

FIRST DIVISION

[A.M. NO. RTJ-06-2009 (Formerly OCA IPI No. 03-1760-RTJ), July 27, 2006]

**JOSE B. TIONGCO, COMPLAINANT, VS. JUDGE EVELYN E. SALAO,
REGIONAL TRIAL COURT, BRANCH 25, ILOILO CITY,
RESPONDENT.**

R E S O L U T I O N

CHICO-NAZARIO, J.:

Complainant Jose B. Tiongco charges respondent Judge Evelyn E. Salao, of the Regional Trial Court (RTC), Branch 25, Iloilo City, with gross ignorance of the law, gross incompetence, grave abuse of judicial power amounting to vindictiveness and unlawful imprisonment, arising from the respondent Judge's Order dated 17 March 2003, citing him in direct contempt, sentencing him to ten (10) days imprisonment, and ordering the police to place him in prison immediately.

Complainant is a lawyer engaged in the practice of law. He is the counsel for the accused in Criminal Cases No. 02-56371, No. 02-56587, No. 02-55344, and No. 01-53440. On 17 March 2003, he appeared in the court of the respondent Judge. For hearing on that day were motions of the accused in Criminal Case No. 53440, a motion to suppress evidence and to quash Search Warrant No. 26-2001 issued by the respondent Judge on 17 April 2001, while the latter was still Presiding Judge of Branch 4, Municipal Trial Court in Cities, Iloilo City, on the ground that the warrant was issued without examining in writing and under oath the applicant and his witness in the form of searching questions and answers; motion to dismiss and motion for bail in Criminal Case No. 02-56387; motion to dismiss Criminal Case No. 02-56571; and motion to dismiss Criminal Case No. 02-55344.

Complainant alleged that after the prosecutor had argued against the motions, he stood up to argue in support of the same, but he was prevented because the respondent Judge declared the motions submitted for resolution. When he vehemently objected to the respondent Judge's order and protested his being prevented from speaking, the respondent Judge cited him for direct contempt, thus:

ORDER

Atty. Jose Tiongco having been found guilty of misbehaving during the hearing thus interrupting and disrespecting the proceedings of this Court and displaying disrespect to the court by uttering offensive personalities (sic) towards the Court, he is hereby declared in direct contempt of court and is hereby sentenced to ten (10) days imprisonment.

The police officers are ordered to place Atty. Tiongco in prison immediately.

SO ORDERED.

City of Iloilo, Philippines, March 17, 2003.

(SGD) EVELYN E. SALAO
EVELYN E. SALAO
Judge^[1]

He further stated that while he was frantically manifesting his readiness to post a bond and to appeal the order by *certiorari* to stay its execution, the respondent Judge suddenly left the courtroom, entered her chambers and locked herself up. Thus, the policemen present had no choice but to immediately execute the order by placing him in jail where he stayed for 10 days. And while his 10-day sentence was to expire on 27 March 2003, the respondent Judge directed the jail warden to release him from jail at 11:30 p.m. of 26 March 2003 which the jail warden did not follow.

Aggrieved by the order of contempt and his immediate imprisonment, complainant initiated the instant complaint.

In her Comment,^[2] respondent Judge denied she prevented the complainant from expressing his arguments in support of his motions. She averred that complainant had been talking in support of his motions for at least five minutes before she suggested to submit his motions for resolution. Complainant refused to stop talking and continued arguing for a couple of minutes. Again, the respondent Judge suggested to have the motions submitted for resolution as there were at least 10 other cases in the calendar still to be called. The complainant shouted "No" and continued talking. The respondent Judge again ordered him to stop talking as the court will just issue its resolution, but this time the complainant shouted even louder in a defiant manner uttering derogatory remarks. That was the time respondent Judge declared him in contempt, but the latter continued shouting at the top of his voice threatening to file an administrative case against the former. For his contemptuous gross disrespect to the court and affront to the person of the respondent Judge, he was sentenced to 10 days imprisonment for direct contempt of court.

The respondent Judge denied she directed the jail warden to release the complainant from prison at 11:30 in the evening of 26 March 2003. She said she knew that the complainant was due for release at 9:30 in the morning of 27 March 2003, but when she was consulted by the jail guard, she pointed out that although the sentence was to expire on 27 March 2003, for the sake of liberality, she would not object if the complainant was released on 26 March 2003 at 11:30 in the evening as that would be nearing the end of the ten-day period and there were plenty of taxicabs which could take him home if he wished.

As to the search warrant which the complainant was seeking to quash in his motion set for hearing on 17 March 2003, she averred that she conducted a searching question-and-answer examination before she issued the warrant. The searching questions and answers were not only transcribed but were also tape recorded.

On 1 June 2005, the Office of the Court Administrator (OCA) submitted its Report^[3] recommending that:

1. The instant case be REDOCKETED as a regular administrative case;
 2. The respondent Judge Evelyn E. Salao, RTC, Branch 25, Iloilo City be FINED in the amount of Ten Thousand Pesos (P10,000.00) and WARNED that repetition of the same or similar offense shall be more severely dealt with; and
 3. Atty. Jose B. Tiongco, be REMINDED of his professional duty as a member of the bar to observe proper decorum both in language and behavior in his dealings with the courts and the Judges thereof.
- [4]

The issues to be resolved are: (1) whether complainant is guilty of direct contempt of court; and (2) whether the Order finding complainant guilty of direct contempt is immediately executory.

On the issue of whether complainant's actuations constitute direct contempt, we are unable to determine whether the acts and words uttered by complainant are contemptuous because of the unavailability of the transcript which would contain the verbal exchanges between the complainant and respondent Judge and the description of the behavior of the complainant during such exchanges.

While it may be true that complainant committed direct contempt by his disrespectful behavior in arguing his point in court, respondent Judge erred in directing the police officers to place the complainant "in prison immediately."

This brings to the fore the question of whether an order of direct contempt is immediately executory.

Rule 71, Section 2, of the Rules of Court provides that -

SEC. 2. *Remedy therefrom.* - The person adjudged in direct contempt by any court may not appeal therefrom, but may avail himself of the remedies of *certiorari* or prohibition. The execution of the judgment shall be suspended pending resolution of such petition, provided such person files a bond fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him. (Underscoring supplied.)

As may be gleaned from the above-quoted provision, an order of direct contempt is not immediately executory. Squarely applicable is the case of *Oclarit v. Paderanga*, [5] when we ruled that -

[A]n order of direct contempt is not immediately executory or enforceable. The contemner must be afforded a reasonable remedy to extricate or purge himself of the contempt. Thus, in the 1997 Rules of Procedure, as amended, the Court introduced a new provision granting a remedy to a person adjudged in direct contempt by any court. Such person may not appeal therefrom, but may avail himself of certiorari or prohibition. In such case, the execution of the judgment shall be suspended pending resolution of such petition provided the contemner files a bond fixed by the court which rendered the judgment and