

**MIGUEL R. CORNEJO, AS ATTORNEY FOR ACADIA ACACIO ET AL.,
PETITIONER, VS. BIENVENIDO A. TAN, JUDGE OF THE COURT OF
FIRST INSTANCE OF RIZAL, RESPONDENT.**

G.R. No. L-2217. March 23, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

In Civil Case No. 483 of the court of first instance of Rizal, entitled *Carino, et al. vs. Acacio, et al.*," Attorney Miguel R. Cornejo was (allegedly) asked by the defendants Acacio to act as their counsel; but for his convenience he requested his companion, Atty. Palacol, to handle it. The latter entered his appearance and acted accordingly. On May 21, 1948, during the hearing of the case, Cornejo was presented as a witness. Practically all the questions were objected to by opposing counsel, and the judge, the respondent Bienvenido A. Tan, sustained almost all objections. Whereupon Attorney Cornejo left the witness stand and approached the attorneys' table asking that his appearance for the defendants be noted. It was apparent he wanted to say as counsel what he had been prevented from saying as witness. The respondent judge told him he could not thus appear, there being already one lawyer and no substitution of counsel had been accomplished in accordance with the rules.

A few days later, Attorney Cornejo submitted a memorandum in which he said, among other things, that the judge had unduly favored the plaintiffs, to the extent of advising Atty. Palacol "to fix the case because his position was hopeless", and that the memorandum was filed as a protest against the "unjust hostile, vindictive and dangerous attitude of the judge". The memorandum further stated that copies thereof had been sent to the Secretary of Justice, the Supreme Court, and the Office of the President of the Senate.

In an order dated May 26, 1948, the respondent judge, rejecting the accusation of partiality, stated that in accordance with his usual practice he had told Atty. Palacol to see if the matter could be settled amicably. Then he required Atty. Cornejo to show cause why he should not be punished for contempt on four counts, namely, for appearing in court without being a party or attorney in the case, for using offensive language, for misbehavior in the presence of the court and for publishing his memorandum before it was submitted and decided by the court.

Answering the order, Atty. Cornejo expressed doubts that he would be treated impartially because the charges of contempt had been made by the judge himself, and reiterated his accusation that the judge had unduly anticipated his opinion on the case in favor of plaintiffs, "demonstrating his over-anxiety to dispatch the case" "indirectly aiding counsel for the plaintiffs" "insulting and humiliating the undersigned attorney while on the witness stand, etc.". Then he went on to explain away or rebut the charges made.

Immediately thereafter Atty. Cornejo repaired to this Court asking for judgment ordering the respondent judge to admit his appearance as counsel for the defendants in Civil Case No. 483, to refrain from rendering his decision in said case until he shall have allowed the petitioner as counsel for defendants to present further evidence, and to stop all action on the proceeding for contempt of court.

On June 7, 1948, we required the respondent to answer the amended petition within ten days. We also resolved

that upon the filing of a bond by petitioner in the amount of P200 a writ of preliminary injunction will be issued. Such writ was actually issued on June 15, 1948.

It appears, however, that on June 5, 1948, the respondent judge decided Civil Case No. 483. And on June 4, 1948, he declared Atty. Cornejo guilty of contempt and sentenced him to pay a fine of P100 or in case of insolvency, to suffer imprisonment for ten days. It also appears that on the same day Atty. Cornejo interposed an appeal, which was denied by the respondent, on the ground that there is no appeal in the matter of direct contempts.

In view of these developments and of others to be indicated later on, the petitioner now asks: (1) that the respondent be required to admit and recognize his appearance as counsel in Civil Case No. 483, and that the decision in that litigation be set aside on the ground that defendants were deprived of their right to present further evidence through the petitioner as counsel, and (2) that the judgment for contempt be reviewed and revoked.

On the first point it further appears that, as the injunction order proved too late, Atty. Palacol submitted on June 23, 1943 a "petition to set aside judgment or proceeding" seeking relief under Rule 38 of the Rules of Court, and that upon denial thereof he appealed on July 12, 1948 to the Court of Appeals. Wherefore, it is reasonable to expect that this question will be decided by the Court of Appeals upon a review of the main controversy. Upon this ground, and partly because petitioner failed to implead the opposing parties in the said Civil Case No. 483, this portion of the petition may not be granted in these proceedings.

On the second point, it is settled that no appeal lies from an order of a superior court declaring a person in direct contempt thereof .[1] Now, was the submission of the memorandum a direct contempt? The respondent held it was (1) because Cornejo was not an attorney in the case; (2) because it used offensive language against the court; and (3) because it was published before it was submitted and decided by the court. Copy of the memorandum is part of the record before us. It contains the following paragraph:

"It is further respectfully prayed that this memorandum be taken for a protest against what he believes to be unjust, hostile, vindictive and dangerous attitude or conduct of the presiding Judge, Hon. Bienvenido A. Tan, of this Honorable Court in a democratic government where laws shall reign supreme unless the same Judge wants to sabotage the present administration of the President who is seeking the restoration of public peace and order and the faith of the people in our Government".

That is indeed strong language. It is insulting and contemptuous.[2] The judge may have erred in some of his rulings; but mistakes never justify offensive language. As was said in *Salcedo vs. Hernandez*, 61 Phil., 729:

"It is right and plausible that an attorney, in defending the cause and rights of his client, should do so with all the fervor and energy of which he is capable, but it is not, and never will be so for him to exercise said right by resorting to intimidation or proceeding without the propriety and respect which the dignity of the courts require. The reason for this is that respect of the courts guarantees the stability of their institution."

And the last paragraph informing the judge that copies of the memorandum had been furnished "the Honorable, the Secretary of Justice, etc.", could rightly be interpreted as an attempt to intimidate the court in the exercise of its judicial functions.

Omitting reference to the other points, enough has been stated to show that there was no clear abuse of the respondent's powers in declaring Atty. Cornejo to be in direct contempt. Petition denied. No costs.

Moran, C.J., Ozaeta, Pablo, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

[1]Sec. 2, Rule 64, Rules of Court; *People vs. Abaya*, 43 Phil., 247; *Carag vs. Warden of the Jail of Cagayan*, 53 Phil., 85.

[2] Lualhati vs. Albert, 57 Phil., 86; Salcedo vs. Hernandez, 61 Phil., 724.

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