

**RAMON D. MONTENEGRO, PETITIONER, VS. MA. TERESA L. MONTENEGRO, FOR HERSELF AND AS THE MOTHER AND NATURAL GUARDIAN OF THE MINORS, ANTONIO AMELO AND ANA MARIA PIA ISABEL, BOTH SUR...**

*G.R. No. 156829. June 08, 2004*

Ponente: DAVIDE JR., CJ.

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**DAVIDE JR., CJ.:**

In this petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Ramon D. Montenegro seeks the reversal of the 8 November 2002 Order[1] in Civil Case No. 94-8467 of the Regional Trial Court, Branch 41, Bacolod City, holding him guilty of indirect contempt for his repeated failure to appear at the scheduled hearings for his examination as judgment obligor and imposing on him the penalty of three (3) months imprisonment and a fine of twenty thousand pesos (P20,000), and of the subsequent 3 January 2003 Order[2] denying his motion for the reconsideration of the 8 November 2002 Order.

On 14 June 1994, respondent Ma. Teresa V. Lizares-Montenegro (hereinafter, respondent Teresa), for herself and as mother and guardian of her two minor children Antonio Amelo and Ana Maria Pia Isabel, filed with the trial court below a complaint for support against her husband, herein petitioner Ramon D. Montenegro. The case was docketed as Civil Case No. 94-8467. Four years after the filing of the complaint, petitioner and respondent Teresa executed a compromise agreement which was submitted to the trial court for approval on 13 October 1998. On the same date, the trial court rendered a Decision approving the compromise agreement and ordering the parties to comply with it. The parties did not appeal from the Decision; hence, it became final and executory.

Under the terms of the compromise agreement, petitioner obligated himself to:

(1)

Pay the respondent the amount of One Million Pesos (P1,000,000) representing her entire share in their conjugal partnership of gains, Five Hundred Thousand (P500,000) of which is payable upon signing of the compromise agreement while the remaining balance of Five Hundred Thousand (P500,000) must be paid within one (1) year from the execution of the compromise agreement.

(2)

Establish a trust fund in the amount of Three Million Pesos (P3,000,000) in favor of his children Antonio Amelo and Ana Maria Pia Isabel within sixty (60) days from the approval of the compromise agreement.

(3)

Obtain an educational plan or an investment plan to cover tuition and other matriculation fees for the college education of Ana Maria Pia Isabel within one (1) year from the approval of the compromise agreement.

Since petitioner failed to comply with his obligations under the compromise agreement despite the lapse of the periods provided therein, respondent Teresa filed a motion for the execution of the judgment. The trial court granted the motion and issued a writ of execution on 15 February 1999.

A second writ of execution and a notice of garnishment, issued by the trial court on 21 May 2001 and on 28 May 2001, respectively, were returned unsatisfied.

In several conferences[3] called by the trial court, petitioner admitted his failure to comply with his obligations under the compromise agreement but alleged that he was no longer in a position to do so as he was already insolvent. In the conference held on 6 March 2002, respondent Teresa manifested that she would file a motion for examination of petitioner as judgment obligor. The trial court gave her 30 days within which to file the appropriate motion and informed petitioner that he would have 30 days to file a comment or reply to the motion.

On 14 March 2002, respondent Teresa filed a motion to examine petitioner as judgment obligor under Sections 36 and 38 of Rule 39 of the Rules of Court. In her motion, she alleged that there is an urgency for the examination to be conducted at the earliest time since petitioner was about to migrate to Canada. Acting on the said motion, the trial court issued on 19 March 2002 an Order granting the motion for examination of petitioner as judgment obligor and setting his examination on 22 March 2002. On the same day the motion for examination was granted, petitioner filed with the court a Manifestation alleging that the grant of the motion for examination was premature because he still would have 30 days from receipt of the motion, or until April 14, 2002, within which to file a comment or opposition thereto as agreed upon during the conference on 6 March 2002.

On 22 March 2002, neither petitioner nor his counsel appeared for the scheduled hearing. On that date, the trial court issued an order re-scheduling the hearing to 10 April 2002 and requiring the petitioner to explain why he should not be held in contempt of court for disobeying the 19 March 2002 Order.

On 26 March 2002, petitioner filed a Compliance with Motion to Re-schedule Proceedings. He explained that he did not attend the 22 March 2002 hearing because he was under the impression that he still had 30 days from the filing of the motion to examine him as judgment obligor within which to respond to the motion; besides, his counsel was not available on 22 March 2002 due to previously scheduled hearings.

At the hearing on 4 April 2002 of the Compliance with Motion to Re-schedule Proceedings, counsel for petitioner manifested that his client already left for Canada on 26 March 2002 and will be unable to attend the 10 April 2002 hearing, and that petitioner would be available for examination on the last week of July or first week of August 2002. Counsel prayed that the hearing be thus reset accordingly. The trial court denied the motion and informed the parties that the hearing scheduled on 10 April 2002 will proceed as scheduled.

On 5 April 2002, petitioner filed a manifestation reiterating that he would be unable to attend the 10 April 2002 hearing because he was already in Canada. Counsel for petitioner likewise manifested that he would also be unavailable on the said date because he would be in Manila to attend to his other cases.

On 17 June 2002, the trial court issued an Order directing the petitioner to show cause why he should not be held in contempt of court for failure to appear on the 10 April 2002 hearing for his examination as judgment obligor. In his Compliance and Explanation filed on 28 June 2002, petitioner alleged that he was unable to attend the 10 April 2002 hearing because he was in Canada and had no intention to abscond from his obligation.

On 13 June 2002, the trial court issued an Order setting the case for the examination of the petitioner on 3 July 2002. A subpoena was issued against the petitioner and served at his address of record. Respondent Teresa also

caused the service of the subpoena at 8051 Estrella Avenue, San Antonio Village, Makati City where petitioner is allegedly residing.

The 3 July 2002 hearing did not push through as the petitioner filed a Motion to Quash Subpoena Ad Testificandum[4] on 28 June 2002. In the motion, petitioner admitted that 8051 Estrella Avenue, San Antonio Village, Makati City, is his present address but alleged that Makati City is more than 100 kilometers away from Bacolod City; thus, he may not be compelled by subpoena to attend the 3 July 2002 hearing in Bacolod City. In this motion, petitioner did not allege that he was still in Canada.

In its Order of 2 September 2002, the trial court denied the Motion to Quash Subpoena Ad Testificandum, but re-scheduled the hearing to 23 October 2002. On 22 October 2002, the day before the scheduled hearing, petitioner filed a manifestation informing the trial court that he was still in Canada and would not be able to attend the 23 October 2002 hearing; however, he would be in Manila on the first week of December 2002. He moved that the hearing be re-scheduled on 9 December 2002. The manifestation, however, did not contain a notice of hearing.

On 23 October 2002, petitioner did not appear at the scheduled hearing, prompting the trial court to issue an order citing him in contempt of court.

In its Order of 8 November 2002, the trial court declared petitioner in contempt of court under Section 38 of Rule 39 of the Rules of Court[5] and imposed on him the penalty of imprisonment for three months and ordered him to pay a fine of P20,000. His motion for reconsideration of the Order having been denied by the trial court in its Order of 3 January 2003, petitioner filed the petition in the case at bar.

The petition raises pure questions of law. After the issues were joined, we resolved to give due course to the petition.

Having raised only questions of law, petitioner is bound by the trial court's findings of fact.

The core issue to be determined is whether, based on the facts found by the trial court, the latter erred in holding the petitioner guilty of indirect contempt for willfully disobeying the orders of the trial court requiring him to appear for examination as a judgment obligor at the hearings scheduled on 22 March 2002, 10 April 2002, and 23 October 2002.

We rule in the negative.

The totality of petitioner's acts clearly indicated a deliberate and unjustified refusal to be examined as a judgment obligor at the time the examination was scheduled for hearing by the trial court. His acts tended to degrade the authority and respect for court processes and impaired the judiciary's duty to deliver and administer justice. Petitioner tried to impose his will on the trial court.

Contempt of court involves the doing of an act, or the failure to do an act, in such a manner as to create an affront to the court and the sovereign dignity with which it is clothed.[6] It is defined as "disobedience to the court by acting in opposition to its authority, justice and dignity." [7] The power to punish contempt is inherent in all courts, because it is essential to the preservation of order in judicial proceedings, and to the enforcement of judgments, orders and mandates of the courts; and, consequently, to the due administration of justice.[8]

The Rules of Court penalizes two types of contempt, namely, direct contempt and indirect contempt. Direct contempt is committed in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, and includes disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so.[9]

On the other hand, Section 3 of Rule 71 of the Rules of Court enumerates particular acts which constitute indirect contempt, thus:

(a)

Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b)

Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c)

Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;

(d)

Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e)

Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f)

Failure to obey a subpoena duly served;

(g)

The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

In relation to the foregoing, Section 38 of Rule 39 of the Rules of Court also provides that “a party or other person may be compelled, by an order or subpoena, to attend before the court or commissioner to testify as provided in the two preceding sections, and upon failure to obey such order or subpoena or to be sworn, or to answer as a witness or to subscribe his deposition, may be punished for contempt as in other cases.” This provision relates specifically to Section 3(b) of Rule 71 of the Rules of Court.

Indirect contempt may either be initiated (1) *motu proprio* by the court by issuing an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt or (2) by the filing of

a verified petition, complying with the requirements for filing initiatory pleadings.[10] In the present case, the trial court initiated the proceedings for indirect contempt by issuing two orders[11] directing the petitioner to show cause why he should not be punished for indirect contempt.

Contempt, whether direct or indirect, may be civil or criminal depending on the nature and effect of the contemptuous act. Criminal contempt is “conduct directed against the authority and dignity of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect.”[12] On the other hand, civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein and is therefore, an offense against the party in whose behalf the violated order was made.[13] If the purpose is to punish, then it is criminal in nature; but if to compensate, then it is civil.[14]

In the present case, the contemptuous act was the petitioner’s refusal to attend a hearing for his examination as judgment obligor, upon motion by the respondent Teresa. It must be pointed out that the purpose of Section 36 of Rule 39 is to provide the judgment obligee a remedy in case where the judgment obligor continues to fail to comply with its obligation under the judgment. Petitioner’s refusal to be examined, without justifiable reason, constituted indirect contempt which is civil in nature.

Petitioner’s deliberate willfulness and even malice in disobeying the orders of the trial court are clearly shown in the pleadings he himself had filed before the trial court.

In his Manifestation of 19 March 2002 petitioner insisted on his right to file a reply or comment on the Motion to Examine Defendant as Judgment Obligor until 14 April 2002 solely on the basis of the purported agreement at the conference on 6 March 2002. Petitioner merely brushed aside the Order of the trial court requiring him to appear on 22 March 2002 for the hearing by not appearing in court. Petitioner cannot simply assume that his manifestation would suffice for the trial court to re-schedule the 22 March 2002 hearing. That portion of the manifestation filed by petitioner on 19 March 2002, which reads:

3. In the meantime, we have no other option but to cancel the setting on March 22, 2002 until Respondent shall have submitted his Reply/Comment and the issue is finally laid to rest by the issuance of a final Order for that purpose.

demonstrates beyond doubt arrogance, haughtiness and disrespect. While petitioner apparently disagrees with the 19 March 2002 Order of the trial court, he did not file a motion for its reconsideration. Neither did he file a motion to reset the scheduled hearing on 22 March 2002. We have ruled that a motion for continuance or postponement is not a matter of right but is addressed to the sound discretion of the court.[15] Petitioner sought to deprive the trial court of the discretion; he took it upon himself to cancel or to order the court to cancel the 22 March 2002 scheduled hearing.

Petitioner makes a belated claim in the present petition that his failure to attend the 22 March 2002 hearing was due to the fact that he was already on his way to Manila on 22 March 2002 in preparation for his 26 March 2002 trip to Canada. However, such explanation was not stated in the 19 March 2002 Manifestation and 5 April 2002 Compliance and Motion to Re-schedule Proceedings. The explanation is either a delayed afterthought or an unguarded confession of a deliberate plan to delay or even avoid his examination as a judgment obligor.

Neither can petitioner rely on the alleged irregularity in the trial court’s grant of the motion to examine him as judgment obligor before he was able to file a reply or comment. Section 36 of Rule 39 of the Rules of Court allows, as a matter of right, the plaintiff who is a judgment obligee to examine the defendant as judgment obligor, at any time after the return of the writ of execution is made. Section 36 reads as follows:

Sec. 36. Examination of judgment obligor when judgment unsatisfied. — When the return of a writ of execution issued against property of a judgment obligor, or any one of several obligors in the same judgment, shows that the judgment remains unsatisfied, in whole or in part, the judgment obligee, at any time after such return is made, shall be entitled to an order from the court which rendered the said judgment, requiring such judgment obligor to appear and be examined concerning his property and income before such court or before a commissioner appointed by it, at a specified time and place; and proceedings may thereupon be had for the application of the property and income of the judgment obligor towards the satisfaction of the judgment. But no judgment obligor shall be so required to appear before a court or commissioner outside the province or city in which such obligor resides or is found. (Emphasis supplied)

Thus, the trial court committed no abuse of discretion in scheduling the examination of petitioner on 22 March 2002. On the contrary, it acted with utmost judiciousness to avoid a miscarriage of justice because petitioner was reported to be about to leave for Canada, a fact which petitioner did not refute in his Manifestation of 19 March 2002.

It is noteworthy that while petitioner insisted that he still had until 14 April 2002 to file a reply or comment on the motion for examination, he also manifested through counsel on 5 April 2002 that he already left for Canada on 26 March 2002 and will not be back until the last week of July or the first week of August 2002. It is obvious then that petitioner wanted to gain time to avoid being examined.

With respect to the 10 April 2002 hearing, it is established that petitioner was already in Canada at the time of the scheduled hearing. Nonetheless, it must be stressed that the re-scheduling of the hearing to 10 April 2002 was brought about by his unjustifiable failure to attend the 22 March 2002 hearing.

Subsequently, despite petitioner's 19 March 2002 and 5 April 2002 manifestations that he would return to the Philippines sometime during the last week of July or first week of August 2002, petitioner did not attend the 23 October 2002 hearing. Again, instead of filing a motion to reset the hearing, petitioner filed a manifestation the day before the scheduled hearing, informing the court that he will be unable to attend the hearing and suggesting the hearing to be reset to 9 December 2002. Such manifestation to re-schedule the 23 October 2002 hearing was, for all intents and purposes, a motion to postpone the hearing, but the pleading did not contain a notice of hearing.

It is of no moment that petitioner was eventually examined as judgment obligor on 17 December 2002, nine months after the original setting. His subsequent appearance at the hearing did not wipe out his contemptuous conduct.

We shall now take up the penalties imposed by the trial court.

Under Section 7 of Rule 71 of the Rules of Court, a person found guilty of contempt of court against a Regional Trial Court may be punished with a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. The penalties of imprisonment for three months and a fine of twenty thousand pesos are within the allowable penalties the trial court may impose. However, the penalties of imprisonment and fine may be imposed one at a time, or together.

In the present case, the nature of the contemptuous acts committed are civil in nature. Section 7 of Rule 71 of the Rules of Court provides for indefinite incarceration in civil contempt proceedings to compel a party to comply with the order of the court. This may be resorted to where the attendant circumstances are such that the non-compliance with the court order is an utter disregard of the authority of the court which has then no other recourse but to use its coercive power.<sup>[16]</sup> It has been held that "when a person or party is legally and validly required by a court to appear before it for a certain purpose, when that requirement is disobeyed, the only remedy left for the court is to use force to bring such person or party before it."<sup>[17]</sup>

The reason for indefinite incarceration in civil contempt proceedings, in proper cases, is that it is remedial, preservative, or coercive in nature. The punishment is imposed for the benefit of a complainant or a party to a suit who has been injured. Its object is to compel performance of the orders or decrees of the court, which the contemnor refuses to obey although able to do so.[18] In effect, it is within the power of the person adjudged guilty of contempt to set himself free.

In the present case, however, the act which the trial court ordered the petitioner to do has already been performed, albeit belatedly and not without delay for an unreasonable length of time. As such, the penalty of imprisonment may no longer be imposed despite the fact that its non-implementation was due to petitioner's absence in the Philippines.

We are not unmindful of the nature of the judgment from which the present controversy arose. Six years have elapsed from the time the compromise agreement for the support of the children of petitioner and respondent was executed. We take judicial notice of the amount of expenses which a travel outside the country, particularly to Canada, entails, much more so when the person traveling to Canada is trying to establish himself in the said country as an immigrant. Petitioner's claim for insolvency is negated by his frequent travels to Canada. We thus exhort the parties, specifically the petitioner, to resort to all reasonable means to fully satisfy the judgment for support based on the compromise agreement, for the paramount interests of their minor children.

WHEREFORE, the petition is hereby **PARTIALLY GRANTED**. The 8 November 2002 Order of the Regional Trial Court, Branch 41, Bacolod City in Civil Case No. 94-8467 is modified. As modified, the penalty of imprisonment is deleted therefrom, while the penalty of fine of P20,000 is affirmed.

No costs.

**SO ORDERED.**

Panganiban, Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

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[1] Rollo, 56-70. Per Judge Ray Alan T. Drilon.

[2] Rollo, 71-72.

[3] Conferences were held on 13 September 2001, 30 January 2002, and 6 March 2002.

[4] Rollo, 121-122.

[5] Sec. 38. Enforcement of attendance and conduct of examination. — A party or other person may be compelled, by an order or subpoena, to attend before the court or commissioner to testify as provided in the two preceding sections, and upon failure to obey such order or subpoena or to be sworn, or to answer as a witness or to subscribe his deposition, may be punished for contempt as in other cases. Examinations shall not be unduly prolonged, but the proceedings may be adjourned from time to time, until they are completed. If the examination is before a commissioner, he must take it in writing and certify it to the court. All examinations and answers before a court or commissioner must be under oath, and when a corporation or other juridical entity answers, it must be on the oath of an authorized officer or agent thereof.

[6] *Antonio San Luis v. Court of Appeals*, 417 Phil. 598, 606 (September 13, 2001).

[7] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, G.R. Nos. 147589 and 147613, February 18, 2003.

[8] Ibid.

[9] Section 1, Rule 71, Rules of Court.

[10] Section 4, Rule 71, Rules of Court.

[11] 22 March 2002 and 17 June 2002 Orders.

[12] *People v. Godoy*, 312 Phil. 977, 999 (March 29, 1995).

[13] Ibid.

[14] *Supra* note 7.

[15] *Pepsi Cola Products Phils., Inc. v. Court of Appeals*, 359 Phil. 858, 867 (December 2, 1998).

[16] *Quinio v. Court of Appeals*, 390 Phil. 852, 860 (July 13, 2000).

[17] *Ledesma v. Enriquez*, 84 Phil. 483, 489 (August 30, 1949).

[18] *Supra* note 16.

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