

**ATTY. ERNESTO P. TABAO AND HEIRS OF CANDIDA CANOZA,
PETITIONERS, VS. HON. JUDGE EUSTAQUIO GACOTT, JR. AND
SPOUSES LUCY DEMAALA AND CLARITO DEMAALA, JR.,
RESPONDENTS.**

G.R. NO. 170720. November 30, 2006

Ponente: CALLEJO. SR., J.

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CALLEJO. SR., J.:

Before the Court is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 45013 dated September 16, 2005 and Resolution dated December 2, 2005 denying the motion for reconsideration of the said decision.

The antecedents are as follows:

On July 30, 1996, Clarito Demaala, Jr., the incumbent mayor of Narra, Palawan, and his wife Lucy Demaala filed a complaint for sum of money with prayer for the issuance of writ of preliminary attachment[2] against the heirs of Candida Canozza before the Regional Trial Court (RTC) of Palawan and Puerto Princesa City. The complaint prayed for the following:

a)

Pending the hearing of this case, a writ of preliminary attachment be issued against the properties of the deceased Candida Canozza which were the subject of Extra-judicial Settlement of Estate attached hereto in order [to] serve as security for the satisfaction of any judgment that may be recovered herein;

b)

After notice and hearing, judgment be rendered in favor of the Plaintiff and against the Defendants ordering Defendants, jointly and severally, to pay Plaintiff the following sum, to wit:

a)

P994,000.00 representing the face value of the checks issued by Candida Canozza in favor of Plaintiffs plus legal rate of interests from the date the checks matured

b)

P248,500.00 by way of attorney's fees

c)

P20,000.00 by way of litigation expense

d)

P100,000.00 by way of moral damages

e)

P50,000.00 by way of exemplary damages

c)

For such other reliefs and remedies which are just and equitable under the premises.[3]

The case was docketed as Civil Case No. 2921 and was raffled to Branch 47 presided by Judge Eustaquio Z. Gacott, Jr.

On December 4, 1996, the RTC issued a Writ of Preliminary Attachment.[4] Upon a motion filed by the heirs of Candida, it issued an Order dated January 10, 1997 for the discharge of the writ after the approval of the counterbond in the amount of P1,500,000.00.[5]

On July 14, 1997, the heirs of Candida, through their counsel, petitioner Atty. Ernesto P. Tabao, filed a Motion[6] seeking the inhibition of respondent Judge from proceeding with the trial of the case. The Motion to Inhibit reads as follows:

Defendants, through the undersigned counsel, respectfully moves the Honorable Judge of this Court to inhibit from the trial of the above-entitled case on the ground that the non-partiality of this Honorable Court has been put to question by acts perpetrated by herein plaintiffs, which has been believed to be true by herein defendants and avers:

- That herein plaintiffs have been heard to brag about their close ties with the Honorable Judge of this Court, hence, creating the impression that he can get any order or decision that he wants, without any sweat;

- That as proof of such words, the plaintiff has been claiming that despite the fact that the subject matter of this case did not even reach one million pesos, he managed to get an order of attachment on the whole estate, with an estimated amount of several millions of pesos, far exceeding their claim thereon;

- That despite the fact that the whole of the estate is under attachment, he managed to isolate some respondents to be declared in contempt of court for violation of the standing order, while freeing some for the same liability, as if the Court can only see what the plaintiffs want it to see;

- That such actions of this Honorable Court has been alleged to have been realized due to some promise of consideration that would be taken from the amount that may be elicited from herein defendants in anticipation of the promised victory in this case;

- That most, if not all, cases of the plaintiffs has been deliberately raffled to be assigned to the Honorable Judge of this Court and that most, if not all of them, has been victorious due to a strong bond existing between Mayor Demaala and the Honorable Judge of this Court;

- That such ties has been heard to have originated from their common sponsor to their respective positions which has been known to be the former Speaker of the House of Representatives, Ramon Mitra;

- That although the undersigned counsel is not in the position to lend credence to such allusions against the integrity of this Honorable Court which is presumed to be immaculate, this representation is constrained to ask for this inhibition so as not to destroy the image and integrity of this tribunal, which in the minds of herein defendants has been put to question by the foregoing circumstances;

- That this motion is being made so as to eradicate existing notion of the defendants that they are bound to lose this case, even before it begins;[7]

On July 14, 1997, the motion to inhibit was heard, during which petitioner Tabao was made to explain why he

should not be held in contempt of court for the statements he made therein. His explanation, however, did not satisfy respondent Judge; thus, on the same day, the latter issued an Order[8] declaring petitioner Tabao guilty of contempt of court. Respondent judge asserted that petitioner's statements are false, baseless and malicious, degraded his person and the court, and undermined the faith of the people in the administration of justice. The dispositive portion of the Order reads:

WHEREFORE, in view of all the foregoing facts and considerations, the Court hereby finds the herein Counsel of the defendants, ATTY. ERNESTO P. TABAO guilty of contempt of court for the clearly unfounded, baseless and offensive statements stated in the Motion to Inhibit he filed as heard this morning and accordingly he is ordered to pay a fine of TEN THOUSAND PESOS (P10,000.00), Philippine Currency, to be paid immediately to the Clerk of Court with subsidiary imprisonment in case of insolvency and to suffer an imprisonment of FIFTEEN (15) DAYS.

IT IS SO ORDERED.[9]

Petitioner Tabao filed a petition for certiorari with the CA assailing the said order of inhibition. He assigned the following errors to the trial court:

- That the respondent Judge gravely abused his discretion amounting to lack of jurisdiction when he cited the undersigned counsel in contempt of court due to a carefully worded written motion filed in his court asking for his inhibition;
- That the respondent judge acted in excess of his jurisdiction by imposing the twin penalty of fifteen (15) days imprisonment and ten thousand pesos (P10,000.00) with subsidiary imprisonment for [an] alleged direct contempt committed against his person.[10]

On September 16, 2005, the appellate court partially granted the petition. The CA held that there was no grave abuse of discretion on the part of respondent judge in holding petitioner Tabao guilty of direct contempt for the unfounded accusations the latter made in his motion for inhibition against the former. The appellate court found that the imputations were unsubstantiated thereby constituting derogatory remarks, unwarranted criticism and language disrespectful to the court, hence, contemptuous. However, the CA modified the judgment by dispensing with the jail sentence and reducing the fine to P2,000.00 which is the maximum amount provided for in the Rules of Court.[11] The dispositive portion of the decision therefore reads:

WHEREFORE, premises considered, the instant petition is PARTLY GRANTED. The assailed Order of the Regional Trial Court (RTC), Branch 47, Puerto Princesa City, dated July 14, 1997 is AFFIRMED with modification deleting the sentence of imprisonment for fifteen (15) days and reducing the fine from P10,000.00 to P2,000.00.

SO ORDERED.[12]

On December 2, 2005, the CA denied petitioner Tabao's motion for reconsideration of its decision for lack of merit.[13]

Hence, petitioner Tabao, along with the heirs of Candida, filed this petition for review, contending that—

I.

THE HONORABLE COURT OF APPEALS HAD DECIDED IN A WAY NOT IN ACCORD WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT RULED THAT NO GRAVE ABUSE OF DISCRETION COULD BE IMPUTED AGAINST THE RESPONDENT JUDGE IN HOLDING PETITIONER GUILTY OF DIRECT CONTEMPT AS A CONSEQUENCE OF FILING A CAREFULLY WORDED MOTION TO INHIBIT THEREBY TOTALLY DISREGARDING THE PIECES OF EVIDENCE

AND ARGUMENTS RAISED BY THE PETITIONER, MORE SO WHEN THE PENALTY IMPOSED FOR THE GIVEN OFFENSE WAS WAY BEYOND THE MANDATE OF THE RULES OF COURT.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE MOTION TO INHIBIT FILED BY THE UNDERSIGNED COUNSEL IS CONTEMPTUOUS.[14]

Petitioners maintain that respondent Judge clearly committed a grave abuse of his discretion when he issued the Order holding petitioner Tabao in direct contempt and imposing a penalty not in accord with the provisions of Section 1, Rule 71 of the Rules of Court. They assert that respondent cited petitioner Tabao in contempt as a personal vendetta against him; hence, the order of contempt is a patent nullity. Petitioners stress that the power to punish for contempt must be exercised in the preservative not vindictive principle, and on the corrective not retaliatory idea of punishment. They insist that courts must exercise the power of contempt for purposes that are impersonal because that power is intended as a safeguard not for the judges but for the functions they exercise.[15]

Moreover, petitioners aver that petitioner Tabao did not make any contemptuous statement in the Motion to Inhibit. He was not privy to all the allegations stated therein and merely wrote down what had been relayed to him by his clients who, in turn, received the information from the plaintiffs, herein private respondents. They assert that petitioner Tabao, in fact, made this clear when he stated in paragraph 7 of the motion that he "is not in the position to lend credence to such allusions against the integrity of this Honorable Court which is presumed to be immaculate." [16]

Petitioners claim that petitioner Tabao did not make any disrespectful allusions in the Motion to Inhibit. No statement therein can be considered to have directly accused respondent Judge of anything, as all informations raised therein were premised on mere allegations or products of hearsay which his clients, the defendants, heard from the plaintiffs. They stress that petitioner Tabao was constrained to file the Motion to Inhibit because his clients were losing confidence in the judicial system as a result of what the plaintiffs had told them. Petitioner Tabao claims that his clients' apprehension is not without any basis, and the fact that respondent Judge ordered the attachment of the defendants' properties worth several millions of pesos for a mere P944,000.00 claim on a P300,000.00 bond is enough to raise some doubts. What is more disturbing is that respondent Judge required a counterbond of P1,500,000.00 from his clients to free their assets from attachment.[17]

For their part, private respondents aver that the appellate court did not err in sustaining the contempt order because petitioner had indeed employed words and statements in the Motion to Inhibit which are offensive and derogatory to the honor, dignity and reputation of respondent Judge. Petitioners' allegations in the motion were unsubstantiated and unfounded, hence, contemptuous.[18]

The petition is meritorious.

Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties-litigants or their witnesses during litigation.[19] In particular, direct contempt is conduct directed against or assailing the authority and dignity of the court or a judge, or in the doing of a forbidden act.[20] Section 1, Rule 71 of the Rules of Court provides:

Section 1. Direct contempt punished summarily.— A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including 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, may be summarily adjudged in contempt of such court

and punished by a fine not exceeding two thousand pesos or imprisonment not exceeding ten (10) days, or both, if it be a Regional Trial Court or a court of equivalent or higher rank, or by a fine not exceeding two hundred pesos or imprisonment not exceeding one (1) day, or both, if it be a lower court.

Courts must be slow to punish for direct contempt. This drastic power must be used sparingly in cases of clearly contumacious behavior in facie curiae[21] Judges are enjoined to exercise such power judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the same for correction and preservation of the dignity of the court, and not for retaliation or vindictiveness.[22]

A pleading containing derogatory, offensive or malicious statements when submitted before a court or judge in which the proceedings are pending is direct contempt because it is equivalent to a misbehavior committed in the presence of so near a court or judge as to interrupt the administration of justice.[23] Unfounded accusations or allegations, or words tending to embarrass the court or to bring it into disrepute have no place in a pleading. Their employment serves no useful purpose. On the contrary, they constitute direct contempt of court or contempt in facie curiae and a violation of the lawyer's oath and a transgression of the Code of Professional Responsibility.[24]

The ruling of the Court in *Patricio v. Suplico*[25] is instructive as to when defamatory statements can be considered contemptuous. In the said case, the movant attached to his motion for inhibition a petition for the elimination of the respondent Judge from the judiciary, which contained statements of the judge's perceived shortcomings. The Court annulled and set aside the contempt order issued by the respondent judge. It held that "the petition was attached to the motion not to defame or debase, or shame or humiliate the judge, or defy or denigrate the authority of the court, but simply to demonstrate the basis for the movant's apprehension that the judge might become or have become so affected by the petition for his ouster as to lose that "cold neutrality" demanded of his office in dealing with the authors and their clients." [26] Although the alleged defamatory statements were not actually contained in the motion itself but in the petition attached to the motion, the principle stated in that case can also be applied analogously to the present case.

At first glance, the motion to inhibit would seem to contain disdainful and unfounded accusations against the respondent. However, a closer look thereof would reveal that petitioner was not actually imputing upon the respondent the acts which were mentioned therein. He was merely stating the reasons why his clients were losing hope of getting a fair trial in respondent Judge's court, which was precisely the ground for the motion for inhibition filed by petitioner. This is evident from his statement in the motion that he is "constrained to ask for this inhibition so as not to destroy the image and integrity of this tribunal, which in the minds of herein defendants has been put to question by the foregoing circumstances." Hence, applying the parameter set in the *Patricio* case, it cannot be said that petitioner *Tabao* is guilty of contempt since there was clearly no intention to debase the dignity of the court.

Contempt of court presupposes a contumacious attitude, a flouting or arrogant belligerence, a virtual defiance of the court.[27] The power of contempt, being a drastic and extraordinary remedy, should not be exercised unless clearly necessary in the interest of justice.[28] In another case,[29] counsel likewise filed a motion for voluntary inhibition of the judge alleging, inter alia, that he feels that he has no chance of winning the case against the plaintiff in whose favor respondent has previously rendered a favorable judgment, and that respondent may no longer possess the cold neutrality of a judge to be able to render an impartial judgment. In the said case, the Court held:

xxx The mere fact that respondent did not see any validity in the grounds given in the motion for his voluntary inhibition does not render the movants liable for direct contempt. It may be true that the contents of the motion were critical of respondent's prior actuations and expressed concern regarding his impartiality. Ang and Atty.

Lapak may have insulted respondent. This, however, cannot be considered derogatory, offensive, or malicious as to undermine the integrity and dignity of the court and hamper the administration of justice.[30]

A judge may not hold a party in contempt for expressing concern on his impartiality even if the judge may have been insulted therein.[31] Moreover, a judge should never allow himself to be moved by pride, prejudice, passion, or pettiness in the performance of his duties.[32] The courts must exercise the power to punish for contempt for purposes that are impersonal because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.[33]

On the other hand, it would be well to remind lawyers that they are officers of the Court, bound by the law. It is a lawyer's sworn and moral duty to help build and not destroy unnecessarily the high esteem and regard towards the courts so essential to the proper administration of justice. It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance.[34] They should always keep this in mind in all their dealings with the court and be particularly careful in the statements they make in their pleadings and utter before the courts.

WHEREFORE premises considered, the petition is GRANTED. The Court of Appeals' Decision of September 16, 2005 and Resolution of December 2, 2005 are REVERSED and SET ASIDE. The July 14, 1997 Order of the Regional Trial Court of Palawan and Puerto Princesa City declaring petitioner Atty. Ernesto P. Tabao in contempt of court is ANNULLED and SET ASIDE.

SO ORDERED.

Panganiban, C.J., Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Elvi John S. Asuncion and Hakim S. Abduhvahid, concurring; rollo, pp. 36-41.

[2] Rollo, pp. 44-50.

[3] Id. at 48-49.

[4] Id. at 50-52.

[5] Id. at 37.

[6] Id. at 53-56.

[7] Id.

[8] Id. at 57-59.

[9] Id. at 58-59.

[10] Id. at 38.

[11] Id. at 39-40.

[12] Id. at 40.

[13] Id. at 43.

[14] Id. at 17.

[15] Id. at 18-21.

[16] Id. at 24-25.

[17] id. at 27-28.

[18] Id. at 64-67.

[19] Heirs of Trinidad De Leon Vda. de Roxas v. Court of Appeals, G.R. No. 138660, February 5, 2004, 422 SCRA 101, 114.

[20] Encinas v. National Bookstore, Inc., G.R. No. 162704, July 28, 2005, 464 SCRA 572, 574.

[21] Soriano v. Court of Appeals, 416 Phil. 226, 253 (2001).

[22] Ruiz v. How. 459 Phil. 728, 739 (2003).

[23] Dantes v. Caguioa, A.M. No. RTJ 05-1919, June 27, 2005, 461 SCRA 236, 244.

[24] Re: Letter dated 21 February 2005 of Atty. Noel Sorreda, A.M. No. 05-3-04-SC, July 22, 2005, 464 SCRA 32, 41.

[25] G.R. No. 76562, April 22, 1991, 196 SCRA 140.

[26] Id. at 151.

[27] Id.

[28] Velasquez, Jr. v. Court of Appeals, G.R. No. 138480, March 25, 2004, 426 SCRA 309, 318.

[29] Felongco v. Dictado, A.M. No. RTJ-86-50, A.M. No. RTJ-88-222, A.M. No. RTJ-88-224, A.M. No. RTJ-89-320, A.M. RTJ-89-389, June 28, 1993, 223 SCRA 696.

[30] Id. at 713.

[31] Cortes v. Bangalan, 379 Phil. 251, 256 (2000).

[32] Office of the Court Administrator v. Paderanga, A.M. No. RTJ-01-1660, August 25, 2005, 468 SCRA 21, 34.

[33] Torcende v. Sardido, 444 Phil 12, 25 (2003).

[34] Soriano v. Court of Appeals, supra note 21 at 255.

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