

HIDULFO D. NAZARENO, PETITIONER, VS. HONORABLE ROQUE M. BARNES, JUDGE, COURT OF FIRST INSTANCE OF BAGANGA, DAVAO ORIENTAL, RESPONDENT.

G.R. No. 59072. April 25, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

This CERTIORARI case arose from a contempt proceeding conducted by the Honorable respondent Judge against the herein petitioner captioned "In Re: Contempt Proceedings vs. Hidulfo D. Nazareno, accused" — Criminal Case No. 436 for "Indirect Contempt of Court and Judge of the Court of First Instance", resulting in the issuance of the challenged Order finding petitioner GUILTY of indirect contempt and sentencing him to suffer imprisonment of six (6) months and to pay a fine of One Thousand (P1,000.00) Pesos.[1]

The aforesaid contempt case was brought about by a letter-complaint dated August 22, 1981,[2] addressed by the herein petitioner to His Excellency, Ferdinand E. Marcos, which was subscribed and sworn to before Fiscal Diosdado Llamas. Said letter reads as follows —

"August 22, 1981
His Excellency
Ferdinand E. Marcos
Malacañan Palace
Manila

Your Excellency,

In line with your call to the general public to come up with charges and/or evidence against incompetent and/or corrupt Judges in connection with the reorganization of the Judiciary, I am most respectfully bringing to your attention specific charges against Judge Roque M. Barnes of the Court of First Instance of Baganga, Davao Oriental, which I believe render him unfit to continue as a member of the Judiciary. The following are specification of charges:

1 - IGNORANCE OF THE LAW:

(A) In Civil Case No. 174 entitled Baganga Consolidated Arastre-Stevedoring Services, Inc. vs. NLRC, et al., Judge Barnes issued an injunction against the National Labor Relations Commission enjoining an execution issued by the latter. I believe since the NLRC is equal in rank if not higher than the Court of First Instance and said commission has exclusive jurisdiction in Labor cases, Judge Barnes displayed ignorance of the law in entertaining the suit for injunction. It might be mentioned in passing that the NLRC filed a Motion to Dismiss the suit but up to now has not yet been resolved.

(B) In the case of People of the Philippines versus Jeonardo Ty docketed as Criminal Case No. R-1116-160, the accused therein was convicted by the Municipal Court of Cateel for Slight Physical Injuries, after which the accused appealed to the Court of First Instance of Baganga. In a decision dated January 19, 1976, Judge Barnes also found the accused guilty not of Slight Physical Injuries but of Serious Physical Injuries, which decision

was promulgated to the accused. However after the promulgation, the accused filed a Motion for Reconsideration based on an Affidavit of Desistance of the complaining party. In an Order dated October 4, 1976, Judge Barnes vacated his previous decision finding the accused innocent of the crime charge solely on the basis of the affidavit of desistance. Considering that the affidavit of desistance was submitted after the promulgation of the judgment, Judge Barnes committed grave error and/or displayed ignorance of the law in changing his decision. Copies of the decision, motion for reconsideration and order are hereto attached as Annexes "A", "B", and "C".

(C) In the case of Cresencio Maliño versus Ramon Ramirez vs. (sic) Vicente Estevas, Sr. in Civil Case No. 122 for Reformation of Instrument, Judge Barnes while finding that the property in question was in the possession of the defendant as mortgagee failed to apply the principle of antichresis. Copy of the decision is hereto attached as Annex "D".

II - ACTS OF HARASSMENT:

Sometime in October, 1980, Judge Barnes was on a private plane going to Baganga, Davao Oriental from Davao City. The North Camarines Lumber Company which owns the airstrip in Baganga, Davao Oriental advised all incoming planes that the airstrip was being repaired and therefore could not be utilized for that trip. Failing to land in Baganga, Judge Barnes cited Mr. Ching Hai Cuan, the Vice President for Operations of the North Camarines Lumber Company and Miss Norma Lo, the company accountant for Contempt of Court and both were made to explain why the plane carrying Judge Barnes was not allowed to land in the company's airstrip. Both persons had nothing to do in the landing field.

III - INCURRING INDEBTEDNESS IN THE COMMUNITY:

It is of public knowledge in the Municipality of Baganga that Judge Barnes has contracted many indebtedness in several stores and from several persons without paying for the same.

IV - USING UNDUE INFLUENCE:

On enumerable occasions, Judge Barnes has requested for free rides in the planes of the North Camarines Lumber Company in his trips to and from Baganga, Davao Oriental. Considering that the company has its main offices at Baganga, Davao Oriental under the jurisdiction of Judge Barnes and considering further that the company has cases pending before his sala, it was not proper to secure favors from the company.

V - HABITUAL ABSENTISM:

It is also of public knowledge in Baganga, Davao Oriental that Judge Barnes holds sessions only from two to three days a week.

Your Excellency, in due course I shall also submit other charges against Judge Barnes as soon as I shall have verified certain reports reaching me. I hope that in the interest of attaining the objectives of the Judicial reorganization, persons like Judge Barnes should not be extended a new appointment.

Very truly yours,

(S/T) HIDULFO D. NAZARENO

Baganga, Davao Oriental

SUBSCRIBED AND SWORN to before me this 20th day of October, 1981, in Baganga, Davao Oriental; affiant having exhibited to me his Residence Certificate No. 2261630 issued at Baganga, Davao Oriental, on January 20, 1981.

(S/T) DIOSDADO YAMAS

Fiscal"

Getting hold of a copy of the aforesaid letter, the Hon. respondent Judge instituted before his branch or sala a charge of Indirect Contempt of Court which, as herein earlier stated, was denominated as Criminal Case No. 436, for "Indirect Contempt of Court or Judge of the Court of First Instance." The charge reads as follows —

"The undersigned Presiding Judge hereby charges the above-named accused of the crime of INDIRECT CONTEMPT OF COURT and Judge of the Court of First Instance, defined and penalized under Sec. 3(d) and Sec. 6, Rule 71, Revised Rules of Court, committed as follows:

That on or about August 22, 1981, in a letter-complaint the accused addressed to the President of the Philippines, true copy of which was furnished by the Office of the Provincial Fiscal of Baganga, Davao Oriental, and about which the accused have talked in restaurants and to several people in the community of Baganga that he charged the undersigned with ignorance of the law in connection with Civil Case No. 174, entitled "Baganga Consolidated Arastre-Stevedoring Services, Inc. vs. Hon. Alberto Veloso, et al"; and in Civil Case No. 122, entitled "Cresencio Maliño vs. Ramon Ramirez vs. Vicente Estevas, Sr.", which cases are sub-judice or pending resolution before this Court in view of the pleadings intervening, thus undermining the faith and confidence of the people in the Court, and tending directly or indirectly to impede, obstruct, unlawfully interfere with or influence the decision in the controversy or degrade and embarrass the administration of justice.

CONTRARY TO LAW.

Baganga, Davao Oriental, Philippines, November 9, 1981.

(SGD) ROQUE M. BARNES

Presiding Judge

SUBSCRIBED AND SWORN to before me this 9th day of November, 1981, at Baganga, Davao Oriental, Philippines.

(SGD) ADOLFO A. CAUBANG

Municipal Mayor"

On the basis of the aforesaid charge, a warrant was issued for the arrest of the petitioner who was actually arrested at eight-thirty in the morning of November 11, 1981. Thereafter he was brought direct to the sala of the Hon. respondent Judge where the charge of Indirect Contempt was read to him. As recorded, the proceeding that transpired in said case runs thus —

"COURT:

Now, the charge had been read to you and the basis of that charge is the law that is there in the charge. Read the rule (Reading).

Now, you have been making comments criticisms against the presiding judge of this court of ignorance of the law. That will undermine the faith, confidence and respect of the people in the integrity of this court and of the presiding judge, and thereby maligning, embarrassing, impeding the administration of justice when you mentioned in your criticism cases which are pending decision and/or resolution by the court. It is there in your complaint under oath to the President of the Philippines.

Now, you wanted that this presiding judge decide the case as what you think when you made this criticism? The court knows that you are not a lawyer. Does the accused know the law?

DR. NAZARENO:

Not necessarily a lawyer.

COURT:

Are you a party to these cases you mentioned in your complaint?

DR. NAZARENO:

Your Honor, may I ask if this is part of the proceedings. Because if it is part of the proceedings, then I would ask that the presiding judge inhibits himself.

COURT:

Are you a party to these cases you mentioned in your complaint to the President of the Philippines?

DR. NAZARENO:

Not a party to the case, Your Honor, but I am doing it as a concerned citizen.

COURT:

You are not also a lawyer?

DR. NAZARENO:

I do not pretend to be a lawyer, Your Honor, but only as a concerned citizen.

COURT:

You should know the law because you are denouncing this presiding judge as suffering from ignorance of the law?

DR. NAZARENO:

Your Honor, if this is part of the proceedings, then I move for the inhibition of the presiding judge.

COURT:

You answer the question of the court.

DR. NAZARENO:

If this is part of the proceedings, Your Honor, then I would petition the Honorable Court that the presiding judge inhibits himself because he is a party-in-interest to this proceedings. The contents of my letter to the President was only a narration on the part of the call of the President on the people to denounce incompetent and corrupt judges; and that letter is not addressed to anybody else but only to the President. So it is the President who has to decide on that letter or complaint of mine.

COURT:

Your response to the court is good if it is correct. But your response is not correct because you are violating the rule on contempt. You have heard the rule when it was read to you. And in your complaint you mentioned cases which are still pending resolution by the court and therefore sub-judice. Moreover, you are not a party to the case. By doing so, you are impeding the administration of justice. The lawyers know the status of the proceedings.

Do you have more answers to say?

DR. NAZARENO:

I am petitioning the Honorable Court that the Honorable Presiding Judge should inhibit himself from hearing this case as he is a party-in-interest to this case, Your Honor.

COURT:

Petition denied. It is within the power and authority of the court to charge and investigate you and to put you under custody that is as provided for under the rules.

DR. NAZARENO:

May I request that the ruling of the Honorable Court be placed on record the ruling of the Honorable Court, Your Honor.

COURT:

Put it on record Mr. Stenographer.

Do you have anything more to say?

DR. NAZARENO:

No more, Your Honor.

COURT:

Order. The accused stands charged of indirect contempt of court in a charge quoted as follows: (quote the charge) The court after hearing the explanation and answer of the accused, and finding the same to be unsatisfactory, the accused having admitted the charge in open court, he is hereby found guilty of indirect contempt and accordingly, he is punished under the provisions of Sec. 6 of Rule 71 of the Revised Rules of Court. WHEREFORE, the accused is hereby sentenced and ordered to pay a fine of P1,000.00 and to suffer the penalty of imprisonment of six (6) months. SO ORDERED."

Petitioner now comes before Us through the instant petition for Certiorari assailing not only the validity of his conviction but likewise the legality of the proceedings conducted against him which resulted in his conviction.....alleging that he was denied the opportunity to defend himself;[3] to be assisted by counsel despite his insistence and assertion of said right; and a reasonable time within which to prepare for his defense despite the penal nature of the charge against him. Instead, respondent right then and there proceeded to investigate him on the basis of his letter-complaint to the President[4] which could not in anyway possibly interfere, impede nor obstruct the administration of justice and could not therefore legally serve as a basis for a liability for indirect contempt.

In his COMMENT filed in compliance with our Resolution of March 8, 1982, respondent Judge alleged that petitioner's Letter-Complaint of August 2, 1982 to President Marcos, charging him of ignorance of the law undermines the faith, respect, trust and confidence of the citizenry in the administration of justice considering that the two cases[5] therein dealt with and complained of are still pending consideration in his sala and therefore sub-judice.

Respondent Judge also claims that he had been reliably informed that petitioner was not content in merely writing to the President as he had done, but likewise had been talking to a lot of people in restaurants and other places on this same subject — his (respondent's) alleged ignorance of the law.[6]

Respondent Judge likewise contends that petitioner was merely seeking refuge under the guise of being a concerned citizen answering the call of the President when in reality he was in truth and in fact really settling a score against respondent who convicted him on appeal in a less serious physical injury case on December 14, 1971. He denied having acted without jurisdiction nor in excess of jurisdiction, much less has he committed grave abuse of discretion in adjudging petitioner guilty of indirect contempt and imposing upon him a fine of P1,000.00 plus six (6) months imprisonment which is in accordance with Rule 71, Section 6 of the Rules of Court.

At the outset, let it be stated that the contempt proceeding against the petitioner was wrongly initiated. The nature thereof being that of indirect contempt, a written charge is necessary pursuant to Section 3, Rule 71 of the Rules of Court. The written charge may partake the nature of (1) an Order requiring the respondent (not accused) to show cause why he should not be punished for contempt for having committed the contemptuous acts imputed against him; or (2) a petition for contempt by way of special civil action under Rule 71 of the Rules of Court. The first procedure applies only where the indirect contempt is committed against a court or judge possessed and clothed with contempt powers. The second, if the contemptuous act was committed not against a court nor a judicial officer with authority to punish contemptuous acts.

Neither of the two modes of commencing an indirect contempt proceeding was resorted to nor availed of in the instant case. What was filed against the herein petitioner was to all intents and legal purposes an information in a criminal case.

Contempt, however, is not a criminal offense within the meaning of Sec. 87 of the Judiciary Act of 1948, and need not be instituted by means of an information.[7] The institution of charges by the prosecuting official is not necessary to hold persons guilty of civil or criminal contempt amenable to trial and punishment by the court. All that the law requires is that there be a charge in writing duly filed in court and an opportunity to the person charged to be heard by himself or counsel.[8]

But even disregarding said procedural infirmities, still we are not prepared to sustain petitioner's conviction. It can not be denied that the letter-complaint authored and addressed by the petitioner to the President was in response to His Excellency's appeal to the public to come up with charges and evidences against incompetent and corrupt judges. Since that was the time when the proposed reorganization of the judiciary was being undertaken the timeliness of the said letter may therefore be conceded. True, a mere casual perusal of the said letter will immediately show that the statements contained therein are apparently degrading to the integrity and competence of the respondent Judge. His Honor's remedy, however, if any exists, against such an onslaught or attack on his character and reputation is a criminal action for defamation[9] and not a citation for contempt since the power to punish contempt should be exercised on the preservative and not on vindictive principle.[10]

"A judge, as a public servant, should not be so thin-skinned or sensitive as to feel hurt or offended if a citizen expresses an honest opinion about him which may not altogether be flattering to him. After all, what matters is that a judge performs 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.

(Underscoring supplied)[11]

Anent respondent Judge's assertion that the two cases referred to and dealt with in petitioner's letter are still pending consideration before His sala[12] hence, sub judice, suffice it to state that precisely one of the complaints insofar as Civil Case No. 174 is concerned is the unresolved motion to dismiss which is still then pending despite the lapse of a substantial period of time since its filing. With respect to Civil Case No. 122, the copy of the decision in said case attached to petitioner's letter as Annex D sufficiently negates respondent Judge's assertion that the case is still pending. But be that as it may, it seems clear that petitioner's referral to the two aforementioned cases do not appear motivated by a desire to obstruct nor impede, much less degrade the administration of justice but apparently to make his complaint a more authentic one, hence the said reference to definite cases by way of specifications.

Another disturbing circumstance which strongly argues for the nullification of petitioner's conviction is the denial of petitioner's right to due process and to counsel. We can not ride along with respondent Judge's feeble reliance upon Section 3, Rule 71 of the Rules of Court in justifying the procedure adopted by His Honor in the questioned contempt proceeding. He claimed that petitioner was given the opportunity to be heard before being adjudged guilty of the charge against him which was in full accord with Section 3 of Rule 71 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;

xxx xxx xxx"

Our review of the records, however, convinces Us that petitioner was not afforded full and real opportunity to be heard. And this is so because he learned of the charge against him only on the very day he was arrested and hailed to court to answer the said charge. Respondent should have granted petitioner ample opportunity to prepare for trial and defend himself. While speedy trial should be encouraged, a person's right to due process should not be sacrificed. In the case at bar, right at the very start and all throughout the proceedings, respondent Judge's burning desire to send petitioner behind bars appeared clearly evident, thereby transforming his court into a despot's forum. By reason thereof, he succeeded in having people, more especially the herein petitioner, lose confidence in courts of justice thereby placing the administration of justice under a cloud of doubt, thus setting at naught his proclaimed attempt to correct petitioner's alleged acts of undermining the faith, respect, trust, and confidence of the citizenry in the court of justice. It should not be lost sight of that contempt proceedings are commonly treated as criminal in nature, the same being penal in character. The safeguards therefore provided for by the Constitution and the Rules of Court in favor of the accused should be similarly accorded to the herein petitioner of which he was denied by the respondent Judge.

Petitioner's proper and correct remedy against the questioned order of conviction, pursuant to Sec. 10, Rule 71 of the Rules of Court, is appeal. Instead, he has resorted to certiorari. Considering, however, that this case has been pending for quite some time and more specifically the view we take thereon on its merits, to compel petitioner to follow said mode of review, will be sanctifying technicality against substance with no different result in view.

WHEREFORE, the Order convicting petitioner of indirect contempt is hereby REVERSED, and he is hereby

relieved of any liability for indirect contempt. No pronouncement as to costs.

SO ORDERED.

Concepcion, Jr., and Escolin, JJ., concur.

Makasiar, J., (Chairman), an administrative case should be filed against respondent Judge Roque M. Barnes based on the charges alleged by herein petitioner in his letter dated August 22, 1981 consisting of 2 ½ pages addressed to the President of the Philippines. Respondent Judge should be required to answer the same and thereafter, the case should be assigned to a Justice of the Intermediate Appellate Court for investigation, report and recommendation. Aquino and Abad Santos, JJ., see concurring opinions.

[1] Annex "D" - Order, dated November 11, 1981.

[2] Annex "A".

[3] Page 1, Petition.

[4] Page 8, Petition.

[5] Civil Cases Nos. 122 and 174.

[6] Pages 1-2, Comment.

[7] Israel vs. Estenzo, L-24670, June 30, 1968, 14 SCRA 652.

[8] People vs. Venturanza, 98 Phil. 211.

[9] Barrios vs. Alano, 98 SCRA 401.

[10] Sulit vs. Tiangco, 115 SCRA 207; Manolo vs. de Vega, 120 SCRA 749; Lipata vs. Tutaan, 124 SCRA 877.

[11] Austria vs. Masaquiel, 20 SCRA 1247, 1260.

[12] Civil Cases Nos. 122 and 174.

CONCURRING OPINION

ABAD SANTOS, J.:

I am glad to give my concurrence to the learned opinion of Mr. Justice Cuevas which curbs judicial tyranny through the exercise of the power to hold persons in contempt of court.

I have had two personal experiences on the matter when I was Secretary of Justice. Although I had administrative supervision of all courts below the Court of Appeals and the Supreme Court contempt actions were brought against me in inferior courts which were not warranted on the basis of the facts.

I had been a trial judge myself and then as now I want things to move with all deliberate speed. I also regard my office with respect but I can also laugh at myself as a human being susceptible to error.

Judges are well-advised that the power to cite for contempt is to be used sparingly. It is there to be used for preservative but not for vindictive purposes. It should be used only in clearly warranted cases to uphold the dignity of the office, not person, of the judge, and to prevent obstruction of justice.

CONCURRING OPINION

AQUINO, J.:

I concur in the result. The two complaints dated August 22 and October 13, 1981 of Hidulfo D. Nazareno against Judge Barnes were referred by the Office of the President of the Philippines to this Court and were investigated by Justice Vicente Mendoza of the Appellate Court. He recommended the exoneration of the respondent. Administrative Matter No. 2699-CFI against Judge Barnes was dismissed in this Court's resolution of January 29, 1985. In the meantime, Judge Barnes was retired on March 31, 1984.

The complaints of Nazareno against Judge Barnes do not constitute contempt of court. While the complainant against a judge harbors nothing but contempt for him, such contempt is not the actionable contempt contemplated in Rule 71 of the Rules of Court.

Contempt, which used to be a provisional remedy, is now a special civil action. The procedure against the contemnor is indicated in sections 4 to 6 of Rule 71. The contempt charge may be filed by the fiscal, the offended judge himself or by a private person (3 Moran's Comments on the Rules of Court, 1980 Ed., p. 369).

The peculiarity is that the judge is both the offended party and the deciding judge in the case. That is why the judge should keep his head and exercise his power to punish for contempt on the preservative, and not on the vindictive principle, and on the corrective and not retaliatory idea of punishment.

In the instant case, not only is Nazareno's denunciation of Judge Barnes not contemptuous but Judge Barnes exercised his power to punish the supposed contemnor in a vindictive and retaliatory manner. He acted summarily and arbitrarily in dealing with the alleged contemnor.

For that reason and because Nazareno was denied due process, the sentence imposed on him by Judge Barnes should be set aside. Certiorari is proper because Judge Barnes acted with grave abuse of discretion amounting to excess of jurisdiction.

Nazareno should be commended for exposing in good faith what he regarded as anomalies committed by Judge Barnes. The judge has nothing to fear if he did nothing wrong.

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