

ATTY. RODRIGO MATUTINA, PETITIONER, VS. JUDGE TEOFILO B. BUSLON AND THE PROVINCIAL SHERIFF, SURIGAO, SURIGAO, RESPONDENTS.

G.R. No. 14637. August 24, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

In Civil Case No. 384 of the Court of First Instance of Surigao, respondent judge issued an order, dated October 31, 1958, requiring petitioner Matutina to appear before the Court on November 5, 1958, at 8:00 o'clock in the morning,

"to show cause why he should not be declared in contempt of court for employing words derogatory to the dignity of the Court in his pleading dated October 30, 1958."

On November 5, 1958, in response to the above order, petitioner filed a "Manifestation" of the following tenor—

"The undersigned counsel, having been ordered to show cause why he should not be punished for contempt for using, in his pleading dated October 30, 1958, language derogatory to the dignity of the Court, respectfully manifests:

- That the undersigned would like to be informed what particular words, phrases or portions of his pleading dated October 30, 1958 are considered language derogatory to the dignity of the court, in order for him to intelligently put up his defense;

- That the undersigned counsel, after he shall have been informed what constitutes derogatory language in said pleading, would like to request for three (3) days within which to submit his defense or explanation."

Surigao, Surigao, November 5, 1958.

On the same day (November 5), the respondent judge, without the attendance of petitioner, issued an order for the latter's arrest. The Provincial Sheriff, thru a deputy, went to the house of Matutina to effect the arrest, but this did not materialize as Matutina was bed-ridden with influenza at the time. The respondent judge then verbally suspended petitioner's arrest until further orders.

The order of arrest issued on November 5, 1958 has not been attached to the records, despite an express reservation made by Matutina in his petition to submit the same to this Court later. Nevertheless, this is not essential, since there seems to be no issue as to its substantial contents.

Petitioner prays for a judgment (a) annulling the order of arrest; (b) commanding respondent judge to specify the words employed by petitioner in his pleading of October 30, 1958, which said respondent considers derogatory to the dignity of the court; (d) granting the injunction; (e) awarding damages and costs; and (f) for other general relief.

We are of the opinion that, under the circumstances obtaining here, the order of arrest issued by respondent judge

was not justified. Petitioner had asked that he be informed as to the portions of his pleading dated October 30, 1958 which were supposedly derogatory to the dignity of the court, and for a period of three days thereafter to file his answer. Because of the length of the pleading, and because the expressions used therein were not blatantly offensive, since the petitioner's description of the Court's action as "vague, uncalled for and unjust" amounted to no more than saying that the order was erroneous and unjustified, it is really probable that petitioner was not sure, and, although he might have an inkling, he wanted to have something more definite than conjecture on which to base his contemplated explanation or answer. Until his motion was considered and passed upon and petitioner notified, the order of arrest was not warranted. Contempt of court presupposes a contumacious attitude, a flouting or arrogant belligerence, a defiance of the court; and it is not evident in this case.

The fact that petitioner was not present in the morning session of November 5, 1958, did not make his actions contemptuous. As it turned out, Matutina was sick with "influenza", which was precisely why his arrest was postponed.

It is, however, urged that since no motion for reconsideration was filed in the court below, this petition should be denied. While as a matter of policy, a motion for reconsideration has, in many instances, been considered necessary before applying for a writ of certiorari, this rule was never intended to be applied without considering the circumstances. In view of the urgency of petitioner's predicament, arising from the order of arrest which was only temporarily suspended until his recovery, and because the uncompromising attitude of respondent judge rendered improbable the granting of relief, this case should not be included within the purview of the rule requiring a previous motion for reconsideration.

Wherefore, the order of arrest issued on November 5, 1958 is hereby set aside. No pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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