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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. MTJ-00-1261. April 3, 2000]

NOE CANGCO ZARATE, *complainant, vs.* **Judge ISAURO M. BALDERIAN, Municipal Circuit Trial Court of Carmona[1] Gen. Mariano Alvarez, Cavite,[1]** *respondent.*

SYNOPSIS

Respondent Judge was charged by complainant with gross ignorance of the law and serious misconduct. Allegedly, respondent judge summarily held complainant lawyer guilty of direct contempt and ordered the latter's arrest and incarceration for failure to appear in court despite proper notice, and for failure to make good complainant's promise that he will facilitate the repair of the vehicle, subject matter of a case. For several times, respondent was required by the Court to comment on the charge but failed to do so.

Failure to attend a hearing does not constitute direct contempt. At most, complainant's acts constitute only indirect contempt which can be sanctioned only after the proper charge has been filed and the respondent has been given the opportunity to be

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[1] Subsequently of the Municipal Trial Court of Bacoor, Cavite.

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heard. Thus, for issuing a manifestly erroneous order, and for continuously ignoring the Court's directives to file comment on the complaint, the Court deemed it necessary to impose a stiffer sanction. Respondent judge is suspended for one month and fined in the amount of P5,000, with a stern warning that a repetition of similar act would be dealt with more severely.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; FAILURE TO ATTEND A HEARING DOES NOT CONSTITUTE DIRECT CONTEMPT.—** In *Silva v. Lee Jr.*, this Court has clearly ruled that failure to attend a hearing does not constitute direct contempt.

2. **ID.; ID.; ID.; INDIRECT CONTEMPT; REQUISITES.—** At most, complainant's acts can constitute only indirect contempt as defined in Section 3 of Rule 71. This provision, however, also states that indirect contempt can be sanctioned only after the proper charge has been filed and the respondent has been given the opportunity to be heard. In the instant case neither requisite was met, as the Order for complainant's arrest was issued summarily.

3. **ADMINISTRATIVE LAW; JUDGES; GROSS IGNORANCE OF THE LAW; WHEN JUDGE LIABLE THEREFOR.—** To be held liable for gross ignorance of the law, the judge must be shown to have committed an error that was "gross or patent, deliberate and malicious." In this case, the Order of respondent on so elementary a subject was patently erroneous.

4. **ID.; ID.; FAILURE TO COMPLY WITH THE DIRECTIVES OF THE COURT; PROPER PENALTY IN CASE AT BAR.—** It appears that respondent judge ignored and continues to ignore this Court's directive requiring him to file his comment on the Complaint. He has been afforded more than ample time within which to file it. Thus, although the penalty accorded to the erring judge in *Silva v. Lee Jr.* was only a reprimand, we deem it necessary in this case to impose upon respondent a stiffer sanction, because his misconduct was aggravated by his callous disregard of this Court's directives. WHEREFORE, respondent judge is hereby

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SUSPENDED for one month and FINED in the amount of ₱5,000, with a stern warning that a repetition of a similar act would be dealt with more severely.

D E C I S I O N

PANGANIBAN, *J.*:

A judge who commits a patent error on so elementary a subject is administratively liable for gross ignorance of the law. Such liability is aggravated by a callous disregard of direct orders of this Court.

The Case

Before this Court is a Complaint for gross ignorance of the law and serious misconduct filed with the Office of the Court Administrator on February 22, 1996. The Complaint was filed by Atty. Noe Cangco Zarate against Judge Isauro M. Balderian, who was at the time the presiding judge of the Municipal Circuit Trial Court of Carmona-Gen. Mariano Alvarez, Cavite.

In a Resolution dated October 7, 1996, the Court required respondent to comment on the Complaint. He failed to do so. Thereafter, in a Resolution dated December 3, 1997, he was required (1) to show cause why he should not be disciplinarily dealt with for failure to file the required Comment and (2) to file the said Comment.

Because the December 3, 1997 Resolution had been returned unclaimed, the Court, in a later Resolution dated April 27, 1998, required the service of the former resolution through the executive judge of the Regional Trial Court, Cavite. In his letter dated December 23, 1998, Executive Judge Christopher Lock informed the Court that the December 3, 1997 Resolution had been served on respondent judge at the Municipal Trial Court of Bacoor, Cavite. This fact was evidenced by the Return dated December 22, 1998, signed by Clerk of Court IV Jose Lagac, who had personally served it.

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Notwithstanding the service of the December 3, 1997 Resolution, however, respondent failed to file the required Comment. In its September 1, 1999 Memorandum, the Office of the Court Administrator recommended that he be fined in the amount of ₱5,000 for failure to comply with the directive of the Court dated December 3, 1997. In its September 22, 1999 Resolution, the Court reduced the fine to ₱2,000. The Court further directed his detention in case he failed to pay the fine.

To this day, respondent has not yet complied with either Court Resolution. Considering the length of time that has elapsed, he is deemed to have waived his right to file his Comment. The administrative case is therefore submitted for resolution on the basis of the records before this Court.

The Facts

The facts are narrated in the Court Administrator's September 1, 1999 Memorandum[2] as follows:

"In a verified complaint dated February 2, 1996, Atty. Noe Cangco Zarate charged respondent Judge Isauro M. Balderian (formerly acting presiding Judge of MCTC, Carmona, Gen. Mariano Alvarez, now presiding Judge of MTC, Bacoor, Cavite) with gross ignorance of the law, incompetence or serious misconduct for ordering complainant's arrest and incarceration in view of the latter's failure to appear in court despite proper notice and for failure to make good his promise that he will facilitate the repair of the vehicle, subject matter of Crim. Case No. CC-95-118, entitled *'People of the Philippines vs. Luis Hemopia y Donado'*, for [d]amage to [p]roperty [t]hrough [r]eckless [i]mprudence.

"Complainant, who is the counsel for the accused in the aforecited criminal case, alleges that the criminal action arose from a vehicular accident involving a damage claim of P30,000.00 with the accused offering to pay ₱15,000.00 as per assessment of the Insurance company as the rightful sum due.

"During the pre-trial conference, the offended party refused the option to have the vehicle repaired by a repair shop of his choice, hence the trial was set on December 1, 1995 at 9:00 o'clock in the morning. While the accused appeared, his counsel, complainant herein, failed to appear on

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[2] Signed by Alfredo L. Benipayo (court administrator) and Danilo L. Mendoza (asst. officer-in-charge, Legal Office-OCA).

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time. For such non-appearance, the respondent Judge immediately issued an ORDER dated December 1, 1995 quoted as follows:

> 'Upon calling this case for initial trial, accused Luis Hemopia appeared in Court, devoid of counsel. In view thereof, the private prosecutor moved for the arrest of the defense counsel for his failure to inform the court of his absence in today's proceedings.
>
> 'Wherefore, Atty. Noe Zarate is hereby ordered arrested and incarcerated for his failure to appear in Court despite proper notice and for his failure to make good his promise that he will facilitate the repair of the vehicle, subject matter of the case.
>
> 'SO ORDERED.'

"Copies of the warrant of arrest were served on complainant personally at his office through the Makati Police Station and at his residence through the Biñan Police Station.

"On January 3, 1996, complainant filed a Motion for Reconsideration of the aforesaid Order for having been issued without due process of law as the mandatory requirement under Sections 3, 4, and 5 of Rule 71 of the Rules of Court have not been observed and therefore null and void. He claims that for his failure to appear on time respondent Judge summarily declared him in [c]ontempt of [c]ourt and ordered his immediate and perpetual incarceration when the factual circumstances of such failure to appear simply constitutes indirect contempt which can only be issued after due hearing.

"Said Motion for Reconsideration was calendared for hearing on January 5, 1996, but the judge did not arrive and the clerk of court advised him that the motion would be considered submitted for resolution. The clerk of court then allowed the complainant to go home and no arrest was made.

"On January 13, 1996, while complainant was in the RTC, Makati City, he was arrested by virtue of the same Order and detained for 36 hours at the Warrant Section of the Makati City Police Station. When respondent judge issued the Release Order on January 9, 1996, he wittingly or unwittingly failed to furnish copy of said Order to the Makati City Police. It was precisely x x x such omission that caused the embarrassing detention of complainant from January 15, 1996 to January 16, 1996.

"Complainant seeks relief from having been detained without provision for bail or any other qualification as to preserve his rights to liberty. He was arrested in a bizarre manner in the presence of numerous lawyers,

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thereby being publicly humiliated, shabbily treated, as if he was a common criminal."[3]

Issue

Complainant poses before this Court this solitary issue:

"Whether or not on the basis of facts herein attributed against the herein respondent judicial officer, he has committed gross ignorance of the law, incompetence or serious misconduct in the performance of his judicial duties."[4]

The Court's Ruling

For issuing a manifestly erroneous order and for ignoring several Resolutions of this Court, respondent should be sanctioned.

The Manifestly Erroneous Order Of Respondent

Without giving complainant an opportunity to explain, respondent issued an Order dated December 1, 1995, directing his arrest because of "his failure to appear in court despite proper notice and for his failure to make good his promise to facilitate the repair of the vehicle, subject matter of the case."

The above-mentioned Order summarily held complainant guilty of direct contempt, pursuant to Section 1 of Rule 71, as amended,[5] which provides:

"SECTION 1. *Direct contempt punished summarily.* — A person guilty of misbehavior in the presence of or so near a court or judge as to obstruct or interrupt the proceedings before the same, including disrespect toward 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, may be summarily adjudged in contempt by such court or judge and punished by fine not exceeding two thousand pesos or imprisonment not exceeding ten (10) days, or both, if it be a superior court, or a judge thereof, or by fine not exceeding two hundred pesos or imprisonment not exceeding (1) day, or both, if it be an inferior court."

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[3] Court Administrator's Memorandum, pp. 2-6.

[4] Complaint, p. 6; *rollo*, p. 8.

[5] The amendment was done through Administrative Circular No. 22-95, which took effect on November 16, 1995.

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Respondent's assailed Order, however, is manifestly erroneous. In *Silva v. Lee Jr.*,[6] this Court has clearly ruled that failure to attend a hearing does not constitute direct contempt. We quote below the pertinent portion of that ruling:

"At the scheduled hearing of the Motion to Dismiss on April 13,1984, Atty. Silva did not appear. This prompted Judge Lee to dictate in open court an order citing Atty. Silva for direct contempt of court, ordering his arrest and sentencing him to five (5) days imprisonment. Atty. Silva was arrested and jailed that same afternoon. He was in jail for five (5) days.

x x x x x x x x x

"But can such behavior be considered a direct contempt which would warrant an outright order to immediately arrest and jail complainant?

"Direct contempt is conduct directed against or assailing the authority and dignity of the court or a judge, or in the doing of a forbidden act, while indirect contempt is the failure to do something ordered done by the court or judge, such as failure to appear at a hearing or in the use of disrespectful language in a pleading. A direct contempt may be punished summarily while an indirect contempt can be punished only after charge and hearing.

"Clearly, the acts of complainant do not constitute direct contempt."

At most, complainant's acts can constitute only indirect contempt as defined in Section 3 of Rule 71.[7] This provision, however, also

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[6] 169 SCRA 512, 514-515, January 26, 1989, per Paras, *J.*

[7] SECTION 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:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(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;

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states that indirect contempt can be sanctioned only after the proper charge has been filed and the respondent has been given the opportunity to be heard. In the instant case neither requisite was met, as the Order for complainant's arrest was issued summarily.

To be held liable for gross ignorance of the law, the judge must be shown to have committed an error that was "gross or patent, deliberate and malicious."[8] In this case, the Order of respondent on so elementary a subject was patently erroneous.

That respondent subsequently recalled his Order does not excuse him. Indeed, when he issued the Release Order on January 9, 1996, he failed to inform the Makati City Police, which had been tasked earlier to implement the arrest warrant at complainant's office in Makati. As a consequence, complainant was still arrested on January 15, 1996 and detained until the following day.

Moreover, it appears that respondent judge ignored and continues to ignore this Court's directive requiring him to file his comment on the Complaint. He has been afforded more than ample time within which to file it. As noted earlier, several Resolutions have been issued by the Court requiring respondent to comment on the Complaint. In fact, the first Resolution was issued as early as 1996 and the last on September 22, 1999, in which the Court fined him ₱2,000 for his failure to comply with the directives of this Court. To this day, he has not complied.

(c) Any abuse of or any unlawful interference with the process or proceedings of a court not constituting direct contempt under Section 1 of this rule;

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

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings."

[8] *In Re: Joaquin Borromeo,* 241 SCRA 408, February 21, 1995.

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Thus, although the penalty accorded to the erring judge in *Silva v. Lee, Jr.* was only a reprimand, we deem it necessary in this case to impose upon respondent a stiffer sanction, because his misconduct was aggravated by his callous disregard of this Court's directives.

WHEREFORE, respondent judge is hereby *SUSPENDED* for one month and *FINED* in the amount of ₱5,000, with a stern warning that a repetition of a similar act would be dealt with more severely. Let this judgment be spread on his personnel record, and let copies be furnished the Judicial and Bar Council for its information.

SO ORDERED.

Melo (Chairman), Vitug, Purisima, and *Gonzaga-Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 116689. April 3, 2000]

NOLI MARQUEZ, *petitioner, vs.* **COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYNOPSIS

Petitioner Noli Marquez and his co-accused Melchor Marquez were charged with violation of Republic Act No. 6539, otherwise known as the "Anti-Carnapping Act of 1972," before the Regional Trial Court of Cauayan, Isabela, Branch 19. After trial, the trial court rendered a decision finding both accused, Noli Marquez and Melchor Marquez, guilty beyond reasonable doubt of the crime of carnapping as defined and penalized under Republic Act No. 6539. On appeal, the Court of Appeals affirmed the decision of the trial court insofar as the conviction of Noli Marquez is concerned but acquitted Melchor Marquez on reasonable doubt. In this appeal,