

ENRIQUE MEDINA, PETITIONER, VS. PABLO S. RIVERA, ACTING JUDGE OF FIRST INSTANCE OF ORIENTAL NEGROS, RESPONDENT.

G.R. No. 45905. September 06, 1938

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is a petition for a writ of certiorari against Honorable Pablo S. Rivera, acting judge of the Court of First Instance of Oriental, Negros, for the purpose of obtaining the annulment of his order sentencing the petitioner for contempt and the return to the latter of the fine paid by him.

The cause of the incident was an ex parte motion filed in five civil cases pending in the Court of First Instance of Oriental Negros wherein the petitioner prayed for the postponement of the trial of said cases on the ground that, having presented in this court an administrative complaint against the respondent judge, and for other reasons, said attorney has personally antagonized him. Paragraphs three and four of said motion read as follows:

"3. That in the view of this strained and unpleasant situation, the undersigned fears and believes that the presiding judge of this court harbors against the clients of the undersigned some bias which prevents him from ministering justice to the undersigned attorney and his clients, the presiding judge of this court being after all human.

"4. That this belief of the undersigned is supported by the fact that after the unpleasant incident culminating in the imprisonment of the undersigned by order of the presiding judge of t his court who felt offended merely by the phrase 'rank injustice' contained in the notice of appeal prepared by the undersigned, the latter's cases have always been decided adversely to him."

In the fifth paragraph the petitioner cites a case decided by the respondent against him although, so he alleges, it is analogous to other cases decided in his favor prior to his strained relations with said judge. Citation is likewise made of another case regarding a motion of a client of the petitioner for permission to litigate as pauper which was denied, notwithstanding the fact that in a similar case handled by another attorney, said judge granted, as in other cases identically circumstanced, the permission sought.

The sixth paragraph of the motion referred to reads as follows:

"6. The undersigned on the other hand believes that he should not withdraw from or abandon the cases entrusted to him, because he has already been paid in many of them and because he considers it a disloyalty and cowardice to desert his clients in the middle of a tempestuous sea."

Considering the language employed in said motion to be offensive to the dignity of the court, the respondent judge ordered that the petitioner be directed to appear on a designated day and hour in order to show cause why he should not be punished for contempt. On the same day the order was issued, October 8, 1937, the petitioner filed a writing wherein he alleged, among other things, that he had no intention to attack the dignity of the court; but in the last paragraph he stated that he wanted to "present evidence and the very files of the court to prove beyond doubt the truth of the statements made in his motions * * *."

At the hearing the respondent judge gave the petitioner an opportunity to explain and asked him whether he still insisted in the phrases appearing in his motions. The following is part of the dialogue between the petitioner and the respondent.

"Mr. MEDINA:

"I have no particular choice of words or phrases in these motions, if this Hon. Court would be kind enough to suggest to me what words are more proper, and I have no objection to replace my words in those motions for the proper ones.

"COURT:

"It seems that the court has made it clear that all it wishes is to have you withdraw those words and promise to this court that no further offensive words from you would be used against the court—that is the position of the court—and the court will consider the incident as close, that all the court wants."

"Mr. MEDINA:

"I will request the Hon. Court to recite and mention the objectionable words—I am ready to file an amendment to those objectionable words and phrases.

"COURT:

"No, sir, the court will not do that—let it appear in the record—the members of the bar ought to know what words and phrases are proper or not, without the court suggesting. In one word, you cannot charge the court with improper conduct and at the same time address the court * * *"

"Mr. MEDINA:

"If your Honor, please, I am going to study the way in amending my motions. I am going to ask for a period of ten (10) days to file my amended motions.

"COURT:

"The court will not do that, will not allow you to do that."

Thereupon the court issued the order dated October 9, 1937 sentencing the petitioner, for being guilty of direct contempt, to pay a fine of P200 within twenty-four hours or otherwise suffer imprisonment for ten days.

The next day the petitioner filed a motion for reconsideration which was denied and, upon his depositing P200 with the clerk pending final resolution of the case, the court ordered the latter to return said sum to the petitioner unless he would unconditionally give it in payment of the fine imposed. The petitioner then stated that he was making the payment under protest, but the judge rejected the offer and reiterated his order for the payment of the fine without any condition, with the warning that the petitioner would be sent to prison if he refused to do so. In compliance with this order the petitioner, on the same day, October 11th, delivered the sum of P200 in payment of the fine. On the same date he excepted to the various orders of the court relating to his incident and, on the 12th, he filed his notice of appeal. On November 26th the respondent judge, in his own handwriting, inserted the following note at the foot of a motion filed by the petitioner praying that all the papers referring to this incident be elevated to this court:

"As already stated to the accused in open court, this is a finished case as far as the court is concerned; besides it has no jurisdiction. File the same. Nov. 26-37. P.S. Rivera, Judge."

There is no doubt that the phrases and statements contained in the motion and mentioned and copied above constitute real contempt of the judge to whom they were addressed, as they supposed him to be incapable of administering justice impartially and insinuated that in the actions pending before him and brought by the

petitioner, he would act, as he in fact has already acted, upon impulses of a vindictive mind.

What kind of contempt is that committed by the petitioner? Section 231 of the Code of Civil Procedure treats of direct contempt punishable summarily with a fine not exceeding P200, or imprisonment of not more than ten days, or both. In the procedure for this class of contempt, the right of appeal is not conceded.

Section 232 of the same Code enumerates the cases of indirect or constructive contempt. The procedure to be followed for their punishment is regulated by the succeeding sections and section 240 grants the right of appeal after the filing of a bond by the appellant.

Well, then; we are of the opinion that the herein contempt is direct, as the disrespectful and offensive phrases and statements against the court contained in a motion or any other pleading have been considered lack of respect in the presence of the court and constitute direct contempt.

"It is unnecessary to consider what are the consequential contempts, if the contempt before me was not of that character, but was direct. It was direct if it affected directly the power and the dignity of the court. Direct contempts are those usually referred to as contempts in the face of the court (in facie curiae), but this does not mean that such contempts must be committed while the judge is presiding in open session in the courtroom." (In re Merrill, 102 Atl. Rep., 400, 406.)

"A petition for rehearing stated that 'how or why the honorable commissioner should have so effectually and substantially ignored and disregarded the uncontradicted testimony * * * we do not know. * * * It seems that neither the transcript nor our briefs could have fallen under' the commissioner's observation. 'There is not a scintilla of evidence to the contrary, and yet the honorable commissioner assumes', etc., and 'in very euphuistic language says,' etc. 'A more disingenuous and misleading statement of the evidence could not well be made.' 'It is substantially * * * untrue, and unwarranted.' 'The decision * * * seems to us to be a travesty of the evidence.' Held, That counsel drafting the petition was guilty of contempt committed in the face of the court, notwithstanding a disavowal of disrespectful intention." (McCormick vs. Sheridan, 20 Pac. Rep., 24.)

"Making irrelevant and scurrilous attack, in filed answer, on the integrity of the judge in making a prior decree and order, is a 'direct contempt.' ". (Kerr vs. State, 141 N. E., 308.)

"Counsel in filing petition without leave of court, setting up title to certain property, which was in hands of receiver as trust fund to be administered by court, addressed to all the judges of circuit court, asking that matter be taken from hands of judge for bias, prejudice, and animosity, was in direct contempt of court." (Kneisel vs. Ursus Motor Co., 147 N. E., 243.)

"A grand jury report filed in open court, if contemptuous, is a direct contempt, though the grand jurors had gone home, and were absent from court when its contents became known" (Coons vs. State, 134 N. E., 194.)

In the case of State vs. Tipton (1 Black [Ind.], 166), the following passage from Weeks on Attorneys (2d ed., page 206), is quoted with approval:

"Language may be contemptuous, whether written or spoken; and if in the presence of the court, notice is not essential before punishment; and scandalous and insulting matter in a petition for rehearing is equivalent to the commission in open court of an act constituting a contempt. When the language is capable of explanation, and is explained, the proceedings must be discontinued; but, where it is offensive and insulting per se, the disavowal of an intention to commit a contempt may tend to excuse, but cannot justify, the act."

In this jurisdiction we have the decisive instance in an election case wherein the attorney for the petitioner had filed a motion regarding a resolution of this court denying reconsideration, in which motion the movant said:

"* * * and constitutes an outrage to the rights of the petitioner Felipe Salcedo and a mockery of the popular will expressed at the polls * * *."

"* * * because we should not want that some citizen, particularly some voter of the municipality of Tiaong, Tayabas, resort to the press publicly to denounce, as he has a right to do, the judicial outrage * * *.

"and * * * we wish to state sincerely that erroneous decisions like these, which the affected party and his thousands of voters will necessarily consider unjust, increase the proselytes of 'sakdalism' and make the public lose confidence in the administration of justice."

This court held that the statements above-quoted constituted contempt in facie curiae. (Salcedo vs. Hernandez, In re Vicente J. Francisco, 61 Phil., 724.)

In view of what has been said, we reach the conclusion that such words and phrases as are contained in the motion filed by the petitioner, constitute direct contempt of the court.

The judge, therefore, did not exceed or overstep his jurisdiction in sentencing the petitioner for said contempt to pay a fine of P200 or otherwise suffer imprisonment for ten days.

Neither did he exceed or overstep his jurisdiction in denying to the petitioner the right to appeal for the reason that, the procedure prescribed by the procedural code for this case being summary, the right of appeal is not proper. This right is conceded only in the procedure for indirect contempt, and according to the provisions of section 240 of the Code of Civil Procedure, the appeal is perfected by the filing of the corresponding notice and a bond in an amount to be fixed by the court, a requirement not satisfied in the present case, for if the petitioner considered the contempt discussed by him to be indirect, he should have filed a bond and accordingly asked the court to fix its amount; but he did not even make such request.

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

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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