

RELIANCE PROCOMA INC., CATABPASS PROCOMA INC., CANTARIA PROCOMA INC., FILIPINO AGRICOMA INC., BANNAWAG PROCOMA INC., CENTRAL LA UNION PROCOMA INC., DULAO PROCOMA INC., MASALVICA...

G.R. NO. L-37656. May 31, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

Judge Ludovico D. Arciaga of the Court of First Instance of Ilocos Sur, Mariano Cachero, a special sheriff, Reliance Procoma Inc. and their forty-nine (49) co-petitioners, all corporations "represented by Mariano Pintor", have appealed by certiorari from the resolution of the Court of Appeals dated August 2, 1973, finding Judge Arciaga and the other petitioners "guilty of indirect contempt," for having disobeyed that Court's restraining order, and sentencing each of them to pay a fine of P500.

The resolution, which was issued in CA-G.R. No. SP-01360, Phil-Asia Tobacco Corporation vs. Hon. Ludovico D. Arciaga et al., and which was penned by Mr. Justice Manuel P. Barcelona, reads as follows:

"Before us for resolution are the motion of petitioner Phil-Asia Tobacco Corporation (Phil-Asia, for brevity) to hold respondent Judge Ludovico D. Arciaga, as well as private respondents Reliance Procoma Inc. et al., (Reliance for short) and the motion of intervenor Philippine Virginia Tobacco Administration (hereinafter referred to as PVTa), which is likewise to declare said respondent Judge in contempt of court, both of which motions were generated by the following undisputed facts:

"On September 23, 1972, this Court issued in the above-entitled case for certiorari and prohibition a restraining order, which was promulgated on September 25, 1972, the pertinent excerpt of which, ordained:

'NOW, THEREFORE, you the respondents are HEREBY PROHIBITED and RESTRAINED from enforcing the writ of execution and orders of garnishment issued in Civil Case No. 2873-V of the Court of First Instance of Ilocos Sur, entitled Reliance Procoma, Inc., et al., vs. Phil-Asia Tobacco Corporation, until further orders from this Court.' (Rollo, p. 110).

"However, subsequent thereto, respondent Judge, on motion of plaintiff Reliance (private respondent herein), issued an order in Civil Case No. 2873-V, of the Court of First Instance of Ilocos Sur, which reads:

'Acting on the motion of plaintiffs dated September 29, 1972 and filed with this court today, September 30, 1972, and finding the allegations therein to be well-founded and meritorious, this court hereby grants the same and directs the Philippine Virginia Tobacco Administration, Consolacion Building, Cubao, Quezon City, to refrain, pending the termination of the legal proceedings in this case before the Court of Appeals, from effecting the transfer to anyone so much of the funds of the Phil-Asia Tobacco Corporation which are in the possession and control of the Philippine Virginia Tobacco Administration, as would sufficiently cover the amount mentioned in the decision in this case dated September 5, 1972, including costs of this suit and sheriff's fees.' (Rollo, p. 131 or p. 140).

"At the hearing of October 23, 1972, re-spondents were required to file their answer to the above-stated motions for contempt and, in compliance therewith, they did so, averring therein, in synthesis, that what was contemplated and specifically enjoined and prohibited in the restraining order is 'the enforcement of the writ of execution and orders of garnishment' and that as the order of respondent Judge did not cause the execution of the judgment and the orders of garnishment, said order did not constitute a disobedience or resistance to said restraining order, much less was it done in bad faith.

"Movants, however, submit that the questioned order of respondent Judge 'is a wanton disregard and/or disobedience to the restraining order', because:

'x x x such a subsequent order which deprive the PVTa from complying with its valid and just obligation by prohibiting it to transfer funds or pay to anyone including the Petitioner itself is not only contemptuous but also absurd, unjust and renders nugatory and ineffective the prior restraining order of the Honorable Court. Suffice is to say that by issuing the order dated September 30, 1972, the respondent Judge in effect enforces the writ of execution complained of.' (Rollo, p. 455).

"After a cautious deliberation and reflection on the foregoing conflicting theories of the parties, we are of the opinion and so hold that the assailed order of respondent Judge does really constitute a disobedience of, or resistance to, the restraining order issued by this Court to respondents, prohibiting and restraining them 'from enforcing the writ of execution and orders of garnishment.'

"The term 'garnishment' has been defined as:

'a warning to a person in whose hands the effects of another are attached, not to pay the money or deliver the property of the defendant in his hands to him, but to appear and answer the plaintiff's suit' (Black's Law Dictionary, p. 810.)

whereas, the verb 'enforce' means:

'To put into execution; to cause to take effect; to make effective; as to enforce a writ, a judgment, or the collection of a debt or fine; to compel obedience to'. (Black's Law Dictionary, p. 621)

"It is to be noted that 'garnishment' is composed of two parts: (1) a warning to the garnishee not to pay or deliver judgment debtor's money or effects in his possession and control to said debtor but (2) to pay or deliver the same to the judgment creditor to satisfy the judgment.

"Therefore, when respondent Judge, upon motion of private respondents, issued the challenged order, directing the PVTa, 'to refrain, pending the termination of the legal proceedings in this case before the Court of Appeals, from effecting the transfer to anyone so much of the funds of the Phil-Asia Tobacco Corporation which are in the possession and control of the Philippine Virginia Tobacco Administration, as would sufficiently cover the amount mentioned in the decision in this case, dated September 5, 1972, including costs of this suit and sheriff's fees', respondents, in effect, resuscitates and put in force the order of garnishment (Annex 1, pp. 68 and 69, Rollo) the enforcement of which had been restrained by this Court, insofar as it prohibited intervenor from making any transfer of petitioner's funds in the former's possession and control, thereby maintaining and giving force to the garnishment, at least as to the attachment of the funds in plain violation or disobedience of the restraining order.

"True it is, respondents have not executed the orders of garnishment by the actual taking of the funds for answer for the judgment but this refers merely to the implementation thereof, the second part of the garnishment. However, as to the first part of the garnishment, the attachment of the funds, the same, as already adverted to above has been reanimated and maintained, contrary to the restraining order, the purpose of which is to suspend temporarily the effects of the order of garnishment, so as to revert the parties to their status quo before the

issuance of said order of garnishment. That such is the intention of the restraining order is evident and clear and cannot be gainsaid. That respondents are well aware thereof cannot be denied. As a matter of fact, the issuance of respondent Judge's order, on motion of private respondents, was obviously to defeat the effect of the restraining order, designed to lift the attachment of the funds. It was an implied admission of respondents that the garnishment, both (1) as to the attachment of the funds and (2) to the implementation thereof, has been temporarily suspended by the restraining order, otherwise, there would have been no need for the issuance of respondent Judge's order, were the first part of the order of garnishment not suspended.

"In resume, we hold that the order of garnishment to the Philippine Virginia Tobacco Administration, one of the subject matters of the restraining order, insofar as the attachment of the funds of the petitioner in its possession and control, is concerned, and the questioned order of respondent Judge, are one and the same process. As the saying in Spanish goes, 'los dos son el mismo perro con diferente collar'. And, since the aforesaid order of respondent Judge resurrected the order of garnishment against the PVTa with regard to the attachment of the funds therein of the Phil-Asia Tobacco Corporation, the issuance thereof is contemptuous, it being in disobedience of, or resistance to, the often repealed restraining order, and hence punishable under Rule 17, Section 3 (b) of the Rules of Court."

Since the petitioners did not bother to file any memorandum, although they were required to do so in this Court's resolution of January 21, 1974, the only points to be resolved in this appeal are the issues raised in their petition for review.

1. They contend that Judge Arciaga's order did not constitute an enforcement of the writ of execution and the orders of garnishment. They point out that the sheriff "was not even able to garnish a single centavo" of the funds of the Phil-Asia Tobacco Corporation (Phil-Asia), amounting to almost five million pesos, in the custody of the Philippine Virginia Tobacco Corporation (PVTa).

That contention has no merit. By means of the notice of garnishment, Deputy Sheriff Cachero on September 11, 1972 levied on the funds of Phil-Asia, which were in the control of the PVTa, in order to satisfy a judgment against Phil-Asia amounting to P2,466,786.06. The notice enjoined the PVTa, as garnishee, not to "deliver, transfer, or otherwise dispose of" such funds except to the sheriff or his deputy.

The petitioners argue that the order of garnishment was not enforced at all by Judge Arciaga because no portion of the garnished funds was paid to the sheriff; hence, there was no violation of the restraining order issued by the Court of Appeals. That argument is logomachic and, therefore, fallacious.

In Judge Arciaga's questioned order, the PVTa was restrained "from effecting the transfer to anyone" of Phil-Asia's funds that would be sufficient to cover the judgment for more than two million four hundred thousand pesos.

No sophistical reasoning can obscure the glaring fact that that order is identical to the prior notice of garnishment which directed the PVTa not to "deliver, transfer, or otherwise" dispose of Phil-Asia's funds and which prior notice was rendered inoperative by the Appellate Court's restraining order. As the saying goes, the questioned order was the same wine in a new bottle. The Court of Appeals noted that it was verily a revival of the order of garnishment. Judge Arciaga's order was a transparent circumvention of the Appellate Court's restraining order. What he could not have done directly should not be allowed to be done indirectly.

2. Petitioners' alternative contention is that assuming *arguendo* that there was disobedience to the restraining order, it was not willful. They claim that Judge Arciaga acted in good faith and in the regular performance of official duty. He supposedly issued the order for the preservation or protection of the rights of the petitioners.

That contention is not sustainable. Willfulness, which is a condition of mind, is inferable from the act itself and the circumstance surrounding its commission. The juris tantum presumption is "that an unlawful act was done with an unlawful intent" (Sec. 5[b], Rule 131, Rules of Court).

Judge Arciaga was apprised of the restraining order by telegram on September 25, 1972. Five days later or on September 30th, the petitioners filed their urgent motion (presumably ex parte) praying that the PVTa be restrained from transferring "to anyone" the funds of Phil-Asia in its custody. The motion itself makes reference to the Appellate Court's restraining order of September 23rd.

On that same date, September 30th, Judge Arciaga issued the questioned order which contravened the Appellate Court's restraining order and nullified it at least with respect to the prior notice of garnishment to the PVTa already mentioned.

Under the circumstances, the willfulness or bad faith of the respondents is manifest. They knowingly disregarded and negated partially the directive of the Appellate Court. The least that they could have done was to ask for the reconsideration of the restraining order or to secure leave and clearance from the Court of Appeals for the freezing of Phil-Asia's funds in the custody of the PVTa.

Incidentally, it may be stated that the restraining order was later converted into a writ of preliminary injunction, which was issued on December 4, 1972 after Phil-Asia filed a bond in the sum of two million pesos.

One form of indirect contempt is "disobedience of or resistance to a lawful writ, process, order, judgment, Or command of a court, or injunction granted by a court or judge which is punishable by a fine not exceeding once thousand pesos or imprisonment not exceeding six (6) months or both (Secs. 3 and 6, Rule 71, Rules of Court).

The restraining order issued by the Court of Appeals was equivalent to an injunction. A trial judge may be held in contempt of court for disregarding a writ of preliminary injunction issued by this Court (Commissioner of Immigration vs. Cloribel, L-24139, August 31, 1967; Valenzuela vs. Revilla and Carlos, 41 Phil. 4). Judges of inferior courts should be the first to comply with the decrees of superior courts (People vs. Vera, 65 Phil. 56, 96; Shioji vs. Harvey, 43 Phil. 333).

Defiance of a restraining order or writ of injunction issued by this Court constitutes contempt of court (Kibad vs. Commission on Elections, L-28469, October 29, 1968, 25 SCRA 711; Ysasi vs. Fernandez, L-28593, December 26, 1968, 26 SCRA 393). A judge's refusal to enforce a final judgment of this Court is contemptuous (Reyes vs. Arca, L-28234, September 30, 1970, 35 SCRA 247).

The fifty (50) petitioning corporations, Reliance Procoma Inc. et al., the respondents in CA-G.R. No. SP-01360, are represented by one Mariano Pintor, who is also a petitioner herein. Only Pintor and Judge Arciaga should be adjudged in contempt of court. The record does not show that Deputy Sheriff Cachero had any intervention in the commission of the contemptuous act. If he served on the PVTa Judge Arciaga's order, he must have done so as a ministerial officer executing a mandate of the lower court.

Considering that the power to punish for contempt should be exercised on the preservative and not on the vindictive principle and on the corrective and not on the retaliatory idea of punishment (People vs. Marcos, 70 Phil. 468, 480), the resolution of the Court of Appeals imposing a fine of five hundred pesos on each of the contemnors appears to be appropriate and just.

WHEREFORE, that resolution is affirmed with the modification that only (1) Mariano Pintor, as the representative of the fifty petitioning corporations, and (2) Judge Ludovico D. Arciaga are adjudged in contempt of court and held liable to pay a fine of P500 each plus the costs.

SO ORDERED.

Zaldivar, (Chairman), Barredo, Antonio, and Fernandez, JJ., concur.

CONCURRING OPINION**FERNANDO, J.:**

There was, so it seemed to me at first, hardly any need for a concurring opinion. Justice Aquino, in his characteristic fashion and with the lucidity that invariably marks his juristic output, has thoroughly gone into every aspect of the matter. There is no room for disagreement then. So I vote. Nonetheless, I feel that a brief concurrence is necessary, if only to stress further the deplorable actuation of respondent Judge. The respect to which the judiciary is entitled, not excluding the offending member of the bench in his capacity as such, would be eroded if what occurred in this case would not be vehemently stigmatized as an unjustified and unjustifiable deviation from the accepted norm of judicial behavior.

As was shown in the decision: "Judge Arciaga was apprised of the restraining order by telegram on September 25, 1972. Five days later or on September 30th, the petitioners filed their urgent motion (presumably ex parte) praying that the PVTa be restrained from transferring 'to anyone' the funds of Phil-Asia in its custody. The motion itself makes reference to the Appellate Court's restraining order of September 23rd. On that same date, September 30th, Judge Arciaga issued the questioned order which contravened the Appellate Court's restraining order and nullified it at least with respect to the prior notice of garnishment to the PVTa already mentioned." [1] It follows then, as was so clearly pointed out, that his "willfulness or bad faith. x x x is manifest." [2] He "knowingly disregarded and negated partially the directive of the Appellate Court." [3] As was correctly observed by the ponente, the least that could have been done was to await for the setting aside of the restraining order by the Court of Appeals or to secure from it "leave and clearance." [4] There was no other course left for the Court of Appeals then, in the light of such conduct, except to penalize respondent Judge. As a matter of fact, in a way, he was let off easy, considering that the fine imposed was P500.00

This Court has ever been insistent on the rule of law being observed. [5] Concerning the specific question involved, the settled rule is that an order from the bench issued by a court acting within its jurisdiction is entitled to respect. It may come from a municipal or city court, or one of the next higher rank as that occupied by respondent Judge or the Court of Appeals, as did happen here. This Court does not have to be the source. What cannot be ignored is that it would be productive of confusion if parties could just disregard what has been so ordained. The appropriate procedure always is for the matter as thus decreed by any tribunal to be taken up on appeal. Where as did happen here, the Court of Appeals had spoken, the judge of the court of first instance was bound by what it said. If there is room for disagreement, a reconsideration can be sought, or the matter can be taken up, whenever appropriate, to this Court.

In the meanwhile, no evasion, much less defiance, is allowable. It is bad enough if the parties would be minded to do so. It is infinitely worse if the offender, as was the case here, was a judge of the Court of First Instance. It would make a mockery of the legal order if one like the respondent Judge, precisely called upon to assure respect for legal processes, would act otherwise. To say that he has been recreant to his trust is to put it mildly. For the contumacious conduct manifested by him has a much more corrosive effect in the public mind. To paraphrase Justice Brandeis, a government of laws demands that public officials observe scrupulously orders emanating from tribunals vested with competence. For the public looks up to them. For good or for ill, what they do sets the example. Disrespect for the law is contagious. If a judge does not observe judicial norms, he is to all intents and

purposes just as much a law-breaker. His conduct breeds contempt for the rule of law. It may ultimately lead to anarchy.[6] This may be to conjure too extreme an evil. It may be so, but where the observance of judicial decorum is concerned, more specifically the requirement of strict conformity to an order of an appellate tribunal, even the slightest infraction is not to be tolerated. Obsta principiis should be the rule.

So I believe. Hence this brief concurrence.

[1] Reliance Procoma Inc. vs. Phil-Asia Tobacco Corporation, G.R. No. L-37656.

[2] Ibid.

[3] Ibid.

[4] Ibid.

[5] Cf. Gonzales vs. Hechanova, L-21897, October 22, 1963, 9 SCRA 230 and Philippine Association of Free Labor Unions vs. Salvador, L-29471, September 28, 1968, 25 SCRA 393.

[6] "Cf. Olmstead vs. United States, 277 US 485 (1928).

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