

ATTY. MARIANO R. SANTIAGO, PETITIONER, VS. HON. K. CASIANO P. ANUNCIACION, JR., HON. LUIS TUAZON, JR., AND ATTY. ELEAZAR FERRY, RESPONDENTS.

G.R. NO. 89318. April 03, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petitioner asks the Court to annul an order of the respondent judge directing further proceedings in connection with the prosecution for indirect contempt against him (the petitioner) arising from an incident in Criminal Case No. 89-XI-01 of the Metropolitan Trial Court of Manila, Branch XI.

The petitioner, a practicing attorney was counsel for Rene Peralta, the accused in Criminal Case No. 89-3854 of the Regional Trial Court of Quezon City, Branch 88,* a prosecution for kidnapping of one Amylie Rosalie Orozco. Pending further proceedings therein, the petitioner moved for investigation on the ground that Amylie had come forward to claim that "she was not kidnapped and that she went voluntarily with RENE PERALTA, her boyfriend and father of the child she is carrying." [1]

The assistant city prosecutor was scheduled to submit the sworn statement of Amylie on July 10, 1989 and recommend the dismissal of the kidnapping charge. Amylie was also supposed to affirm her statement before the court.

On the same date, it appears that Amylie's mother, Carolina Orozco, had commenced charges for "disobedience" [2] against Amylie with the respondent court. [3]

It also appears that when Amylie arrived at the courthouse (Quezon City), she was "intercepted" by alleged CIS agents and Quezon City policemen to serve a warrant of arrest in connection with the "disobedience" charge. [4] The petitioner allegedly requested the peace officers aforesaid to defer service of the warrant until after Amylie had testified in court. They apparently agreed to present her to Judge Velasco in open court and later in his chamber where the judge interviewed her and her mother.

Thereafter, an accusation of indirect contempt was brought against the petitioner before the respondent judge for obstructing the implementation of the warrant of arrest against Amylie. [5]

On July 11, 1989, the respondent judge directed the petitioner to answer Mrs. Orozco's motion. [6]

On July 17, 1989, the petitioner filed a motion to dismiss, which the respondent judge considered as an answer. [7]

On July 19, 1989, the case was called for hearing. The petitioner appeared on his behalf while Atty. Eleazar Ferry, with the conformity of Fiscal Luis Tuason, Jr., entered his appearance as private prosecutor. The petitioner interposed his objection to Atty. Ferry's appearance, "in the absence of any damage claim for which the intervention of the offended party is warranted."

The respondent judge overruled the petitioner, for which the latter asked for time to raise the matter to a higher

court. The judge denied his motion.

Hence, this petition.

On August 16, 1989, we issued a Temporary Restraining Order whereby the respondent judge his "officers, agents, representatives and/or persons acting upon your (his) orders or in your (his) place or stead are hereby RESTRAINED from further proceeding with the trial of Crim. Case No. 89-XI-01, entitled 'In the Matter of the Petition to Cite Atty. Mariano Santiago for Contempt: Atty. Mariano Santiago, Respondent.'"

The only question is whether or not the appearance of the private prosecutor in question is proper and warranted.

It is well-settled that a contempt charge partakes the nature of a penal proceeding.[8] Being so, it is subject to the rules on criminal procedure and the rules on the intervention of the offended party in criminal actions. The rule is that:

SEC. 16. Intervention of the offended party in criminal action. - Unless the offended party has waived the civil action or expressly reserved the right to institute it separately from the criminal action, and subject to the provision of Section 5 hereof, he may intervene by counsel in the prosecution of the offense.[9]

Aside from the above exceptions, the intervention of the offended party is subject to the direction and control of the fiscal[10] and for the sole purpose of enforcing the civil liability of the accused, and as we have held, "not of demanding punishment of the accused." [11] Thus:

Consequently, where from the nature of the offense, or where the law defining and punishing the offense charged does not provide for an indemnity, the offended party may not intervene in the prosecution of the offense.[12]

It is true that in another case,[13] we sought to distinguish between the civil and criminal features of an accusation for contempt; our effort, however, was not to halve contempt into a civil and penal proceeding, because contempt is inherently criminal in character. (In the *Converse* case, contempt was said to be "criminal" "when the purpose is to vindicate the authority of the court and protect its outraged dignity." [14] It is "civil" "when there is failure to do something ordered by a court to be done for the benefit of a party." [15]) But whether the first or the second, contempt is still a criminal proceeding in which acquittal, for instance, is a bar to a second prosecution.[16] The distinction is for the purpose only of determining the character of punishment to be administered. We held thus:

x x x And in *Ex parte Grossman* (267 U.S., 87; 69 Law. ed., 527, 532), the Supreme Court of the United States, through Chief Justice Taft, said: "In the *Gompers* case this court points out that it is not the fact of punishment, but rather its character and purpose that makes the difference between the two kinds of contempts. For civil contempts, the punishment is remedial and for the benefit of the complainant and a pardon cannot stop it. For criminal contempts, the sentence is punitive in the public interest to vindicate the authority of the court and to deter other like derelictions." [17]

But the fact, say, that the punishment, in the words of *Slade Perkins*, is "remedial and for the benefit of the complainant," (which makes contempt one of the "civil" kind), does not convert the criminal contempt proceeding into a civil case in which an appeal lies in the event of a denial. Thus:

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It is not the sole reason for dismissing this appeal. In the leading case of *In re Mison, Jr. v. Subido*, it was stressed by Justice J.B.L. Reyes as ponente, that the contempt proceeding far from being a civil action is "of a criminal nature and of summary character in which the court exercises but limited jurisdiction." It was then explicitly held: "Hence, as in criminal proceedings, an appeal would not lie from the order of dismissal of, or an exoneration from, a charge of contempt of court." Such a doctrine is traceable to an opinion by Justice Street in *Lee Yick Hon v. Collector of Customs*. A later decision is that of *Pajao v. Provincial Board of*

Canvassers of Leyte. Justice Alex Reyes, speaking for the Court, pointed out that with contempt proceedings being "in their nature penal," its denial "after trial amounts to a virtual acquittal from which an appeal would not lie. (11 Moran's Comments on the Rules of Court, 3rd ed. 125)." There is this qualification in a ponencia of Justice J.B.L. Reyes in *Amoren v. Pineda*: "Likewise, the ruling that an acquittal from a contempt charge is not appealable, like an acquittal in a criminal case (*Pajao v. Board of Canvassers*, 88 Phil. 588) does not apply to the case before us, since there has been no adjudication on the merits of the charge, but a ruling upon a motion to dismiss on jurisdictional ground." [18]

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In the case at bar, there is no justification for the prosecution of the case by a private prosecutor. In this instance, the kind of contempt (indirect) for which the petitioner sought to be held liable provides for no indemnity because the alleged "obstruction committed was an offense against the State, the respondent court in particular which involves no private party. Thus, the appearance of Atty. Eleazar Ferry, on behalf of Mrs. Carolina Orozco, was unwarranted.

WHEREFORE, the petition is GRANTED. The respondent judge is ordered to proceed with the instant contempt proceedings to be prosecuted by the fiscal, without any further delay. Accordingly, the Temporary Restraining Order is hereby LIFTED.

No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

* Hon. Tirso Velasco, presiding judge.

[1] Rollo, 3.

[2] The specific nature of this charge is not apparent from the pleadings.

[3] *Id.*, 69: the petition is captioned "Motion to Cite Atty. Mariano Santiago for Contempt of Court."

[4] *Id.*

[5] *Id.*

[6] *Id.*, 70.

[7] *Id.*, 67.

[8] *The Insurance Commissioner v. Globe Assurance Co. Inc.*, No. L-21874, January 30, 1982, 111 SCRA 202; *Clapano v. Gapultos*, Nos. 51574-77, September 30, 1984, 132 SCRA 429.

[9] 1985 RULES ON CRIMINAL PROCEDURE, RULE 110, sec. 16.

[10] *Tan, Jr. v. Gallardo*, Nos. L-41213-14, October 5, 1976, 73 SCRA 306.

[11] *Supra*, 312.

[12] *Supra*, 313.

[13] *Converse Rubber Corp. v. Jacinto Rubber & Plastic Co., Inc.*, Nos. L-27425 & 30505, April 28, 1980, 97 SCRA 158.

[14] Supra. 182.

[15] Supra.

[16] Globe Assurance Co., Inc., supra.

[17] Slade Perkins v. Director of Prisons, 58 Phil. 271, 280 (1933).

[18] Globe Assurance Co., Inc., supra., 204-205.

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