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FIRST DIVISION

[G.R. No. 66371. May 15, 1985]

ARMANDO ANG, *petitioner, vs.* **HON. JUDGE JOSE P. CASTRO, Regional Trial Judge, Branch LXXXIV and HON. JUDGE JOSE P. ARRO, Branch CIII, both of the Regional Trial Court of Rizal, and ASSISTANT FISCAL NARCISO T. ATIENZA of Quezon City,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; DIRECT AND INDIRECT CONTEMPT, DISTINGUISHED IN CASE OF DISRESPECTFUL LANGUAGE IN PLEADINGS.**— The Rules of Court cannot be any clearer. The use of disrespectful or contemptuous language against a particular judge in pleadings presented in another court or proceeding is indirect, not direct, contempt as it is not tantamount to a misbehavior in the presence of or so near a court or judge as to interrupt the administration of justice. Stated differently, if the pleading containing derogatory, offensive or malicious statements is submitted in the same court of judge in which the proceedings are pending, it is direct contempt because it is equivalent to a misbehavior committed in the presence of or so near a court or judge as to interrupt the administration of justice. Considering the aforecited provisions, petitioner's conduct if at all, constitutes indirect contempt and, if found guilty, he may appeal pursuant to Section 10, Rule 71 of the Rules of Court.

2. **ID.; ID.; PROHIBITION; LIES TO RESTRAIN PROSECUTION FOR LIBEL IN CASE AT BAR; COMMUNICATION CONSIDERED PRIVILEGED NOT LIBELOUS.**— Anent the ancillary action for prohibition, We find the same meritorious, considering that the basis of the libel case filed against petitioner before the respondent Regional Trial Court, Branch CIII, Quezon City was a communication addressed to the Chief Justice of the Supreme Court which was coursed through the Office of the Presidential Assistant on Legal Affairs, complaining against respondent judge's ignorance of

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the law, gross inexcusable negligence, incompetence, disregard for the Supreme Court administrative order, grave misconduct, rendering an unjust decision and dereliction of duty. It is manifest that as held in the case of *Santiago vs. Calvo*, 48 Phil 922. "a communication made in good faith upon any subject matter in which the party making the communication has an interest or concerning which he has a duty is privileged if made to a person having a corresponding interest or duty, although it contains incriminatory or derogatory matter which without the privilege would be libelous and actionable; x x x that parties, counsel and witnesses are exempted from liability in libel or slander for words otherwise defamatory published in the course of judicial proceedings, provided the statements are pertinent or relevant to the case."

APPEARANCES OF COUNSEL

Salonga, *Ordoñez*, *Yap*, *Corpuz* and *Padlan* for petitioner.

D E C I S I O N

RELOVA, *J.*:

In the supplemental petition for *certiorari*, prohibition and *mandamus*, Armando Ang seeks to set aside the order, dated February 9, 1984, of respondent Judge Jose P. Castro of the Regional Trial Court, Branch LXXXIV in Quezon City, denying his appeal from an order holding him in contempt of court. Petitioner likewise asks this Court (1) to order respondent Judge Castro to forward the records of Civil Case No. Q-35466 to the Intermediate Appellate Court; (2) to enjoin him from enforcing his order for the arrest of petitioner; (3) to restrain respondent Assistant Fiscal Narciso T. Atienza of Quezon City from conducting preliminary investigation on the libel charge filed against him by respondent judge; and, (4) to prohibit respondent Judge Jose P. Arro of the Regional Trial Court of Rizal, Branch CIII, Quezon City from proceeding and/or conducting a hearing on the criminal complaint for libel against petitioner in Criminal

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Case No. Q-31587.

In November 1983, petitioner, through the Office of the Presidential Assistant on Legal Affairs, lodged with this Court an administrative complaint against respondent judge for ignorance of the law, gross inexcusable negligence, incompetence, manifest partiality, grave abuse of discretion, grave misconduct, rendering unjust decision in Civil Case No. Q-35466 and dereliction of duties in not resolving his motion for reconsideration of the adverse decision in said civil case.

On December 23, 1983, upon learning of the administrative case filed against him by petitioner, respondent judge ordered petitioner to appear before him on December 29, 1983 at 8:30 in the morning, and to show cause why he should not be punished for contempt of court, for malicious, insolent, inexcusable disrespect and contemptuous attitude towards the court and towards him.

On January 9, 1984, respondent judge found petitioner guilty of contempt of court, sentenced him to suffer five (5) days imprisonment and ordered his arrest for his failure, despite notice, to appear on the scheduled hearing of the contempt charge against him.

On February 3, 1984, petitioner filed his notice of appeal from the judgment of conviction in the contempt charge but the same was denied by the respondent judge in an Order, as follows:

"Considering that ARMANDO ANG was found guilty of Direct Contempt' of court, the notice of appeal filed by him thru counsel cannot be given due course and is hereby denied, as the pronouncement of guilt in a direct contempt is not appealable.

"Meantime, in view of the fact that said Armando Ang has remained in hiding and has been eluding the officers of the law in serving the original warrant for his arrest, let an *alias* warrant be issued for his arrest so that he can serve his sentence of five (5) days imprisonment." (p. 45, *Rollo*)

Thereafter, respondent judge instituted before the Office of

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the City Fiscal of Quezon City a criminal complaint (I.S. No. 83-22198) for libel against herein petitioner for using malicious, insolent and contemptuous language against him in his letter-complaint filed before this Court.

Hence, instant petition.

On February 20, 1984, We issued a temporary restraining order enjoining (1) the respondent judge from carrying out the warrant of arrest issued in Civil Case No. Q-35466, entitled: "*Engson Realty Co., Inc., Plaintiff, versus Lim Eng Si, Defendant*" of the Regional Trial Court, Branch LXXXIV at Quezon City; and (2) the respondent fiscal from conducting the preliminary investigation for libel lodged by respondent judge against petitioner in I.S. No. 83-22198 of Quezon City.

Asked to comment why he proceeded with the preliminary investigation of the complaint for libel filed by respondent judge against herein petitioner, despite the restraining order from this Court, Fiscal Narciso T. Atienza explained that "long before the undersigned receive said order, the information for libel against Armando Ang has already been filed in court." Indeed, records show that the information for libel was lodged on February 2, 1984; whereas, the temporary restraining order was issued on February 20, 1984.

On February 29, 1984, upon knowing that Criminal Case No. Q-31587 for libel was instituted against him by respondent Fiscal Atienza, petitioner filed a supplemental petition for prohibition against respondent Judge Jose P. Arro of the Regional Trial Court, Branch CIII, in Quezon City, who was assigned to try and hear said criminal case. Petitioner prays for a supplemental writ of preliminary injunction to enjoin Judge Arro from proceeding with said Criminal Case No. Q-31587.

On March 5, 1984, We issued a Temporary Restraining Order enjoining respondent Judge from proceeding and/or conducting hearing on the criminal complaint for libel.

On June 4, 1984, after considering the allegations, issues, and arguments adduced in the petition and supplemental petition

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for *certiorari*, prohibition and *mandamus*, respondents' comments thereon as well as petitioner's reply to respondent fiscal's comment with motion to dismiss the aforesaid petition, We resolved to give due course to the petition and required both parties to submit simultaneously their memoranda on the issues within thirty (30) days from notice.

Despite the lapse of the period granted both parties, they failed to file their memoranda. Thus, the case is deemed submitted for decision.

Upon a careful scrutiny of the records of the case, We found that the alleged malicious imputations were not uttered in the presence of or so near respondent Judge Jose P. Castro as to obstruct or interrupt the proceedings before him; rather, they were contained in the pleadings and/or letters-complaint filed by petitioner before the Office of the Presidential Assistant on Legal Affairs and before this Court in the aforementioned administrative case filed by petitioner against him.

Section 3, particularly paragraphs (b) and (d), Rule 71 of the New Rules of Court, provide:

"SEC. 3. *Indirect contempts to be punished after charge and hearing.*— After charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt:

xxx xxx xxx

"(b) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

xxx xxx xxx

"(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

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Respondent Judge Castro, in his comment, argues that failure of petitioner to appear, despite notice, on the scheduled hearing of the contempt charge for the use of derogatory language in his two letters addressed to the Office of the Presidential Assistant on Legal Affairs and to his Court in an administrative complaint against him, constitutes direct contempt as the acts actually impeded, embarrassed and obstructed him in the administration of justice.

We do not agree. The Rules of Court cannot be any clearer. The use of disrespectful or contemptuous language against a particular judge in pleadings presented in another court or proceeding is indirect, not direct, contempt as it is not tantamount to a misbehavior in the presence of or so near a court or judge as to interrupt the administration of justice. Stated differently, if the pleading containing derogatory, offensive or malicious statements is submitted in the same court or judge in which the proceedings are pending, it is direct contempt because it is equivalent to a misbehavior committed in the presence of or so near a court or judge as to interrupt the administration of justice. Considering the aforecited provisions, petitioner's conduct if at all, constitutes indirect contempt and, if found guilty, he may appeal pursuant to Section 10, Rule 71 of the Rules of Court, which reads:

"SEC. 10. *Review of judgment or order by Court of Appeals or Supreme Court; bond for stay.* — The judgment or order of a Court of First Instance made in a case of contempt punished after written charge and hearing may be reviewed by the Court of Appeals or the Supreme Court, but 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 Court of First Instance, conditioned that if the appeal be decided against him he will abide by and perform the judgment or order. The appeal may be taken as in criminal cases."

Anent the ancillary action for prohibition, We find the same meritorious, considering that the basis of the libel case (Criminal Case No. Q-31587) filed against petitioner before the respondent Regional Trial Court, Branch CIII, Quezon City was a communication addressed to the Chief Justice of the Supreme

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Court which was coursed through the Office of the Presidential Assistant on Legal Affairs, complaining against respondent judge's ignorance of the law, gross inexcusable negligence, incompetence, disregard for the Supreme Court administrative order, grave misconduct, rendering an unjust decision and dereliction of duty. It is manifest that as held in the case of *Santiago vs. Calvo*, 48 Phil. 922, "a communication made in good faith upon any subject matter in which the party making the communication has an interest or concerning which he has a duty is privileged if made to a person having a corresponding interest of duty, although it contains incriminatory or derogatory matter which without the privilege would be libelous and actionable; xxx that parties, counsel and witnesses are exempted from liability in libel or slander for words otherwise defamatory published in the course of judicial proceedings, provided the statements are pertinent or relevant to the case."

Records show that the libel case had already been instituted in court when the restraining order was issued by Us. Nonetheless, considering the privileged character of petitioner's communication to the Chief Justice barring a prosecution for libel, it is proper that the injunction against respondent Regional Trial Court, Branch CIII, Quezon City, from proceeding with the hearing of Criminal Case No. Q-31587, be made permanent pursuant to the restraining order and established doctrine against the use of the strong arm of the law as an instrument of arbitrary and oppressive prosecution.

ACCORDINGLY, the petition with respect to the action against respondent Judge Jose P. Castro of the Regional Trial Court, Branch LXXXIV, Quezon City is granted and said respondent judge is hereby ordered to elevate the records of Civil Case No. Q-35466 to the Intermediate Appellate Court at once for disposition in accordance with the terms hereof.

Respondent trial judge is hereby ordered to dismiss the libel case (Criminal Case No. Q-31587).

The temporary restraining order issued on February 20, 1984 enjoining respondent Judge Jose P. Castro from enforcing or carrying out the warrant of arrest issued in Civil Case No. Q35466 is made permanent.

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SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Gutierrez, Jr., De la Fuente, and *Alampay, JJ.*, concur.

EN BANC

[A.M. No. 2864-P. May 16, 1985]

OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **AMANDO S. SORIANO and MILA R. TIJAM,** *respondents.*

SYLLABUS

1. **ADMINISTRATIVE LAW; PUBLIC OFFICERS; MALVERSATION OF PUBLIC FUNDS; RESTITUTION NOT AN EXEMPTION FROM LIABILITY; CASE AT BAR.**— The fact that the shortage was fully restituted does not exempt the respondents from responsibility. Amando Soriano was the Officer-in-Charge and Accountable Officer of the defunct Court of First Instance, Iriga City, Branch XXXIV and as such, he was responsible for all the collections made by the court. Any loss or shortage resulting from non-remittance, unlawful deposit or misapplication thereof, whether he has a hand or not, shall be for his account. It is not an excuse the his designated collection clerk was the one who failed that remit the questioned amount on time because it is incumbent upon him to exercise the strictest supervision on the person he designated, otherwise, he would suffer the consequences of the acts of his designated employee through negligence. In short, by failing to exercise strict supervision on respondent Mila Tijam, he could be liable for malversation through negligence. On the other hand, respondent Mila Tijam, the collection clerk, is likewise liable for failure to account the monies that come to her hand. The circumstance that