) and certificate of registration (Exh. VVV-2) that his car from 1972 to 1978 had been a blue Volkswagen beetle, not colored white as declared by respondent.

The calling card (Exh. 5-A) bearing the printed name "Concepcion F. Abaño" as director of the Commercial Credit Corporation of Bicol is not signed, and, as complainant testified, she used to give out these calling cards to accompany Philamlife diaries. But the cards were in good shape, not torn and mutilated. Indeed, Exh. 5-A shows it is mutilated on the left lower part and right upper corner, indicating it might have been detached from another object to which it was attached or pasted. Respondent's explanation that it might have been eaten by cockroaches when he left the box open in his chamber is possible, although improbable, since only the calling card and no part of the cardboard box appears to have been affected.

Then, too, notwithstanding Judge Vera's advice, respondent could have had the gift returned to complainant upon his return to Daet, considering his instruction to his interpreter, Ernesto Pajares, not to accept any gifts. The deposit would not have served any purpose since complainant was not even informed or notified of it until later after the charges were filed. Respondent could have asked Judge Vera to corroborate his testimony that he had sought his advice as Executive Judge concerning the alleged gift, but strangely he failed to do this.

But a far more significant consideration which serves to detract from respondent's claim is complainant's submission that when respondent denied complainant and her co-plaintiffs' motion for disqualification filed in Civil Case No. 2825 dated April 10, 1978 in his Order of April 17, 1978 (Exh. TT-2) he merely denied having received favors or gifts from Ong; he never mentioned in said order that it was complainant instead who had given him a wine decanter, a circumstance which would have bolstered all the more the order of denial. Finally, if Complainant had in fact given the wine decanter as a gift in January, 1978 to respondent and insofar as complainant was concerned the same was accepted by respondent because complainant did not learn of the court deposit until after the present charges were filed, said complainant would not have felt a compelling necessity to ask for respondent's inhibition.

It is pertinent to emphasize in connection with this charge that the Certification (Exh. 8) which respondent caused his branch Clerk of Court to issue was not completely false as it certified correctly that respondent on the date therein deposited with him the wine decanter. What appears false is the allegation that the decanter was given as a gift by complainant in an attempt to corrupt him, testified to as part of his defense to belie the charge of accepting gifts and favors from litigants." (Rollo, at pages 1007-1008)

The Investigator in his Report recommended that light penalties of "admonition" and "fine and/or brief suspension" be imposed upon respondent. The Court has taken a more serious view in the light of respondent's grave transgressions upon the established norms of judicial behavior as established by the record of the case.

As we stressed in *De la Paz vs. Inutan*, 64 SCRA 540, "the judge is the visible representation of the law and, more importantly, of justice. From him, the people draw their will and awareness to obey the law. They see in him as intermediary of justice between two conflicting interest, x x x. Thus, for the judge to return that regard, he must

be the first to abide by the law and weave an example for the others to follow. He should be studiously careful to avoid even the slightest infraction of the law."

What we said there is fully applicable here, *mutatis mutandis*: 'But, here is a judge who stands across the path of the law. Unperturbed by judicial conscience, he breached the very law he was sworn to uphold. Perhaps in a misplaced display of the influence of his office, he unrestrainedly and openly intoxicated himself in a public place, caused disturbance and alarm, and poked his gun at an innocent man. He wilfully moved away from the behavioural injunctions of his office and let himself caught by the reaches of misconduct and misdeeds. Such conduct need be sanctioned and must, therefore, be drawn to a close. It throws an indelible stain on the judiciary.'

Prescinding from the foregoing, although not necessary for the disposition of the present case, the Court takes judicial notice that complainant's charge that respondent judge had rendered in a simple ejectment case exorbitant damages against her corporation, notwithstanding its being the aggrieved party (of P10,830.00 for expenses of litigation, P75,000.00 for attorney's fees, P75,000.00 for moral damages and P25,000.00 for exemplary damages and costs) in favor of Nelson Ong the defaulting lessee whom she had charged with unduly consorting with respondent and then arbitrarily tried to close all avenues of appeal by wrongfully declaring complainant's appeal as having been filed out of time. The Court at the time did not give due course to the charge, since respondent judge's wrongful action in the case was then the subject of complainant's pending recourse of mandamus filed with the Court of Appeals. The charge has now been borne out by the outcome of complainants corporation's case with the Court of Appeals, and being based on matters of record require no further investigation. The Court of Appeals in its decision of January 4, 1980 in the case, CA-G.R. No. SP-08942-R entitled "Abaño Realty Development Corp. et al. vs. Hon. C. Ancheta, et al.", long final and executory, did find that respondent judge acted capriciously and with grave abuse of discretion, as follows:

"Thus, it is evident that petitioners' motion dated September 5, 1978 adopting private respondents' record on appeal was timely filed within the 10-day period required by the order of August 2, 1978 for the petition-ers to complete their record on appeal.

But, even assuming that said motion was filed out of time, the mere non-inclusion of the above-mentioned pleadings in the petitioners' original record on appeal does not prove fatal to petitioners' appeal. Neither will the same justify the dismissal of their appeal. It is noted that the annexes to private respondents' 'Answer with Counterclaim' form part of the exhibits presented by the parties during the trial, aside from the fact that same were already incorporated in private respondents' record on appeal. With respect to the order dated July 29, 1977 cancelling the hearing of August 15, 1977, and the motion for extension dated April 3, 1978, their inclusion is not really indispensable for same has no bearing to the issue involved therein. Under the Rules, only such pleadings, motions and interlocutory orders as are related to the appealed judgment and necessary for the proper understanding of the issue involved, need to appear in the Record on Appeal (Section 6, Rule 41, Revised Rules of Court). As regards private respondents' "counter-manifestation" dated June 30, 1978 in connection with petitioners' motion for inhibition, it observed that the same was not yet in existence when petitioners filed their original record on appeal. Clearly, therefore, said omissions in petitioners' record on appeal cannot be considered as such serious infractions of the Rules as to deprive petitioners of their right to elevate their case to the appellate court. If at all, the matters would properly draw an opposite order from the respondent court, after hearing, for further amendment of the record on appeal, but certainly not for the disapproval thereof which amounts to total disallowance of petitioners' appeal (Section 7, Rule 41, Rules of Court), unless it can be shown that such omissions were purposely sought to delay the early termination of the proceedings which has not been done by the respondents in this case (*Francisco vs. Muñoz-Palma*, 37 SCRA 753). At any rate, the amended record on appeal submitted by the petitioners fully incorporate the omitted pleadings. While this was filed later, it is deemed to have been filed on presentation of the original record on appeal which was done within the reglementary period (*Vda. de Oyzon vs. Vinzon*, L-19360, July 26, 1963). The Supreme Court has explained that 'amendment presupposes the existence of something to be amended,

and, therefore, the tolling of the period should relate back to the filing of the pleading sought to be amended' (Phil. Independent Church vs. Juana Mateo, et al., L-37229, Oct. 21, 1975). Indeed, the trend of the rulings of the Supreme Court is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.

WHEREFORE, the questioned orders dated December 12, 1978 and January 26, 1979 are hereby set aside and the respondent judge or his successor is directed to approve the amended record on appeal and give due course to petitioners' appeal."

The record further shows that there were concerted attempts on the part of therein private respondent Nelson Ong and respondent judge to execute the said judgment of exorbitant damages against complainant's corporation during the pendency of the case in the Court of Appeals, so much so that in the course of the proceedings this Court had to issue its resolution of September 25, 1979 disqualifying respondent judge from acting in any way in the said case. All these background facts manifest the existence of willful malice in respondent judges wrongful orders and actions in the case, which cannot be defended as mere errors of judgment, and warrant his separation from the service.

ACCORDINGLY, respondent judge is found guilty of the charges of serious misconduct prejudicial to the judiciary and the public interest and is hereby dismissed from the service, with forfeiture of all retirement benefits and pay and with prejudice to reinstatement in any branch of the government or any of its agencies or instrumentalities. This decision is immediately executory.

SO ORDERED.

Fernando, C.J., Barrredo, Makasiar, Aquino, Concepcion, Jr., Guerrero, and Melencio-Herrera, JJ., concur.
Fernandez and De Castro, JJ., vote for six months suspension.
Abad Santos, J., on official leave.

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