Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-47244. January 16, 1979]

TRANQUILINO O. CALO, JR., and RODRIGO LIBARNES, *petitioners*, *vs.* **JUDGE LAURO TAPUCAR as District Judge of the Court of First Instance of Agusan del Norte and Butuan City (Branch I) and EDUARDO CURATO,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; DIRECT CONTEMPT; UNJUST ORDER DOES NOT JUSTIFY USE OF DEROGATORY LANGUAGE.** — While petitioner counsel could have been provoked by what he considered an unjust and unfair order, there is no justification for him to resort to intemperate and highly derogatory language. Accordingly it is not an excess of jurisdiction on the part of respondent Judge to find him in direct contempt of court — having resorted to such a language in his pleadings. Offensive and disrespectful observation is an act of direct contempt or contempt in *facie curiae*.

2. **ID.; ID.; ID.; ID.; PUNISHED SUMMARILY.** — Offensive and disrespectful observation is an act of direct contempt or contempt in facie curiae and could be summarily punished without hearing.

3. **ID.; ID.; ID.; ID.; IMPOSITION OF PENALTY MUST BE DEVOID OF UNDUE SEVERITY.** — Although there was direct contempt committed by petitioner for using intemperate and highly derogatory language in his pleadings, the punishment of suspension from the practice of law, however, under the circumstances, is characterized by undue severity.

4. **ID.; ID.; ID.; ID.; DUE CARE NECESSARY IN IMPOSING CONTEMPT PENALTY; REASONS THEREFOR.** — In *People v. Estenzo*, (L-25522, May 29, 1975; 64 SCRA 211) The Supreme Court said: ""It cannot be denied either that unless exercised with restraint judiciousness, this power lends itself to manifestation whim, caprice, and arbitrariness. There is a

Supreme Court E-Library

compelling and exigent need therefore for judges to take the utmost care lest prejudice, innate or covert hostility to personality of counsel, or previous incidents lead them to characterize conduct susceptible of innocent explanation as slights on the dignity of the court. It is ever timely to remember how easy it is to overstep the dividing line that should separate the prosecutor from the judge, when both roles are merged in the same person. The infusion of personal element may go unnoticed. Even if such were not the case, objectively viewed, such an impression may be difficult to avoid by laymen. That is a consideration that cannot be overlooked. It is important that public confidence judicial impartiality and fairness be not impaired . . . 'The power to punish for contempt,' as was pointed out by Justice Malcolm in Villavicencio v. Lukban, 'should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail.' The lower court, it clearly appears, failed to meet such a rigid but commendable test." The last sentence is quite *apropos*. It does appeal clearly that resentment at the epithets hurled against him in the offending pleadings found its outlet in the penalty of suspension. It is true that such an emotional reaction is a human failing. It is, however, the burden and the glory of a man on the bench that he can keep under check the tendency to retaliate. Never has the constitutional concept of a public office being a public trust, and not the vehicle for giving vent to one's injured sensibilities been more meaningful than in contempt citations where the judge combines in himself the dual and antagonistic of being offended party and arbiter. Under the facts of this case, the suspension of petitioner Calo, Jr. from October 17, 1977 to December 7, 1977, when the restraining order against its enforcement was issued by this Court, more than sufficed to make him atone for the direct contempt.

APPEARANCES OF COUNSEL

Tranquilino O. Calo, Jr. in his own behalf and his co-petitioner.

Arturo M. De Castro for private petitioner.

Supreme Court E-Library

DECISION

FERNANDO, *J.*:

The sense of grievance felt by petitioner Tranquilino O. Calo, Jr. arose from an order dated January 31, 1977 of respondent Judge which would preclude him as counsel for his co-petitioner, plaintiff in a pending civil case, to present his rebuttal evidence on a question of accounting on the ground that there was a waiver. In his motion of February 3, 1977, praying that such order be set aside,[1] there was this allegation which did not find favor with respondent Judge: "This is not the kind of administration of justice that should be made to prevail in this Court. This is obnoxious to the principles of the New Society, and abhorrent to the elementary principles of fair play."[2] The result was an order of February 14, 1977, reprimanding petitioner Calo for resorting to such language.[3] Then came a motion for reconsideration filed on March 24, 1977, petitioner Calo alleging: "That the plaintiff merely attacked the order of this Honorable Court because it is unfair, unjust and unconstitutional. It is the right of a person or party litigant to present his evidence."[4] It stated further: "That the statement by the plaintiff's counsel is not worthy of reprimand, censure or punishment because it is an expression of plaintiff's right to denounce before any court of justice any unjust and unfair act being committed against him by the Presiding Judge so that the Court can correct itself and if the Court refuses to correct itself, it can be ventilated in the higher courts for proper action if the same is reversible under our laws. If the plaintiff went to the press to denounce the actuations of this Honorable Court or in the public square or by rumors, then it will be worthy of punishment. But when

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[1] Petition, par. 3, Annex B.

[2] *Ibid.*, par. 4, Annex C.

[3] *Ibid.*, par. 5, Annex D.

[4] *Ibid.*, par. 6, Annex D-1.

Supreme Court E-Library

a litigant makes his utterances in a formal pleading in order to give the Court a chance to correct itself, it is not worthy of any punishment. It is an exercise of his constitutional right to seek redress of grievances in the means provided for by law. Any act which is tantamount to partiality or unfairness is not only 'obnoxious' or 'abhorrent.' It is scandalous. It is not pleasant to be the victim of unfairness or partiality. Anything unpleasant is malodorous. Any act that is malodorous cannot be swallowed and therefore abhorrent to any man's sense of fairness and justice. It shatters the hopes of the citizenry that the courts are the last bulwark of democracy where the excesses of the executive and legislative officials can be questioned. Our charge of partiality is based on the fact that during the absence of Mrs. Soledad Cagampong-Castro the Court cancelled the hearing of her cases until her return. But in the present case, the Court is blaming the plaintiff for not presenting evidence even while Mrs. Soledad Cagampong-Castro was in the United States. What is worse is that the motion of Mrs. Castro was to set the case for hearing. That is why the plaintiff did not bother to oppose the same, but instead the Court considered the case submitted for decision without allowing the plaintiff to present his rebuttal evidence."[5]

Respondent Judge at first did not take offense as shown by his order of July 8, 1977: "When this case was called for hearing this morning to treat the [motion for reconsideration] and opposition thereto, the Court inquired from the counsel for the plaintiff what matters on rebuttal he has to present. Meanwhile, the defendant has already submitted his memorandum on the accounting of the properties, subject matter of this case and decided by the Court of Appeals. The plaintiff has not filed his memorandum on the accounting because according to him there are matters he will present on rebuttal on some of the claims of the defendant. The Court, in the interest of justice, hereby allows the plaintiff thru counsel to file his memorandum on the accounting, together with the matters which he considers as his rebuttal evidence on some of the claims of the defendant thru counsel, who is hereby given the opportunity to comment

[5] *Ibid.*, Annex D-1.

Supreme Court E-Library

and/or oppose whatever matter the defendant may find proper for opposition, after which this incident shall be deemed submitted for resolution."[6] Petitioner Calo, therefore, could, in his petition, rightfully assert: "That when this motion for reconsideration was heard the respondent judge merely required the petitioners to file the memorandum and point out the matters which would have been the subject of rebuttal evidence.* * * The matter on the contempt of petitioner Calo was in effect denied *sub silentio*. The respondent Judge did not bother to raise it during the hearing."[7]

It came as a surprise to him, therefore, when in the hearing on October 17, 1977, called without previous notice, in the civil case where the co-petitioner Libarnes was plaintiff and private respondent Curato was defendant, respondent Judge, according to petitioner Calo, "said that the matter of the contempt proceedings has not yet been resolved. Petitioner Calo manifested that it was denied *sub silentio* but the respondent judge insisted that it should be discussed. Petitioner Calo manifested that he had already explained why he should not be declared in contempt of court. The respondent Judge began making statements, and in reply, petitioner Calo said that 'if this honorable Court believes that the language used by this representation are contemptuous, then it is up for the Court to appreciate and rule and all that this representation could do in case of an adverse order is to seek higher judicial relief. Then the respondent Judge suddenly shouted and banged his gavel and said 'you are hereby declared in contempt of court, you are suspended from the practice of law.' Petitioner Calo merely said: 'I believe this is illegal.' The Rules of Court prescribes the procedure for suspending a member of the Integrated Bar. But the respondent Judge again shouted: 'I have the authority suspend you, I will issue the written order later." All the cases of petitioner Calo, were postponed on the ground that Atty. Calo was ordered suspended."[8] Notwithstanding an *ex parte*

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[6] *Ibid.*, par. 8 Annex F.

[7] *Ibid.*, par. 8.

[8] *Ibid.*, par. 9.

Supreme Court E-Library

motion for reconsideration of such verbal order of suspension, the suspension was not lifted, respondent Judge stating in his order of October 20, 1977 that "the matter sought by the movant is connected with Civil Case No. 368, *Rodrigo Libarnes v. Eduardo Curat*, and the [*sic*] cannot be treated independently as it is not sanctioned by the Rules of Court. And so, strike out this pleading from the docket."[9] Then came the order of October 24, 1977, the dispositive portion of which reads as follows: "1. Counsel Tranquilino O. Calo, Jr. is hereby found guilty of direct contempt of this court and ordered suspended from the practice of law. Until further orders of the Supreme Court, such suspension is to take effect immediately. 2. Pursuant to Section 9 of Rule 139, let certified copies of this order be elevated to the Honorable Supreme Court. 3. The Clerk of Court is hereby ordered to cancel and/or suspend all scheduled cases in which afore-mentioned suspended counsel appears a counsel of record, unless and until the parties to such cases have made proper substitution of counsel."[10] Hence, this petition.

In a resolution of November 11, 1977, respondents were required to comment within ten days from notice. Subsequently on November 24, there was an urgent *ex parte* motion for the issuance of a restraining order by petitioner Calo, Jr. Accordingly, on December 7, 1977, this Court ordered respondent Judge "to immediately suspend, upon notice hereof, the effects of the impugned verbal order of suspension from the practice of law of said petitioner, as confirmed in the written order of October 24, 1977, until further orders of this Court."[11] The comment of respondent Eduardo Curato is concerned, no comment was forthcoming. On April 19, 1978, there was filed with this Court by De Castro and Cagampang Law Offices appearance for respondent Curato which was noted in a resolution of May 10, 1978. As of the date of this decision, no further pleading had been filed.

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[9] *Ibid.*, Annex G-1.

[10] *Ibid.*, par. 13, Annex I.

[11] Resolution of this Court dated December 7, 1977.

Supreme Court E-Library

The facts are undisputed. It does appear that while petitioner Calo, Jr. could have been provoked by what he considered an unjust and unfair order, there was no justification for him to resort to intemperate and highly derogatory language. Accordingly, it cannot he considered an excess of jurisdiction on the part of respondent Judge to find him in direct contempt of court. Nonetheless, under equally well-settled principles, the punishment appears to be disproportionate to the offense. To that extent, the petitioners are entitled to the relief prayed for.

1. There is, in the recent case of *Yangson v. Salandanan*,[12] the opinion being penned by Justice Aquino, a reiteration of the authoritative doctrine that "offensive and disrespectful observation [is] an act of direct contempt or contempt in *facie curiae* and could, therefore, be summarily punished without hearing * * *."[13]

In a 1932 decision, *Lualhati v. Albert*, [14] the opinion coming from Justice Malcolm, this Court held that an urgent motion filed by counsel, where he sought to disqualify a judge to conduct the new trial of a criminal case where he had previously found the accused guilty on the ground that "a completely impartial trial to which her constitutional right entitles her" and to protect her "against the prejudice necessarily formed by the judge who had presided at the original trial [having thus] formed in his mind a firm and irrevocable conviction as to her guilt" could be punished as direct contempt.[15] Hence, as noted above, it was within the authority of respondent Judge to find petitioner Calo, Jr. in direct contempt of court.

2. There was direct contempt committed by petition Calo, Jr. The punishment of suspension, however, under the

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[12] Adm. Case No. 1347, November 12, 1975, 63 SCRA 42.

[13] *Ibid.*, 43. The opinion cited the following cases: *Salcedo v. Hernandez*, 61 Phil. 724 (1935); *De Joya v. CFI of Rizal*, 99 Phil. 907 (1956); *Sison v. Sandejas*, 105 Phil. 1279 (1959); *Malolos v. Reyes*, 111 Phil. 113 (1961).

[14] 57 Phil. 86.

[15] The offending words appear at 88 and the finding of contempt at 93.

Supreme Court E-Library

circumstances, is characterized by undue severity. There is relevance to this excerpt from *People v. Estenzo*:[16] "It cannot be denied either that unless exercised with restraint judiciousness, this power lends itself to manifestation whim, caprice, and arbitrariness. There is a compelling and exigent need therefore for judges to take the utmost care lest prejudice, innate or covert hostility to personality of counsel, or previous incidents lead them to characterize conduct susceptible of innocent explanation as slights on the dignity of the court. It is ever timely to remember how easy it is to overstep the dividing line that should separate the prosecutor from the judge, when both roles are merged in the same person. The infusion of personal element may go unnoticed. Even if such were not the case, objectively viewed, such an impression may be difficult to avoid by laymen. That is a consideration that cannot be overlooked. It is important that public confidence in judicial impartiality and fairness be not impaired . . . 'The power to punish for contempt,' as was pointed out by Justice Malcolm in *Villavicencio v. Lukban*, 'should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail.' The lower court, it clearly appears, failed to meet such a rigid but commendable test."[17] The last sentence is quite *apropos*. It does appeal clearly that resentment at the epithets hurled against him in the offending pleadings found its outlet in the penalty of suspension. It is true that such an emotional reaction is a human failing. It is, however, the burden and the glory of a man on the bench that he can keep under check the tendency to retaliate. Never has the constitutional concept of a public office being a public trust,[18] and not the vehicle for giving vent to one's injured sensibilities been more meaningful than in contempt citations

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[16] L-24522, May 29, 1975, 64 SCRA 211.

[17] *Ibid.*, 214-215. *Villavicencio v. Lukban* is reported in 39 Phil. 778 (1919).

[18] According to the first sentence of Article XIII, Section 1 of the Constitution: "Public office is a public trust."

Supreme Court E-Library

where the judge combines in himself the dual and antagonistic being offended party and arbiter. Under the facts of this case, the suspension of petitioner Calo, Jr. from October 17, 1977 to December 7, 1977, when the restraining order against its enforcement was issued by this Court, more than sufficed to make him atone for the direct contempt.

3. The other point raised in this petition is that the order of July 8, 1977 of respondent Judge, which would deprive petitioner Libarnes as plaintiff in the pending civil case before his sala to present his rebuttal evidence and instead him only to file a memorandum on the accounting together with the matters considered by him as rebuttal evidence, be nullified. In the interest of regularity of procedure, not to say for the purpose of avoiding any due process question as without such an opportunity, petitioner Libarnes might not obtain the justice to which he is entitled under the law, this Court is disposed to grant the plea.

WHEREFORE, the suspension of petitioner Calo, Jr. is hereby lifted and the order of July 8, 1977 by respondent Judge nullified, to enable petitioner Libarnes to present his rebuttal evidence, at the earliest date that his calendar allows. Costs against private respondent.

Antonio, Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

Barredo, J., I concur because I believe that the suspension of petitioner which has lasted for a year and three months already is more than sufficient punishment.