

## EN BANC

[ A.M. NO. RTJ-06-1970, November 30, 2006 ]

**ALLAN MACROHON, RODRIGO GONZALES AND REDEEM ONGTINCO, COMPLAINANTS, VS. JUDGE FRANCISCO B. IBAY, REGIONAL TRIAL COURT, BRANCH 135, MAKATI CITY, RESPONDENT.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

The facts of the case as summarized in the Report dated July 10, 2006 of the Investigating Justice<sup>[1]</sup> are as follows:

A "*Pinagsanib na Salaysay*" dated April 22, 2005 was filed by the complainants, Allan Macrohon, Rodrigo Gonzales and Redeem Ongtinco, before the Office of the Court Administrator x x x against respondent Judge Francisco D. Ibay charging him with Grave Abuse of Authority.

In compliance with the directive of the Court Administrator in a 1st Indorsement dated May 10, 2005, the respondent judge submitted his comment on the complainants' *Pinagsanib na Salaysay* through a 3rd Indorsement dated June 10, 2005.

x x x x

On April 28, 2006, an Order was issued x x x ordering the complainants and the respondent judge, with their respective counsels, to appear for a preliminary conference and initial presentation of evidence on May 11, 2006 at 2:00 o'clock in the afternoon. Copies of the said Order were thence sent to the complainants at their given address at HIS Construction, Roosevelt Avenue, Quezon City, as well as to the respondent judge, thru the Process Server of this Court.

In a Certification dated May 3, 2006, signed by Process Server Adrian C. Aggabao and attested by the Chief, Mailing and Delivery Section of this Court, it is stated that the copy of the Order was served upon the respondent judge on May 2, 2006, but the copies of the Order intended for the complainants were not delivered as the said Process Server was not able to find the given address which was insufficient. Thus, the Acting Division Clerk of Court caused the sending of the copies of the Order to the complainants by Express Mail Services but the envelopes containing these copies were also returned with the notation "No longer connected."

In the hearing on May 11, 2006 x x x only the respondent judge with his counsel, Atty. Apolonio A. Padua, Jr., appeared, while the complainants

were absent. Atty. Padua moved for the dismissal of the case for failure of the complainants to inform the Court of their latest address, x x x but [the Investigating Justice] proceeded with the investigation. Atty. Padua manifested that respondent judge is adopting his Comment contained in the 3rd Indorsement dated June 10, 2005, as his Answer to the complaint.

Finding the Answer to be vague, the [Investigating Justice] asked clarificatory questions which were answered by the respondent judge and his counsel. Thereafter, upon motion of the latter, respondent judge was given fifteen (15) days from May 11, 2006 or until May 27, 2006, within which to submit a memorandum. x x x

In their *Pinagsanib na Salaysay*, the complainants alleged that they are laborers of HIS Construction x x x. which, in August, 2002, was engaged to paint the *Gusali ng Katarungan* in Makati City; that after completing the painting of the building, they x x x dismantle[d] the metal scaffoldings which they used as support in their painting; x x x that while they were removing these metal tubes at the 2nd floor level of the building, a small amount of water from one of the metal tubes, flowed to a closed window jalousie; that they had the impression that the said metal tube collected water from the rain the night before; that considering that said window jalousie was closed, they did not bother so much about the water which flowed from the tube and they continued with their work; that several minutes later, a policeman arrived and took their names and when they asked him why, the policeman replied that they will be informed of the reason when they reach the sala of the respondent judge; that when they reached the chamber of the respondent judge at around 9:30 in the morning, the latter who was then very angry ("galit na galit"), met them and showed to them the flooring of his chamber which was drenched with water, that they apologized as they did not intend to cause such damage and complainant Redeem Ongtinco even volunteered to clean the wet floor, but the respondent judge replied, "*Huwag na, baka sampalin pa kita*;" that they were brought by the policeman to the courtroom and presented to the respondent judge who was already wearing a black robe; that they were surprised when a charge was read to them in English which they did not understand, except the portion that they will be imprisoned for five (5) days, and they were detained at the police precinct in front of the *Gusali ng Katarungan*.

In his Comment, x x x respondent judge alleged that x x x the careless attitude of the three (3) complainants in carrying out their tasks and their obvious indifference to the safety and well-being of others, resulted in the damage of his computer x x x [that] he was not able to use the same computer for at least a week and was forced to handwrite his decisions, draft them and have them typed by his staff. The belated filing of the instant complaint about an incident which occurred in August 2002, together with other complaints against him involving other complainants, are indications that an invisible hand is orchestrating these actions against him.

In answer to the clarificatory questions x x x respondent judge stated that sometime in August, 2002, while he was inside his chamber at the 2nd floor of the building typing a decision using his computer, water suddenly seeped in as if it was poured, through the closed window jalousie of his chamber. He put off his computer and asked his Sheriff to look for those who were responsible and to ask their names. The Sheriff saw the three complainants outside the building as there was a repair going on. He felt that what the complainants did was contemptuous as the incident in question occurred while he was typing one of his decisions. Thus, he set the hearing of the incident and when the complainants appeared before him, he informed them that they were being charged with contempt of court. He gave the complainants an opportunity to explain what happened, which they did. They could hardly speak, but they admitted that they were the ones working outside his window. Not being satisfied with their explanation, he cited them in contempt of court and issued an Order sentencing all the complainants with imprisonment up to 5:00 o'clock in the afternoon of the same day. Before noontime of the same day, Executive Judge Leticia Morales called him up by telephone and requested him to reconsider his decision. Hence, he dictated an Order immediately after lunch, releasing the complainants. This Order was delivered to the jail before 1:00 o'clock in the afternoon of the same day. He did not, however, inquire anymore whether the complainants were released on the same day. He denied having uttered the words "*Huwag na, baka sampalin pa kita*" and said that complainant Redeem Ongtinco did not offer to clean the wet flooring of his chamber. He admitted that he does not have any record of the proceedings and he cannot even remember the date of the subject incident which transpired four (4) years ago.

In his Memorandum x x x the respondent judge maintained that the spillage of water into his chamber x x x could have been prevented if due care was observed by the complainants; that the incident could not be considered as an accident because everything that complainants did in carrying out their duties were deliberate and supervised; that they were formally summoned to appear before him about their obvious imprudence and were given the opportunity to be heard but he found their explanation unacceptable x x x as a consequence of which, the administration of justice was delayed; that finding the complainant's act to be contemptuous, he cited them in direct contempt of court and meted the penalty of imprisonment; that complainants were detained before noon on that day but were released immediately after lunch of the same day; that the proceedings he observed were not arbitrary and the imposition of the sanction of imprisonment for a few hours was not abuse of authority; and that he observed and felt that someone is all out to harass and embarrass him through the simultaneous filing of the complaint-affidavits against him<sup>[2]</sup>

At the outset, the Investigating Justice observed that although the complainants did not appear during the hearing, "[t]he facts in their *Pinagsanib na Salaysay* on the circumstances surrounding their incarceration upon the order of respondent judge, are substantially correct and true."

We agree. The apparent desistance of complainants from further pursuing their charges against respondent is of no moment. As has been said in *Abalde v. Roque, Jr.*,<sup>[3]</sup> the desistance of the complainant against respondent is not a bar to disciplinary sanction. The overriding need to maintain the faith and confidence of the people in the judiciary demands that erring personnel be sanctioned, notwithstanding the withdrawal of the complaints. Indeed, these proceedings do not depend upon the whims and caprice of the concerned employees, for the aggrieved party is the court system. The issue in administrative cases is not whether the complainant has a cause of action against the respondent, but whether the employee has breached the norms and standards of the judiciary.

It is the Court's duty to root out misconduct among those who are engaged in the dispensation of justice regardless of the parties' desistance.<sup>[4]</sup> Furthermore, it must be borne in mind that the Court retains its jurisdiction either to pronounce the respondent judge innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications. If innocent, respondent judge merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.<sup>[5]</sup>

While respondent judge denies having said "*Huwag na, baka sampalin pa kita*" he admits ordering the incarceration of complainants whom he found guilty of direct contempt. Respondent judge insists he was justified in holding complainants for direct contempt due to the tatter's carelessness and imprudence, as he was drafting a decision when water seeped into the chamber's closed window jalousie.

According to respondent, the complainants could be punished even without hearing but still, he gave them the opportunity to explain themselves but he found their explanations unsatisfactory. He further alleges that someone is out to harass and embarrass him as shown by the simultaneous filing, of the complaint-affidavits of six individuals. He claims that under such situation, he has nothing to shield himself from the onslaught of complainants and those behind them except his inherent contempt power as a judge.

The pivotal question, given the foregoing arguments proffered by respondent judge is whether or not he abused his authority in citing the complainants in contempt and ordering their incarceration.

In the Motion for Leave To Admit Herein Supplement to the June 30, 2006 Memorandum of the Respondent and Manifestation filed on October 11, 2006, respondent judge admits that he erred in citing the complainants in contempt but insists that it was "a mistake of judgment" and "an innocent error."<sup>[6]</sup>

In finding respondent administratively liable for abusing his contempt powers, the Investigating Justice reasoned thus:

In this case, the respondent judge admitted that because of the subject incident, he cited the complainants in contempt of court and ordered their incarceration. As a justification for his action, he explained, thus -

Complainants x x x in a very careless manner, caused the spillage of water xxx causing damage not only to the carpeted flooring of his chamber, but also his computer. All these could have been prevented if due care was observed. It could not be treated as an accident because everything the complainants did in carrying out their duties were deliberate and supervised. Obviously, the complainants manifested complacency and did not care at all whether their omissions would result to any damage to the occupants of the premises. They were not working on an unoccupied building. They were working on the Hall of Justice completely occupied by the Regional Trial Court, by the Municipal Trial Courts, by the offices of the City Prosecutor and the Public Attorney's Office. This is not to mention that the incident in issue occurred on a regular working day where all the courts and the offices in the building were carrying out their respective functions. Judges, litigants and office workers abound the building, xxx

Complainants xxx were formally summoned before the respondent judge xxx [and] were given the chance to explain why they [did] not observe care and prudence in carrying out their functions. They did; but, their explanation was not acceptable x x x. Their indifference to the safety of others was obvious. The respondent judge did not consider the material damage to his computer and to his chamber; but, he considered with deep concern the delay in the administration of justice. **He would not be able to write down his decisions as expediently as when he has the full use of his computer. And, that he would not be able then to meet on time the requirements of decision-making.** Thus, they were cited in contempt of court and meted the penalty of imprisonment. Truly, they were detained before noon on that day; but they were released immediately after lunch on the same day. (Emphasis supplied)

Nothing on the records, however, substantiates the respondent judge's claim that the subject incident is not an accident and that the complainant's manner in carrying out their duties is contemptuous. What is glaring is that because of the subject incident that caused damage to his chamber's carpeted flooring and to his computer, he blamed the complainants for their alleged carelessness. As a consequence, he used his contempt power in order to give them a lesson.

Clearly, the respondent judge used his contempt power in a vindictive and retaliatory manner. The fact that "he would not be able to write down his decisions as expediently as when he has the full use of his computer and meet on time the requirements of decision-making" is no excuse nor justification for utilizing such power for retaliation and vindication.

The salutary rule is that **the power to punish for contempt must be exercised on the preservative, not vindictive principle, and on the corrective and not retaliatory idea**