

**ALEN ROSS RODRIGUEZ AND REGIDOR TULALI, PETITIONERS, VS.
THE HON. BIENVENIDO BLANCAFLOR, IN HIS CAPACITY AS THE
ACTING PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF
PALAWAN, BR...**

G.R. No. 190171. March 14, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court filed by Alen Ross Rodriguez (Rodriguez), the Provincial Prosecutor of Palawan; and Regidor Tulali (Tulali), Prosecutor I of the Office of the Provincial Prosecutor of Palawan, seeking to annul and set aside the October 13, 2009 Decision[1] of respondent Judge Bienvenido Blancaflor (Judge Blancaflor), Acting Presiding Judge of Branch 52, Regional Trial Court, Palawan (RTC). The petition likewise seeks to prohibit Judge Blancaflor from implementing the said decision.

In his October 13, 2009 Decision, Judge Blancaflor found petitioners Rodriguez and Tulali guilty of direct contempt and ordered them to issue a public apology to the court. In the same decision, Judge Blancaflor suspended them indefinitely from the practice of law. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding respondents PROVINCIAL PROSECUTORS OF PALAWAN ALEN ROSS B. RODRIGUEZ and PROSECUTOR REGIDOR TULALI as both guilty of direct contempt and for violation of their oath of office as member of the bar and as officer of the Court, and hereby sentence them to suffer the penalty of INDEFINITE SUSPENSION from practice of law and for each to pay a fine of P100,000.00.

Respondents are further directed to issue a public apology to the Court for the above grave offenses and should they fail to do so after the finality of this Sentence, a warrant for their arrest will be issued, and they will not be released unless they comply with the order of this Court.

Let a copy of this Order be furnished the Secretary of Justice for appropriate action.

IT IS SO ORDERED.[2]

The Facts

Previously pending before Judge Blancaflor was Criminal Case No. 22240 for arson (arson case), entitled People of the Philippines v. Teksan Ami, in which Tulali was the trial prosecutor.

During the pendency of the case, Tulali was implicated in a controversy involving an alleged bribery initiated by Randy Aawayan (Aawayan), the driver assigned to Judge Blancaflor under the payroll of the Office of the Governor of Palawan, and one Ernesto Fernandez (Fernandez), to assure the acquittal of the accused, Rolly Ami (Ami), and the dismissal of the arson case.

On June 29, 2009, a day before the scheduled promulgation of the decision in the arson case, Tulali filed an Ex-Parte Manifestation withdrawing his appearance in the said case to prevent any suspicion of misdemeanor and collusion. He attached to the said manifestation a copy of the administrative complaint against Awayan filed (but eventually withdrawn) by his superior, Rodriguez, before the Office of the Governor of Palawan.

On June 30, 2009, Judge Blancaflor rendered his decision acquitting Ami of the crime of arson.

Purportedly on the basis of the administrative complaint filed against Awayan and Rodriguez, Judge Blancaflor summoned several witnesses including Tulali and heard their testimonies. On July 30, 2009, he issued an order summoning Rodriguez to appear before him for the purpose of holding an inquiry on matters pertaining to his possible involvement in Tulali's filing of the ex-parte manifestation and the administrative complaint against Awayan, among others.

On August 7, 2009, Rodriguez filed his Motion for Clarification as to the purpose of Judge Blancaflor's continued inquiries considering that the decision in the arson case had already been promulgated.

In an order dated August 13, 2009, Judge Blancaflor informed the petitioners that he was proceeding against them for direct contempt and violation of their oath of office on the basis of Tulali's Ex-Parte Manifestation.

As earlier recited, after the submission of petitioners' respective position papers, Judge Blancaflor issued the assailed October 13, 2009 Decision finding petitioners guilty of direct contempt. The penalty of indefinite suspension from the practice of law and a fine of P100,000.00 each were imposed upon them.

The petitioners filed a motion for reconsideration of the decision but it was denied in the assailed November 6, 2009 Order.[3]

Hence, the petitioners interpose the present special civil action before this Court anchored on the following

GROUND

(A)

RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED DECISION AND ORDER CONSIDERING THAT PETITIONERS WERE DENIED THEIR RIGHT TO DUE PROCESS.

(B)

RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED DECISION AND ORDER CONSIDERING THAT HE GROSSLY VIOLATED THE RULES ON CONTEMPT.

(C)

SINCE THE ASSAILED DECISION AND ORDER ARE VOID, A WRIT OF PROHIBITION MUST BE ISSUED AGAINST RESPONDENT.[4]

Petitioners argue that the contempt proceedings are null and void for contravening their rights to due process of law. They claim that they were denied their rights to be informed of the nature and cause of the accusation against them, to confront the witnesses and present their own evidence. According to petitioners, Judge Blancaflor's disregard of due process constituted grave abuse of discretion which was further aggravated by the unlawful manner of simultaneously conducting suspension and contempt proceedings against them.

Petitioners further argue that the penalty imposed upon them in the "direct contempt" proceeding is clearly

oppressive and without basis.

In its Manifestation in Lieu of Comment,[5] the Office of the Solicitor General (OSG) stated that Judge Blancaflor committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding petitioners guilty of direct contempt as the judgment was not based on law and evidence.

The petition is impressed with merit.

The power to punish a person in contempt of court is inherent in all courts to preserve order in judicial proceedings and to uphold the orderly administration of justice. However, judges are enjoined to exercise the 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. It bears stressing that the power to declare a person in contempt of court must be exercised on the preservative, not the vindictive principle; and on the corrective, not the retaliatory, idea of punishment.[6] Such power, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.[7]

In this case, the Court cannot sustain Judge Blancaflor's order penalizing petitioners for direct contempt on the basis of Tulali's Ex-Parte Manifestation.

Direct contempt is any 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.[8]

Based on the foregoing definition, the act of Tulali in filing the Ex-Parte Manifestation cannot be construed as contumacious within the purview of direct contempt. It must be recalled that the subject manifestation bore Tulali's voluntary withdrawal from the arson case to dispel any suspicion of collusion between him and the accused. Its filing on the day before the promulgation of the decision in the pending criminal case, did not in any way disrupt the proceedings before the court. Accordingly, he should not be held accountable for his act which was done in good faith and without malice.

Neither should Rodriguez be liable for direct contempt as he had no knowledge of, or participation in, the preparation and filing of the subject manifestation. It was signed and filed by Tulali alone in his capacity as the trial prosecutor in the arson case. The attached complaint against Awayan was filed with the Office of the Palawan Governor, and not with the RTC.

Apparently, Judge Blancaflor's conclusion, that the subject manifestation containing derogatory matters was purposely filed to discredit the administration of justice in court, is unfounded and without basis. There being no factual or legal basis for the charge of direct contempt, it is clear that Judge Blancaflor gravely abused his discretion in finding petitioners guilty as charged.

Such grave abuse of authority is likewise manifested from the penalty imposed on the petitioners. Under Section 1, Rule 71 of the Revised Rules of Court, direct contempt before the RTC or a court of equivalent or higher rank is punishable by a fine not exceeding P2,000.00 or imprisonment not exceeding ten (10) days, or both.

The penalty of indefinite suspension from the practice of law and to pay a fine of P100,000.00 each with the additional order to issue a public apology to the Court under pain of arrest, is evidently unreasonable, excessive and outside the bounds of the law.

Petitioners also fault Judge Blancaflor for non-observance of due process in conducting the contempt proceedings. It must be emphasized that direct contempt is adjudged and punished summarily pursuant to Section 1, Rule 71 of the Rules. Hence, hearings and opportunity to confront witnesses are absolutely unnecessary.

In the same vein, the petitioners' alleged "vilification campaign" against Judge Blancaflor cannot be regarded as direct contempt. At most, it may constitute indirect contempt, as correctly concluded by the OSG. For indirect contempt citation to prosper, however, the requirements under Sections 3 and 4, Rule 71 of the Rules must be satisfied, to wit:

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

(d) any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

x x x.

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.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

In the present case, Judge Blancaflor failed to observe the elementary procedure which requires written charge and due hearing. There was no order issued to petitioners. Neither was there any written or formal charge filed against them. In fact, Rodriguez only learned of the contempt proceedings upon his receipt of the July 30, 2009 Order, requiring him to appear before the Court in order to clarify certain matters contained in the said order. Tulali, on the other hand, only learned of the proceedings when he was ordered to submit his compliance to explain how he came in possession of the administrative complaint against Awayan.

The fact that petitioners were afforded the opportunity to file their appropriate pleadings is not sufficient as the proceedings ex-parte to hear the witnesses' testimonies had already been completed.

In the course of his investigation, Judge Blancaflor showed that he no longer had the cold impartiality expected of a magistrate. He had clearly prejudged petitioners as manifested in the questions propounded in his July 30, 2009 Order, as follows:

- Your [petitioner Rodriguez's] participation, if any, in the filing of the ex-parte manifestation by Prosecutor Tulali together with the attachment of your letter to Gov. Joel T. Reyes dated May 8, 2009 filed on June 29, 2009 with the Clerk of Court, Branch 52, Regional Trial Court, Palawan;

- Whether or not the letter was received and read by Gov. Joel T. Reyes, if you know, and if so what was the official action thereon;

- Before Randy Awayan was terminated on June 30, 2009 was he allowed to answer the charges against him, i.e., calling him bag man and facilitator and Ernesto Fernandez, calling him "extortionist."

Aside from the allegations of Salam Ami, any other evidentiary basis for your conclusion that Ernesto Fernandez was an extortionist and that Awayan was a bag man and facilitator;

What was your role in obtaining the release of accused Rolly Ami from the City Jail without permission from the Court on June 29, 2009 at 2:00 O'clock in the afternoon and having been interviewed in the Office of the Provincial Prosecutor (c/o Prosecutor Tulali) and how long was Rolly Ami interviewed?

- Rolly Ami is publicly known as illiterate (cannot read or write) but he was made to sign affidavits in the absence of his lawyer on June 29, 2009 at 2:00 o'clock in the afternoon, why?

- Rolly Ami was fetched upon his release by SPO4 Efren Guinto, a close associate of yours, and directly went to the Palawan Pawnshop to pawn expensive jewelry (watch and ring), why?

What is your participation in the media coverage Re: VILIFICATION CAMPAIGN of the Judge of Branch 52 RTC-Palawan from July 1 to 10, 2009. Do you recognize that as a member of the Bar and as an officer of the Court, pursuant to the rules of judicial ethics and your oath of office as a lawyer, your loyalty and fidelity is primarily to the Court? Do you still recognize this duty and obligation?[9]

Indeed, Judge Blancaflor failed to conform to the standard of honesty and impartiality required of judges as mandated under Canon 3 of the Code of Judicial Conduct.

As a public servant, a judge should perform his duties in accordance with the dictates of his conscience and the light that God has given him. A judge should never allow himself to be moved by pride, prejudice, passion, or pettiness in the performance of his duties. He should always bear in mind that the power of the court to punish for contempt should be exercised 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.[10]

Contempt and suspension proceedings are supposed to be separate and distinct. They have different objects and purposes for which different procedures have been established. Judge Blancaflor should have conducted separate proceedings. As held in the case of *People v. Godoy*,[11] thus:

A contempt proceeding for misbehavior in court is designed to vindicate the authority of the court; on the other hand, the object of a disciplinary proceeding is to deal with the fitness of the court's officer to continue in that office, to preserve and protect the court and the public from the official ministrations of persons unfit or unworthy to hold such office. The principal purpose of the exercise of the power to cite for contempt is to safeguard the functions of the court and should thus be used sparingly on a preservative and not, on the vindictive principle. The principal purpose of the exercise of disciplinary authority by the Supreme Court is to assure respect for orders of such court by attorneys who, as much as judges, are responsible for the orderly administration of justice.

x x x. It has likewise been the rule that a notice to a lawyer to show cause why he should not be punished for contempt cannot be considered as a notice to show cause why he should not be suspended from the practice of law, considering that they have distinct objects and for each of them a different procedure is established. Contempt of court is governed by the procedures laid down under Rule 71 of the Rules of Court, whereas disciplinary actions in the practice of law are governed by file 138 and 139 thereof.

Thus, it was grossly improper for Judge Blancaflor to consider his July 30, 2009 Order on the contempt charge as the notice required in the disciplinary proceedings suspending petitioners from the practice of law.

Granting that the simultaneous conduct of contempt and suspension proceedings is permitted, the suspension of petitioners must still fail.

This Court is not unmindful of a judge's power to suspend an attorney from practice for just cause pursuant to Section 28, Rule 138 of the Revised Rules of Court. Judge Blancaflor, however, must be reminded that the requirements of due process must be complied with, as mandated under Section 30, Rule 138 of the same Rules which specifically provides, viz:

Sec. 30. Attorney to be heard before removal or suspension. - No attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex parte*.

Indeed, a lawyer may be disbarred or suspended for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor. His guilt, however, cannot be presumed. It must indicate the dubious character of the acts done, as well as the motivation thereof. Furthermore, a disbarred lawyer must have been given full opportunity upon reasonable notice to answer the charges against him, produce witnesses in his own behalf, and to be heard by himself and counsel.[12]

In the case at bench, there was no prior and separate notice issued to petitioners setting forth the facts constituting the misconduct and requiring them, within a specified period from receipt thereof, to show cause why they should not be suspended from the practice of their profession. Neither were they given full opportunity to defend themselves, to produce evidence on their behalf and to be heard by themselves and counsel. Undoubtedly, the suspension proceedings against petitioners are null and void, having violated their right to due process.

Likewise, Judge Blancaflor's suspension order is also void as the basis for suspension is not one of the causes that will warrant disciplinary action. Section 27, Rule 138 of the Rules enumerates the grounds for disbarment or suspension of a member of the Bar from his office as attorney, to wit: (1) deceit, (2) malpractice, (3) gross misconduct in office, (4) grossly immoral conduct, (5) conviction of a crime involving moral turpitude, (6) violation of the lawyer's oath, (7) willful disobedience of any lawful order of a superior court, and for (8) willfully appearing as an attorney for a party without authority to do so. Judge Blancaflor failed to show that the suspension was for any of the foregoing grounds.

In fine, having established that Judge Blancaflor committed grave abuse of discretion amounting to lack or excess of jurisdiction, petitioners are entitled to the remedy of prohibition under Section 2, Rule 71 of the Rules on Contempt which provides:

SEC. 2. Remedy therefrom. - The person adjudged in direct contempt by any court may not appeal therefrom, but may avail himself of the remedies of certiorari or prohibition. The execution of the judgment shall be suspended pending resolution of such petition, provided such person files a bond fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him.

Accordingly, an order of direct contempt is not immediately executory or enforceable. The contemnor must be afforded a reasonable remedy to extricate or purge himself of the contempt. Where the person adjudged in direct contempt by any court avails of the remedy of certiorari or prohibition, the execution of the judgment shall be suspended pending resolution of such petition provided the contemnor files a bond fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him.[13]

WHEREFORE, the petition is GRANTED. The October 13, 2009 Decision and November 6, 2009 Order are hereby annulled and set aside. Judge Bienvenido Blancaflor is hereby permanently enjoined from implementing the said decision and order. This injunctive order is immediately executory.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr.,[*] Peralta, and Abad, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933 dated January 24, 2011.

[1] Annex "A" of Petition, rollo, pp. 41-46.

[2] Id. at 46.

[3] Id. at 47.

[4] Id. at 11.

[5] Id. at 67.

[6] *Baculi v. Belen*, A.M. No. RTJ-09-2176, April 20, 2009, 586 SCRA 69, 80.

[7] *Bank of Philippine Island v. Labor Arbiter Roderick Joseph Calanza, et al.*, G.R. No. 180699, October 13, 2010, citing *Lu Ym v. Mahinay*, G.R. No. 169476, June 16, 2006, 491 SCRA 253.

[8] Section 1, Rule 71 of the Revised Rules of Court.

[9] Rollo, pp. 8-9.

[10] *Baculi v. Belen*, A.M. No. RTJ-09-2176, April 20, 2009, 586 SCRA 69, 80, citing *Nazareno v. Barnes*, 220 Phil. 451, 463 (1985), citing *Austria v. Masaquel*, 127 Phil. 677, 690 (1967).

[11] 312 Phil. 977, 1032, 1033 (1995).

[12] Re: Administrative Case No. 44 of the Regional Trial Court, Branch IV, Tagbilaran City, Against Atty. Samuel C. Occena, 433 Phil. 138, 154 (2002).

[13] *Tiongco v. Salao*, A.M. No. RTJ-06-2009, July 27, 2006, 496 SCRA 575, 583, citing *Oclarit v. Paderanga*, 403 Phil 146, 152 (2001).

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