

**ATTY. EMELITA H. GARAYBLAS AND ATTY. RENATO G. DE LA CRUZ,
PETITIONERS, VS. THE HON. GREGORY ONG, HON. JOSE HERNANDEZ
AND HON. RODOLFO PONFERRADA, AS CHAIRMAN & MEMBERS,
RESPECT...**

G.R. Nos. 174507-30. August 03, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This resolves the Petition for Certiorari under Rule 65 of the Rules of Court, praying that the Order[1] of the 4[th] Division of the Sandiganbayan (SB 4[th] Division) dated June 14, 2006, holding petitioners liable for their non-appearance in the scheduled pre-trial conferences, and the Resolution[2] dated August 10, 2006, denying petitioners' motion for reconsideration, be annulled and set aside.

The records reveal the following antecedent facts.

Petitioner Atty. Emelita H. Garayblas (Atty. Garayblas) is the principal legal counsel, with petitioner Atty. Renato G. De la Cruz (Atty. De la Cruz) as collaborating counsel, for Gen. Jose S. Ramiscal who is facing charges for falsification of public documents and violation of Section 3 (e) of Republic Act No. 3019 before several divisions of the Sandiganbayan. Criminal Case Nos. 25741 and 25742 are pending before the Second Division, while Criminal Case Nos. 25122-45 are pending in the Fourth Division.[3]

Accused Gen. Jose S. Ramiscal was arraigned on February 20, 2006, and the SB 4[th] Division set the pre-trial for April 6, 2006 in Davao City. On February 28, 2006, the Office of the Clerk of Court of the SB 4[th] Division sent a Notice of Hearing to all the parties, informing them of the cancellation of the April 6, 2006 pre-trial hearing and the resetting to April 27, 2006 in Davao City. Petitioner Atty. Garayblas, opposing the resetting to April 27, 2006, filed a Motion to Reset. On March 23, 2006, the SB 4[th] Division issued an Order[4] denying said motion to reset, stating that "Atty. Garayblas and Associates must adjust their schedule to suit all the other accused and their counsels, who are available for the pre-trial hearing in Davao City on April 27, 2006."

Petitioners failed to appear for pre-trial on April 27, 2006 in Davao City; hence, public respondents ordered petitioners to explain why they should not be held in contempt.[5] Atty. Garayblas filed a Compliance/Manifestation dated June 5, 2006, explaining as follows:

On the morning of April 26, 2006, she went home from her office in view of her severe headache, body weakness and sluggishness. She gave a call to her doctor/diabetologist who instructed her to get her sugar count and blood pressure. The blood sugar taken revealed that her sugar count was 420 and the blood pressure, was 170/140, a very precarious condition.

She was advised to enter the hospital but the undersigned [Atty. Garayblas] opted to stay home and just follow the instruction given by her doctor, Dr. Graciella Garayblas-Gonzaga of UST Hospital. She was requested to administer her insulin injection every six (6) hours x x x. She was also advised to stay on (sic) bed until her

sugar count and blood pressure normalize.

Till the evening of the said date, the undersigned [Atty. Garayblas] continued to suffer the recurrent headaches, sluggishness and body weakness. Her condition did not disappear. Due to this continuous discomforts and pains, and apprehensive that she might lose her consciousness, she was unable to attend the above numbered criminal cases scheduled for pre-trial hearings on April 27, 2006.[6]

Atty. De la Cruz also filed his Explanation[7] dated June 3, 2006, stating that he did not attend the pre-trial of the cases on April 27, 2006 in Davao City because he had to appear before the Second Division of the SB in Criminal Case No. 25741 involving the same accused, attaching a certificate of appearance from the Second Division as proof of his explanation.

On June 14, 2006, the SB 4th Division issued the first assailed Order, pertinent portions of which read as follows:

After reading and considering the respective submissions of Attys. De la Cruz and Habacon-Garayblas for their absence in the scheduled pre-trial proceedings of the above-entitled cases in Davao City on April 27, 2006, which caused the cancellation thereof, the Court finds them not quite satisfactory. It appears that they belong to the same law office and, therefore, one or the other should have appeared or made the necessary arrangement to let one of their associates or colleagues appear in the pre-trial conference knowing as they do of the Davao City (out of town) schedule and the corresponding expenses thereof. Atty. De la Cruz should have been more prudent in the scheduling of his cases in order to avoid his alleged conflict of schedule. Moreover, in case of conflict, he should [have given] precedence or priority to the out of town schedule of this Court considering the additional expenses for such out of town hearings.

On the other hand, the Court commiserates with the alleged plight and/or adverse medical condition of Atty. Habacon-Garayblas (at that time) but, with the advance or modern means of communication at her disposal, she should have made the necessary arrangement with her co-counsel Atty. De la Cruz or the other members of her law office. Besides, the Court notes the absence of a medical certificate attesting to such medical condition of Atty. Habacon-Garayblas.

Under these circumstances, the Court is constrained to hold Attys. De la Cruz and Habacon-Garayblas liable for their absence or non-appearance which caused the cancellation of the scheduled pre-trial conference and thus wasted the time of the Court. Hence, pursuant to Sec. 3 of Rule 118 of the Revised Rules of Criminal Procedure, the Court hereby orders them to pay the amount of ten thousand pesos (P10,000) each as sanction or penalty and to partially answer the traveling and other expenses of the Court in holding the subject pre-trial conference in Davao City, within ten (10) days from receipt of this order.

x x x x

SO ORDERED.[8]

From the above-quoted Order, petitioners moved for reconsideration.

Atty. Garayblas reasoned that: (1) she had no intention whatsoever of disregarding the scheduled pre-trial but her health and physical condition prevented her from attending the same, and records would show that except for her non-appearance at the pre-trial, she had never been absent in all the proceedings for subject criminal cases before the SB 4[th] Division; (2) her failure to submit a medical certificate was purely out of inadvertence; (3) her non-appearance was not the only reason for the cancellation of the pre-trial as the records show that all the accused failed to submit their respective pre-trial briefs; (4) while the Court has the duty to act on cases with promptness, it should also act with understanding and compassion; (5) just so there would be a lawyer to attend the proceedings scheduled on the same date in both the Second Division and the Fourth Division, they agreed that Atty. De la Cruz would be the one to appear before the Second Division, while she (Atty. Garayblas) would be the

one to attend the pre-trial in Davao City before the Fourth Division; and (6) there were no other lawyers from their law office who could attend the pre-trial in Davao City, as one had already resigned and another member, Atty. Rafaelito Garayblas, just suffered from acute myocardial infraction complicated by diabetes.[9]

Atty. De la Cruz, for his part, reiterated Atty. Garayblas' explanation that he did not appear before the SB 4[th] Division because they agreed that it was the latter who would appear for their client at the pre-trial in Davao City.[10]

On August 10, 2006, the SB 4[th] Division promulgated the Resolution denying petitioners' motions for reconsideration, stating that even if the Court is inclined to believe Atty. Garayblas' illness, the Court still expected her to make the necessary arrangement for co-counsel or any other colleague to attend the pre-trial. It was also reiterated in said Resolution that Atty. De la Cruz should have given priority to the pre-trial hearing in Davao City.[11]

Aggrieved by the foregoing disposition of the SB 4[th] Division, petitioners filed the present petition for certiorari, alleging that the SB 4[th] Division acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not finding their explanation satisfactory and ordering them to pay a fine of Ten Thousand Pesos (P10,000.00) each and to partially answer the traveling and other expenses of the Court in holding the subject pre-trial conference in Davao City.

The Court finds some merit in the petition.

Section 3, Rule 118 of the Revised Rules of Criminal Procedure provides as follows:

Sec. 3. Non-appearance at Pre-Trial Conference. - If the counsel for the accused or the prosecutor does not appear at the pre-trial conference and does not offer an acceptable excuse for his lack of cooperation, the court may impose proper sanctions or penalties.

Pursuant to the foregoing provision, the court may sanction or penalize counsel for the accused if the following concur: (1) counsel does not appear at the pre-trial conference AND (2) counsel does not offer an acceptable excuse. There is no cavil that petitioners failed to appear at the pre-trial conference in Davao City on April 27, 2006. The crux of the matter in this case then is, did petitioners present an acceptable or valid excuse for said non-appearance?

The SB 4[th] Division already said it believed Atty. Garayblas' claim that a day before the scheduled pre-trial conference in Davao City, she started suffering from hyperglycemia (high blood sugar) and hypertension, and she felt the symptoms thereof until the day of the pre-trial itself. This incapacitated her from traveling to Davao City to appear at the proceedings. Note that symptoms of hypertension include confusion, ear noise or buzzing, fatigue, headache, irregular heartbeat, and vision changes.[12] As for hyperglycemia, a person suffering therefrom experiences headaches, increased thirst, difficulty concentrating, blurred vision, frequent urinating, and fatigue, among others.[13] Verily, the Court can understand that a person suffering from confusion, difficulty in concentrating, blurred vision, fatigue, and others, would be hard put to attend a hearing, much less have the clarity of mind to think or worry about finding another lawyer to substitute for her. Indeed, it would not be reasonable to expect her to have been able to make the necessary arrangements for another lawyer to attend in her stead.

Consider, further, the importance of having counsel who is the most well-versed on the facts of the case, to be the one attending a pre-trial conference. In *Bayas v. Sandiganbayan*, [14] the Court expounded on the role of lawyers in pre-trials, to wit:

Pre-trial is meant to simplify, if not fully dispose of, the case at its early stage. x x x .

x x x during pre-trial, attorneys must make a full disclosure of their positions as to what the real issues of the trial would be. They should not be allowed to embarrass or inconvenience the court or injure the opposing litigant by their careless preparation for a case; or by their failure to raise relevant issues at the outset of a trial x x x[15]

This being so, it is not quite prudent to send in a new lawyer, who has not had ample time to fully familiarize himself or herself with the facts and issues involved in the case, to attend a pre-trial conference. Sending to the pre-trial conference a new lawyer who is not very knowledgeable about the case would most probably lead to such careless preparation which the Court abhors.

Moreover, respondents do not refute Atty. Garayblas' claim that before the pre-trial conference, she had never been absent for a hearing before the SB 4[th] Division. This circumstance should be taken in her favor, as it shows that she is not in the habit of feigning illness to deliberately delay the proceedings.

However, Atty. Garayblas should have at least sent word to the SB 4[th] Division and to her co-counsel, Atty. De la Cruz, when she began feeling the symptoms of hypertension and hyperglycemia, that she would be unable to attend said pre-trial conference. This would have been the courteous thing to do.

With regard to Atty. De la Cruz, his non-appearance at the pre-trial conference was also excusable. There were hearings for their client's case in two separate divisions of the Sandiganbayan on the very same date in two distant locations. To ensure representation for their client at the hearings in both divisions of the Sandiganbayan, petitioners agreed that Atty. De la Cruz would attend the one before the Second division, while Atty. Garayblas would attend the one before the SB 4[th] Division in Davao City. It appears that Atty. De la Cruz was not fully apprised of the fact that his co-counsel would not be able to attend the pre-trial conference. It is understandable why Atty. De la Cruz could not have abandoned the hearing before the Second Division so he could attend the pre-trial in Davao City. It was already too late in the day for Atty. De la Cruz to change plans and to notify the Second Division that he would be absent so he could attend the pre-trial in Davao City instead of the hearing at the Second Division.

The Court finds respondents' directive for petitioners to pay part of the travel expenses of court personnel in holding the hearing in Davao City to be unwarranted. There is nothing on record to show that the proceedings were being held in Davao City mainly because of the cases being handled by petitioners. In fact, the SB 4[th] Division does not deny Atty. Garayblas' asseveration that the cancellation of the hearing on April 27, 2006 in Davao City was caused not only by her and her co-counsel's failure to attend the pre-trial, but also because of all the other accused's failure to submit their respective pre-trial briefs. The Minutes of the Session held on April 27, 2006,[16] also shows that hearings/arraignment of the accused in Criminal Cases Nos. 25144 and 25143 (which are cases different from the ones being handled by petitioners) were held on that day for the Davao City sessions of the SB 4[th] Division. Hence, the SB 4[th] Division's time and effort in holding sessions in Davao City were not entirely wasted due to petitioners' inability to attend the pre-trial conference.

For the foregoing reasons, the Court deems imposing a fine on petitioners and ordering them to answer part of the court personnels' travel expenses to be too harsh. In *Inonog v. Ibay*,[17] the Court reiterated that:

The power to punish for contempt is inherent in all courts so as to preserve order in judicial proceedings as well as to uphold the administration of justice. The courts must exercise the power of contempt for purposes that are impersonal because that power is intended as a safeguard not for the judges but for the functions they exercise. Thus, judges have, time and again, been enjoined to exercise their contempt power judiciously, sparingly, with utmost restraint and with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication. x x x[18]

Petitioner Atty. De la Cruz has presented a valid and acceptable excuse, for which he should not be found liable under Section 3, Rule 118 of the Revised Rules of Criminal Procedure. On the other hand, petitioner Atty. Garayblas showed some lapse in judgment, not to mention discourteous behavior, in not informing the SB 4[th] Division at the earliest possible time of her illness and inability to attend said pre-trial conference.

WHEREFORE, the petition is PARTIALLY GRANTED. The Sandiganbayan 4[th] Division's Order dated June 14, 2006 and its Resolution dated August 10, 2006 in Criminal Cases Nos. 25122, 25125-29, 25133, 25135, 25137-38, are hereby MODIFIED by DELETING the fine and the order for both petitioners to pay part of the traveling expenses of the court. Instead, petitioner Atty. Garayblas is hereby given a STERN WARNING that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Velasco, Jr., (Chairperson), Brion,[*] Abad, and Sereno,**] JJ., concur.

[*] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1056 dated July 27, 2011.

[**] Designated as an additional member, per Special Order No. 1028 dated June 21, 2011.

[1] Penned by Sandiganbayan Associate Justice Rodolfo A. Ponferrada with Associate Justices Gregory Ong and Jose R. Hernandez, concurring.

[2] Id.

[3] Rollo, p. 21.

[4] Id. at 22.

[5] Id. at 25.

[6] Id. at 82-83.

[7] Id. at 29.

[8] Id. at 31-33

[9] Motion for Reconsideration, id. at 90-91.

[10] Rollo, pp. 39-40.

[11] Id. at 43-46.

[12] http://www.righthealth.com/topic/High_Blood_Pressure_Symptom/overview/adam20?fdid=Adamv2_000468; July 12, 2011.

[13] <http://www.medicinenet.com/hyperglycemia/page2.htm#tocd>; July 12, 2011.

[14] G.R. Nos. 143689-91, November 12, 2002, 391 SCRA 415.

[15] Id. at 427-428. (Emphasis supplied.)

[16] Records, Vol. III, back portion of p. 554.

[17] A.M. No. RTJ-09-2175, July 28, 2009, 594 SCRA 168.

[18] Id. at 177-178. (Emphasis supplied.)

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