

**AMADO S. CENIZA, PETITIONER, VS. ALEJANDRO E. SEBASTIAN,
JUDGE OF THE COURT OF FIRST INSTANCE OF DAVAO, 16TH
JUDICIAL DISTRICT, BRANCH VIII, RESPONDENT.**

G.R. No. L-39914. July 02, 1984

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

This Court has been and continues to be committed to the authoritative doctrine that the power to punish for contempt should be exercised on the preservative and not vindictive principle.[1] In deciding this certiorari and prohibition proceeding with a plea for a mandatory preliminary injunction, we do so again.

The immediate cause that resulted in an order of arrest for contumacious conduct arose from an ex-parte motion to have respondent Judge Alejandro E. Sebastian, now retired, inhibited from trying a civil case in the then Court of First Instance of Davao, 16th Judicial District, Branch VIII. The paragraph in such motion that apparently gave offense follows: "That because of certain personal acts or conduct displayed by the Presiding Judge in handling the above case, which the Defendant and her counsel deem as highly irregular, corrupt and a gross misconduct for a Judge to do, the undersigned counsel for Defendant has already filed an Administrative Case against the herein Presiding Judge in the Supreme Court, now docketed therein as 'Administrative Matter No. 846-CFI, Atty. Amado S. Ceniza vs. District Judge Alejandro Sebastian, CFI, Br. VIII, Tagum, DN', and the Defendant in the above case is one of the material witnesses for the complainant in said Administrative Case; and, that by virtue of these, the bias and prejudice of the Presiding Judge against the Defendant and her counsel in the above case, is intensified and heightened, and consequently the Presiding Judge in the above case, will no longer have that sense of justice, that equanimity of emotion, that detached and unaffected feeling and that disinterested and impartial comportment which all judges ought to have and maintain while hearing and deciding a case before them." [2]

As a result, according to the Petition, "respondent Judge herein issued a 'Warrant for the Arrest' of the petitioner herein, so that he will be locked-up in jail for having committed, according to said respondent Judge, 'Direct Contempt'." [3] It was further alleged that copies of such warrants of arrest of petitioner "are now in the hands of several Peace Officers, who are specifically ordered to arrest the herein petitioner wherever found." [4] Then the Petition went on to state: "That firmly believing that these warrants for his arrest issued by the herein Respondent Judge is grossly unlawful and is inspired by the Respondent Judge's desire for vengeance, hatred and yearning to persecute and destroy the herein Petitioner, the latter had fled from his office and residence at Visayan Village, Tagum, Davao, and dodged arrest by hurriedly and secretly going to various places and ultimately here in Manila, in order to have the chance of filing this Petition for Certiorari and Prohibition with a Writ of Preliminary Mandatory Injunction." [5] After reiterating what for him was the patent illegality of such order for contempt and the warrant of arrest issued in pursuance thereof thus amounting to lack or excess of jurisdiction or at the very least grave abuse of discretion, petitioner prays that there be an immediate prohibition for their enforcement, even prior to declaring them null and void. [6]

The Court required respondent to file a comment and issued a temporary restraining order enjoining the enforcement of such warrant of arrest.

Respondent Judge, accordingly, submitted his Comment to the petition. There was a clear admission in such comment that it was the allegation in paragraph 6 of the Ex-Parte Motion to Have Presiding Judge Inhibit Himself from Trying the Case which led to the issuance of the warrant of arrest, petitioner being guilty of direct contempt. Thus: "For calling the respondent 'corrupt' in said motion, the Court issued an Order dated December 20, 1974 holding petitioner guilty of direct contempt and sentenced him to 10 days imprisonment and P200 fine. To enforce the Order, a warrant for the arrest of Atty. Amado Ceniza was issued on December 23, 1974. He could not be arrested, however, because he went into hiding. It is this unserved warrant of arrest and the unexecuted Order holding him guilty of contempt that he questions in this special civil action of Certiorari and Prohibition." [7] For respondent Judge, the punishment for contempt being inherent in all courts, the only question is whether or not he had committed a grave abuse of discretion. That accusation he denied in these words: "He merely exercised his right and power to punish the petitioner for his act or conduct that tended to bring the authority of the Court and the administration of justice into disrepute." [8] He referred to the well-settled doctrines that the use in pleadings of language disrespectful to the court or containing offensive words constitutes direct contempt, amounting as it does to misbehaviour in the presence of or so near a court or judge as to interrupt the administration of justice. He stressed the point further in this way: "In the instant case, the Court held Atty. Ceniza guilty of direct contempt for stating in his motion for the judge's inhibition, among others, that he was 'corrupt'. No self-respecting judge will tolerate such a vile language in a lawyer's pleading; and punishing such a presumptuous and insolent lawyer can never be termed abuse of power or discretion amounting to lack of jurisdiction correctible by certiorari or prohibition. Under Rule 71 of the Revised Rules of Court, contempt includes 'disrespect toward the court or judge.' Mr. Ceniza was plainly guilty of direct contempt." [9]

This Court, on the above facts, sustains respondent Judge in finding that there was a direct contempt committed but likewise holds that, conformably to the controlling doctrine that the power to punish for contempt should be exercised on the preservative and not vindictive principle, modifies the judgment by lifting the warrant of arrest but increasing the fine imposed to P500.

1. This Court from *Carag v. Warden of the Jail of Cagayan*, [10] a 1929 decision, to *Sulit v. Tiangco*, [11] has consistently ruled that the contempt power may be availed of by a judge, who is the victim of insulting and offensive epithets. A member of the bar as an officer of the court is not justified to use vile and disrespectful language. If there be such a failing on his part, he cannot complain if he is adjudged guilty of contempt. Where the words appear in a pleading submitted to the Court, that is contempt in facie curiae and thereore may be dealt with in a summary manner. [12]

2. There are circumstances however that militate in this case against the imposition of imprisonment for ten days. In the comment submitted by respondent Judge, reference was made to an injunction issued by him in a civil case where the client of petitioner Ceniza was the defendant. Then came this portion of such comment: "After the issuance of the injunction, the respondent took steps to settle the case amicably. Before the break-up, the parties were quite close to the respondent and his wife, whom they fondly addressed as tatang and nanang. He succeeded in convincing the defendant that if she no longer liked to live with plaintiff, who is legally married to another woman, at least, she should be agreeable to the division of their properties before they evaporated in a long litigation, eaten up by expenses and enormous attorney's fees. Before the amicable settlement could be signed, however, the petitioner was able to dissuade the defendant from signing, telling her that all the real estate, businesses, trucks, and vehicles were hers because they were all registered in her name. But the petitioner was aware that the defendant had signed a document wherein the properties that were to be her share were listed, as 'agreed' upon between her and the plaintiff. To avoid the effect of this document, the petitioner concocted a false story in the Answer that he prepared and filed that the defendant was forced to sign

the document thru intimidation of being killed and her honor exposed by the plaintiff, in the residence of the respondent and with the aid of one Col. Callejo and the respondent. For this shameless fabrication, derogatory to the integrity and honor of respondent, the petitioner and his client were held guilty of direct contempt of Court and sentenced to 10 days imprisonment and P200 fine."^[13] Then it was stated that after petitioner was released from prison, an administrative case was filed against respondent Judge.^[14] That led to the ex-parte motion for inhibition where the contemptuous language appeared. It thus appears that because of the deep-seated ill-will that existed between petitioner and respondent Judge - a fact made manifest by their voluminous pleadings - it would be most difficult for respondent Judge to act with restraint and judiciousness. The power to punish for contempt could then be a manifestation of whim, caprice, or arbitrariness, or something analogous to it.^[15] Here, while the words were contumacious, it is hard to resist the conclusion, considering the background of this occurrence that respondent Judge in imposing the ten-day sentence was not duly mindful of the exacting standard that preservation of the dignity of his office not indulging his sense of grievance sets the limits of the authority he is entitled to exercise. It is the view of the Court that under the circumstances the fine imposed should be increased to P500.00.

WHEREFORE, certiorari is granted declaring null and void the ten-day sentence and quashing the warrant of arrest. Respondent Judge, or whoever acts in his stead, is prohibited from enforcing such order. The temporary restraining order is made permanent as regards the imposition of the ten-day imprisonment and the serving of the warrant of arrest. The fine imposed should be increased to P500.00. No costs.

Concepcion, Jr., Guerrero, Abad Santos, Escolin, and Cuevas, JJ., concur.

Aquino, J., concurs and thinks no fine should be imposed. Petitioner already served 10 days' imprisonment due to a prior contempt order of Judge Sebastian. The charges filed by Judge Sebastian was dismissed.

Makasiar, J., did not take part.

[1] Cf. *Entelera v. Amores*, L-41361, March 8, 1976, 70 SCRA 37; *Blancaflor v. Raya*, L-31399, March 17, 1978, 82 SCRA 148; *Calo Jr. v. Tapucar*, L-47244, January 16, 1979, 88 SCRA 78; *Sulit v. Tiangco*, L-35333, July 20, 1982, 115 SCRA 207; *Manalad v. De Vega*, L-59866, February 22, 1983, 120 SCRA 749; *Lipata v. Tutaan*, L-61643, September 29, 1983, 124 SCRA 877; *Repeque v. Aquilizan*, G.R. No. 62979, June 29, 1984.

[2] Petition, Annex A, par. 6.

[3] *Ibid*, par. 10.

[4] *Ibid*, par. 11.

[5] *Ibid*, par. 12.

[6] *Ibid*, par. 14 and Prayer.

[7] Comment, 5-6.

[8] *Ibid*, 6.

[9] *Ibid*, 8.

[10] 53 Phil. 85.

[11] L-35333, July 20, 1982, 115 SCRA 207.

[12] Cf. *Yangson v. Salandanan*, Adm. Case No. 1347, November 12, 1975, 68 SCRA 42.

[13] Comment, 4.

[14] Administrative Case No. 846-CFI, for libel and serious misconduct. After an answer duly filed and an investigation it was dismissed for failure to prove prima facie case.

[15] Cf. *People v. Estenzo*, L-24522, May 29, 1975, 64 SCRA 211, 214.

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