

## FIRST DIVISION

[ G.R. No. 120074, June 10, 1997 ]

**LEAH P. ADORIO, PETITIONER, VS. HON. LUCAS P. BERSAMIN,  
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 96,  
QUEZON CITY, RESPONDENT. PHILIP SEE, INTERVENOR.**

### D E C I S I O N

**KAPUNAN, J.:**

This is a special civil action for certiorari which seeks to set aside the Order of Judge Lucas P. Bersamin<sup>[1]</sup> dated May 5, 1995 insofar as it holds petitioner in direct contempt and sentences her therefor. The dispositive portion of said order reads:

WHEREFORE, the *Motion For Inhibition And For Re-raffle Of Cases* is hereby granted.

The complainant Philip See y Go and his former private prosecutor, Atty. Leah P. Adorio, of the King & Adorio Law Offices, with address at No. 40 Landargun Street, Quezon City, are hereby found guilty of direct contempt of this Court for disrespect to the Court and its Presiding Judge and are accordingly sentenced to suffer imprisonment of two (2) days in the City Jail of Quezon City and to pay a fine of P200.00 each.

For the pupose of the execution of their sentence, complainant Philip See y Go and Atty. Leah P. Adorio are hereby directed to appear in person before the Court on May 23, 1995 at 10:00 o'clock in the morning.

Pending execution of the sentence, the transmittal of the records to the Honorable Executive Judge, through the Office of the Clerk of Court, for purposes of re-raffle shall be held in abeyance.

SO ORDERED.<sup>[2]</sup>

Petitioner was counsel for Philip G. See, the private complainant in Criminal Case Nos. Q-94-55933 to Q-94-55957 involving violations of B.P. Blg. 22 pending before the sala of respondent Judge.<sup>[3]</sup>

Pre-trial in these cases was concluded on January 16, 1995. Upon agreement of the parties, trial on the merits was set on March 8, 15 and 22, all at 8:30 a.m.<sup>[4]</sup>

Unknown to petitioner, counsel for the accused filed several requests addressed to the Branch Clerk of Court for the issuance of subpoenas duces tecum requiring officials of several banks to bring before the court on March 8, 1995 at 8:30 a.m., microfilm copies of various checks. The subpoenas *duces tecum* were issued on February 6, 7 and 14, 1995.<sup>[5]</sup>

On March 8, 1995, which petitioner supposed to be the date of the presentation of the prosecution's evidence, petitioner came to court and was surprised by the presence of the bank officials therein.<sup>[6]</sup> During the hearing, respondent Judge called for a recess to enable counsel for the accused to confer with the bank officers.<sup>[7]</sup> When the case was again called, the following arguments took place:

Atty. Adorio:

Before we call our witness, your honor, may I now make of record that I was surprised with the move this morning of all the bank officers, I was not informed about any request for subpoena to the bank officers today. No copy of such request was given to the Private Prosecutor. And I also notice, your honor, that the subpoena or rather no copy issued by this court was ever given to the private prosecutor. Atty. Rivera knows, he had already entered his appearance and he knows my address, why did he not furnish me a copy of his request for subpoena, your honor, considering that I have the right to examine his request, the materiality of his request. I would like also to make of record, your honor, why they keep it as a secret, as a rule, the opposing party must be a party to whatever paper the other party may file, it seems that Atty. Rivera is hiding something from us. Whatever he wants to ask the Court, I am entitled to know.

Atty. Rivera:

I don't think there is a reason or there is a need to be furnished with my request for subpoena, that is the reason why she was not furnished, your honor. Besides, my request for subpoena this morning is not a litigated motion. I made this request for advance in order that, when the defense turn to present evidence, it won't be delayed because of non-availability of these exhibits.

Atty. Adorio:

This is our day of presenting evidence, your honor. This is only my observation, your honor and may I request Atty. Rivera to give us all copies he submits to the Court.

Atty. Rivera:

May I request for particular rule for that....

Atty. Adorio:

Your honor, copies must be given to the opposing counsel, there is a ruling on that your honor....

Atty. Rivera:

This is not a litigated motion your honor.

C o u r t:

What is the problem of Atty. Adorio?

Atty. Adorio:

My only observation, your honor. And may I request Atty. Rivera to give us all copies he submits to the Court.

Atty. Rivera:

May I request for that particular rule for furnishing request for subpoena to the other counsel, your honor...

C o u r t:

What is this rule, will you cite the rule so that we can examine your protest you are insinuating to the Court that there was something here, we don't even know the request for subpoena. If anyone of my staff is.... towards the other side, you call me I can discipline them...

Atty. Adorio:

There was an instance, your honor, when this case was called by the Clerk for arraignment, the Clerk would say that the accused would be coming. And one time, your honor, the Court already issued an Order of arrest, and it was already past 10:00 o'clock in the morning when the accused arrived....<sup>[8]</sup>

Petitioner was apparently referring to an incident that allegedly occurred on July 13, 1994, the date set for the accused's arraignment. According to petitioner, the accused failed to appear in court on said date even after the third call at around 11:00 a.m. Consequently, the Court ordered the issuance of a warrant of arrest and the confiscation/cancellation of the accused's bail bond. The clerk in charge of the record then went to the door separating the courtroom and the staff's office and whispered to someone in the office. After two minutes, the same clerk again rose from her seat, went back to the door, and announced to the Court that the accused would be late. Respondent Judge replied that the Court will wait for the accused.<sup>[9]</sup>

However, on March 8, 1995, Philip See allegedly examined the record but found that the incidents which purportedly transpired during the arraignment were not reflected therein.<sup>[10]</sup>

The above revelations by Atty. Adorio prompted the following response from respondent judge:

C o u r t:

Will you call everybody, all the staff inside.... and you point to me who is that....? If you want me to be disqualified in these cases, you make it in writing. You file your motion to inhibit, I will disqualify myself because I

don't want to hear such accusations. Any participation of my staff which I am now parading before you... I don't like that kind of accusation.

Atty. Rivera:

I will join the court.

C o u r t:

O r d e r

As prayed for, the private prosecutor is hereby directed to file a Request for inhibition in writing stating the grounds.

Pending consideration of the Request for Inhibition, hearing is hereby suspended.

So ordered.<sup>[11]</sup>

Pursuant to said order, petitioner filed a "Motion for Inhibition and for Re-Raffle of Cases" in behalf of her client, alleging that:

The filing of the request for issuance of subpoena duces tecum and the issuance of the subpoena without notice on the private prosecutor were irregular for the following reasons:

[a] The pre-trial of the case had been terminated and the evidence for the prosecution was scheduled to be heard on March 8, 1995. Thus, it was plaintiff's turn to present evidence. Whatever request defendant wanted to make with the court which would affect the right of the plaintiff to present evidence on the date scheduled would therefore be of notice to private prosecutor so that no surprises would result and so that plaintiff could also prepare questions for these bank officers involved and make use of their presence.

[b] The act of the Court in issuing the subpoena for the bank officers to testify on March 8, 1995 upon request of the defendant when it was not yet his turn to present evidence is disruptive of orderly court procedure and shows bias on the part of the court. It shows the control of the accused over the court and court procedure.

[c] This control was also manifest on July 13, 199<sup>[4]</sup>, when accused was scheduled for arraignment, when the latter failed to appear before the court despite the third call at about 11:00 a.m. The Court then issued an Order for the issuance of a warrant of arrest and the confiscation/cancellation of the bail bond. After this Order was given orally in open court, the clerk who took charge of the records went to the door between the sala and the office and whispered something to someone in the office. After about two minutes, the same clerk again rose from her seat and went back to the door and thereafter, she announced to the Court that the accused would be late and the accused