

MAYOR SALVADOR M. PEREZ, COMPLAINANT, VS. JUDGE HILARION A. SULLER, RESPONDENT.

A.M. No. MTJ-94-936. November 06, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

In a sworn letter-complaint dated March 23, 1994, Salvador M. Perez, Municipal Mayor of San Manuel, Pangasinan accused Judge Hilarion A. Suller of grave abuse of discretion, misconduct, ignorance of the law and acts unbecoming of a judge relative to Criminal Case No. SM-7962 entitled "People v. Carlo Perez, Salvador Perez, Jr. and Jerico Perez," for qualified trespass to dwelling.

Complainant Mayor, father of the three (3) named accused, alleged that respondent Judge conducted the preliminary investigation in said case although the complaining witness, Cristobal Suller, Jr. is his nephew and thereafter issued the warrant of arrest against the accused on the same day the complaint was filed without requiring the accused and their witnesses to submit their counter-affidavits; that on the following day, a Friday, respondent judge purposely left his station to thwart any opportunity for the accused to post bail.

In his Comment, respondent judge averred that he issued the warrant of arrest against the accused when he found probable cause of the commission of the crime by them; that issuance of the warrant was in accord with the provisions of Section 6, Rule 112[1] of the Revised Rules of Criminal Procedure. He denied the allegation that he left his station on March 18, 1994, the day after the filing of the complaint; that in a Joint "Sworn Statement" dated April 7, 1994, his Branch Clerk of Court, Staff Assistant and interpreter attested that respondent judge, together with affiants reported for work on said date and maintained a skeletal force up to noon the next day.

His comment, however, was silent as to his relationship with the complaining witness in Criminal Case No. SM-7962, Cristobal Suller, Jr.

After an evaluation of the present complaint, we find that the resolution thereof hinges on two issues, to wit: (1) whether or not it is necessary to first accord the accused their statutory right to submit counter-affidavits and those of their witnesses, prior to issuance of the warrant of arrest; (2) whether or not it was proper for respondent judge to conduct the preliminary investigation and then order the arrest of the accused when the complaining witness in Criminal Case No. SM-7962, as claimed by complainant mayor, is his nephew.

In resolving the first issue, this court finds guidance in its decision in *Pangandaman, et al. v. Dimaporo Casar, et al.*[2] In said case, the court is confronted with the same issue, though stated differently: "Whether or not the respondent judge had the power to issue the warrant of arrest without completing the entire prescribed procedure for preliminary investigation (i.e. the provisions of Section 3, Rule 112 of the Rules on Criminal Procedure as amended)."[3] The Court stated:

"There is no requirement that the entire procedure for preliminary investigation must be completed before a warrant of arrest may be issued. What the Rule provides is that no complaint or information for an offense cognizable by the Regional Trial Court may be filed without completing that procedure. But nowhere is it

provided that the procedure must be completed before a warrant of arrest may issue. Indeed, it is the contrary that is true. The present Section 6 of the same Rule 112 clearly authorizes the municipal trial court to order the respondent's arrest even before opening the second phase[4] of the investigation if said court is satisfied that a probable cause exists and there is a necessity to place the respondent under immediate custody in order not to frustrate the ends of justice.

Sec. 6. When warrant of arrest may issue.—

x x x x x x x x

(b) By the Municipal Trial Court. — If the municipal trial judge conducting the preliminary investigation is satisfied 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, he shall issue a warrant of arrest."

Consequently in the case before us, we rule that no taint of irregularity attended the issuance of the warrant of arrest by respondent judge.

Respondent judge issued the warrant after complying with the provision of Section 6, Rule 112. He need not, as a condition precedent to the issuance of the warrant of arrest require submission of the counter-affidavits of the accused and his witnesses, as insisted upon by complainant mayor.

Additionally, the complainant questions the impartiality of respondent judge in conducting the preliminary investigation of the crime on the ground that the complaining witness is his nephew, Cristobal Suller, Jr.

Respondent judge's comment, being silent on his relationship with complaining witness, Cristobal Suller, Jr., the Court deems it an admission of the alleged relationship.

Respondent judge could have easily denied the alleged relationship and adduced proof to that effect, but he chose to sidestep said issue by being silent, notwithstanding that this constitutes one of the principal charges against him.

The Court finds that respondent judge should have refrained from handling the preliminary investigation since he was closely related to the complainant, Cristobal Suller Jr., his nephew and a relative by consanguinity within the sixth degree.

The Court mandates that all judges strictly comply with the Code of Judicial Conduct[5] which provides, in Rule 3.12 that:

"Rule 3.12. - A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:

x x x x x x x x

(d) The judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree;

x x x x x x x x"

Rule 137 Section 1 of the Revised Rules of Court which applies suppletorily provides:

"Section 1. Disqualification of judges. - No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed

according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record. (Emphasis supplied)

x x x x x x x x"

While conducting preliminary investigation may not be construed strictly as "sitting in a case," the underlying reason behind disqualification under Rule 3.12 of the Code of Judicial Conduct and Section 1 of Rule 137 is the same.

Clearly, respondent judge's participation in the preliminary investigation involving his nephew is a violation of the aforementioned rules laid down to guide members of the judiciary. The rationale for the rule on disqualification of a judge stems from the principle that no judge should preside in a case in which he is not wholly free, disinterested, impartial and independent.[6] A judge should not handle a case in which he might be perceived to be susceptible to bias and partiality.[7] The rule is intended to preserve the people's faith and confidence in the courts of justice.[8]

As can be gleaned from the records, respondent judge may have been influenced or affected by his relationship to Suller, Jr. during the preliminary investigation. Based on the documentary evidence presented,[9] it appears that during the preliminary investigation, respondent judge ordered the accused to submit within the ten-day reglementary period, their counter-affidavit to controvert the complaint filed against them; that prior to the expiration of said period, respondent judge issued a Resolution dated March 17, 1994 ordering, among others, the forwarding of the records of the case to the Office of the Provincial Prosecutor despite protestations from the accused. This, in effect, deprived the accused of their opportunity to adequately present their position during the preliminary investigation. Such actuation of respondent judge demonstrated partiality in favor of the complaining witness, his nephew, thus casting doubt on his fairness in conducting the preliminary investigation.

We have declared often enough that the behavior of judges and court personnel, must at all times, not only be characterized by propriety and decorum, but must also be above suspicion.[10] Due process cannot be satisfied in the absence of that degree of objectivity on the part of a judge sufficient to reassure litigants of his being fair and just.[11] Canon 2 of the Code of Judicial Conduct, moreover, mandates that a judge should avoid, not merely impropriety in all his acts but even the appearance of impropriety.

IN VIEW OF THE FOREGOING, respondent judge is FINED in the amount of One Thousand Pesos (P1,000.00) for not having inhibited himself in the preliminary investigation of Criminal Case No. SM-7962 entitled "People of the Philippines v. Carlo Perez, et al." with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Feliciano, (Chairman), Melo, and Panganiban, JJ., concur.

Vitug, J., no part.

[1] SEC. 6. When warrant of arrest may issue. — (a) By the Regional Trial Court. -- Upon the filing of an information, the Regional Trial Court may issue a warrant of arrest of the accused.

(b) By the Municipal Trial Court. — If the municipal trial judge conducting the preliminary investigation is satisfied 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, he shall issue a warrant of arrest.

[2] No. L-71782, April 14, 1988, 159 SCRA 599.

[3] SEC. 3. Procedure. — Except as provided for in Section 7 hereof, no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted in the following manner:

(a) The complaint shall state the known address of the respondent and be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents, in such number of copies as there are respondents, plus two (2) copies for the official file. The said affidavits shall be sworn to before any fiscal, state prosecutor or government official authorized to administer oath, or, in their absence or unavailability, a notary public, who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss the same if he finds no ground to continue with the inquiry, or issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents. Within ten (10) days from receipt thereof, the respondent shall submit counter-affidavits and other supporting documents. He shall have the right to examine all other evidence submitted by the complainant.

(c) Such counter-affidavits and other supporting evidence submitted by the respondent shall also be sworn to and certified as prescribed in paragraph (a) hereof and copies thereof shall be furnished by him to the complainant.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within ten (10) day period, the investigating officer shall base his resolution on the evidence presented by the complainant.

(e) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the investigating officer which the latter may propound to the parties or witnesses concerned.

(f) Thereafter, the investigation shall be deemed concluded, and the investigating officer shall resolve the case within ten (10) days therefrom. Upon the evidence thus adduced, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

[4] The first phase consists of an ex-parte inquiry into the sufficiency of the complaint and the affidavits and other documents offered in support thereof. And it ends with the determination by the Judge either: (1) that there is no ground to continue with the inquiry, in which case he dismisses the complaint and transmits the order of dismissal, together with the records of the case, to the provincial fiscal; or (2) that the complaint and the supporting documents show sufficient cause to continue with the inquiry and this ushers in the second phase.

This second phase is designed to give the respondent notice of the complaint, access to the complainant's evidence and an opportunity to submit counter-affidavits and supporting documents. At this stage also, the Judge may conduct a hearing and propound to the parties and their witnesses questions on matters that, in his view, need to be clarified. The second phase concludes with the Judge rendering his resolution, either for dismissal of the complaint or holding the respondent for trial, which shall be transmitted, together with the record, to the provincial fiscal for appropriate action.

[5] Effective October 20, 1989.

[6] Garcia v. De la Pena, 229 SCRA 766; Gutierrez v. Santos, 112 Phil. 184; Geotina v. Gonzales, G.R. No. 26310, September 30, 1971, 41 SCRA 66; Umalek v. Villaluz, G.R. No. 33508, May 25, 1973, 51 SCRA 84.

[7] Urbanes Jr. v. CA, G.R. No. 112884, August 30, 1994, 236 SCRA 72.

[8] Pimentel v. Salonga, G.R. No. 27934, September 18, 1969, 21 SCRA 160.

[9] Resolution issued by the Office of the Provincial Prosecutor dated May 30, 1994 dismissing the crime charged, pp. 51-54 of Rollo.

[10] Tan v. Herras, A.M. No. P-90-904, March 11, 1991, 195 SCRA 1.

[11] Mateo, Jr. v. Villaluz, L-34756, March 31, 1973, 50 SCRA 18, cited in Castillo, et al. v. San Juan, 62 SCRA 124.

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