

ATTY. HIMINIANO D. SILVA, COMPLAINANT, VS. HON. JUDGE GERMAN G. LEE, JR., RESPONDENT.

Adm. Matter No. R-225-RTJ. January 26, 1989

Ponente: PARAS, J.

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PARAS, J.:

For citing him in direct contempt of court and having him suffer imprisonment for five (5) days, Atty. Himiniano D. Silva of Dumaguete City commenced a formal administrative complaint against respondent Judge German G. Lee, Jr. of the Regional Trial Court of Negros Oriental, Branch XXXV for oppression, conduct prejudicial to the best interest of the judiciary, violation of the anti-graft law and ignorance of the law.

This administrative case stemmed from Civil Case No. 8338 before the sala of the respondent Judge and where the complainant Atty. Himiniano D. Silva was counsel for the plaintiffs. Defendants filed a Motion to Dismiss the case. Judge Lee set the same for hearing on April 13, 1984, notice of which was duly received by Atty. Silva as counsel.

On April 9, 1984, Atty. Silva filed a Motion for Inhibition, stating that he could not appear before the court because of the following reasons:

a)

By reason of complainant's radio broadcast over DYRM of Dumaguete City not long ago - the Presiding Judge of the Court allegedly felt strongly alluded to, got so hurt about it and even revealed his adverse reactions to the President of the IBP of Negros Oriental and the Executive Judge of the Regional Trial Court of Negros Oriental, and

b)

A previous unwholesome atmosphere between the Presiding Judge of the Court and the complainant triggered by the alleged uncalled for, unjustified, and unnecessary threat by the former to hold the latter in contempt of Court prejudices the Plaintiffs' interests in the case. (pp. 2-3, Memorandum for Respondent)

He therein prayed that the respondent Judge inhibit himself from trying the case or "in the alternative, should this motion not be granted, that the undersigned be relieved as counsel." (p. 20, Rollo)

On April 10, 1984, Judge Lee denied the motion for inhibition, after finding the same "to be unfounded and patently unmeritorious, there being no valid and legal reason for his disqualification to try the case pursuant to Rule 137 of the Rules of Court. However, Atty. Himiniano D. Silva may, in the exercise of his sound discretion, file his formal withdrawal with the conformity of his clients to enable the latter to engage the services of new counsel." (p. 22, Rollo)

At the scheduled hearing of the Motion to Dismiss on April 13, 1984, Atty. Silva did not appear. This prompted

Judge Lee to dictate in open court an order citing Atty. Silva for direct contempt of court, ordering his arrest and sentencing him to five (5) days imprisonment. Atty. Silva was arrested and jailed that same afternoon. He was in jail for five (5) days.

With his Motion to Quash the Warrant of Arrest denied and his Motion for Reconsideration similarly denied, Atty. Silva filed the instant administrative case, resolution of which would depend on whether or not the non-appearance of Atty. Silva at the hearing on April 13, 1984 could be considered a contumacious act and if so, was it direct or indirect contempt of court.

As is apparent from the tenor of the Motion for Inhibition and the categorical statement and intention of Atty. Silva not to appear, there was a willful display of disrespectful language and attitude towards the court which tended to provoke and could be considered to border on contempt, or to be contemptuous themselves.

But can such behavior be considered a direct contempt which would warrant an outright order to immediately arrest and jail complainant?

Direct contempt is conduct directed against or assailing the authority and dignity of the court or a judge, or in the doing of a forbidden act, while indirect contempt is the failure to do something ordered done by the court or judge, such as failure to appear at a hearing or in the use of disrespectful language in a pleading. (Southern Broadcasting Network vs. Davao City Light & Power 98 SCRA 982; Nazareno vs. Barnes, 136 SCRA 57; Ang vs. Castro, 136 SCRA 453). A direct contempt may be punished summarily while an indirect contempt can be punished only after charge and hearing. (Rule 71, Rules of Court)

Clearly, the acts of complainant do not constitute direct contempt.

Be that as it may, the mistake of respondent Judge Lee in the appreciation of his prerogative to charge and punish for contempt does not make out a case of oppression, conduct prejudicial to the best interest of the judiciary, violation of the anti-graft law and ignorance of the law. Considering the circumstances of this case - the complainant aired a vehement broadcast unduly critical of the RTC judge in Dumaguete City, filed a Motion for Inhibition intemperately written stating that he cannot appear in the hearing if respondent judge will not inhibit himself, his subsequent expected non-appearance - respondent Judge might have equated complainant's actuations with an orchestrated assault against the authority and dignity of the court.

WHEREFORE, for having ordered the arrest and imprisonment of complainant without affording him the requisite notice and hearing (under the above-mentioned circumstances) respondent Judge Lee is ordered REPRIMANDED with warning that a repetition of this mistake would draw sterner disciplinary action.

SO ORDERED. Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

DISSENTING OPINION

CRUZ, J.:

I regret I must dissent. The complainant was unjustly incarcerated for all of five days. The sanction against the respondent judge calls for more than a mere reprimand.

The reason for the complainant's imprisonment was his failure - or refusal, if you will - to attend a scheduled hearing. I do not think this was contemptuous at all. At any rate, he was not even given a chance to be heard on his absence but was arbitrarily condemned and punished.

To explain the respondent's attitude, the ponencia cites the complainant's motion to inhibit and a radio broadcast

earlier made by him. But these are not in issue here. The sole issue before us is whether the complainant's absence at the scheduled hearing justified his imprisonment like a felon. No hearing was held on this issue even as the punishment imposed was swift.

Courts of justice have a right to demand respect and courtesy from those appearing before them. But we must also be watchful of oppressive judges who, to gratify private resentments, would misuse and pervert their powers at the cost of individual liberty.

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