

IN THE MATTER OF THE CONTEMPT ORDERS AGAINST LT. GEN. JOSE M. CALIMLIM AND ATTYDOMINGO A. DOCTOR, JR.

G.R. No. 141668. August 20, 2008

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review^[1] of the 11 December 1999 and 20 January 2000 Orders of Judge Adoracion Cruz-Avisado (Judge Cruz-Avisado), presiding judge of the Regional Trial Court, Branch 9, Davao City (RTC).

The Facts

Leonardo Pitao (Pitao),^[2] one of the accused in Criminal Case Nos. 16,342-88 pending before the RTC, was arrested by the Military Intelligence Group XI of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) on 2 November 1999 in Tolomo District, Davao City. For security reasons, Pitao was brought to the ISAFP Detention Cell in Camp Aguinaldo, Quezon City.

In the Return of Service of Warrant of Arrest,^[3] Atty. Domingo A. Doctor, Jr. (Atty. Doctor, Jr.), Chief of the Legal Action Unit of the ISAFP, prayed for the issuance of a Commitment Order authorizing Pitao's continued detention at the ISAFP Detention Cell during the pendency and trial of his case before the RTC. The ISAFP, through Atty. Doctor, Jr., promised to be responsible for producing and bringing Pitao before the RTC on every scheduled hearing of his case.

In an Order^[4] dated 4 November 1999, Judge Cruz-Avisado issued the Commitment Order and set Pitao's arraignment on 19 November 1999. Atty. Doctor, Jr. personally received the Order.^[5]

On 19 November 1999, Pitao was not able to attend the arraignment. In an Order dated the same day, Judge Cruz-Avisado required Atty. Doctor, Jr. and Lt. Gen. Jose M. Calimlim (Lt. Gen. Calimlim), Chief of the ISAFP, to explain in writing their failure to appear and bring Pitao before the RTC for his scheduled arraignment.^[6]

In their Compliance^[7] dated 8 December 1999, Atty. Doctor, Jr. and Lt. Gen. Calimlim (petitioners) reiterated that, for security reasons and because of threats on his life, Pitao was brought to the ISAFP Detention Cell in Quezon City, instead of being detained in Davao City. Petitioners explained that on 23 November 1999, they filed before this Court a Petition for Change of Venue^[8] from Davao City to Quezon City. Petitioners added that on 1 December 1999, they filed a Manifestation and Motion^[9] for a deferment of the proceedings before the RTC until the resolution of the Petition for Change of Venue.

In the 11 December 1999 Order, Judge Cruz-Avisado found the explanation of petitioners "highly unsatisfactory." Judge Cruz-Avisado said that petitioners totally disregarded their commitment to bring Pitao to the RTC for his arraignment and showed an "unwarranted display of arrogance and irresponsibility." Judge Cruz-Avisado also noted that petitioners did not sign the Compliance. The 11 December 1999 Order reads:

WHEREFORE, Lt. Gen. Jose Calimlim is hereby ADMONISHED to be more responsible and circumspect in his duties and obligations to the Court. Atty. Domingo A. Doctor is hereby REPRIMANDED for not being candid and for taking lightly his commitment to the Court. He must remember that he is not only a military officer but he is likewise a member of the Integrated Bar of the Philippines with the sworn duty to assist in the administration of justice. As officer of the court, he should not make a mockery of its processes.

Let copies of this order be attached to the personnel records of both Lt. Gen. Jose Calimlim and Atty. Domingo Doctor with the Intelligence Service, Armed Forces of the Philippines.

Let copies of this order be furnished the Secretary of the Department of National Defense and the Chief of Staff of the Armed Forces of the Philippines for their information and appropriate action.

Likewise, furnish the Integrated Bar of the Philippines with [a] copy of this order for its information and appropriate action in so far as Atty. Domingo A. Doctor is concerned.

SO ORDERED.[10]

On 15 December 1999, petitioners filed a motion for reconsideration.

In the 20 January 2000 Order, Judge Cruz-Avisado partly granted the motion for reconsideration. The 20 January 2000 Order provides:

The Court finds that the duly signed verification attached to the Motion for Reconsideration and admission of inadvertence with offer of apology by the movants to the Court constitute sufficient compliance of the Order for Explanation issued by the Court last November 19, 1999.

As a continuing reminder to the two officers however, and in order for them to avoid in the future, any other inadvertent lapse regarding their responsibility to the court, the Court finds the need for the earlier order of ADMONITION and REPRIMAND to stay and form part of their personnel record.

WHEREFORE, the offered apology for the incident last November 19, 1999 is hereby duly noted and the apologies offered are accepted. The Motion for Reconsideration is partly GRANTED such that the Compliance by way of Explanation on their failure to bring the accused to Court last November 19, 1999 is now considered satisfactory. However all other aspects of the December 11, 1999 Order of this Court stands.

The prayer raised in open court by Solicitor San Juan to set aside the ADMONITION and REPRIMAND of Lt. Gen. Calimlim is hereby DENIED for lack of merit. The December 11, 1999 Order and this Order should form part of the personnel record of the two (2) military officers herein.

Let [a] copy of this Order be furnished all those served with the December 11, 1999 Order of this Court.

SO ORDERED.[11]

The Issues

Petitioners raise the following issues:

- Whether petitioners could be burdened with a penalty for indirect contempt other than that provided by the Rules of Court; and
- Whether the order of admonition and reprimand against petitioners should stay despite a declaration that their explanation as to why they should not be cited for contempt was satisfactory and accepted.

The Ruling of the Court

The petition is partly meritorious.

Proper Procedure for Indirect Contempt

In contempt proceedings, the prescribed procedure must be followed.[12] Sections 3[13] and 4,[14] Rule 71 of the Rules of Court provide the procedure to be followed in case of indirect contempt. First, there must be an order requiring the respondent to show cause why he should not be cited for contempt. Second, the respondent must be given the opportunity to comment on the charge against him. Third, there must be a hearing and the court must investigate the charge and consider respondent's answer. Finally, only if found guilty will respondent be punished accordingly.

In this case, Judge Cruz-Avisado failed to observe the proper procedure in the exercise of the power to punish for indirect contempt. First, there can be no indirect contempt absent any prior written charge.[15] In the 19 November 1999 Order, Judge Cruz-Avisado only ordered petitioners to explain their failure to bring Pitao before the RTC for his scheduled arraignment.[16] The 19 November 1999 Order did not yet amount to a show-cause order directing petitioners to explain why they should not be cited for indirect contempt. Absent an order specifically requiring petitioners to show cause why they should not be punished for contempt, Judge Cruz-Avisado had no authority to punish petitioners.

Second, if the answer to the contempt charge is satisfactory, the contempt proceedings end.[17] Even if we consider the 19 November 1999 Order sufficient to charge petitioners with indirect contempt, petitioners still could not be punished for contempt because Judge Cruz-Avisado found petitioners' explanation satisfactory. Only in cases of clear and contumacious refusal to obey should the power to punish for contempt be exercised.[18] Absent any finding that petitioners contumaciously refused to comply with the orders of the RTC, Judge Cruz-Avisado had no reason to punish petitioners for indirect contempt.

Lastly, there must be a hearing conducted on the contempt charge. In this case, no hearing was ever conducted. After receiving petitioners' Compliance, Judge Cruz-Avisado immediately issued the 11 December 1999 Order. Petitioners were not afforded full and real opportunity to be heard. Since a contempt charge partakes of the nature of a criminal prosecution and follows the proceedings similar to criminal prosecution,[19] judges must extend to the alleged contemner the same rights accorded to an accused.[20] Judge Cruz-Avisado should have given petitioners their day in court and considered the testimony and evidence petitioners might offer.

Proper Penalty for Indirect Contempt

Section 7, Rule 71 of the Rules of Court provides the penalty for indirect contempt. Section 7 of Rule 71 reads:

SEC. 7. Punishment for indirect contempt. - If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. x x x

Indeed, the Rules do not provide that reprimand and admonition may be imposed on one found guilty of indirect contempt.

However, in *Racines v. Judge Morillos*,[21] the Court, after finding Jaime Racines (Racines) guilty of indirect contempt, merely reprimanded Racines because "he is not learned in the intricacies of law." Therefore, the courts may impose a penalty less than what is provided under the Rules if the circumstances merit such.

In this case, if petitioners were found guilty of indirect contempt, Judge Cruz-Avisado may penalize them with reprimand. However, since the proper procedure for indirect contempt was not followed, Judge Cruz-Avisado's Orders to reprimand Atty. Doctor, Jr. had no legal basis.

On the other hand, admonition is not a penalty but merely a warning.[22] Judge Cruz-Avisado may admonish Lt.

Gen. Calimlim for the failure to comply with the RTC's 4 November 1999 Order. Judge Cruz-Avisado may make such admonition even in the absence of contempt proceedings.

Judges are reminded that the power to punish for contempt should be used sparingly and only in cases of clear and contumacious refusal to obey should the power be exercised.[23] The power to punish for contempt must also be used with due regard to the provisions of the law and the constitutional rights of the individual.[24]

WHEREFORE, we GRANT in part the petition. We SET ASIDE the 11 December 1999 and 20 January 2000 Orders of Judge Adoracion Cruz-Avisado reprimanding Atty. Domingo A. Doctor, Jr.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Leonardo-De Castro, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Also known as "Commander Parago" and "Commander Farago," Commanding Officer of the Main Regional Guerilla Unit 3 of the New People's Army.

[3] Records, p. 108.

[4] Id. at 111.

[5] Id.

[6] Rollo, pp. 51-52.

[7] Id. at 53-55.

[8] Id. at 45-50.

[9] Id. at 56-57.

[10] Id. at 31-32.

[11] Id. at 35-36.

[12] Nazareno v. Barnes, G.R. No. L-59072, 25 April 1984, 136 SCRA 57.

[13] Section 3, Rule 71 of the Rules of Court provides:

SEC. 3. - Indirect contempt to be punished after charge and hearing. - After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt: x x x

[14] Section 4, Rule 71 of the Rules of Court provides:

SEC. 4. How proceedings commenced. - Proceedings for indirect contempt may be initiated motu proprio by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

[15] Felizmeña v. Galano, 216 Phil. 158 (1984).

[16] The 19 November 1999 Order stated that "Pros. Serafica J. Weis moved that both Atty. Domingo A. Doctor,

Jr. and Lt. Gen. Jose M. Calimlim be ordered to explain in writing why they should not be cited for contempt for failure to abide with the Order of this Court dated November 4, 1999."

[17] Paredes-Garcia v. Court of Appeals, G.R. No. 120654, 11 September 1996, 261 SCRA 693.

[18] Gamboa v. Teodoro, 91 Phil. 270 (1952).

[19] Santiago v. Anunciacion, Jr., G.R. No. 89318, 3 April 1990, 184 SCRA 118.

[20] Soriano v. Court of Appeals, G.R. No. 128938, 4 June 2004, 431 SCRA 1.

[21] A.M. MTJ-08-1698, 3 March 2008.

[22] Tobias v. Veloso, 188 Phil. 267 (1980).

[23] Pacuribot v. Judge Lim, 341 Phil. 544 (1997).

[24] Paredes-Garcia v. Court of Appeals, supra note 17.++

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