

PAQUITO BALASABAS, PETITIONER, VS. HON. GREGORIO U. AQUILIZAN, JUDGE OF THE COURT OF AGRARIAN RELATIONS, COTABATO CITY, RESPONDENT.

G.R. No. 51414. July 31, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

These two (2) cases, G. R. No. 51414 and Administrative Case No. 2077, involving the indirect contempt citation and the indefinite suspension from the practice of law, respectively, of lawyer Paquito G. Balasabas are taken up together as per Resolution of this Court dated October 5, 1979.[1]

In G. R. No. 51414, petitioner Paquito G. Balasabas, in a petition for certiorari and prohibition with preliminary injunction, seeks to declare as null and void the order[2] which cited him for indirect contempt and suspended him indefinitely from the practice of law issued in open court on August 27, 1979 by respondent Judge Hon. Gregorio U. Aquilizan, then judge of the Court of Agrarian Relations, 16th Regional District, Branch I, Davao City, in CAR Case No. 1912, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the Honorable Court cites Atty. Paquito G. Balasabas for Indirect Contempt of Court under Section 3(b) Rule 71 of the Rules of Court in consonance with Section 26 of Rule 138 of the Rules of Court and therefore is indefinitely suspended from the practice of law unless he explains satisfactorily and meritoriously his failure to comply with the Resolution of the Honorable Court dated June 19, 1979.

"Copies of this Order shall be properly furnished all courts of justice in Davao Pro-vinces including that of Davao City as well as the Supreme Court of the Philippines and the Integrated Bar of the Philippines, National Office, Quezon City."

"SO ORDERED."

A temporary restraining order[3] dated September 17, 1979 was issued by this Court after the petition was filed on September 12, 1979 restraining respondent judge from enforcing his order dated August 27, 1979 and from acting on his indirect contempt citation against petitioner in CAR Case No. 1912 Davao-1974, entitled "Edgardo Medrocillo, plaintiff vs. Jose Bandigan, et al., defendants; and CAR Case No. 3271 Davao-1979, entitled "Jose Bandigan, et al., plaintiffs vs. Edgardo Medrocillo, defendant", of the Court of Agrarian Relations, Branch I, Davao City or in proceedings related thereto.

Administrative Case No. 2077 is the proceedings before this Court following its receipt of the copy of the Order of respondent Judge suspending Atty. Paquito G. Balasabas, as quoted above, which was transmitted by said respondent to this Court, pursuant to Section 29 of Rule 138 of the Rules of Court.

It appears that petitioner was the counsel of record for the plaintiff in an agrarian case entitled "Edgardo Medrocillo vs. Jose Bandigan, et al," for unlawful ejectment with preliminary injunction, damages and attorney's

fees, filed on March 4, 1974, docketed as CAR Case No. 1912 in the Court of Agrarian Relations, Branch I, Davao City. After trial, the then CAR Judge (now CFI Judge) Filomeno Gapultos rendered a decision on December 27, 1974 in favor of the plaintiff Edgardo Medrocillo, the dispositive portion of which reads:

"(1) Finding plaintiff Edgardo Medrocillo an agricultural share tenant in the landholding in question located at San Ignacio, Manay, Davao Oriental, consisting of 11 and 1/2 hectares, more or less, since 1964, and was illegally ejected from the said landholding in February, 1974, by defendant;

"(2) Declaring void and illegal that portion of the Order of the Cadastral Court of Mati, Davao Oriental, issued on August 15, 1973, insofar as it involved the dispossession of plaintiff Edgardo Medrocillo from his tenanted landholding implemented by defendant Juan Labasano, Clerk of Court, Court of First Instance of Mati, Davao Oriental, in his capacity as Ex-Oficio Provincial Sheriff;

"(3) Ordering defendants Jose Bandigan and his wife Davina Bandigan to reinstate immediately plaintiff Edgardo Medrocillo to the landholding in question and thereby allowing him to cultivate same, gather the coconuts therefrom and process same to copra, the proceeds thereof to be divided 70% - 30% in favor of plaintiff;

"(4) Ordering defendants Jose Bandigan and his wife Davina Bandigan to submit to the court, fifteen (15) days after receipt of this decision, the complete accounting of the proceeds of copra they produced from February, 1974 to the present to be able to determine the 70% share of plaintiff which he failed to receive;

"(5) Ordering defendants Jose Bandigan and his wife Davina Bandigan to pay to plaintiff the sum of One Thousand Pesos (P1,000.00) as attorney's fees and another sum of One Thousand Pesos (P1,000.00) as reimbursement of plaintiff's necessary expenses in protecting his rights in this case;

"(6) Ordering defendant Jose Bandigan and his wife Davina Bandigan to pay to plaintiff the sum of Two Thousand Pesos (P2,000.00) as moral damages."

The said decision of the Court of Agrarian Relations was elevated on appeal by Jose Bandigan, et al to the Court of Appeals which rendered a decision on July 28, 1976 affirming in toto the CAR decision.

On July 5, 1978, plaintiff Edgardo Medrocillo, thru counsel Paquito G. Balasabas, filed a motion for execution in the Court of Agrarian Relations, Branch I, Davao City which was duly opposed by defendants Jose Bandigan, et al. After hearing the motion and the opposition thereto, respondent Judge Gregorio U. Aquilizan, Presiding Judge of the Court of Agrarian Relations, Cotabato City, who had succeeded Judge Filomeno Gapultos, issued a resolution on November 24, 1978 giving due course to the motion for execution but ordered plaintiff Medrocillo to render an accounting of the copra sold during the period specified therein.

Plaintiff Edgardo Medrocillo, however, failed to comply with the November 24, 1978 resolution issued by Judge Aquilizan and, so, upon motion of Jose Bandigan, respondent judge, after hearing, issued an order dated May 14, 1979 requiring plaintiff Medrocillo to appear in court on May 21, 1979 to explain why he should not be cited for contempt of court for failure to render an accounting of the copra sold. On the day set, plaintiff Medrocillo and his counsel, Paquito G. Balasabas, failed to appear, prompting respondent judge to issue another order dated May 21, 1979 for the arrest of plaintiff Medrocillo.

A motion for reconsideration of the order of May 21, 1979 was filed by plaintiff Medrocillo on June 2, 1979, but through another counsel, Atty. Leo S. Carillo, stating, among others, that the only order plaintiff had received from the Honorable Court was the order of May 21, 1979, and plaintiff has not received any notice of hearing, pleadings and all other motions and orders pertinent to CAR Case No. 1912 and pointed out that his former counsel who had met a vehicular accident on February 3, 1979 in Tayasan, Negros Oriental was still recovering and had not yet reported to his office. Plaintiff likewise, assailed the resolution of November 24, 1978, alleging

that it is contrary to the decision of the Court of Appeals promulgated on July 28, 1978, hence, null and void. Acting on the motion for reconsideration of the order dated May 21, 1979, respondent judge issued a resolution⁵ on June 19, 1979, declaring thus:

"WHEREFORE, PREMISES CONSIDERED, the Honorable Court rules:

"1. That the Resolution of November 24, 1978 stands valid and legal and should be complied with by the plaintiff Edgardo Medrocillo to the letter;

"2. That with respect to the motion to cite plaintiff Edgardo Medrocillo for contempt of court, the case should be heard on August 1, 1979;

"3. That Attorney Paquito G. Balasabas should be made to explain in writing why he should not be punished for indirect contempt of court under Section 3(b) of Rule 71 of the Rules of Court by abandoning the cause of his client without prior notice and compliance of Section 26 Rule 138 of the Rules of Court."

"SO ORDERED."

Meanwhile, on June 18, 1979, Jose Bandigan, et al filed an action for ejectment against Edgardo Medrocillo docketed as CAR Case No. 3271 in the Court of Agrarian Relations, Branch I, Davao City. On June 22, 1979, respondent judge issued an order consolidating CAR Case No. 1912 and CAR Case No. 3271, stating as reasons therefor, that CAR Case No. 3271, is a continuation of CAR Case No. 1912 and the fact that Edgardo Medrocillo refused to abide by the resolution of the Court of Agrarian Relations dated November 24, 1978.⁶ The initial hearing of the two consolidated cases was set on August 27, 1979.

On the other hand, on August 25, 1979, Edgardo Medrocillo, now a defendant in CAR Case No. 3271, thru counsel Paquito G. Balasabas, filed a motion to disqualify respondent Judge Gregorio U. Aquilizan from hearing CAR Case No. 3271 Davao-1979 and CAR Case No. 1912 Davao-1974 alleging that CAR Case No. 1912 has long been terminated, therefore, there is nothing to be heard; that the latest incident of CAR Case No. 1912 was the motion for reconsideration of the order of May 21, 1979 which was denied and as a matter of fact the order has been implemented by the court already; that CAR Case No. 3271 is a new case which Judge Aquilizan "had not started to hear" since he has been assigned to Cotabato City; that since a new judge, Hon. Judge Emilio Jacinto, has been assigned in the Court of Agrarian Relations, Branch I, Davao City, the new case should be heard by Judge Jacinto pursuant to P. D. 946 Section 11;⁷ that Edgardo Medrocillo has likewise filed an administrative case against the Presiding Judge Aquilizan before the Supreme Court and the Office of the President and was properly informed of the charges on July 6, 1979. Counsel Paquito G. Balasabas requested that the said motion be submitted for resolution and approval on August 27, 1979 at 8:30 a.m. without further argument.

On the scheduled hearing of CAR Case No. 1912 and CAR Case No. 3271 on August 27, 1979, petitioner entered his appearance for Edgardo Medrocillo and argued his motion for the disqualification of respondent Judge Aquilizan. After hearing, respondent judge issued on that same day an order, in open court, citing petitioner Paquito G. Balasabas for indirect contempt of court and indefinitely suspended him from the practice of law unless he explains satisfactorily and meritoriously his failure to comply with the resolution of June 19, 1979.

Hence, the instant petition raising constitutional and statutory objections against the questioned order of August 27, 1979, alleging, among others, that respondent judge acted without or in excess of jurisdiction and/or with grave abuse of discretion in issuing the questioned order. After the parties have submitted their respective pleadings, the petition was given due course and was deemed submitted for decision by a resolution⁸ of this Court dated May 14, 1980.

In this certiorari and prohibition proceedings under Rule 65 of the Rules of Court, there is, on the part of the

petitioner, an emphatic assertion of violation of petitioner's constitutional and statutory rights when respondent Judge issued the questioned order of August 27, 1979 which cited him for indirect contempt of court and suspended him indefinitely from the practice of law in total disregard of the fundamental safeguards of procedural due process such as notice to petitioner that he was to be tried that day for indirect contempt, a reasonable time and opportunity to submit his written explanation, opportunity to present witnesses in his own behalf, opportunity to be heard of the charge for indirect contempt because what was heard on August 27, 1979 was petitioner's motion for disqualification, violating therefore Rule 71, Section 3 of the Rules of Court which provides:

"Section 3. Indirect contempts to be punished after charge and hearing. After charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt:

"a) x x x."

On the indefinite suspension imposed upon him from the practice of law, petitioner maintained that respondent Judge took this action without regard to Rule 71, Section 6 of the Rules of Court, which provides:

"Section 6. Punishment if found guilty. - If the accused is thereupon adjudged guilty of contempt committed against a superior court or judge, he may be fined not exceeding one thousand pesos or imprisoned not more than six 6 months, or both; if adjudged guilty of contempt committed against an inferior court or judge, he may be fined not exceeding one hundred pesos or imprisoned not more than one (1) month, or both, and if the contempt consists in the violation of an injunction, he may also be ordered to make complete restitution to the party injured by such violation." (Underscoring ours).

It is clear from the foregoing provision that the imposable penalty, if the accused is, after hearing, adjudged guilty of contempt committed against a superior court or judge, is fine not exceeding one thousand pesos or imprisonment of not more than six (6) months, or both.

Petitioner also stressed that Rule 138, Section 30 of the Rules of Court mandatorily requires that "No attorney shall be removed or suspended from the practice of his profession, until he has 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." No clearer demand for the observance of procedural process can be imagined before a lawyer is removed or suspended from the practice of law.

For his part, respondent Judge Gregorio U. Aquilizan, in his comment, pointed out that when petitioner was asked during the joint hearing of CAR Case No. 1912 and CAR Case No. 3271 on August 27, 1979 as to his reasons for failing to comply with the order of June 19, 1979, petitioner responded that he did not receive the said order which, according to respondent, was received on July 11, 1979. Respondent also contended that petitioner promised to submit the necessary papers substantiating his claim that he never received the resolution of November 24, 1978 and that of June 19, 1979 within the period of one (1) month but instead decided to argue his case with the Honorable Tribunal.

Respondent judge, noticeably, did not reason out his order of indefinite suspension from the practice of law in his comment, not until after he filed his opposition to the reply of petitioner wherein he alleged that it was based on grounds of "wilful disobedience of any lawful order of superior court" as provided for under Section 27, Rule 138 of the Rules of Court inasmuch as petitioner continued to ignore the Honorable Court's resolution, orders, and notices of hearing claiming not to have received said notices when the records clearly show that he received all of them.⁹ In addition, respondent cited Section 14, P. D. No. 946 in relation to Section 28, Rule 138 of the Rules of Court in arguing that the Court of Agrarian Relations, possessing "all the powers and prerogatives inherent in or belonging to the Court of First Instance," has likewise the power to suspend a lawyer from the practice of law.

Fundamentally, therefore, the decisive issue in these two (2) cases before Us pertains to the all important issue of procedural due process. Definitely, the inquiry here reflects more on the manner with which the contempt and suspension powers of courts of justice were exercised by respondent judge.

From what may be gathered from the records of the instant case, We are convinced of petitioner's plea of denial of procedural due process of law; first, on the procedure adopted for indirect contempt against petitioner; and second, on the procedure followed in his indefinite suspension from the practice of law.

On the proceedings for indirect contempt against the petitioner, the grave error of the respondent judge is manifest when, under the circumstances disclosed in the records, petitioner was denied his right to notice of hearing, to have his day in court and present witnesses in his behalf, a reasonable time to explain in writing why he should not be cited for indirect contempt of court.

Petitioner claimed that he did not receive the order dated June 19, 1979 which, according to the respondent judge, was received on July 11, 1979. While it is beyond Our domain to ascertain the conflicting factual incidents alleged by both parties, nevertheless, it is arguable that if petitioner did in fact receive the said order of June 19, 1979, fairness requires that at least, respondent judge should have given the petitioner reasonable time to explain in writing why he should not be cited for indirect contempt. An order directing petitioner to explain in writing or to show cause constitute, under the law, the written charge for indirect contempt contemplated under Section 3, Rule 71. It is, in reality, a compelling mandate of procedural due process, with its stress on fairness, that petitioner be afforded a reasonable time and opportunity by giving a definite period within which to submit a written explanation.

Moreover, Section 3, Rule 71 requires that there must be a hearing of the indirect contempt charge after notice thereof is validly served on the person charged with indirect contempt. As adverted to earlier, an order requiring petitioner to submit a written explanation constitutes the written charge for indirect contempt, and at the same time serves as notice of said charge. However, such notice cannot by all means, be considered as a notice of hearing itself. The two notices are different, for they have distinct object and purpose.

At this point, it is noteworthy that during the scheduled joint hearing of CAR Case No. 1912 and CAR Case No. 3271 respondent judge, at the start of the proceedings, inquired from petitioner Balasabas as to his explanation, and petitioner explained, in open court, that he was out of office for almost three (3) months and would make it of record that he and his family met a vehicular accident; that he was seriously injured, his brother died, his father is physically disabled, his mother died last July 1979, his aunt and the helpers were also injured and that there were 15 of them in the hospital.¹⁰ In spite of such oral explanation, respondent judge issued on that same day the questioned order of August 27, 1979. Without being overly technical, such an oral explanation given by the petitioner sufficiently satisfies, under the circumstances, what was sought for by respondent in his order of June 19, 1979. In any case, respondent judge should have given petitioner ample opportunity to substantiate his explanation.

The non-observance of the fundamental right of due process as enunciated above manifests arbitrariness, unfairness and injustice. This Court frowns upon proceedings which depart from the solemn adherence to the tenets of justice and fairness. This Court too has its responsibility. Regard for the requirements of due process of law inescapably imposes upon it an exercise of judgment upon the whole course of the proceedings. As this Court said, thru Justice Jose P. Bengzon, the due process clause is designed to secure justice as a living reality,¹¹ especially so, it may be postulated, when courts exercise this inherent power to punish for contempt.

A contempt of court has been distinctly described as an offense against the State not against the judge personally. A judge 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.¹² Rightly then, such power of the courts must be used sparingly in a preservative and not on the vindictive principle, and must be used on the corrective rather than on the retaliatory idea of punishment.¹³ In this regard, when one is charged with contempt of court, the proceedings attendant thereto partake of the nature of a criminal action¹⁴ even when the acts complained of is an incident of a civil action. In the case at bar, the respondent judge did not observe the procedure outlined in Rule 71 of the Rules of Court.

That is not all. What is worse, to Our mind, is the fact that respondent judge not only cited petitioner for indirect contempt in open court; he summarily suspended him indefinitely from the practice of law in violation of the procedure prescribed under Rule 138 and 139 of the Rules of Court relative to suspension of lawyers. The petitioner here was indefinitely suspended unless he explains satisfactorily and meritoriously his failure to comply with the resolution of the court dated June 19, 1979. Obviously, pending the submission of a satisfactory and meritorious explanation, he is, under all circumstances, already placed under indefinite suspension. In the event that he submits an explanation which the court may find not satisfactory and meritorious, the indefinite suspension would go on. Such an indefinite suspension meted out as a penalty for alleged indirect contempt is absolutely not permitted under the law and jurisprudence. It is tantamount to disbarment without due process of law not sanctioned by the provisions of Rule 138 and Rule 139 of the Rules of Court.

The order of June 19, 1979, construed as a notice that petitioner is charged with indirect contempt cannot be considered as a notice to explain in writing why he should not be suspended from the practice of law. As early as 1920, this Court ruled that the notice served upon a lawyer to appear before a Judge of the Court of First Instance and show cause why he should not be sentenced for contempt, cannot be considered as a notice to show cause why he should not be suspended from the practice of his profession. These things are different; they have distinct objects and for each of them a different procedure is established.¹⁵

On the other hand, respondent judge should have limited his ruling on the charges of indirect contempt. Under the provisions of Section 6 Rule 71 of the Rules of Court which prescribe in categorical language the punishment for contempt, suspension from the practice of law is not indicated. While it is true that a Court of Agrarian Relations under P. D. 946, like a Court of First Instance, may suspend a lawyer "for wilful disobedience of any lawful order of a superior court" pursuant to Section 27 Rule 138 or may suspend on other grounds other than those enumerated by said provision,¹⁶ notwithstanding such broad power to suspend, suspension must not be meted as a punishment for indirect contempt which has its own corresponding penalty, as provided by the Rules of Court. Granting, arguendo, that suspension falls within the domain of the inherent power of courts to punish for contempt, nevertheless, respondent judge should have exercised such broad power in full observance of the rules on suspension and disbarment specifically provided for under Rule 139 of the Rules of Court.

Suspension from the practice of law requires an entirely separate procedure under the Rules with all the attendant constitutional and statutory safeguards of procedural due process. Respondent should have applied Section 6, Rule 71 on punishment for indirect contempt not Section 27 Rule 138 on suspension and removal of lawyers from the practice of law which is entirely a different matter requiring different procedure as to motion or complaint, service of motion or complaint, investigation, hearing, confidentiality of investigation, etc. It is clear that under Section 29 of Rule 138 that upon such suspension by the Court of Appeals or the Court of First Instance, either court shall forthwith transmit to the Supreme Court a certified copy of the order of suspension and a full statement of the facts upon which the same was based. Upon receipt of such certified copy and statement, the Supreme Court shall make full investigation of the facts involved and make such order revoking or extending the suspension, or removing the attorney from his office as such, as the facts warrant.

WHEREFORE, in view of the foregoing, the Order issued by the Court of Agrarian Relations dated August 27,

1979 is declared null and void and is hereby set aside. Accordingly, the petition in G. R. No. 51414 is granted, and the proceedings in Administrative Case No. 2077 under Section 29, Rule 138 of the Rules of Court, by virtue of which the Order of Suspension was transmitted to this Court, is ordered closed and terminated. No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

[1] p. 139, Rollo.

[2] p. 47, Rollo.

[3] p. 45, Rollo.

5 p. 84, Rollo.

6 See Order of CAR dated August 27, 1979, p. 47, Rollo.

7 Presidential Decree No. 946, Section 11. Detail of Judges x x x.

"Whenever a Judge of any Branch of the Court of Agrarian Relations is assigned, transferred or detailed to another Branch or District or to another court of equal rank or jurisdiction without having decided a case totally heard by him and which was duly argued or in which opportunity for argument was given to the parties or their counsel, he shall prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of court to be filed in the proper Branch as of the date when the same was received by the clerk, which shall to all legal intents and purposes have the same effect as if the Judge were present in the court to direct the filing of the judgment: Provided, however, that if a case has been heard only in part, the Chief Justice, upon petition of any interested parties to the case, may authorize the Judge who has partly heard the case to continue hearing and to decide said case notwithstanding his assignment to another Branch or District, under such conditions as the Chief Justice may specify."

8 p. 127, Rollo.

9 p. 132, Rollo.

10 t. s. n., August 27, 1979, p. 12 of the Petition.

11 Albert vs. University Publishing Co., 13 SCRA 84; cited in Macabingkil vs. Hon. Yatco, 21 SCRA 150.

12 Emeterio Buyco, et al. vs. Zosa, 34 SCRA 710.

13 Yangson vs. Salandanan, 68 SCRA 42; People vs. Estenzo, 64 SCRA 211.

14 Concepcion, Jr. vs. Gonzales IV, 4 SCRA 1124.

15 In re Jesus Cuenco, 41 Phil. 32.

16 In re Pelaez, 44 Phil. 567; Balinon vs. De Leon, et al., 50 O. G. 583.

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