

**VICENTE J. FRANCISCO Y FRANCISCO V. MARASIGAN,
RECURRENTES, CONTRA HONORABLE EDUARDO ENRIQUEZ, JUEZ
DEL JUZGADO DE PRIMERA INSTANCIA DE NEGROS OCCIDENTAL,
RECURRIDO.**

G.R. No. L-7058. March 20, 1954

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DIOKNO, M.:

La cuestion en este recurso ha quedado reducida a la de si el Honorable Juez recurrido incurrio en exceso de jurisdiction al insistir en su orden de que los recurrentes comparezcan personalmente ante el en la ciudad de Bacolod para que expongan las razones por que no se les debe imponer accion disciplinaria por no haber comparecido el dia 15 de septiembre de 1953 para la continuation de la vista de la causa criminal No. 3220 del Juzgado de Primera Instancia de Negros Occidental, intitulado Pueblo contra Lacson y otros, por asesinato.

Los hechos pertinentes, brevemente expuestos, son los siguientes:

1. Los recurrentes, Francisco y Marasigan, eran los abogados del acusado Rafael Lacson. El primero era el abogado principal y el segundo el auxiliar, que en ausencia del primero actuaria y actuo, en efecto, en su lugar. Marasigan era ademas abogado de otro acusado en la causa. El 15 de septiembre de 1953 estaba seiialada la continuation de la vista de la causa criminal, y ninguno de los recurrentes comparecieron, ni enviaron oportuna explication de su ausencia. El acusado Lacson estaba presente, pero se limito a informar que el recurrente Francisco le habfa dicho que el personalmente no asistiria en la vista sino el recurrente Marasigan. Con motivo de la ausencia de ambos abogados, la vista hubo de transferirse para otro dia.

2.º Con vista de esta ausencia inexplicada, el Hon. Juez rocurrido ordeno el arresto de los recurrentes. En el mismo dia el recurrente Francisco dirigio al Juez recurrido el siguiente telegrama, desde Manila:

"Septiembre 15, 1953

Honorable Eduardo Enriquez

Bacolod City

Please suspend order until we have opportunity to explain stop Attorney Marasigan flying to Negros tomorrow

VICENTE FRANCISCO"

A lo que el Hon. Juez recurrido contesto como sigue:

"Bacolod Sep 16-53

Atty. Vicente Francisco

Manila

Re tel order suspended as requested but you are required personally to appear twenty fourth instant to explain why you should not be held in contempt.

JUDGE ENRIQUEZ"

El anterior telegrama fue recibido por el recurrente Francisco cuando el recurrente Marasigan ya habia salido por avion para Bacolod, por la que aquel envio el mismo dia el siguiente telegrama al Hon. Juez recurrido:

"Judge Enriquez

Bacolod City

Received your telegram when Atty. Marasigan had gone already to Negros by plane to submit explanation why he and myself did not attend last hearing Lacson case stop I submit said explanation and motion of withdrawal for your action without hearing stop Request my present be dispensed with on the 24th cannot make trip to Negros during this stormy season due to failing health and doctors advice.

VICENTE FRANCISCO"

3.º El recurrente Marasigan llevo a Bacolod el mismo dia 16 de septiembre de 1953, Hevando consigo la explicacion de la ausencia de ambos recirrrentes en la vista del 15, en forma de un escrito intitulado Ex-parte Urgent motion for reconsideration of Order of Arrest, fechado 15 de septiembre, 1953, firmado por ambos recurrentes, y jurado por Marasigan (Exh. D).

El 17 de septiembre de 1953, el recurrente Marasigan presento el escrito y comparecio ante el Hon. Juez recurrido. Lo que sigue es parte de la transcripcion de las notas taquigraficas de lo que acurrio en esa ocasion:

"Marasigan: I would like to state that I am here to explain for Atty. Francisco and for myself.

* * * * *

"Court: Practically that order has been suspended or practically set aside because of the telegram of Mr. Francisco sent on the fifteenth. There is a telegram sent by Atty. Francisco asking that the order be suspended because you are coming here by plane, but in my reply telegram I advised him that the order was suspended twenty fourth to explain and to show cause why no disciplinary actions should be taken against you. Besides that telegram, I dictated an order requiring Mr. Francisco and you—Mr. Marasigan— to appear on the twenty fourth. Inasmuch as you are here the court is ready to listen to your explanation but that is insofar as you are concerned only. The court still requires Mr. Francisco to appear before this Court, before or on September 24th because I will not accept your explanation for Mr. Francisco. So you choose, do you want to have your explanation on the twenty fourth with Mr. Francisco or do you want to advance your explanation by disregarding your explanation for Mr. Francisco? Because the court wants Mr. Francisco to be present here to explain for himself and no explanation from somebody else will be accepted by this court because I would like to propound some questions to Atty. Francisco.

* * * * *

"Court: I have told you already that I will not accept any explanation from somebody else but from Mr. Francisco himself. He must appear here personally.

* * * * *

"Court: Let us cut short this discussion. I made it clear to you that the court will not accept any explanation for Mr. Francisco by somebody else except by Mr. Francisco only, and there is a standing order requiring him to be here and not thru somebody else.

* * * * *

"Atty. Marasigan: That is it. The court admits that the only purpose in requiring him to come here is to give him an opportunity to explain. Now I am here to explain for him in the meantime.

* * * * *

"Court: I will let it appear on the record that the court is not ready to receive any explanation for Mr. Francisco by somebody else.

* * * * *

"Atty. Marasigan: Not even if it will be an explanation that would justify the failure of Atty. Francisco to appear here?

"Court: I am not concerned with the explanation for Mr. Francisco by somebody else.

* * * * *

"Court: Well, if you believe that it is his right let us wait for Atty. Francisco. If he wants to be here it is okay and if he does not want to come here it is also okay but I know what steps I will take.

* * * * *

"Court: The telegram of Mr. Francisco is as follows: "Please suspend order until we have opportunity to explain stop Atty. Marasigan flying to Negros tomorrow." This was received at 5:45 p. m., September 15, Tuesday. On the following day, yesterday, I answered that telegram. "Re tel order suspended as requested but you are required personally to appear twenty fourth instant to explain why you should not be held in contempt." This is very clear. "Personally." The court wants him to appear personally and not thru another person. Besides that telegram, here is the order of the court signed by me yesterday, which I am quoting: "A petition del abogado Sr. Vicente J. Francisco contenida en su telegrama de ayer, por el presente se suspende aquella parte de la orden de 15 de Septiembre de 1953 en cuanto se ordena el arresto de los abogados Sres. Vicente J. Francisco y Francisco Marasigan, y en su lugar se ordena a ambos abogados para que personalmente comparezcan ante esta Sala el 24 de Septiembre de 1953, a las 9:00 de la manana y expongan las razones por que no se les debe imponer action disciplinaria por no haber comparecido el dia 15 de Septiembre de 1953 para la continuation de la vista de esta causa. Enviense por correo ae'reo y por certificado dopias de esta orden a los referidos abogados. Asi se ordena." The court in open court will offer you a copy of this order and please sign on the original of this order. (To a court personnel who was present there.) Where is a copy of that. You furnish Mr. Marasigan. (To Atty. Marasigan.) Now, if you want to advance your appearance here by virtue of that order you can do so but I will repeat; I won't hear any explanation to be made by you in behalf of Mr. Francisco because the court will stick to its order and will require Mr. Francisco to be here on the 24th." (pp. 3756, 3757, 3758, and 3759, t.s.n.)

"Atty. Marasigan: At any rate I will explain and I ask that court to consider that whatever I explain, I explain it not only in connection with my case but in connection with the case of Atty. Francisco. I explain in the meantime.

"Court: If that is the condition, I will not listen to you—If you will abide by that condition. * * *

"Atty. Marasigan: But I insist * * *

"Court: (Interruption) I don't want to hear, if you insist that you will be heard in behalf of Mr. Francisco. If you want to explain for yourself, all right, but if you want to explain for Mr. Francisco, nothing doing." (pp. 3767-3768, t. s. n.)

"Atty. Marasigan: I have nothing more to say but I will make of record that I am presenting my evidence. This is a question of law." (p. 3768, t. s. n.)

"Court: All right, this is the order of the court. Let the motion for reconsideration filed by Messrs. Francisco and Marasigan be heard on the 24th day of this month September 1953, at 9:00 a. m." (pp. 3763-3769, t. s. n.)

"Court: That is the order of the court. All right hearing closed.

"Atty. Marasigan: All right, Your Honor, I will present evidence in support of the ex-parte urgent motion for reconsideration.

"Court: The order is already issued. (To Court Interpreter)

Next came, that election case. (pp. 3768-3769, t. s. n.)

A.º En cuanto a la condition fisica por entonces del recurrente Francisco, consta que el 1.º de septiembre de 1953, o quince dias antes, el Juzgado estaba enterado que aquel "temia" viajar en avion.

"Court: There are people who are afraid to take the plane as a means of transportation and I am one of them. Mr. Francisco is as old as I am and I want to live longer.

"Court: This is one instance where the non-appearance of Atty. Francisco is justified. Nobody can go against the will of God. This typhoon is the act of God. If anybody says: If he did not take the boat, why not take the plane? But I would have clone the same like him." (p. 3716, t. s. n.)

Tambien consta el hecho en el. telegrama arriba transcrito de fecha 16 de septiembre de 1953. Y no parece ficticio, porque el Dr. Agerico B. M. Sison, Director del Philippine General Hospital, certified bajo juramento—

"* * * that Atty. Vicente J. Francisco is under the medical care of the undersigned and has been advised to avoid sea and air travel because he is extremely susceptible to 'Motion Sickness' which lowers his vitality to such an extent that it provokes Neurocirculatory Asthenia, and may seriously endanger his health."

5.º Habiendo el Hon. Juez recurrido insistido en la comparecencia personal de los recurrentes para el 24 de septiembre que indico, el recurrente Francisco el 23 dirigio el siguiente telegrama al Hon. Juez recurrido:

"Raised question to Supreme Court whether Atty. Marasigan and myself may be compelled to appear personally in hearing September twenty four stop Requesting incident be held in abeyance until after Supreme Court resolves certiorari. Vicente Francisco."

y dicho Juez, el 24 del citado mes, sin haber sido aun notificado del recurso aqui presentado dicto una orden (anexo F) que dice en parte:

"El Juzgado cree que, a menos' que haya una orden de la Corte Suprema ordenando a este tribunal para que se abstenga de seguir ejerciendo sus facultades en este incident, podria hacer caso omiso o ignorar el contenido de este telegrama; sin embargo, para dar todas las oportunidades al Sr. Francisco para poner a prueba la legalidad de la orden de fecha 16 de Septiembre de 1953, el Juzgado resuelve conceder la peticion del Sr. Francisco y dispone transferir la comparecencia de los Sres. Francisco y Marasigan ante este Juzgado a fin de exponer las razones que tuvieron por que no debe ser declarados incurso en desacato, hasta que la Corte Suprema resuelva al remedio de certiorari que segun el Sr. Francisco ha presentado ante dicha Superioridad."

En la misma orden el Hon. Juez recurrido dijo que se abstenia de tomar action alguna en cuanto a la motion de reconsideration de la orden de arresto de los recurrentes "toda vez que dicha orden ya ha sido suspendida"; y en cuanto a la separation de los recurrentes como abogados en la causa criminal conforme a sus mociones de fecha 7 y 18 de septiembre de 1953, autorizo la retirada de los mismos como abogados del acusado Rafael Lacson, y el ultimo ademas como abogado del acusado Jose Valencia. Tambien por dicha orden pospuso la comparecencia personal de los recurrentes hasta que fuese resuelta por esta Corte el presente recurso.

El articulo 3 de la regla 64 de los Reglamentos dice que "after charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel, a person guilty * * * may be punished by contempt." Dice tambien que "nothing in this section shall be so construed as to prevent the court from issuing process to bring the

accused party into court, or from holding him in custody pending such proceedings."

Estando ya presentada la explicacion requerida, y bajo juramento, habiendo ya el recurrente Marasigan comparecido en persona para dar las aclaraciones y presentar las pruebas que se necesiten, para si y para el recurrente Francisco, no habia razon alguna para requerir todavia la comparecencia personal de los recurrentes para el mismo tramite en Bacolod en otra fecha. La explicacion jurada es, con arreglo a nuestros reglamentos, prueba prima facie. (Art. 100, Regla 123.) Caso de falsedad de dicha explicacion escrita en algun detalle material, cabe la acusacion de perjurio. Ademas ambos son miembros del foro y son responsables de toda conducta anti-profesional. El recurrente Marasigan, que lo juro de propio conocimiento, y que era el llamado a asistir en la vista del dia 15 de septiembre de 1953 de la causa criminal, era competente para dar personalmente cualquiera explicacion pertinente de la ausencia de los recurrentes en la vista del dia 15 de septiembre y se habia ofrecido a darla. No consta que se le haya dirigido pregunta alguna sobre la incomparecencia de los recurrentes que el no podia contestar de su propio conocimiento, o que solo el recurrente Francisco podia dar contestation legalmente admisible. La negativa de oir la explicacion de Marasigan solo porque incluia la de Francisco va contra los preceptos de la ley. Es indisputable que el tenia derecho a ser oido en su propia representation, entonces y alli mismo. No habia razon alguna para hacerle volver. Es tambien indisputable que el recurrente Francisco tenia derecho a ser oido "by himself or counsel." (Regla 64, art. 3.) No habia por el momento razon para requerir su presencia personal, dejando a un lado su por entonces delicada salud para hacer viajes. Y este repetidamente declarado que se obra con exceso de jurisdiction cuando se dicta orden sin razon. Se arguye que el exigir la comparecencia personal de los recurrentes el Hon. Juez recurrido estaba autorizado por el ultimo parrafo del articulo 3 de la Regla 64 que provee que el mismo no se interpretara de modo que impida el Juzgado de ordenar que el acusado sea traído del Juzgado o de tenerle detenido durante la pendencia del incidente. Se pueden tambien invocar al mismo efecto los articulos 5 y 8 de la misma regla. Sin embargo, el arresto de los recurrentes esta abandonado y el argumento es por tanto inmaterial. Entonces todo lo que quedaba del incidente era resolverlo.

En virtud de lo expuesto, se concede el recurso. La orden del 24 de septiembre de 1953, en cuanto requiere a los recurrentes que comparezcan ante el Hon. Juez recurrido para un tramite ya hecho, cual es el de explicar la incomparecencia de los mismos en la vista del dia 15 de septiembre de 1953 de la causa criminal No. 3220 del Juzgado de Primera Instancia de Negros Occidental queda anulada. Sin costas.

Paras, Pres., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, y Labrador, MM., estan conformes.

CONCURRING

BAUTISTA ANGELO, J.,:

On September 15, 1953, date set for the continuation of the hearing of the case, Attys. Francisco and Marasigan, who were appearing for the accused, failed to show up, whereupon respondent Judge issued an order for their arrest. Informed of this order, Atty. Francisco sent a wire asking for an opportunity to explain. The order was suspended but Attys. Francisco and Marasigan were required to appear personally on September 24. Atty. Francisco replied by telegram informing the court that he could not appear on the date set due to failing health and doctor's advice, but who submitting his explanation through Atty. Marasigan. Atty. Marasigan in effect appeared on the date set but respondent Judge refused to hear his explanation if it would include that of Atty. Francisco. A portion of the transcript showing what has taken place during the hearing is as follows:

"Court: I have told you already that I will not accept any explanation from somebody else but from Mr. Francisco himself. He must appear here personally.

"Atty. Marasigan: * * * If in a criminal action the accused can waive his presence, why cannot Atty. Francisco waive his presence and allow me, instead in the meantime to explain for him, Your Honor?

"Court: I can tell you that a defendant in a criminal case can waive his presence in certain stage in the proceedings but he cannot waive his presence to be arraigned of this information or charge. He must be present here. He cannot be represented by somebody else.

"Atty. Marasigan: But in this case there is no arraignment, Your Honor.

"Court: Precisely he is required to be here, to be apprised of the charge.

"Atty. Marasigan: In a criminal charge there is an arraignment but in a contempt proceedings, there is none.

"Court: Why not? That is the reason why the court wants him to be present here to be apprised of the charges.

"Atty. Marasigan: But he is apprised already. As a matter of fact there is no arraignment."

The power to punish for contempt is inherent in all courts and is essential to their right of self-preservation.

"The reason for this is that respect for the courts guarantees the stability of their institution. Without such guaranty said institution would be resting on a very shaky foundation." (Salcedo vs. Hernandez, 61 Phil., 724.) This power is recognized by our Rules of Court (Rule 64). Under this rule, contempt is divided into two kinds: (1) direct contempt, that is, one committed in the presence of, or so near, the Judge as to obstruct him in the administration of justice; and (2). constructive contempt, or that which is committed out of the presence of the court, as in refusing to obey its order or lawful process. [Narcida vs. Howen, 22 Phil., 365, 371; Lee Yick Hon vs. Collector of Customs, 41 Phil., 548; Caluag vs. Pecson, 46 Off. Gaz., (2), 614, 82 Phil., 8.]

As a rule, contempt proceeding is initiated by filing a charge in writing with the court. (Section 3, Rule 64.) It has been held however that the court may *motu proprio* require a person to answer why he should not be punished for contemptuous behaviour. Such power is necessary for its own protection against an improper interference with the due administration of justice (In re Quirino, 76 Phil., 630).

The contempt under consideration is a constructive one it having arisen in view of the failure of Atty. Francisco and Marasigan to obey an order of the court, and for such failure respondent Judge ordered them to appear and show cause why they should not be punished for contempt. There was therefore no formal charge filed against them but the action was taken directly by the court upon its own initiative. The question that now arises is: Can the attorneys waive their personal appearance as ordered by the court?

The rule on the matter is not clear (section 3, Rule 61). While on one hand it allows a person charged with contempt to appear by himself or by counsel, on the other, the rule contains the following proviso: "But nothing in this section shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings." Apparently, this is the provision on which respondent Judge is now relying insisting on the personal appearance of Atty. Francisco.

I believe, however, that this power can only be exercised when there are good reasons justifying its exercise. The record discloses none. The reason for the appearance is already well known. The contemptuous charge was clear. The only thing required was for Atty. Francisco to explain his conduct. This he did in his telegram to the court intimating that his failure to appear was due to failing health and doctor's advice, while, on the other hand, he caused Atty. Marasigan to appear for him and elaborate on his explanation. This attitude, in my opinion, is a substantial compliance with the rule and justifies the action taken by Atty. Francisco.

Se concede el recurso.

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