



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ATTY. LUCITA E. MARCELO,
Complainant,

A.M. No. MTJ-14-1839

Present:

CARPIO, *Acting C.J.*,
Chairperson,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

-versus-

JUDGE PELAGIA J. DALMACIO-JOAQUIN,
Presiding Judge, Municipal Trial Court in Cities,
Branch 1, San Jose del Monte, Bulacan,
Respondent.

Promulgated:

22 JUL 2015

M. Cabalag

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RESOLUTION

CARPIO, *Acting C.J.*:

The Case

This involves an administrative complaint¹ filed by Atty. Lucita E. Marcelo against Judge Pelagia J. Dalmacio-Joaquin, Presiding Judge of Branch 1 of the Municipal Trial Court in Cities, San Jose del Monte, Bulacan (MTCC-San Jose del Monte), for grave abuse of authority, grave misconduct, and violation of Section 4(a), (b), and (c) of Republic Act No. 6713 (RA 6713).²

The Facts

Complainant, as counsel for accused in three criminal cases raffled off to respondent judge's sala, failed to appear during the hearing on 21 January

¹ *Rollo*, pp. 1-7.

² Otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."

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2011 in Criminal Case No. 10-0090. She reasoned that she was indisposed, and conveyed her condition through a phone call to Randy Sarmiento, Clerk of the Office of City Prosecutor of San Jose del Monte, Bulacan to inform the assigned prosecutor and the trial court. She also instructed her client, Manolito Capingol, through his sister, to inform the trial court of her predicament.

Respondent judge issued an Order directing complainant to show cause “why she should not be cited in contempt of court for not appearing in court despite notice and causing delay in the proceedings.”³ The hearing was reset to 18 February 2011.

On 1 February 2011, complainant filed a “Compliance and Manifestation”⁴ explaining the reason for her absence during the hearing, attaching thereto a medical certificate.⁵

During the scheduled hearing on 18 February 2011, complainant verbally objected to the show cause order for lack of basis, to which respondent judge allegedly countered that “the issue was not [her] absence but the failure to indicate in [her] ‘Compliance and Manifestation’ the details regarding [her] third [Mandatory Continuing Legal Education (MCLE)] compliance.”⁶ Complainant stated that she had the honest belief that as a retired prosecutor she was exempt from the MCLE requirement in accordance with Department of Justice (DOJ) Circular No. 50 dated 25 June 2010.⁷ In an Order⁸ of even date, respondent judge directed complainant to submit her exemption certificate within 10 days, which was extended to 15 days upon complainant’s motion.

Since she failed to obtain immediately a copy of the exemption certificate, complainant wrote a letter⁹ addressed to the Clerk of Court of the MTCC-San Jose del Monte, protesting about respondent judge’s “sudden shift of focus from [her] absence [on the 21 January 2011 hearing] to [her] MCLE Certification”; stating her belief that she was exempted from completing the MCLE; and explaining why she could not submit any Certificate of Exemption within the period given by respondent judge, that is due to the MCLE Board meeting held only once a month delaying the release of the Certificate of Exemption. The Clerk of Court returned the letter to complainant reasoning that it concerned a court matter.¹⁰

On 20 April 2011, respondent judge issued an Order (1) expunging the Compliance and Manifestation, (2) citing complainant in contempt for

³ *Rollo*, p. 9.

⁴ *Id.* at 10-11.

⁵ *Id.* at 12.

⁶ *Id.* at 3.

⁷ *Id.* at 15-32.

⁸ *Id.* at 75.

⁹ *Id.* at 34-35.

¹⁰ *Id.* at 36.

failing to comply with the show cause order dated 21 January 2011, and (3) imposing a fine of ₱2,000.¹¹ The Order stated that more than a month after the 18 February 2011 Order directing complainant to submit her certificate of exemption, no such certificate has been filed.

On 18 May 2011, complainant, through counsel, filed a motion for reconsideration,¹² which was denied in an Order dated 17 June 2011.¹³

On 31 August 2011, respondent judge issued an Order¹⁴ directing complainant to show cause why she should not be ordered arrested for her failure to pay the fine imposed on her.

Thereafter, complainant filed with the trial court a Compliance, dated 17 September 2011,¹⁵ maintaining that she “[had] not the slightest intention to defy lawful court orders.”¹⁶ Complainant reiterated the reason for her absence during the 21 January 2011 hearing and her honest belief that she was exempted from the MCLE requirement as a retired city prosecutor pursuant to DOJ Circular No. 50. Complainant claimed that “her absence in court on January 21, 2011 and/or her failure to timely submit the Certificate of MCLE Exemption does not fall within the ambit of the enumerated acts in Section 3, Rule 71 which constitutes indirect contempt.”¹⁷

Complainant also filed a Letter Explanation, addressed to respondent judge thru the Clerk of Court, dated 19 September 2011,¹⁸ raising her continuing objection to the contempt order.

On 8 November 2011, respondent judge issued an Order¹⁹ for the arrest of complainant for non-payment of the fine. On 24 November 2011, complainant paid the ₱2,000 fine, thereby lifting the warrant of arrest.

Respondent judge also issued a show cause order in the other two criminal cases for complainant’s failure to appear during the hearing. Complainant filed an Explanation²⁰ for her absence on 18 August 2011 in Criminal Case Nos. 09-0138 and 09-0398, which was due to the sudden change of trial date which conflicted with complainant’s pre-scheduled appointments. In its 12 October 2011 Order, respondent judge ordered the Explanation expunged for non-indication of complainant’s MCLE information, cited complainant in contempt, and fined her ₱2,000 for failing to show cause why she should not be cited in contempt for not appearing in

¹¹ Id. at 76.

¹² Id. at 77-79.

¹³ Id. at 80-81.

¹⁴ Id. at 83.

¹⁵ Id. at 86-92.

¹⁶ Id. at 86.

¹⁷ Id. at 89.

¹⁸ Id. at 84-85.

¹⁹ Id. at 93-94.

²⁰ Id. at 98-99.

court despite notice.

In her Complaint, complainant alleged that respondent judge issued the contempt orders “out of her whims and caprices and without any legal basis therefor.”²¹ Complainant further alleged that respondent judge “deprived her of the opportunity to defend herself against her unjust orders by refusing to consider all the explanation, compliance, and/or correspondence she filed as expunged pleadings under the cloak of non-compliance with the MCLE requirements.”²²

Complainant alleged that her non-appearance in just one hearing due to a justifiable reason or her failure to indicate the details of her third MCLE Compliance does not fall under any of the particular acts which constitute indirect contempt under Section 3, Rule 71 of the Rules of Court.

In her Comment,²³ respondent judge explained that she cites in contempt only those lawyers or litigants who fail to submit satisfactory explanations to show cause orders and only after giving them sufficient time to submit explanations or compliances. She admitted citing complainant in contempt since complainant submitted an explanation or compliance which the trial court did not consider filed or was ordered expunged from the records for not being compliant with the MCLE requirement.

Respondent judge claimed that it was complainant who had the propensity to do improper acts as a legal practitioner such as sending a letter²⁴ to the Clerk of Court asking her to reschedule a hearing, when what should have been done was to submit a timely motion for cancellation or postponement of hearing. In another instance, complainant, instead of submitting a compliance to the trial court’s show cause order by way of pleading, sent a letter-explanation²⁵ which was not considered at all, since the show cause order called for a formal pleading that conforms with the prescribed rules.

Respondent judge further pointed out that complainant filed a petition for certiorari before the Regional Trial Court of Malolos, Bulacan, Branch 7, challenging the show cause and contempt orders and the ₱2,000 fine imposed by respondent judge for being issued with grave abuse of authority. Respondent judge stressed that the petition for certiorari was dismissed for being moot since complainant already paid the fine.

Respondent judge alleged that complainant was impelled by revenge in filing the administrative case because it was respondent judge who initiated a financial audit in the MTCC-San Jose del Monte, which resulted

²¹ Id. at 6.

²² Id.

²³ Id. at 66-70.

²⁴ Id. at 124.

²⁵ Id. at 84-85.

in the dismissal of complainant's son, then acting clerk of court, who was found guilty of grave misconduct, dishonesty, and gross neglect of duty.

The OCA's Report and Recommendations

In its Report of 22 November 2013, the Office of the Court Administrator (OCA) found respondent judge liable for grave abuse of authority, thus:

This Office cannot pass upon the wisdom of respondent Judge Dalmacio-Joaquin in citing complainant Atty. Marcelo in contempt for simply failing to appear during the hearing. It is noteworthy, however, that the records reveal that complainant Atty. Marcelo made an effort to notify the adverse party and the court that she could not appear on the scheduled hearing due to illness. A medical certificate issued by Meonardo A. Reyes, M.D., substantiates this.

Be that as it may, even if it is conceded that complainant Atty. Marcelo committed indirect contempt of court, she is nevertheless entitled to due process.

x x x x

Respondent Judge Dalmacio-Joaquin's act of expunging from the case records complainant Atty. Marcelo's explanation of her failure to indicate the requisite third (3rd) MCLE Compliance effectively deprived the latter of the procedural requisite that before citing a person in contempt, said person must be given the opportunity to appear and explain her conduct. Moreover, the non-inclusion by complainant Atty. Marcelo of her MCLE Compliance is not without valid reason. Complainant cited Section 607 of Department of Justice Circular No. 50 dated 25 June 2010 as her basis of exemption. Yet, despite the aforesaid circular, respondent Judge Dalmacio-Joaquin required complainant Atty. Marcelo to submit a Certificate of Exemption, which the latter willingly complied with by applying for the same. The MCLE Board's action on the matter is beyond complainant Atty. Marcelo's control and, therefore, the MCLE Board's failure to immediately act on the application should not be taken against her.

x x x Respondent judge's act of unceremoniously citing complainant in contempt is a clear evidence of [her] unjustified use of the authority vested upon [her] by law.²⁶

The OCA recommended that:

1. x x x x
2. respondent Judge Dalmacio-Joaquin be found LIABLE for grave abuse of authority; and
3. respondent Judge Dalmacio-Joaquin be meted a FINE of FIVE THOUSAND PESOS (Php5,000.00), with a STERN WARNING that a repetition of the same, or any similar infraction in the future, shall be dealt with more severely.²⁷

²⁶ Id. at 140-141.

²⁷ Id. at 142. Signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino.

The Issue

Since the OCA no longer discussed the charges of grave misconduct and violation of Section 4(a), (b) and (c) of RA 6713, without any question from complainant, the issue boils down to whether respondent judge is guilty of grave abuse of authority.

The Ruling of the Court

We adopt the findings of the OCA, but modify the penalty imposed on respondent judge.

The records show that respondent judge directed complainant to show cause why she should not be cited in contempt for not appearing during the hearing of 21 January 2011 in Criminal Case No. 10-0090. In her Compliance and Manifestation, complainant explained that she was unable to attend the scheduled hearing because she was unwell, which condition was relayed to her client and the office of the prosecutor for the information of the trial court. Complainant attached a medical certificate to support her explanation.

However, complainant's Compliance and Manifestation lacked the number and date of issue of her MCLE Certificate of Compliance or Exemption. For this reason alone, respondent judge admits expunging the Compliance and Manifestation and eventually citing complainant in contempt for failure to file a satisfactory explanation for her non-appearance. Respondent judge did not review or consider complainant's explanation for her absence during the hearing of 21 January 2011.

In the interest of substantial justice, respondent judge should have relaxed the application of Bar Matter No. 1922;²⁸ accepted complainant's Compliance and Manifestation; and should not have expunged the same from the records. Besides, complainant was not without reason for not indicating the MCLE information, that is, her honest belief of her exemption from such requirement. At any rate, complainant applied for a Certificate of Exemption²⁹ and completed the units for her third MCLE Compliance period. Yet, her application for exemption remained pending when the contempt order was issued.³⁰ As noted by the OCA, the delay in the issuance of the Certificate of Exemption should not be taken against her.

²⁸ Bar Matter No. 1922 was amended in the Court's Resolution of 14 January 2014, repealing the harsh penalty of dismissal of the case and expunction of the pleadings for counsel's failure to disclose the required MCLE information. Instead, the non-compliant counsel will merely be subject to fine, the amount of which depends on the frequency of the offense, and disciplinary action.

²⁹ *Rollo*, p. 33.

³⁰ *Id.* at 62.

Reviewing the records, we find that complainant exhibited respect and obedience to the trial court's orders. There is clearly no disobedience, much less defiance, on the part of complainant against respondent judge's authority. In other words, there is no contempt of court to speak of, which has been defined as "a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties litigant or their witnesses during litigation."³¹

While respondent judge has inherent contempt powers,³² the same should be exercised judiciously, sparingly, and with utmost restraint.³³ Respondent judge miserably failed to exercise restraint. She cited complainant in contempt on the sole ground that complainant failed to file a satisfactory explanation for her non-appearance before the court. Yet, the records clearly show that complainant filed a satisfactory explanation, albeit lacking the required MCLE information.

Indeed, respondent judge demonstrated grave abuse of authority, which has been defined as "a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury; *it is an act of cruelty, severity, or excessive use of authority.*"³⁴ To repeat, respondent judge strictly, albeit unreasonably, applied the provisions of Bar Matter No. 1922 in expunging the Compliance and Manifestation. Respondent judge equated the expunged explanation to non-filing of a satisfactory explanation when in fact complainant filed a sufficient explanation for her non-appearance.

However, we modify the penalty imposed by the OCA. Instead of fine, we find the penalty of reprimand appropriate under the circumstances in this case.³⁵ As stated, respondent judge invoked and applied, though strictly, Bar Matter No. 1922 in expunging complainant's Compliance and Manifestation, which ultimately resulted in the contempt order.

We find unsubstantiated respondent judge's accusation of ill-will or revenge as motive for the filing of this administrative complaint. Respondent judge did not adduce any evidence to prove such allegation.

On complainant's sending of letters addressed to the Clerk of the trial court concerning court matters, we remind complainant to file the appropriate pleadings or motions directly with the trial court.

³¹ *Heirs of Trinidad de Leon Vda. de Roxas v. CA*, 466 Phil. 697, 711 (2004), citing *Halili v. CIR*, 220 Phil. 507 (1985).

³² *Prosecutor Baculi v. Judge Belen*, 604 Phil. 1 (2009).

³³ *Prosecutor Baculi v. Judge Belen*, id.; *Inonog v. Judge Ibay*, 611 Phil. 558, 568 (2009); *Nuñez v. Judge Ibay*, 609 Phil. 14, 26 (2009), citing *Sison v. Caoibes, Jr.*, 473 Phil. 251 (2004).

³⁴ *Romero v. Villarosa, Jr.*, 663 Phil. 196, 207 (2011), citing *Rafael v. Sualog*, 577 Phil. 159 (2008), further citing *Aranda, Jr. v. Alvarez*, 563 Phil. 474 (2007), and *Spouses Stilgrove v. Sabas*, 538 Phil. 232 (2006).

³⁵ See *OCA v. Judge Paderanga*, 505 Phil. 143, 159 (2005).

WHEREFORE, we find respondent Judge Pelagia J. Dalmacio-Joaquin, Presiding Judge, Municipal Trial Court in Cities, Branch 1, San Jose del Monte, Bulacan, **GUILTY** of grave abuse of authority and accordingly **REPRIMAND** her, with a **STERN WARNING** that a repetition of the same, or any similar infraction in the future, shall be dealt with more severely.

SO ORDERED.

ANTONIO T. CARPIO
Acting Chief Justice

WE CONCUR:

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice