

M. SINGH, PETITIONER, VS. CAYETANO LUKBAN, JUDGE OF FIRST INSTANCE OF TARLAC, AND JOSE P. FAUSTO, RESPONDENTS.

G.R. No. 28948. March 24, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of prohibition, commanding the respondents to desist from further action in certain contempt proceedings.

It appears from the record that the respondent Jose P. Fausto was the lawyer for the petitioner M. Singh in an action for damages brought by the latter against Juan Suke, then sheriff of the Province of Samar, and certain deputy sheriffs for their failure to execute a judgment for the sum of P2,113.17 rendered in favor of Singh in an earlier case. The Court of First Instance gave judgment in favor of Singh and against the sheriff and his deputies for damages in the total sum of P4,467.24, of which P800 was for attorney's fees, and upon appeal to the Supreme Court, the judgment was affirmed.[1] Shortly before the rendition of the judgment of the Court of First Instance, Singh and Fausto made an agreement in writing whereby the latter was to be allowed a contingent fee of 30 per cent of the total amount recovered in the action.

Difficulties were encountered in connection with the collection of the judgment debt, and finally Singh, on the 28th of October, 1927, without consulting Fausto, accepted a payment of P4,000 in full satisfaction thereof. It may be noted that at that time the judgment debt, with interest, amounted to P5,306.07. No fee was paid Fausto, but under the date of October 31, 1927, W. A. Caldwell, Singh's attorney in the present case, wrote Fausto the following letter:

"MANILA, P. I., October 31, 1927

"JOSE P. FAUSTO, Esq.

"Tarlac, Tarlac, P. I.

"SIR: Mr. M. Singh, a client of mine, has requested me to write you concerning your claim for professional services rendered him in his suit against Juan Sulce, provincial governor of Samar and others.

"I understand that Mr. Singh has already acquainted you with the fact that your failure to have him render an account, when requested by Juan Sulce in his letter of June 7, 1927, for the fruits received from his lands since the purchase thereof by Mr. Singh, afforded the said Juan Sulce an opportunity to file an unmerited suit against him.

"I also understand that Mr. Singh has informed you of the extravagant demands made by Juan Sulce in his complaint, the amount claimed by him as damages exceeding the redemption price of the land by P1,306.14.

"Admitting that Juan Sulce's suit was without merit, still it served to postpone indefinitely the day when Mr. Singh could hope to obtain legal possession of the land, or, in lieu thereof, the redemption money.

"Under these circumstances, Mr. Singh received an offer from Mr. Sulce to abandon his suit and have it

dismissed, if Mr. Singh would accept P4,000 as the redemption price of Sulce's land. The total amount of Mr. Singh's just claims against Mr. Sulce, chargeable against the land is P1,306.07; by accepting P4,000, he therefore loses P1,306.07 plus my fees for professional services.

"From the above statement of facts, you may see for yourself that it is a hard bargain that Sulce is driving with Mr. Singh, but his financial condition was such that he felt compelled to accept Sulce's terms in order to obtain some ready cash.

"Mr. Singh therefore wishes to know if you will accept P400 in full settlement of your claims for professional services rendered him. If so, you may answer "yes" by telegram collect, and the money will be remitted to you forthwith.

"Very respectfully,

"

(Sgd.) W. A. CALDWELL"

As might have been expected, on receiving the letter, Fausto became very indignant and immediately brought an action in the Court of First Instance of Tarlac against Singh for the recovery of 30 per cent of the full amount of the judgment rendered against the sheriff of Samar plus the sum of P200 for legal services in another matter in which he had represented Singh. Immediately thereupon, on November 10, 1927, the Court of First Instance upon motion issued an order which in translation reads as follows:

"ORDER

"The plaintiff Jose P. Fausto having filed a motion duly sworn to, together with a bond signed by two solvent sureties, praying that a writ of preliminary attachment be issued against the property of the defendant M. Singh, to secure the compliance with any judgment that may be rendered in this case in favor of said plaintiff; and considering the reasons therein set forth to be good and his petition proper;

"It is hereby ordered that the sheriff of the City of Manila immediately proceed to the attachment by garnishment of the money deposited by M. Singh and his wife Elvira Calvento, or any of them, with the banking institutions of Manila, with W. A. Caldwell, c/o Lack & Davis Building, in whose possession P400 belonging to the defendant M. Singh are deposited, and with Juan Sulce, room No. 18 Palma de Mallorca, Intramuros, to an amount of P1,821.80 claimed by the plaintiff in this case, and in default thereof to levy a preliminary attachment on any property, personal or real, that may be found belonging to the defendant M. Singh, which may be applied to the payment of the plaintiff's claim, if judgment is rendered for the same; and if no money or property of the defendant M. Singh can be found by the sheriff of the City of Manila by virtue of this order, the defendant M. Singh is ordered under penalty of contempt to deposit with the clerk of this court P1,821.80, which is the amount of the plaintiff's claim, put of the money collected by him from Juan Sulce, within the period not exceeding three days, from the receipt by him of a copy of this order.

"So ordered.

"Tarlac, Tarlac, November 10, 1927.

"(Sgd.) CAYETANO LUKBAN

"Judge, Sixth Judicial District"

This order was duly served on Singh on November 15, 1927, and on the same day Singh through his attorney, W. A. Caldwell, moved the court to suspend the order until he could have an opportunity to contest the writ of attachment and give evidence concerning his financial situation under section 433 of the Code of Civil Procedure. On November 21, 1927, the court denied the petitioner's motion and ordered him to comply with the order of November 10, within three days. On November 27, 1927, the petitioner filed the following petition:

"Comes now the defendant M. Singh in the above entitled cause and petitions the court to rescind that part of its order of November 10, 1927, which requires him to deposit the sum of P1,821.80 with the clerk of court, for the following reasons:

"1. The order has been irregularly issued, in that the defendant has not been afforded the opportunity to present evidence concerning his financial condition, as contemplated by section 433 of the Code of Civil Procedure.

"2. He does not possess such a large sum of money and has no means by which he could obtain it.

"3. The plaintiff's claim is fraudulent.

"4. The plaintiff's affidavit on which the writ of attachment was issued, is false.

"It is further prayed that in case the defendant is required to appear and answer concerning his property, some official with office in the City of Manila, be designated and appointed to take the evidence, as contemplated by section 474 of the Code of Civil Procedure.

"(Sgd.) M. SINGH"

On November 28, the deposition of Singh as to his financial condition and related matters was taken in Manila. Fausto was present and attempted to cross-examine, but the deponent refused to answer the more important questions. On December 5, 1927, the court ordered Singh to appear in person before it on December 12, 1927, to state his reasons, if any he had, why he should not be punished for contempt of court. Singh failed to obey this order, and on December 21 the court issued the following order:

"Considering (1) the petition filed by the defendant M. Singh to the effect that the preliminary attachment issued in this case be dissolved, with the evidence presented in support thereof, and (2) the opposition of the plaintiff, with his evidence;

"Finding that the petition of said defendant cannot be granted in law, for all the circumstances show that the attachment was issued most properly and adequately; the dissolution of said preliminary attachment is denied;

"And it appearing from the record, furthermore, that on the 5th instant, this court ordered the defendant M. Singh to appear before it on December 12, 1927, at 2.30 p. m., to show cause why he should not be punished for contempt, by virtue of an accusation presented against him by the plaintiff on account of the non-compliance by said defendant with the orders of this court dated November 10th and 21st, last; and

"Said defendant not having appeared to answer said accusation of the plaintiff, and it appearing, furthermore, from the evidence presented by said defendant in support of his petition for the dissolution of the preliminary attachment, that the non-compliance with the said orders cannot be attributed to any other cause than his intention to disobey the orders of this court;

"For the last time said M. Singh is ordered immediately to deposit with the sheriff of the City of Manila the sum of P1,821.80 claimed by the plaintiff; otherwise he must be arrested by said sheriff who shall surrender the person of said M. Singh to the Constabulary, which is ordered to bring him before this court, being presumed to be guilty of contempt, as was ordered in the said orders of this court of November last.

"So ordered.

"Tarlac, Tarlac, December 21, 1927.

"(Sgd.) CAYETANO LUKBAN

"Judge, Sixth Judicial District"

The order was duly served on Singh with the result that he immediately disappeared and it is asserted that he has

not since been found. But on December 28, W. A. Caldwell, though he professes not to know the whereabouts of his client, brought the present suit for a writ of prohibition praying "that an order issue out of this court commanding the defendants absolutely to desist or refrain from further action in the contempt proceeding and that the petitioner be granted such other and further relief as by this court may be deemed just."

The petition is, in our opinion, without merit. The writ of prohibition is in the nature of a prerogative writ and though originally a common law remedy, its issuance is in many respects governed by the rules of equity. In the present case it clearly (appears that the petitioner has sought, and still seeks, to defraud the respondent Fausto of his legitimate attorney's fees, fixed by a written contract. He therefore comes before this court with soiled hands, and applying a well-known rule of equity, we might well deny his petition on that ground alone. But there are also other reasons for so doing. It is not disputed that the petitioner repeatedly disobeyed the orders of the respondent judge. These orders may have been erroneous, but that need not here be decided; the fact remains that they were disobeyed. As a consequence, the respondent judge issued an order requiring the petitioner to appear personally before the court and state his reasons why he should not be punished for contempt. Such an order was not beyond the jurisdiction of the judge; and there being no lack of jurisdiction and no important obstacle to the petitioner's appearance personally before the court in Tarlac, prohibition will not lie in regard to that particular order.

The petitioner not only disregarded said order, but when he was threatened with arrest, he further defied the authority of the court by evading its process. And this is another reason for withholding the writ; a person who hides himself from the sheriff for the purpose of evading the process of a court of justice is not in position to demand extraordinary relief from another court.

The petition is denied with the costs against the petitioner. So ordered.

Avanceña, C. J., Johnson, Villamor, Johns, and Romualdez, JJ., concur.

[1] 49 Phil., 563.

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