

**LEAH P. ADORIO, PETITIONER, VS. HON. LUCAS P. BERSAMIN,
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 96, QUEZON
CITY, RESPONDENT. PHILIP SEE, INTERVENOR.**

G.R. No. 120074. June 10, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is a special civil action for certiorari which seeks to set aside the Order of Judge Lucas P. Bersamin[1] dated May 5, 1995 insofar as it holds petitioner in direct contempt and sentences her therefor. The dispositive portion of said order reads:

WHEREFORE, the Motion For Inhibition And For Re-raffle Of Cases is hereby granted.

The complainant Philip See y Go and his former private prosecutor, Atty. Leah P. Adorio, of the King & Adorio Law Offices, with address at No. 40 Landargun Street, Quezon City, are hereby found guilty of direct contempt of this Court for disrespect to the Court and its Presiding Judge and are accordingly sentenced to suffer imprisonment of two (2) days in the City Jail of Quezon City and to pay a fine of P200.00 each.

For the pupose of the execution of their sentence, complainant Philip See y Go and Atty. Leah P. Adorio are hereby directed to appear in person before the Court on May 23, 1995 at 10:00 o'clock in the morning.

Pending execution of the sentence, the transmittal of the records to the Honorable Executive Judge, through the Office of the Clerk of Court, for purposes of re-raffle shall be held in abeyance.

SO ORDERED.[2]

Petitioner was counsel for Philip G. See, the private complainant in Criminal Case Nos. Q-94-55933 to Q-94-55957 involving violations of B.P. Blg. 22 pending before the sala of respondent Judge.[3]

Pre-trial in these cases was concluded on January 16, 1995. Upon agreement of the parties, trial on the merits was set on March 8, 15 and 22, all at 8:30 a.m.[4]

Unknown to petitioner, counsel for the accused filed several requests addressed to the Branch Clerk of Court for the issuance of subpoenas duces tecum requiring officials of several banks to bring before the court on March 8, 1995 at 8:30 a.m., microfilm copies of various checks. The subpoenas duces tecum were issued on February 6, 7 and 14, 1995.[5]

On March 8, 1995, which petitioner supposed to be the date of the presentation of the prosecution's evidence, petitioner came to court and was surprised by the presence of the bank officials therein.[6] During the hearing, respondent Judge called for a recess to enable counsel for the accused to confer with the bank officers.[7] When the case was again called, the following arguments took place:

Atty. Adorio:

Before we call our witness, your honor, may I now make of record that I was surprised with the move this morning of all the bank officers, I was not informed about any request for subpoena to the bank officers today. No copy of such request was given to the Private Prosecutor. And I also notice, your honor, that the subpoena or rather no copy issued by this court was ever given to the private prosecutor. Atty. Rivera knows, he had already entered his appearance and he knows my address, why did he not furnish me a copy of his request for subpoena, your honor, considering that I have the right to examine his request, the materiality of his request. I would like also to make of record, your honor, why they keep it as a secret, as a rule, the opposing party must be a party to whatever paper the other party may file, it seems that Atty. Rivera is hiding something from us. Whatever he wants to ask the Court, I am entitled to know.

Atty. Rivera:

I don't think there is a reason or there is a need to be furnished with my request for subpoena, that is the reason why she was not furnished, your honor. Besides, my request for subpoena this morning is not a litigated motion. I made this request for advance in order that, when the defense turn to present evidence, it won't be delayed because of non-availability of these exhibits.

Atty. Adorio:

This is our day of presenting evidence, your honor. This is only my observation, your honor and may I request Atty. Rivera to give us all copies he submits to the Court.

Atty. Rivera:

May I request for particular rule for that....

Atty. Adorio:

Your honor, copies must be given to the opposing counsel, there is a ruling on that your honor....

Atty. Rivera:

This is not a litigated motion your honor.

C o u r t:

What is the problem of Atty. Adorio?

Atty. Adorio:

My only observation, your honor. And may I request Atty. Rivera to give us all copies he submits to the Court.

Atty. Rivera:

May I request for that particular rule for furnishing request for subpoena to the other counsel, your honor...

C o u r t:

What is this rule, will you cite the rule so that we can examine your protest you are insinuating to the Court that there was something here, we don't even know the request for subpoena. If anyone of my staff is.... towards the other side, you call me I can discipline them...

Atty. Adorio:

There was an instance, your honor, when this case was called by the Clerk for arraignment, the Clerk would say that the accused would be coming. And one time, your honor, the Court already issued an Order of arrest, and it was already past 10:00 o'clock in the morning when the accused arrived....[8]

Petitioner was apparently referring to an incident that allegedly occurred on July 13, 1994, the date set for the accused's arraignment. According to petitioner, the accused failed to appear in court on said date even after the third call at around 11:00 a.m. Consequently, the Court ordered the issuance of a warrant of arrest and the confiscation/cancellation of the accused's bail bond. The clerk in charge of the record then went to the door separating the courtroom and the staff's office and whispered to someone in the office. After two minutes, the same clerk again rose from her seat, went back to the door, and announced to the Court that the accused would be late. Respondent Judge replied that the Court will wait for the accused.[9]

However, on March 8, 1995, Philip See allegedly examined the record but found that the incidents which purportedly transpired during the arraignment were not reflected therein.[10]

The above revelations by Atty. Adorio prompted the following response from respondent judge:

C o u r t:

Will you call everybody, all the staff inside.... and you point to me who is that....? If you want me to be disqualified in these cases, you make it in writing. You file your motion to inhibit, I will disqualify myself because I don't want to hear such accusations. Any participation of my staff which I am now parading before you... I don't like that kind of accusation.

Atty. Rivera:

I will join the court.

C o u r t:

O r d e r

As prayed for, the private prosecutor is hereby directed to file a Request for inhibition in writing stating the grounds.

Pending consideration of the Request for Inhibition, hearing is hereby suspended.

So ordered.[11]

Pursuant to said order, petitioner filed a "Motion for Inhibition and for Re-Raffle of Cases" in behalf of her client, alleging that:

The filing of the request for issuance of subpoena duces tecum and the issuance of the subpoena without notice on the private prosecutor were irregular for the following reasons:

[a] The pre-trial of the case had been terminated and the evidence for the prosecution was scheduled to be heard on March 8, 1995. Thus, it was plaintiff's turn to present evidence. Whatever request defendant wanted to make with the court which would affect the right of the plaintiff to present evidence on the date scheduled would therefore be of notice to private prosecutor so that no surprises would result and so that plaintiff could also prepare questions for these bank officers involved and make use of their presence.

[b] The act of the Court in issuing the subpoena for the bank officers to testify on March 8, 1995 upon request of the defendant when it was not yet his turn to present evidence is disruptive of orderly court procedure and shows bias on the part of the court. It shows the control of the accused over the court and court procedure.

[c] This control was also manifest on July 13, 199[4], when accused was scheduled for arraignment, when the latter failed to appear before the court despite the third call at about 11:00 a.m. The Court then issued an Order for the issuance of a warrant of arrest and the confiscation/cancellation of the bail bond. After this Order was given orally in open court, the clerk who took charge of the records went to the door between the sala and the

office and whispered something to someone in the office. After about two minutes, the same clerk again rose from her seat and went back to the door and thereafter, she announced to the Court that the accused would be late and the accused would be arriving. The Court then said that it will wait, if Alvin Tan is coming. It is puzzling how the clerk knew that Alvin Tan would be coming when he was not even present in court. However, none of these facts appeared in the Order or in the Constancia.[12]

Petitioner prayed that (1) the judge inhibit himself from hearing the criminal cases; (2) said cases be re-raffled to another court; and (3) the hearing of said cases be suspended pending the resolution of the Motion for Inhibition.[13]

The trial court granted said motion in an Order dated May 5, 1995. In the same order, declared petitioner and her client, in direct contempt. He explained thus:

The imputation that the Court has come under the control of the accused on account of the issuance of the subpoena duces tecum upon his request but without notice to the complainant or the public prosecutor is most unfair and disrespectful to the Court and is a highly irresponsible accusation on the part of the private complainant and the private prosecutor (who had meanwhile withdrawn from the case). The issuance of a subpoena at a party's instance is not subject to prior or simultaneous notice to the adverse party of the request therefor, for, such notice is not required by the Rules of Court. The grounds for disqualification are unworthy of any consideration. The questioning by the private prosecutor of the issuance of the subpoena is unfounded and due to a misplaced sense of procedural requirements.

x x x

As far as the text and language of the motion are concerned, the Court considers them to be irresponsible and disrespectful, especially the accusation that the Court had come under the control of the accused and had committed an irregularity of procedure. These statements amount to an unmitigatedly disrespectful attitude towards the Court and its Presiding Judge. They also display the dangerous tendencies of a party and counsel who probably think of themselves as beyond reproach. There is therefore no recourse but to find both the complainant and his former private prosecutor guilty of direct contempt.[14]

On May 22, 1995, petitioner filed this special civil action for certiorari with a prayer for a temporary restraining order. This Court, in a Resolution dated June 5, 1995, issued a temporary restraining order enjoining respondent Judge from enforcing the impugned order.

A perusal of the trial court's order reveals that what respondent judge found particularly contemptuous were petitioner's statements in her motion alleging that (1) the issuance of the subpoenas duces tecum was irregular; and (2) the court and court procedure were subject to the "control" of the accused.

Whether or not these statements constitute direct contempt is the issue which confronts this Court.

We rule in the affirmative.

Contrary to petitioner's allegations, there was nothing "irregular" in the issuance of the subpoenas duces tecum. Requests by a party for the issuance of subpoenas do not require notice to other parties to the action. No violation of due process results by such lack of notice since the other parties would have ample opportunity to examine the witnesses and documents subpoenaed once they are presented in court.[15]

Petitioner however argues that:

On March 8, 1995, the prosecution was scheduled to present its first witness, the private complainant, Philip See, after a very long pre-trial period which started sometime in September 1994. The regular [as against the 'irregular'] procedure would have been for the prosecution to proceed with the presentation of evidence

pursuant to Rule 119, Section 3 of the Rules of Court. The prosecution was not, however, able to move along, due to the presence of numerous bank officials from various banks who appeared pursuant to the subpoenas issued to them by the court.

Moreover, the person who requested for the subpoena was the counsel for the accused. The regular or usual procedure would have been for the subpoena to be issued during the pre-trial stage or during the time that the defense is presenting its evidence and not during the time of presentation of evidence by the prosecution as what happened in this case.

We do not find any merit in petitioner's contentions. Rule 119, Section 3 of the Rules of Court which prescribes the order of trial in criminal cases does not preclude the defense from procuring subpoenas duces tecum during the time of the prosecution's presentation of evidence. In this case, counsel for the accused felt that he needed the documents subject of the subpoenas for his cross-examination of the prosecution witnesses. Accordingly, respondent judge called a recess to enable said counsel to secure said documents from the bank officials. The order of trial was not in any way altered; counsel for the accused did not even attempt to call any of the bank officials to the stand. Under these circumstances, the resulting delay cannot be considered unreasonable nor "irregular."

Nor do we find anything "irregular" in the accused's arraignment. As counsel for the accused points out:

xxx the fact that the Presiding Judge issued a warrant of arrest and ordered the cancellation of the accused's bond shows that he gives no special favor to the accused. And it is of common knowledge that orders like that are easily reconsidered/lifted even for excuses like traffic, ill health or failure to remember the hearing. The fact that the Presiding Judge opted to wait for the accused upon information that the latter is coming only shows that he was very aware of the common practice. Waiting saved so much of the court's and parties' time as it did away with the usual motion for reconsideration and the necessity for a resetting.

xxx. Court personnels [sic], practitioners and even judges know, of course that it is not uncommon for litigants, especially those coming for trial late, to call the court's office by phone. It is likewise not uncommon for litigants who follows-up [sic] matters in the office (like bailbonds, [sic], release of rulings, etc.) to get acquainted with – or even become friends of - court clerks, secretaries, typists, stenographers or sheriffs, in the office.

xxx. Besides, if the plaintiff found it necessary to have those matters stated in the Order or placed on record, there were two (2) lawyers (the private and the public prosecutors) who could have stood up and made the proper manifestations or requests. But that incident happened way back 13 July 1994 and it is only now, in their motion of 15 March 1995, that they mention the same in their vain attempt to create an issue on the impartiality and fairness of the Presiding Judge. xxx.[16]

Petitioner's allegation that the proceedings before the trial court were "irregular" therefore lacks basis. Such statement, when read with petitioner's remark that the so-called irregularities "show the accused's control over the court and court procedure," is nothing short of contemptuous.

The latter statement is particularly alarming for it implies that court proceedings are a mere farce, and the court a mere stooge, a marionette subject to the manipulation of the opposing party. It suggests that the judge was moved by considerations other than his sense of justice and fair play thereby calling into question the integrity and independence of the court. Such statement tends to bring the authority and administration of law into disrespect and constitutes a violation of the Code of Professional Responsibility, specifically:

CANON 11 – A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

x x x

Rule 11.03 – A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the courts.

Rule 11.04 – A lawyer shall not attribute to a judge motives not supported by the record or having no materiality to the case.

Consequently, we rule that respondent judge did not commit grave abuse of discretion in declaring petitioner guilty of direct contempt.

However, we find the penalty imposed by respondent Judge upon petitioner too severe. Punishment in contempt cases are meted on a corrective principle to vindicate the authority and dignity of the courts and the administration of justice.[17] Accordingly, we reduce the same to a fine of P200.00.

While petitioner's client, Philip G. See, did not question the contempt order against him -- his motion for intervention and the accompanying motion for issuance of clarificatory order merely questioned the scope of the temporary restraining order issued by this Court -- the reduction of the penalty in favor of his former counsel should likewise benefit him. Under the rules of criminal procedure, the judgment of the appellate court shall affect even those accused who did not appeal insofar as said judgment is favorable and applicable to them.[18] By analogy, this rule should apply in contempt cases. Contempt partakes of the nature of a criminal offense,[19] and the mode of procedure in contempt proceedings is assimilated as far as practicable to those adapted to criminal prosecutions.[20]

WHEREFORE, the Order dated May 5, 1995 issued by respondent judge is MODIFIED in that the penalty of imprisonment for Two (2) Days and a fine of Two Hundred Pesos (P200.00) imposed on petitioner Leah Adorio and intervenor Phillip See is REDUCED to a fine of Two Hundred Pesos (P200.00) only. The Temporary Restraining Order is LIFTED and Criminal Case Nos. Q-94-55933 to Q-94-55957 is ordered re-raffled to another branch of the Regional Trial Court of Quezon City.

SO ORDERED.

Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.

Padilla, (Chairman), J., on Leave.

[1] Presiding Judge of the Quezon City Regional Trial Court, Branch 96.

[2] Rollo, p. 25; italics in the original.

[3] Id., at 2.

[4] Id., at 4.

[5] Id., at 66.

[6] Id., at 4.

[7] Id., at 27.

[8] Id., at 81-84.

[9] Id., at 7.

[10] Ibid.

[11] *Id.*, at 81.

[12] *Id.*, at 28-29.

[13] *Id.*, at 29-30.

[14] *Id.*, at 24-25; italics in the original.

[15] The rule is different, however, when the subpoenas are issued for purposes of deposition. See Rule 23, Sec. 5 in relation to Secs. 15 and 25, Rule 24.

[16] Rollo, p. 75.

[17] In the Matter of Contempt Proceedings against Ventura O. Ducat and Tene Mariano and Cruz Law Offices, G.R. No. 11726, March 13, 1997.

[18] Rule 122, Sec. 11 (a); see *People v. Perez*, G.R. No. 119014, October 15, 1996.

[19] *CMS Investment and Management Corporation v. Intermediate Appellate Court*, 139 SCRA 75 (1985).

[20] *Lee Yick Hon v. Collector of Customs*, 41 Phil. 548 (1921).

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