

ROGER B. PATRICIO, PETITIONER, VS. HON. ENRIQUE P. SUPLICO, RESPONDENT.

G.R. No. 76562. April 22, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

Inspired no doubt by Proclamation No. 3 promulgated by the President of the Philippines on March 25, 1986, shortly after the deposal of the former government headed by the late Ferdinand Marcos, which inter alia directed the taking of measures to improve the judiciary and remove therefrom those deemed incompetent and otherwise undesirable, twenty (20) active law practitioners in Capiz Province addressed a petition dated November 4, 1986 to the President, the Chief Justice, and the Minister of Justice, urging the acceptance of the resignation or immediate removal of Hon. Enrique P. Suplico as presiding Judge of Branch 14 of the Regional Trial Court at Roxas City.[1] The petition contained the following relevant assertions:

- 1) that Judge Suplico "was appointed during the reorganization of the courts in 1983 because of the patronage of his brother-in-law, then an assemblyman, and the regional political kingpin, then an ambassador, and in spite of his meager exposure and experience in the practice of law which his former employment with COMELEC could not provide;"
- 2) that "predictably, * * * in the performance of his functions as a judge, (he) has been deficient and inadequate in legal knowledge, skill and application;"
- 3) that "as a graver fault, * * * (he) solicits, requires and receives valuable consideration in matters affecting cases pending before him, and has interfered and shown unusual interest in cases before other judges and investigating officers for unknown but suspicious reasons and causes;"
- 4) that "the foregoing * * * (allegations) are based on the personal knowledge and experience of some of * * * (the authors), on the information given * * * by * * * clients and other parties, and on the general unsavory reputation of the Hon. ENRIQUE P. SUPLICO in the community;" and
- 5) that "said charges can be proved with documentary and testimonial evidence, and while the various informants against the integrity of the Hon. ENRIQUE P. SUPLICO are litigants in his sala or are government officers and employees who might hesitate to restate formally their respective experiences because of their situation or station, still the seriousness and flagrancy of the information given and the variety and number of the unrelated informants thereof, place to a serious doubt His Honor's ability to meet or even approximate the standard of proven integrity and honesty set out by the New Administration of its judges * * * ."

Among those who signed the petition was Atty. Roger B. Patricio. On November 11, 1986, he filed a common and consolidated Urgent Motion for Inhibition in reference to seventeen (17) criminal and civil actions and special proceedings pending in Judge Suplico's sala in which he was appearing as counsel of record.[2] Adverting to his being a signatory to said petition to President Aquino, et al. dated November 4, 1986, copy of which he appended to his motion, Atty. Patricio prayed that Judge Suplico inhibit himself "from further trying * * * (his 17) cases," and that the same be re-assigned by raffle to other branches of the Trial Court. Patricio's submission was that the

filing of the petition of November 4, 1986 "will unavoidably generate or has generated personal prejudice in the part of the Presiding Judge * * * against undersigned counsel and/or his clients who are parties in the subject cases," and they would thereby be deprived "of the cold neutrality of an independent, wholly-free, disinterested and impartial tribunal * * * (citing Luque vs. Kayanan, 29 SCRA 178)."

By Order dated November 20, 1986, Judge Suplico ruled on the motion for inhibition.[3] In that order, the judge reproduced the petition to the President, annexed to the motion. He also quoted from the record the testimony of a witness in "Civil Case No. V-4653 entitled Catig versus Escevedo," in which, according to him, he —

"made rulings against his (Atty. Roger B. Patricio) objections and terminated his cross-examination against his stand wherein Atty. Roger B. Patricio felt offended and embarrassed in the courtroom in the presence of his clients. So, the present petition come into being." (sic.).

The judge then denied the motion for inhibition because —

- 1) it is "not verified, * * * not under oath, * * * not an original being only a machine copy, and not supported by affidavits;"
- 2) four of the signatories are not known personally to him and "have never practiced law in * * * (his) branch ever since;"
- 3) "the party-litigants has no interest and are not parties to the said motion and said inhibition causes more delay in the termination of this case (sic);"
- 4) the motion, "together with the Annex A, alleges contemptuous words, which is not supported by evidence and constitute a criminal contempt wherein the conduct of Atty. Roger B. Patricio is directed against the dignity and authority of the court or the Presiding Judge acting judicially (sic);"
- 5) the motion was "pre-mature and constitute simple harassment and direct contempt," there being no "on-going investigation lodge in the proper forum (which should be "kept confidential"), nor the undersigned presiding judge was given due process but adding insult to injury, undersigned on November 12, 1986, at 8:00 o'clock A.M., heard a radio interview over DYRO, where Atty. Roger B. Patricio spoke about this petition for the ouster of the Presiding Judge citing the former case they filed against Judge Oscar Leviste, as a precedent * * * (sic)."

Observing that "said motion with the petition has already created great and irreparable damaged (sic) on . . . (his) person," and citing precedents, the Court made the following dispositions, to wit:

- 1) denying the motions for inhibition, summarily declaring them as a direct contempt;
- 2) "(d)eclearing Atty. Patricio guilty beyond reasonable doubt of direct contempt and sentence him (sic) to suffer both, fine of FIVE HUNDRED PESOS (P500.00) and imprisonment of three (3) months for each of the above-entitled cases;"[4]
- 3) fixing the bail bond at P5,000.00 for each case;[5]
- 4) "(d)eclearing all said motions filed in the above-cases with the use of vicious, intemperate, abrasive and disrespectful language as a criminal contempt and (that) the same should be considered as stricken off from the records of the respective cases;"
- 5) recommending "that disbarment proceedings be filed against Atty. * * * Patricio or any disciplinary (sic) action should be filed against him;"
- 6) directing the Deputy Sheriff to effect immediate service of the Order on Atty. Patricio "at his law-office or residence in Roxas City;" and

7) requiring that copies of the order be furnished to the President of the IBP Capiz Chapter and the Court Administrator.

Atty. Patricio lost no time in seeking invalidation of this Order of November 20, 1986. Towards this end, he filed with this Court on November 27, 1986, a petition for "certiorari (with an urgent prayer for a restraining order/preliminary injunction," praying for nullification of said Order of November 20, 1986 and the inhibition of the Judge from trying all the seventeen (17) cases in which petitioner Patricio had entered his appearance as counsel. On December 5, 1986, Patricio reiterated his plea for a temporary restraining order, expressing his "well-grounded concern that, despite the timely filing of * * * (his) Petition, a warrant for (his) arrest * * * may, at any time, be issued, if one has not already been issued, considering respondent Judge's animosity * * *," and considering further that the "bailbond of Eighty Five Thousand Pesos (P85,000) as fixed by respondent Judge * * * (is "grossly exorbitant and excessive," being) even higher than that ordinarily fixed in cases of murder and other grave offenses." [6] The Court issued a temporary restraining order on December 8, 1986, enjoining enforcement of Judge Suplico's Order dated November 20, 1986.

Another action against Judge Suplico, one of prohibition (with preliminary injunction and/or restraining order), was also filed in this Court by Atty. Patricio together with other signatories to the petition of November 4, 1986 — Attys. Roberto A. Barrios, Rodriguez Dadivas, Aquilina B. Brotarlo, Victor Azagra, Antonio Bisnar and Jose O. Alovera. In said action, docketed as G.R. No. 76600, the petitioners prayed that Judge Suplico be enjoined from further taking judicial action, and be directed to inhibit himself, in all the cases where they appear as counsel. By resolution dated December 8, 1986, the Court issued the temporary restraining order prayed for and also directed consolidation of G.R. No. 76600 and G.R. No. 76562.

Comments were submitted by Judge Suplico in both actions, on requirement of the Court.

Thereafter the President of the Philippines accepted the resignation of Judge Suplico, a fact which was communicated to the latter by the Court Administrator on February 3, 1987.

On May 25, 1987 this Court promulgated a Resolution (a) declaring that the acceptance of Judge Suplico's resignation had rendered moot the question, raised in both G.R. No. 76562 and G.R. No. 76600, as to whether or not he should be enjoined from acting in the cases therein specified, and thus left as the sole issue, the validity of the Order of contempt dated November 20, 1986, set up in G.R. No. 76562; and (b) resolving, in view thereof:

"* * * (1) to FORTHWITH LIFT the temporary restraining orders issued on December 8, 1985 in G.R. No. 76562 and G.R. No. 76600; (2) to DISMISS G.R. No. 76600 for having become moot and academic, without pronouncement as to costs; (3) to NOTE Judge Suplico's appearance in his own behalf; and (4) to REQUIRE the parties to submit, if they so desire, memoranda containing additional arguments as regards the Order of contempt of November 20, 1986, within twenty (20) days from notice."

All courts have the inherent power to punish for contempt, this being essential to their right of self-preservation. Under the Rules of Court, contempt is classified into direct, and indirect or constructive. Direct contempt is "misbehavior in the presence of or so near a court or judge as to obstruct or interrupt the proceedings before the same, including disrespect towards the court or judge, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required so to do." [7] Where the act of contumacy is not committed in *facie curiae*, [8] or "in the presence of or so near a court or judge as to obstruct or interrupt the proceedings before the same," i.e., perpetrated outside of the sitting of the court, it is considered indirect, or constructive, contempt, and may include "(m)isbehavior of an officer of a court in the performance of his official duties or in his official transactions," "(d)isobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge," (a)ny abuse of or any

unlawful interference with the process or proceedings of a court not constituting direct contempt," or "any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice," etc.[9]

Several distinctions exist between these two categories of contempt. The first is as regards the nature of the proceeding to be taken against the contemner. In the case of indirect or constructive contempt, the contemner may be punished only "(a)fter charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel;"[10] on the other hand, a person may be "summarily adjudged" in direct contempt,[11] at the very moment or on the very occasion of the perpetration of the act of contumely.

A second distinction lies in the penalty that the Court may impose. For direct contempt, the court may impose a "fine not exceeding two hundred pesos or imprisonment not exceeding ten (10) days, or both, if it be a superior court, or a judge thereof, or * * * a fine not exceeding ten pesos or imprisonment not exceeding one (1) day, or both, if it be an inferior court."[12] On the other hand, the person found guilty of indirect contempt "against a superior court or judge * * * may be fined not exceeding one thousand pesos or imprisoned not more than six (6) months, or both," or if guilty of constructive contempt "committed against an inferior court or judge, * * * may be fined not exceeding one hundred pesos or imprisoned not more than one (1) month, or both, and (in either case) if the contempt consists in the violation of an injunction, * * * may also be ordered to make complete restitution to the party injured by such violation."[13]

A third distinction is in respect of the availability of the remedy of appeal. The judgments of superior courts on direct contempt are not appealable;[14] but their judgments in constructive or indirect contempt "may be reviewed by the Court of Appeals or the Supreme Court * * *; (however) execution of the judgment or order shall not be suspended until a bond is filed by the person in contempt, in an amount fixed by the * * * (Regional Trial Court), conditioned that if the appeal be decided against him, he will abide by and perform the judgment or order."[15]

One other distinction is as regards the Court where proceedings may be initiated. Direct contempt is always proceeded against in the same superior court where committed. A special civil action of indirect contempt involving an inferior court, however, may be instituted either in that court or in the Regional Court of the province or city in which the inferior court is sitting.[16]

Consideration of these legal propositions vis a vis Judge Suplico's Order of November 20, 1986 should at once disclose quite apparent errors in the order.

It seems clear, in the first place, that Judge Suplico had acted in excess of his jurisdiction when he imposed on Atty. Patricio, for having allegedly committed direct contempt, the penalty of a "fine of FIVE HUNDRED PESOS (P500.00) and imprisonment of three (3) months for each of the (17) above-entitled cases;" and "fixing the bail bond at P5,000.00 for each case." [17] The penalty is clearly in excess of that for direct contempt fixed in Section 1, Rule 71 of the Rules of Court, which is "not exceeding two hundred pesos or imprisonment not exceeding ten (10) days, or both." In the second place, His Honor's act of fixing bail quite clearly runs afoul of the legal provision that the "(j)udgment of superior courts on direct contempt shall not be appealable."

Moreover, what Judge Suplico pronounced as constituting direct contempt — Atty. Patricio's Urgent Motion for Inhibition of November 11, 1986 — was without doubt but one, single act. That the motion sought the judge's inhibition in seventeen (17) actions and proceedings pending in his sala did not operate to convert or transform that single motion into seventeen (17) separate applications for disqualification. There was, to repeat, really only one, single act of direct contempt, if direct contempt it was indeed, not seventeen separate contumacious acts meriting seventeen (17) distinct penalties.

Again, the bond fixed by Judge Suplico in the aggregate sum of P85,000.00 — i.e., P5,000.00 for each of the 17 cases being handled by Atty. Patricio — is also unreasonable and excessive in the premises (apart from being completely out of place since, as above pointed out, judgments of direct contempt of superior courts are not appealable). The impression given is that the power to punish for contempt was exercised by His Honor in a manner inconsistent with prevailing policy and doctrine, i.e., that it be wielded on the preservative, rather than on the vindictive, principle;[18] to correct, rather than to retaliate for conduct deemed offensive.[19]

The foregoing exposition and conclusions do not, of course, dispose of the essential question before the Court, which is whether or not Atty. Patricio's urgent motion for inhibition dated November 8, 1986, taken together with the petition addressed to the President of the Philippines for the judge's removal from office,[20] was in truth correctly categorized as an act of direct contempt.

There is nothing in the language of the urgent motion for inhibition itself which may be accounted disrespectful or offensive. This is made clear by Judge Suplico himself in his Order of November 20, 1986. It is the petition annexed to said motion for inhibition and made the overt basis thereof, which must be examined and analyzed to determine if direct contempt was committed against respondent Judge Suplico.

The petition itself, addressed to President, Chief Justice and Minister of Justice (urging, in line with the reorganization of the judiciary, acceptance of the resignation or immediate removal of Judge Suplico) is a privileged communication within the meaning of Article 354 of the Revised Penal Code.[21] The petition was written by twenty (20) active law practitioners in Capiz Province in fulfillment of what they evidently considered their social, civic and legal duty to rid the courts of undesirable magistrates, and assist in the restoration of the people's faith in the judiciary and the Rule of Law. It was addressed exclusively to the officials who were the appropriate and competent parties to act thereon. The petition was not attended by any publicity whatsoever. Absent any evidence of malice or other improper motive on the part of the authors, the petition is *prima facie* not actionable upon the theory either that it is libelous or contumacious. Indeed, given the particular circumstances and conditions of the case, the petition in question may be regarded — as a similar one was so considered by this Court some fifty years ago[22] — as merely an exercise of a constitutional right to petition government for redress of a legitimate grievance.

When it became clear that Judge Suplico had somehow learned of the petition for his elimination from the judiciary, it became inevitable for the lawyers who had drawn it up, and who had cases pending in the judge's sala, to seek the latter's inhibition since it might not unreasonably be expected that, as Atty. Patricio has expressed it, the petition "will unavoidably generate or has generated personal prejudice in the part of the Presiding Judge * * * against undersigned counsel and/or his clients who are parties in the subject cases," hence, the Judge "should inhibit himself * * * in the name and interest of justice and fairness and to avoid violation of the party litigants' constitutional right to due process" and ensure that they be accorded "the cold neutrality of an independent, wholly free, disinterested and impartial tribunal * * * ." It was unavoidable, too, for a copy of the petition to be attached to the motion for inhibition, since it was the very reason for the inhibition prayed for. The petition was attached to the motion not to defame or debase, or shame or humiliate the judge, or defy or denigrate the authority of the court, but simply to demonstrate the basis for the movant's apprehension that the judge might become or have become so affected by the petition for his ouster as to lose that "cold neutrality" demanded of his office in dealing with the authors and their clients.

Contempt of court presupposes a contumacious attitude, a flouting or arrogant belligerence, a virtual defiance of the court.[23] No such attitude is discernible in the statements of the motion for inhibition or the petition thereto annexed. What the authors essentially do in their petition is (1) to declare their endorsement of "the policy and thrust of the New Administration to reform and improve its judiciary by requiring that judges be persons of

proven competence, integrity, probity and independence, * * * whose appointment or stay as such shall be without regard to his political clout or that of his relatives and patrons," and (2) to specify the reasons why they believe that Judge Suplico does not measure up to the desired standards for judgeship and should thus be removed as judge. The statement of those reasons, in the very nature of things, entailed an enumeration of the judge's perceived shortcomings, defects and faults demonstrating his unfitness for the judiciary, necessarily involving some denigration of his qualities and traits. Withal, there was no unnecessary debasement or abuse of the Judge's person. The references to him were all strictly relevant to the fundamental thesis: the need for his removal from his position in line with the Government's policy to reform and improve the judiciary.

WHEREFORE, the writ of certiorari prayed for is issued **ANNULLING AND SETTING ASIDE** the Order issued by respondent Enrique P. Suplico on November 20, 1986, then acting as Presiding Judge of Branch 14 of the Regional Trial Court (6[th] Judicial Region) at Roxas City. No pronouncement as to costs.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 33-35

[2] Id., pp. 29-32

[3] Id., pp. 20-28

[4] TOTAL FINES for 17 cases: P8,500.00; AGGREGATE TERM OF IMPRISONMENT for 17 cases: 51 months, or 4 years and 3 months

[5] AGGREGATE AMOUNT OF BAIL BONDS: P85,000.00

[6] Rollo, pp. 37-40

[7] Sec. 1, Rule 71

[8] Medina v. Rivera, 66 Phil. 156

[9] Sec. 3, Rule 71

[10] Sec. 3, Rule 71

[11] Sec. 1, Rule 71

[12] Sec. 1, Rule 71

[13] Sec. 6, Rule 71

[14] Sec. 2, Rule 71, which also provides, however, that a "person adjudged in contempt by an inferior court may appeal from the judgment to the * * * (Regional Trial Court) of the province, * * *."

[15] Sec. 10, Rule 71

[16] Sec. 4, Rule 71

[17] SEE footnote 3, supra

[18] SEE Moran, op. cit., 1980 ed., Vol. 3, p. 371, citing Villavicencio v. Lukban, 39 Phil. 778; Peo. v. Alarcon,

69 Phil. 265; Gamboa v. Teodoro, L-4893, May 13, 1952; Peo. v. Rivera, L--3646, May 26, 1952; SEE, also, Austria v. Masaquel, 20 SCRA 1247 (1967), Baja v. Judge Macandog, 158 SCRA 391 (1988)

[19] Moran, op. cit., citing In re Lozano, 54 Phil. 801 and Peo. v. Alarcon, supra

[20] See footnote 1 and related text, supra

[21] The provision states that while "(e)very defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown," the presumption does not apply inter alia to a "private communication made by any person to another in the performance of any legal, moral or social duty . . ." SEE Aquino, R., The Revised Penal Code, 1977 ed., Vol. III, pp. 1835-1841, citing cases

[22] Cabansag v. Fernandez, 102 Phil. 153, held that no dangerous tendency to belittle the court or undermine the administration of justice may be inferred solely from the act of a plaintiff in an ejectment case in seeking the aid of the Presidential Complaints and Action Commission (PCAC) in the speedy disposition of his case, this being held to be an exercise by the party of his constitutional right to seek redress for grievances and the letter to the PCAC not constituting undue publication.

[23] Delgra, Jr. v. Gonzales, L-24981, Jan. 30, 1970, 31 SCRA 237

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