

FLORENTINA L. BACLAYON, PETITIONER, VS. HON. PACITO G. MUTIA, AS PRESIDING JUDGE OF THE MUNICIPAL COURT OF PLARIDEL, MISAMIS OCCIDENTAL AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 59298. April 30, 1984

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

This is a petition to review by certiorari the order dated December 21, 1981 of respondent Pacito G. Mutia,[1] then Presiding Judge of the Municipal Court (now Municipal Trial Court) of Plaridel, Misamis Occidental, which imposed as a condition in granting probation to petitioner Florentina L. Baclayon that she refrain from continuing with her teaching profession.

Petitioner, a school teacher, was convicted of the crime of Serious Oral Defamation by the then Municipal Court of Plaridel, Misamis Occidental, then presided by respondent Pacito G. Mutia for having quarrelled with and uttered insulting and defamatory words against Remedios Estillore, principal of the Plaridel Central School. Her conviction was affirmed by the Court of Appeals (now Intermediate Appellate Court) and the appellate court, taking into account the aggravating circumstance of disregard of the respect due the offended party on account of her rank and age and the fact that the crime was committed in the office of the complainant in the public school building of Plaridel, Misamis Occidental where public authorities are engaged in the discharge of their duties during office hours, increased the penalty imposed by respondent judge and sentenced petitioner to one year, 8 months, 21 days of *arresto mayor* in its maximum period to 2 years and 4 months of *prision correccional* in its minimum period.

The sentence was promulgated on September 9, 1981. On the same date petitioner applied for probation with respondent judge who referred the application to a Probation Officer. The Post-Sentence Investigation Report favorably recommended the granting of petitioner's probation for a period of three (3) years.

On December 21, 1981, respondent Judge issued an order granting petitioner's probation, but modified the Probation Officer's recommendation by increasing the period of probation to five (5) years and by imposing the following conditions:

- "(a) To present herself to the probation officer designated to undertake her supervision at such place as may be specified in the order within seventy-two hours from receipt of said order;
- (b) To report to the Probation Office or any specified place designated by the Probation Officer at least once a month in person;
- (c) To reside at the premise approved by the Probation Officer and not change her residence without prior written approval;
- (d) To permit the Probation Officer to visit her house and place of work or an authorized Social Worker;

- (e) To refrain from drinking intoxicating liquor to excess;
- (f) To pay the cost;
- (g) To satisfy any other condition related to the rehabilitation of the defendant and not unduly restrictive of her liberty or incompatible with her freedom of conscience; and
- (h) To refrain from continuing her teaching profession."

Petitioner's plea for deletion of the last condition was rejected by respondent judge. Hence, the petition at bar alleging grave abuse of discretion in the imposition of the said condition that petitioner should "refrain from continuing her teaching profession." The petitioner submits that said condition is not only detrimental and prejudicial to her rights but is also not in accordance with the purposes, objectives and benefits of the probation law and prays that the said condition be deleted from the order granting her probation. On petitioner's motion, the Court issued a temporary restraining order enjoining respondent judge from enforcing the said questioned condition.

The Court finds merit in the petition.

The conditions which trial courts may impose on a probationer may be classified into general or mandatory and special or discretionary. The mandatory conditions, enumerated in Section 10 of the Probation Law, require that the probationer should (a) present himself to the probation officer designated to undertake his supervision at such place as may be specified in the order within 72 hours from receipt of said order, and (b) report to the probation officer at least once a month at such time and place as specified by said officer. Special or discretionary conditions are those additional conditions, listed in the same Section 10 of the Probation Law, which the courts may additionally impose on the probationer towards his correction and rehabilitation outside of prison. The enumeration, however, is not inclusive. Probation statutes are liberal in character^[2] and enable courts to designate practically any term it chooses as long as the probationer's constitutional rights are not jeopardized.^[3] There are innumerable conditions which may be relevant to the rehabilitation of the probationer when viewed in their specific individual context. It should, however, be borne in mind that the special or discretionary conditions of probation should be realistic, purposive and geared to help the probationer develop into a law-abiding and self-respecting individual. Conditions should be interpreted with flexibility in their application and each case should be judged on its own merits - on the basis of the problems, needs and capacity of the probationer.^[4] The very liberality of the probation should not be made a tool by trial courts to stipulate instead unrealistic terms.

Petitioner is a teacher and teaching is the only profession she knows and as such she possesses special skills and qualifications. Thus, she was designated as District Guidance Coordinator and always designated as District-in-Charge whenever the District Supervisor is out of town. She is usually selected to represent her district in seminars, meetings and conferences. She also excelled in her study of Child Study and Development. It also appears that she is an outstanding member of the Misamis Occidental Girl Scout Council, having served as Physical Education & Girl Scout Field Advisor of the District, Adviser of the District Girl Scout Leaders Association, Adviser of the District Federated Girl Scout Barangay Troop Committee, acts as resource person in District and Division Level Girl Scout encampments and re-elected Board Member of the Misamis Occidental Girl Scout Council. To order the petitioner to refrain from teaching would deprive the students and the school in general the benefits that may be derived from her training and expertise. While it is true that probation is a mere privilege and its grant rests solely upon the discretion of the court, this discretion is to be exercised primarily for the benefit of organized society and only incidentally for the benefit of the accused.^[5] Equal regard to the demands of justice and public interest must be observed.^[6] In this case, teaching has been the lifetime and only calling and profession of petitioner. The law requires that she devote herself to a lawful calling and occupation

during probation. Yet, to prohibit her from engaging in teaching would practically prevent her from complying with the terms of the probation.

Respondents contend that petitioner's final conviction carries with it the accessory penalties in addition to the principal penalty of imprisonment; and since petitioner was sentenced to *arresto mayor* in its maximum period to *prision correccional* in its minimum period, she must likewise suffer the accessory penalties of suspension from public office and from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage. This cannot apply to petitioner, however, because she was granted probation. The imposition of her sentence of imprisonment was thereby suspended and necessarily, the imposition of the accessory penalties was likewise thereby suspended.

An order placing defendant on "probation" is not a "sentence" but is rather in effect a suspension of the imposition of sentence.[7] It is not a final judgment but is rather an "interlocutory judgment" in the nature of a conditional order placing the convicted defendant under the supervision of the court for his reformation, to be followed by a final judgment of discharge, if the conditions of the probation are complied with, or by a final judgment of sentence if the conditions are violated.[8]

In view of all the foregoing, the Court grants the petition and hereby orders that paragraph (h) of the questioned order granting probation which requires that petitioner refrain from continuing with her teaching profession be deleted. The temporary restraining order is hereby made permanent. No costs.

Melencio-Herrera, Plana, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

[1] He has since been appointed as and is now the incumbent City Fiscal of Oroquieta City.

[2] *Balleta, Jr. vs. Judge Leviste*, 92 SCRA 719; *Santos To vs. Paño*, 120 SCRA 8; *Yusi vs. Morales*, 121 SCRA 853.

[3] Charles Newman, *Sourcebook on Probation, Parole and Pardons*, Third Edition, p. 129.

[4] Sergio F. Go, *The Period and Conditions of Probation*, p. 43, (1977 Probation Seminar).

[5] *Tolentino vs. Alconcel*, 121 SCRA 92.

[6] *Ibid.*

[7] *Commonwealth ex rel. Paige vs. Smith*, 198 A. 812, 813, 815, 130 Pa. Super. 536.

[8] *Ibid.*

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