

THE PEOPLE OF THE PHILIPPINES AND FERMIN S. MAGLASANG, AS ASSISTANT CITY FISCAL OF ORMOC CITY, PETITIONERS, VS. HON. NUMERIANO G. ESTENZO, AS JUDGE OF THE COURT OF FIRST INSTANC...

G.R. No. L-24522. May 29, 1975

Ponente: FERNANDO, J.

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FERNANDO, J.:

Had respondent Judge Numeriano G. Estenzo of the Court of First Instance of Ormoc City, 13th Judicial District, displayed a little more forbearance and manifested a greater sensitivity to the deportment expected of men on the bench, there would have been no need for this certiorari petition filed by Assistant City Fiscal Fermin S. Maglasang,[1] who was found guilty of direct contempt and sentenced to pay a fine of P 100.00. The order for contempt reads as follows: "Assistant City Fiscal, Fermin Maglasang, when asked to explain the presence of witness Andres Mojadas in the Court notwithstanding the order for the exclusion of witnesses, manifested that the prosecution is no longer utilizing Andres Mojadas as witness, and as a matter of fact, he informed yesterday Andres Mojadas who is now working in Tacloban City, that he need not come today for the hearing. This Court [reminded] Andres Mojadas about such notice by the Fiscal; [he] explained that he had to be present in Court notwithstanding said advice by the Fiscal as this Court has not cancelled its subpoena for him to appear and he feared that he might be cited for contempt. Thereafter, this Court asked Fiscal Maglasang why no such notice was given by him to this Court yesterday for this Court to cancel the subpoena, to which Fiscal Maglasang answered that there was no necessity of such notice to this Court. This answer of Fiscal Maglasang is an insult and a disrespect toward this Court, as it places this Court in an embarrassing position of having its processes and subpoena disobeyed and discarded by the persons cited at the instance of Fiscal Maglasang, not to mention the fact that these proceedings have been interrupted due to such failure of Fiscal Maglasang to notify this Court to enable this Court to cancel the subpoena issued to Andres Mojadas. [Wherefore], this Court finds Assistant City Fiscal Maglasang guilty beyond reasonable doubt of direct contempt pursuant to Sec. 1, Rule 71 of the new Rules of Court and this Court hereby sentences Assistant City Fiscal Fermin Maglasang to pay a fine of One Hundred Pesos (P100.00) and upon his failure to pay said amount until April 23, 1965 at 7:30 a.m., at which time he is ordered to appear before this Court, let him be imprisoned for ten (10) days." [2] There is an inaccuracy in the above recital, for petitioner, as the transcript did reveal, was not that curt when in answer to a query from respondent Judge, he said that while he felt that there was no need to notify the Court, he planned to ask the Clerk of Court to cancel the subpoena. [3] It is understandable then why at first the fine was only in the amount of P50.00, but when petitioner tried to explain further why he was unable to inform the court that Andres Mojadas was no longer necessary as a witness and that the subpoena ought to have been cancelled, reiterating however, that he had no intention of disregarding the court or of acting with disrespect, the fine was increased first to P75.00 and then finally to the amount of P100.00.

It is difficult to avoid the impression then that respondent Judge, whether due to some latent hostility because

petitioner had been able to have some of his decisions reversed in the Court of Appeals,[4] or the irritable mood that possessed him at the moment, exceeded the permissible limits of the exercise of the contempt power. Accordingly, certiorari is granted and the order for contempt reversed.

It is not open to dispute that implied in the judicial power vested in courts under the Constitutions[5] is the inherent power to punish for contempt. Ever since the establishment of the present judicial system, such a prerogative has been exercised with the approval of the Court. There are a number of decisions dealing with direct contempts.[6] It cannot be denied either that unless exercised with restraint and judiciousness, this power lends itself to manifestations of whim, caprice, and arbitrariness. There is a compelling and exigent need therefore for judges to take the utmost care lest prejudice, innate or covert hostility to personality of counsel, or previous incidents lead them to characterize conduct susceptible of innocent explanation as slights on the dignity of the court. It is ever timely to remember how easy it is to overstep the dividing line that should separate the prosecutor from the judge, when both roles are merged in the same person. The infusion of personal element may go unnoticed. Even if such were not the case, objectively viewed, such an impression may be difficult to avoid by laymen. That is a consideration that cannot be overlooked. It is important that public confidence in judicial impartiality and fairness be not impaired. It is not so much for the sake of the judge alone then, but much more so for vindicating the popular belief in court proceedings being marked by calmness and dignity, that there should be a curb on the otherwise human failing of detecting disrespect in conduct or statements from counsel that could not satisfy the highest standard of politeness or courtesy. When an occurrence of such character presents itself, an admonition or warning should suffice. There must be caution and hesitancy on the part of judges against the exercise of this awesome prerogative under such circumstances. "The power to punish for contempt," as was pointed out by Justice Malcolm in *Villavicencio vs. Lukban*,[7] "should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail." [8] The lower court, it clearly appears, failed to meet such a rigid but commendable test.

A recent decision, *Delgra, Jr. vs. Gonzales*,[9] presents many analogous features. As in this case, a fiscal was sentenced for direct contempt in view of a rather persistent attitude in having the respondent Judge Alfredo I. Gonzales correct what he considered an erroneous translation before allowing a witness to answer a question thereon based. As was made clear by Justice Sanchez as ponente: "What is truly significant is that the situation would not have reached grave proportions if the judge only listened carefully to the pleas of the fiscal and patiently allowed the fiscal to make his manifestation — to set the record aright — which, unfortunately, the judge did not." [10] Justice Sanchez then went on to say: "It has been said that '[c]ontempt of court presupposes a contumacious attitude, a flouting or arrogant belligerence, a defiance of the court.' From the transcript, we read no statement of the fiscal that rises to the level of contumacy. Nothing he said constitutes an affront to the dignity of the court. Of course, the transcript has not preserved the exact words uttered during the incident, but the judge has not pointed out to us any word or phrase uttered by the fiscal which may amount to contempt. The judge could do no better than say in his order here under review that the fiscal acted with 'provoking gesture(s)' and exhibited a 'threatening attitude.' Before us, the judge submits that the fiscal was defiant with his 'offensive expressions' and 'aggressive gestures.' But these are at best generalities and conclusions of law. . . . The fiscal underscored the need for immediate correction. He strongly felt that if uncorrected, the next question would be on a false premise; worse, it could be misleading. We perceive it to have been a better attitude had the judge squarely met and decided favorably or adversely the fiscal's objection to the translation." [11] This is the conclusion of the Court as announced by the ponente: "Holding fast to the principles that contempt proceedings are criminal in nature; that 'the powers to punish for contempt should be exercised on the preservative, not vindictive principle'; that 'a judge should always bear in mind that the power of the court to punish for contempt should be exercised for purposes

that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise' and that such 'power to punish for contempt, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice,' we find that the fiscal did not so misbehave as to obstruct or interrupt court proceedings. He should not have been ordered incarcerated. In so directing, respondent judge abused his direction such as to call for the exercise of the supervisory powers of this Court. Certiorari lies." [12]

As in that case, so here, certiorari lies. There is manifest a failure of respondent Judge Estenzo to abide by the limitations inherent in the implied power to punish for contempt.

WHEREFORE, the writ of certiorari prayed for is granted and the order finding Assistant City Fiscal Fermin S. Maglasang in direct contempt is nullified and set aside. The fine of P100.00 paid by him should be remitted. No costs.

Barredo, Antonio, Aquino, and Concepcion Jr., JJ., concur.

[1] The People of the Philippines is joined as co-petitioner.

[2] Annex F to Petition.

[3] Transcript, Annex B to Petition 14.

[4] Mention was made in the Petition, paragraph 23, of the five criminal and civil cases appealed by Fiscal Maglasang "to the Court of Appeals which the respondent's (Numeriano G. Estenzo) orders or decisions appealed from were all reversed in toto by the Court of Appeals as evidenced by the decisions of the Court of Appeals in People vs. Pulgo, CA-G.R. No. 01489-CR; People vs. Pulgo, CA-G.R. No. 01490-CR; People vs. Pulgo, CA-G.R. NO. 01491-CR; People vs. Pulgo, CA-G.R. No. 01492 and the Intestate Estate of Rafael D. Omega, CA -G.R. No. 27382-R" and a mandamus suit, CA-G.R. NO. 32939-R against respondent Judge. There was no direct denial of this assertion of fact.

[5] "The judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law." So reads Article X, Section 1 of the Constitution.

[6] Cf. In re Aguas, 1 Phil. 1 (1901); U.S. vs. Ney, 8 Phil. 146 (1907); Jones vs. Harding, 9 Phil. 279 (1907); Narcida vs. Bowen, 22 Phil. 365 (1912); Villavicencio vs. Lukban, 39 Phil. 778 (1919); Carag vs. Warden of the Jail of Cagayan, 53 Phil. 85 (1929); Laulhati vs. Albert, 57 Phil. 86 (1932); Salcedo vs. Hernandez, 61 Phil. 724 (1935); Medina vs. Rivera, 66 Phil. 151 (1938); Rivera vs. Arellano, 82 Phil. 744 (1949); Torres vs. Teodoro, Sr., 101 Phil. 422 (1957); Matutina vs. Buslon, 109 Phil. 140 (1960); Malolos vs. Reyes, L-16135, Feb. 25, 1961, 1 SCRA 559; Dizon vs. De Borja, AC No. 163-J, Jan. 28, 1971, 37 SCRA 46; Ocampo vs. Domingo, L-27632, Feb. 28, 1972, 43 SCRA 286; Gardones, vs. Delgado, AM No. 120-MJ, July 23, 1974, 58 SCRA 58.

[7] 39 Phil. 778 (1919).

[8] Ibid, 798.

[9] L-24981, January 30, 1970, 31 SCRA 237.

[10] Ibid, 243.

[11] Ibid, 244.

[12] Ibid, 245.

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