

FIRST DIVISION

[G.R. No. 170404, September 28, 2011]

FERDINAND A. CRUZ, PETITIONER, VS. JUDGE HENRICK F. GINGOYON,[Deceased] JUDGE JESUS B. MUPAS, ACTING PRESIDING JUDGE, REGIONAL TRIAL COURT BRANCH 117, PASAY CITY, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

While there are remedies available to a party adjudged in contempt of court, same may only be availed of when the procedures laid down for its availment are satisfied.

By this Petition for *Certiorari*,^[1] petitioner Ferdinand A. Cruz (petitioner) assails the Order^[2] dated November 25, 2005 issued by the now deceased Judge Henrick F. Gingoynon (Judge Gingoynon) of Branch 117, Regional Trial Court (RTC) of Pasay City (respondent court) citing him in direct contempt of court, the dispositive portion of which states:

WHEREFORE, Ferdinand Cruz is hereby found GUILTY beyond reasonable doubt of DIRECT CONTEMPT OF COURT.

Accordingly, he is hereby sentenced to suffer TWO (2) DAYS of imprisonment and to pay a fine of P2,000.00.

SO ORDERED.^[3]

Essentially, petitioner prays for this Court to declare the assailed Order void and that Judge Gingoynon abused his discretion in citing him in contempt, as well as in denying his motion to fix the amount of bond.

Antecedent Facts

This case stemmed from a Civil Complaint^[4] filed by petitioner against his neighbor, Benjamin Mina, Jr. (Mina), docketed as Civil Case No. 01-0401 in the RTC of Pasay City for abatement of nuisance. In the said case, petitioner sought redress from the court to declare as a nuisance the "basketball goal" which was permanently attached to the second floor of Mina's residence but protrudes to the alley which serves as the public's only right of way.

Mina was declared in default^[5] hence petitioner presented his evidence *ex-parte*.

After trial, Judge Gingoyon, in his Decision^[6] dated October 21, 2005, declared the basketball goal as a public nuisance but dismissed the case on the ground that petitioner lacked "*locus standi*." Citing Article 701 of the Civil Code, Judge Gingoyon ruled that the action for abatement of nuisance should be commenced by the city or municipal mayor and not by a private individual like the petitioner.

In the same Decision, Judge Gingoyon also opined that:

Plaintiffs must learn to accept the sad reality of the kind of place they live in. x x x Their place is bursting with people most of whom live in cramped tenements with no place to spare for recreation, to laze around or doing their daily household chores.

Thus, residents are forced by circumstance to invade the alleys. The alleys become the grounds where children run around and play, the venue where adults do all sorts of things to entertain them or pass the time, their wash area or even a place to cook food in. Take in a few ambulant vendors who display their wares in their choice spots in the alley and their customers that mill around them, and one can only behold chaos if not madness in these alleys. But for the residents of the places of this kind, they still find order in this madness and get out of this kind of life unscathed. It's because they all simply live and let live. Walking through the alleys daily, the residents of the area have become adept at [weaving] away from the playthings that children at play throw every which way, sidestepping from the path of children chasing each other, dodging and [ducking] from awnings or canopies or clotheslines full of dripping clothes that encroach [on] the alleys. Plaintiffs appear to be fastidious and delicate and they cannot be faulted for such a desirable trait. But they can only do so within their own abode. Once they step outside the doors of their home, as it were, they cannot foist their delicacy and fastidiousness upon their neighbors. They must accept their alleys as the jungle of people and the site of myriad of activities that it is. They must also learn to accept the people in their place as they are; they must live and let live. Unless they choose to live in a less blighted human settlement or better still move to an upscale residential area, their only remaining choice is for them to live in perpetual conflict with their neighbors all the days of their lives.^[7]

Petitioner sought reconsideration of the Decision. In his Motion for Reconsideration,^[8] he took exception to the advice given by Judge Gingoyon thus:

The 12th and 13th paragraphs of the assailed decision, though only an advice of the court, are off-tangent and even spouses illegality;

Since when is living in cramped tenements become a license for people to invade the alleys and use the said alley for doing all sorts of things, i.e., as wash area or cooking food? In effect, this court is making his own legislations and providing for exceptions in law when there are none, as far as nuisance is concerned;

The court might not be aware that in so doing, he is giving a wrong signal to the defendants and to the public at large that land grabbing, squatting, illegal occupation of property is all right and justified when violators are those people who live in cramped tenements or the underprivileged poor, as the court in a sweeping statement proclaimed that "residents are forced by circumstance to invade the alleys;"

For the enlightenment of the court, and as was proven during the ex-parte presentation of evidence by the plaintiff, Edang estate comprises properties which are subdivided and titled (plaintiffs and defendants have their own titled properties and even the right of way or alley has a separate title) and not the kind the court wrongfully perceives the place to be;

Moreover, the court has no right to impose upon the herein plaintiffs to accept their alleys as a jungle of people and the site of myriad of activities that it is. For the information of the court, plaintiffs have holdings in upscale residential areas and it is a misconception for the court to consider the Pasay City residence of the plaintiffs as a blighted human settlement. Apparently the court is very much misinformed and has no basis in his litany of eye sore descriptions;

Undersigned is at quandary what will this court do should he be similarly situated with the plaintiffs? Will the court abandon his residence, giving way to illegality in the name of live and let live principle?

Nonetheless, what remains bugling [sic] is the fact that the court in his unsolicited advice knows exactly the description of the alley where the complained nuisance is located and the specific activities that the defendants do in relation to the alley. The court should be reminded that the undersigned plaintiff presented his evidence ex-parte and *where else can the court gather these information about the alleys aside from the logical conclusion that the court has been communicating with the defendant, off the record, given that the latter has already been in default.*^[9] (Emphasis supplied.)

Petitioner requested the respondent court to hear his motion for reconsideration on November 18, 2005.^[10]

In an Order^[11] dated November 11, 2005, Judge Gingoyon set the motion for hearing on November 18, 2005, a date chosen by petitioner,^[12] and directed him to substantiate his serious charge or show cause on even date why he should not be punished for contempt.^[13] Judge Gingoyon also opined that:

This court, more specifically this Presiding Judge, has not seen the faintest of shadow of the defendant or heard even an echo of his voice up to the present. Plaintiff Ferdinand Cruz is therefore directed to substantiate his serious charge that he "*has been communicating with*

the defendant off the record, given that the latter has already been declared in default". He is therefore ordered to show cause on November 18, 2005, why he should not be punished for contempt of court for committing improper conduct tending directly or indirectly to degrade the administration of justice.^[14]

On November 18, 2005, petitioner, however, did not appear. Judge Gingoyon then *motu proprio* issued an Order^[15] in open court to give petitioner another 10 days to show cause. The Order reads:

In his Motion for Reconsideration, plaintiff Ferdinand Cruz specifically prayed that he is submitting his Motion for Resolution and Approval of this court today, Friday, November 18, 2005, at 8:30 A.M. Fridays have always been earmarked for criminal cases only. Moreover, long before plaintiff filed his motion for reconsideration, this court no longer scheduled hearings for November 18, 2005 because there will be no Prosecutors on this date as they will be holding their National Convention. Nevertheless, since it is the specific prayer of the plaintiff that he will be submitting his motion for resolution and approval by the court on said date, the court yielded to his wish and set his motion for hearing on his preferred date.

When this case was called for hearing today, plaintiff did not appear. The court waited until 9:45 A.M. but still no appearance was entered by the plaintiff or any person who might represent himself as an authorized representative of the plaintiff. Instead it was the defendant and his counsel who appeared and who earlier filed an Opposition to Motion for Reconsideration.

x x x x

In view of the failure of the plaintiff to appear in today's hearing, the court considers the motion for reconsideration submitted for resolution. As for the Order of this court for the plaintiff to show cause why he should not be punished for contempt of court, the court [*motu proprio*] grants plaintiff last ten (10) days to show cause why he should not be punished for contempt of court. After the lapse of the said period, the court will resolve the issue of whether or not he should be cited for contempt. x x x^[16]

In his Compliance^[17] to the Show Cause Order, petitioner maintained that the alleged contumacious remarks he made have a leg to stand on for the same were based on the circumstances of the instant case. He even reiterated his insinuation that Judge Gingoyon communicated with Mina by posing the query: *"...where then did this court gather an exact description of the alley and the myriad of [sic] activities that the inhabitants of interior Edang do in relation to the alley, when the defendant was held in default and absent plaintiff's evidence so exacting as the description made by this court in paragraphs 12 and 13 of his Decision dated October 21, 2005."*^[18]

On November 25, 2005, Judge Gingoyon issued an Order^[19] finding petitioner guilty of direct contempt of court. The Order reads:

Ferdinand Cruz was ordered to substantiate with facts his serious charge that the Judge "has been communicating with the defendant off the record". But instead of presenting proof of facts or stating facts, Cruz simply shot back with a query: *"Where then did this court gather an exact description of the alley and the myriad activities that the inhabitants of interior Edang do in relation to the alley, when the defendant was held in default and absent plaintiff's evidence so exacting as the description made by this court..."* By this token, Cruz adamantly stood pat on his accusation, which now appears to be wholly based on suspicion, that the Judge has been communicating with the defendant off the record.

The suspicion of Ferdinand Cruz may be paraphrased thus: The only way for the Judge [to] know the blight in his place in Pasay City is for the Judge to communicate with the defendant. It is only by communicating with the defendant and by no other means may the Judge know such blight.

Blinded by his suspicion, Cruz did not consider that as State Prosecutor, the Judge was detailed in Pasay City in 1991 and that he has been a judge in Pasay City since 1997. The nuisance that Cruz complained of, or the blight of his place, is not a unique feature of that particular place. It is replicated in many other places of the city. Indeed, it is but a microcosm of what is prevalent not only within the urban areas within Metro Manila but also in many other highly urbanized areas in the country. Judges are no hermits that they would fail to witness this blight. Cruz did not care to make this allowance for the benefit of preserving the dignity of the court.

Cruz's open accusation without factual basis that the judge is communicating with the defendant is an act that brings the court into disrepute or disrespect; or offends its dignity, affront its majesty, or challenge its authority. It constitutes contempt of court. (People vs. De Leon, L-10236, January 31, 1958). x x x By alleging that the judge communicated with the defendant, Cruz is in effect charging the judge of partiality. Since there is not an iota of proof that the judge did the act complained of, the charge of partiality is uncalled for and constitutes direct contempt (Salcedo vs. Hernandez, 61 Phil. 724; Lualhati vs. Albert, 57 Phil.86; Malolos vs. Reyes, 111 Phil. 1113).

WHEREFORE, Ferdinand Cruz is hereby found GUILTY beyond reasonable doubt of DIRECT CONTEMPT OF COURT.

Accordingly, he is hereby sentenced to suffer TWO (2) DAYS of imprisonment and to pay a fine of P2,000.00.

SO ORDERED.^[20]