

P/SUPT. ALEJANDRO GUTIERREZ, PCI ANTONIO RICAFORT, SPO4 RICARDO G. ONG, AND SPO1 ARNULFO MEDENILLA, COMPLAINANTS, VS. JUDGE GODOFREDO G. HERNANDEZ, SR., RESPONDENT.

A.M. No. MTJ-06-1628. June 08, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

This administrative case stems from a joint complaint-affidavit[1] dated April 18, 2005 filed with the Office of the Court Administrator (OCA) by complainants P/Supt. Alejandro Gutierrez, PCI Antonio Ricafort, SPO4 Ricardo G. Ong, and SPO1 Arnulfo Medenilla, all of the Criminal Investigation and Detective Division (CIDD) of the Philippine National Police (PNP), against then (now retired) Judge Godofredo G. Hernandez, Sr. of the Municipal Trial Court (MTC) of Pinamalayan, Oriental Mindoro charging the latter with:

- Gross ignorance of the law;
- Impropriety;
- Grave misconduct;
- Conduct unbecoming of a judge; and
- Lack of integrity to continue as a member of the judiciary.

The joint complaint-affidavit alleged that on August 9, 2004, Gus Abelgas of ABS-CBN's "Private Eye" TV program accompanied one Ernesto Cruz to Camp Crame, Quezon City to file a complaint involving Cruz's minor daughter who was allegedly recruited in Malabon, Metro Manila to work in a KTV bar in Pinamalayan, Oriental Mindoro.

The next day, August 10, 2004, complainants, as CIDD officers and agents, conducted a rescue operation accompanied by Ernesto Cruz, Gus Abelgas and other ABS-CBN TV crew members who took footage of the operation. The CIDD team was able to rescue five (5) young girls, namely, Joahna Cruz (daughter of Ernesto Cruz), Imelda De Vera, Amylene De Vera, Jackielou Garcia, and Rosalyn Payawal, from the house of a certain Salvador Napolitano in Pinamalayan, Oriental Mindoro who claimed that PO2 Jose Ringor, allegedly a member of the Provincial Mobile Group of the PNP, Oriental Mindoro, brought the women to him for safekeeping.

As a result of the rescue operation, a complaint for violation of Republic Act (RA) 9208 in relation to RA 7610 was subsequently filed before the City Prosecutor's Office of Malabon against PO2 Ringor, his recruiter wife Imelda and a certain Bebang. Thereafter, the rescued minors were brought and turned over to the Department of Social Welfare and Development. Later, the corresponding Information was filed and warrants of arrest with no bail recommended were then issued against PO2 Ringor, et al.

Several weeks thereafter, complainants were surprised to discover that cases for grave coercion and qualified trespass to dwelling had been filed against them, Gus Abelgas and Ernesto Cruz in the MTC of Pinamalayan, Oriental Mindoro, before the sala of the respondent judge. Apparently, the rescued girls, except Joahna Cruz, had retracted their complaint against PO2 Ringor, et al. and had, instead, filed charges of grave coercion and qualified trespass to dwelling against the members of the CIDD rescue team.

It was in connection with said charges, docketed in respondent judge's court as Criminal Case Nos. 6149 to 6156, that the instant administrative complaint arose. In their joint complaint-affidavit, complainants sought to hold the respondent judge liable for gross ignorance of the law in –

- Issuing warrants of arrest in inordinate haste, forgoing the mandatory conduct of preliminary examination and personal determination of probable cause in contravention of the provisions of the Rules of Court and in denial of complainants' constitutional rights to due process; and
- Setting the said criminal cases for arraignment without the requisite Informations having yet been filed in court.

The same complaint-affidavit also contains factual allegations which, if true, would constitute impropriety, grave misconduct and conduct unbecoming of a member of the judiciary, to wit:

x x x On August 17, 2004, Rosalyn Payawal, Amylyn de Vera, Imelda dela Rosa, and Jackielou [four of the rescued girls] were taken by SPO2 Arnulfo Balacana, PO2 Jose Ringor and a certain Atty. Cabugoy with two others at their respective residences and brought to Pasig City, and thereafter to La Taberna beach resort at Pinamalayan, Oriental Mindoro where they were threatened and coerced to sign a complaint for grave coercion and qualified trespass to dwelling against herein complainants including Gus Abelgas and Ernesto Cruz. They were likewise threatened and coerced into signing a retraction of their complaint against PO2 Ringor, et al.

[At the said beach resort,] Judge Godofredo G. Hernandez arrived and conferred with PO2 Ringor, SPO2 Balacana and Atty. Cabugoy relative to the retraction of the complaint of the minors against PO2 Ringor, et al. and the filing of the case against herein [complainants], Ernesto Cruz and Gus Abelgas for qualified trespass to dwelling and grave coercion. The conference was allegedly followed by a drinking spree with the group of SPO2 Balacana, PO2 Ringor, Atty. Cabugoy, and Judge Hernandez who was seen being entertained by two (2) GROs given by SPO2 Balacana.[2] [Words in brackets added]

In his Comment[3] dated May 31, 2005, the respondent judge denies the accusations against him and dismisses the same as pure harassment calculated to cast doubt on his character and integrity as a retiring judge. He then puts forth his unblemished record in the government service since 1956.

To respondent judge, there was nothing anomalous nor irregular in the procedural steps he undertook relative to the subject criminal cases. He maintains that his act of setting said criminal cases for the arraignment of the complainants, as accused therein, even without any information having yet been filed, and issuing warrants of arrest despite the absence of any such information, were all "pursuant to a valid exercise of his judicial function as the presiding judge of Pinamalayan." He asserts that, contrary to the complainants' allegation, he conducted a preliminary investigation and then issued the corresponding warrant of arrest there being a motion filed by the private offended parties for the early issuance thereof. He further claims that the determination of probable cause for the purpose of issuing a warrant of arrest is his sole prerogative as a judge.

As for the imputation of his having coerced and manipulated the private offended parties, the respondent judge counters that there is no showing that he has a personal interest in those cases. He vehemently denies his purported participation in a drinking spree while being entertained by two GROs, stressing that he had never set foot in La Taverna Beach Resort which has apparently been non-operational since 2003 as attested to by the

Certification issued by the Municipal Treasurer of Gloria, Oriental Mindoro. In any event, respondent points to the lack of evidence substantiating the alleged entertainment accorded him.

To bolster his assertion of good moral standing in the community, respondent filed a Supplemental Comment[4] on June 16, 2005, therein attaching a recent recognition of his good character, and the various honors and citations conferred upon him.

In its report of October 19, 2005, the OCA came out with its findings that the respondent judge was guilty of gross ignorance of procedural rules. Seeing, however, that this is the only administrative complaint filed against the respondent and that he had compulsorily retired last July 15, 2005, the OCA recommended that respondent be merely fined in the amount of twenty thousand pesos (P20,000.00), to be deducted from his retirement benefits.

We agree with the OCA's findings and recommendation.

Section 1, Rule 112 of the Rules of Court requires preliminary investigation in cases cognizable by the municipal trial courts for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine.

Section 3 of Rule 112 explicitly provides for the procedure to be followed in the conduct of a preliminary investigation, thus:

Sec. 3. Procedure. - The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish the probable cause. x x x

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

xxx xxx xxx

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of his section, with copies thereof furnished by him to the complainant. The respondent shall be allowed to file a motion to dismiss in lieu of a counter-affidavit.

xxx xxx xxx

It is apparent from the facts on record that the complainants were never issued any subpoena to accord them the opportunity to file their counter-affidavits to adduce evidence controverting those alleged in the criminal complaints against them before the respondent judge issued the warrants of arrest. Moreover, the warrants of arrest were issued without complying with the requisite conditions therefor.

It was on August 23, 2004 that the complaints for qualified trespass to dwelling and grave coercion were filed against "Ernesto Cruz and five (5) John Does" before the sala of respondent judge. On August 24, 2004, a motion for the issuance of a warrant of arrest against Ernesto Cruz was filed. Respondent immediately granted said motion and issued a warrant for his arrest that same day.

On September 8, 2004, a Motion to Amend Criminal Complaint was filed by Amylene, Imelda and Jackielou identifying the names of the members of the CIDD rescue team including Gus Abelgas. Again, on the very same day, warrants of arrest were hastily issued against herein complainants and Gus Abelgas.

Indubitably, there was no preliminary investigation conducted as required by the rules since no subpoena was issued to herein complainants for them to file counter-affidavits. Furthermore, the inordinate haste attending the issuance of the warrants of arrest against complainants, Ernesto Cruz, and Gus Abelgas belies the conduct of preliminary examination and personal determination of probable cause, in contravention of the provisions of the Rules of Court, and constituting a denial of due process.

Section 6, par. (b) of Rule 112 of the Rules of Court provides:

(b) By the Municipal Trial Court. - When required pursuant to the second paragraph of Section 1 of this Rule, the preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court may be conducted by either the judge or the prosecutor. x x x When the investigation is conducted by the judge himself, he shall follow the procedure provided in section 3 of this Rule. If his findings and recommendations are affirmed by the provincial or city prosecutor, or by the Ombudsman or his deputy, and the corresponding information is filed, he shall issue a warrant of arrest. However, without waiting for the conclusion of the investigation, the judge may issue a warrant of arrest if he finds after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice. [Emphasis supplied]

From the foregoing provision, there are three (3) conditions that must concur for the issuance of the warrant of arrest by the municipal judge during a preliminary investigation. The investigating judge must:

- Have examined in writing and under oath the complainant and his witnesses by searching questions and answers;
- Be satisfied that a probable cause exists; and
- That there is a need to place the respondent under immediate custody in order not to frustrate the ends of justice.

The issuance of the warrants of arrest in this case was clearly irregular since, not only did it lack a preliminary investigation, but the order granting

such issuance did not show any finding of a need to place complainants under immediate custody in order not to frustrate the ends of justice.[5]

Even if the judge finds probable cause, it is not mandatory for him to issue a warrant of arrest. He must further determine the necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.[6] It is improper for a municipal judge to issue a warrant of arrest without any finding that it was necessary to place the accused in immediate custody to prevent frustration of the ends of justice.[7]

The procedure described in Section 6(b) of Rule 112 of the Rules of Court is mandatory and failure to follow the same would amount to a denial of due process.[8] Thus, in the case of *Sps. Arcilla v. Judge Palaypayan and Clerk of Court Bajo*,[9] the Court held:

While respondent judge conducted a preliminary investigation on the same day the complaint for estafa was filed, however, he did not notify the accused to give him an opportunity to submit counter-affidavits and evidence in his defense. Worst, on the same day, respondent judge issued the warrant of arrest. Clearly, his actuations manifest his ignorance of procedural rules and a reckless disregard of the accused's basic right to due process.

Worse still, in a clear display of gross ignorance, respondent set Criminal Case Nos. 6149 to 6156 for arraignment

and hearing knowing fully well that no preliminary investigation had been conducted and no informations had yet been filed before his court. This clearly violates complainants' right, as accused in those cases, to due process, to be informed of the accusation against them and to have a copy of the Information before arraignment. As record shows, complainants, as accused in those cases, had already received subpoenas way back on February 11, 2005, commanding them to appear before the court on March 4, 2005 for arraignment without the corresponding Informations having as yet been filed.

When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it. Anything less would be constitutive of gross ignorance of the law.[10] Newly appointed judges are required to have a working knowledge of the Rules of Court before they assume their judicial post. And after years of service in the judiciary, judges are expected to have become already conversant with the Rules, which they apply and rely on everyday in court. Years of service in the bench simply negate any notion that a judge could be grossly ignorant of procedural laws. It is thus completely inexcusable for the respondent who had been with the judiciary for the last twelve (12) years to have acted the way he did in this case.

Be that as it may, compassion works in respondent's favor, what with the fact that this is his first administrative case after more than a decade of judicial service, let alone the circumstance that he has already compulsorily retired. OCA's recommended penalty of FINE appears in order.

WHEREFORE, respondent Judge Godofredo G. Hernandez, Sr. is found GUILTY of Gross Ignorance of the Law and Procedure and is ordered to pay a FINE of twenty thousand pesos (P20,000.00) to be deducted from his retirement benefits.

SO ORDERED.

Puno, C.J., (Chairperson), on official leave.

Sandoval-Gutierrez, (Acting Chairperson), Corona, and Azcuna, JJ., concur.

[1] Rollo, pp. 1-12.

[2] Joint Complaint-Affidavit; id. at 3.

[3] Id. at 101-111.

[4] Id. at 199-222.

[5] Oktubre v. Judge Velasco, A.M. No. MTJ-02-1444, July 22, 2004, 434 SCRA 636.

[6] Bagunas v. Fabillar, A.M. No. MTJ-97-1128, April 22, 1998, 289 SCRA 383.

[7] Mantaring v. Roman, A.M. No. RTJ 93-064, February 26, 1996, 68 SCRA 670.

[8] Cabilao v. Sardido, A.M. No. MTJ-93-818, July 14, 1995, 246 SCRA 94.

[9] A.M. No. MTJ-01-1344, September 5, 2001, 364 SCRA 464.

[10] Creer v. Fabillar, A.M. No. MTJ-99-1218, August 14, 2000, 337 SCRA 632.

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