

**ONOFRE D. MANALAD, REYNALDO M. LAIGO, CIRILO C. DULOG,
PETITIONERS, VS. THE HON. JESUS DE VEGA, JUDGE OF THE COURT
OF FIRST INSTANCE, BRANCH XI, MALOLOS, BULACAN,
RESPONDENT.**

G.R. No. 59866. February 22, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Assailed in this petition, erroneously designated as one for Mandamus, is the order of respondent Judge Jesus de Vega, dated January 27, 1982, finding petitioners guilty of contempt as follows:

"In view of the foregoing, the Court hereby finds NBI Agents Onofre D. Manalad, Reynaldo M. Laigo and Cirilo Dulong, guilty of indirect contempt of court for having breached the trust and confidence reposed in them in the custody and care of the records of this case by making markings thereon without prior authority from the Court, and for directly degrading the administration of justice, and they are hereby sentenced to pay a fine of Five Hundred Pesos [P500.00] each, to be paid by them to the Clerk of this Court within ten (10) days from receipt of this Order; otherwise, the Court shall order their imprisonment." [1]

This contempt proceeding against petitioners arose out of the several requests made by Mrs. Aurelia Manalad de Vera for investigation of the alleged gross falsification of the records in Civil Case No. 5008-M of the Court of First Instance of Bulacan, Branch XI, presided by respondent judge. These requests were contained in a letter-complaint [2], dated August 25, 1980, addressed to NBI Director Jolly Bugarin, and two [2] telegrams, both dated August 25, 1980, respectively, addressed to the Minister of Justice Ricardo C. Puno [3] and to then Tanodbayan Vicente ERICTA [4].

Acting on said request, the Tanodbayan, in his 2nd Endorsement dated September 25, 1980 [Annex "A", p. 14, Rollo] referred the matter to the National Bureau of Investigation for fact-finding investigation and report. The case was assigned to petitioners Reynaldo Laigo and Cirilo Dulong, agents of the NBI Narcotics Section.

In the course of their investigation, petitioners sent a request to respondent judge for an examination of the records of Civil Case No. 5008-M, which request was readily acceded to. While the records were in the custody of the NBI, petitioner Laigo affixed his signature and right thumbprint on the clean, blank dorsal side of pages 142 to 230 of said records which included, among others, court orders, documentary exhibits, the memoranda submitted by the parties and the original of the eight-page decision on the merits rendered in the case.

On March 16, 1981, petitioners Laigo and Dulong submitted a Memorandum Report [5] of the investigation to their co-petitioner, Onofre Manalad, Officer-in-Charge of the Narcotics Section. The 24-page Memorandum-Report concluded with the following recommendations:

"1) That JUDGE JESUS DE VEGA of the CFI, Branch XI, Malolos, Bulacan, be prosecuted for violation of Art. 204 of the Revised Penal Code, and of Sec. 3[e] of the Anti-Graft Law [RA 3019] criminally and

administratively;

"2) That ATTY. FEDERICO BERNARDO of Pandi, Bulacan, likewise be criminally prosecuted for violation of Art. 209 of the Revised Penal Code, and administratively for disbarment, having violated Rule 138 of the Rules of Court and par. 15 of the Canons of Professional [Legal] Ethics. . . ."[6]

After approval of the Memorandum-Report by petitioner Manalad, the same was forwarded to the Legal and Evaluation Division of the NBI, which submitted its Evaluation Comment[7], together with the Memorandum-Report and Annexes, to the Tanodbayan, copies of which were furnished the Court Administrator.

On September 21, 1981, the Court Administrator, through Deputy Court Administrator Romeo D. Mendoza, asked respondent judge to submit his Answer to the NBI Evaluation Comment and Report. It appears that while reviewing the records of Civil Case No. 5008-M in preparation for his answer, respondent judge noticed the markings made thereon by petitioner Laigo. This prompted respondent judge to issue an Order dated October 17, 1981[8]. Petitioners were thereby ordered —

"to show cause in writing within six [6] days from receipt hereof, why they should not be held responsible for these tamperings of official court records and held in contempt for improper conduct in having breached and violated the trust and confidence in the proper custody and care thereof reposed by this court and for directly degrading the administration of justice. Petitioners were likewise 'directed to appear personally before this Court on October 29, 1981 at 8:30 A.M. when this incident shall be calendared for hearing and the Answer of explanation the said Agents may make and offer to this Court would be duly considered.'"

On October 29, 1981, in compliance with said Order, petitioner Laigo appeared before the court, for himself and on behalf of his co-petitioners who were then on official business at some place else. He submitted for the court's consideration a Manifestation[9], denying the allegations of "tampering", with the explanation that the markings made on the records were investigative procedures "incidental to our sworn duty as NBI agents conducting a legitimate investigation upon the directive of the Tanodbayan . . ."[10] He further stated therein that "said markings were not made to embarrass, hinder or obstruct the court in its administration of justice, but are investigative procedures which were precisely adopted in this case to secure and preserve the integrity of the court documents as the subject of our investigation was the decision of the Honorable judge in the above-captioned case which was allegedly not supported by evidence."[11]

Rejecting the above explanation, respondent judge issued the order of January 27, 1982, hereinabove quoted.

This Court resolved to issue, upon motion of petitioners, a resolution restraining the enforcement of the order of arrest dated October 6, 1982 issued by respondent judge against the latter.[12]

We find the citation of petitioners for indirect contempt of court patently unjustified. The questioned order of October 17, 1982 charged petitioners with having made alleged "tamperings" on certain documents forming part of the records of Civil Case No. 5008-M. "To tamper" means "to meddle as to alter a thing, especially to make corrupting or perverting changes, as to tamper with a document or a text." [13] The marks in question cannot be categorized as "tamperings" for they did not alter the contents or import of the documents, particularly so as they are found on the dorsal side, not on the face of the documents themselves. At best, these markings should be construed as a mere notation or memorandum of the fact that said documents were reviewed under an official investigative process.

The arbitrary character of the order of January 27, 1982 is made more evident in the light of the explanation given by petitioners that such markings are part of the standard operating procedure [SOP] of the NBI. While there is cogency in the observation of respondent judge that such "SOP" is not binding upon the court, respondent judge should nevertheless have considered this factor as a manifestation of good faith on the part of petitioners which

should justify their acquittal of the contempt charge. It has been held that "intent, however goes to the gravamen of the offense, and the good faith, or lack of it, of the alleged contemnor should be considered. Where the act complained of is ambiguous or does not clearly show on its face that it is a contempt and is one which if the party is acting in good faith, within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character." [14]

Nowhere than in this case does the concurring opinion of then Associate, now Chief Justice, Enrique M. Fernando in *Oliveros v. Villaluz*, [15] bear more relevance. He cautioned:

"More than that, however, the overriding concern of this brief opinion is the potentiality for arbitrariness that the contempt power lends itself to. A man on the bench must be on guard to be wary not only of his predilections but likewise of his sensitiveness to what may be considered as slights to the dignity of the court. Nonetheless, the occasions do present themselves when, even with the utmost care exercised, one who is both prosecutor and judge may be at times misled by factors infused with the personal element. Even if it were not thus, the impression of the lay public may be precisely that. . . . There must be caution and hesitancy on the part of the judge whenever the possible exercise of his awesome prerogative presents itself. 'The power to punish for contempt,' as was pointed out by Justice Malcolm in *Villavicencio v. Lukban*, 'should be exercised on the preservative and not on the vindicative principle. Only occasionally should the court invoke its inherent power to retain that respect without which the administration of justice must falter or fail.' The lower court, to my mind, failed to meet such a rigid but commendable test."

WHEREFORE, the order of January 27, 1982 of respondent judge finding petitioners guilty of contempt of court is hereby annulled and set aside. The temporary restraining order issued by this Court on October 27, 1982 restraining enforcement of the Order of Arrest against petitioners is made permanent. No costs.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero, Abad Santos and De Castro, JJ., concur.
Aquino, J., is on leave.

[1] p. 71, Rollo.

[2] Annex "A", p. 15, Rollo.

[3] Annex "C", p. 16, Rollo.

[4] Annex "C-1", p. 17, Rollo.

[5] Annex "E", p. 19, Rollo.

[6] Annex "E", pp. 41-42, Rollo.

[7] Annex "F", p. 43, Rollo.

[8] Annex "H", p. 55, Rollo.

[9] Annex "I", p. 58, Rollo.

[10] p. 59, Rollo.

[11] pp. 59-60, Rollo.

[12] Resolution, dated October 27, 1982, p. 89, Rollo.

[13] 41 Words and Phrases, 147, citing U.S. v. Tomicich, D.C. Pa., 41 F. Supp. 30, 35.

[14] 17 C.J.S., p. 20.

[15] 57 SCRA 153.

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